

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Rural Broadband Experiments)	WC Docket No. 14-259

**REPLY COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits reply comments in response to comments filed on the Further Notice of Proposed Rulemaking in the above-captioned proceedings.² The *Further Notice* seeks comment on applying additional weighting factors for scoring bids as part of the Connect America Fund (“CAF”) Phase II competitive bidding process for the four performance tiers adopted by the *Report and Order*.

To make the most effective use of funds over the life of the investments that CAF II support will enable, the Commission should adopt CAF II competitive bidding procedures that actively encourage the deployment of “future-proof” broadband facilities that will stand the test of time and meet an evolving level of universal service. As the record indicates, the Commission

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers (“RLECs”). All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.

² *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Rural Broadband Experiments*, WC Docket No, 14-259, *Report and Order* and *Further Notice of Proposed Rulemaking*, FCC 16-64 (rel. May 26, 2016) (“*Further Notice*” or “*Report and Order*”).

should utilize a CAF II competitive bidding mechanism that awards additional weight to bids that meet a higher set of performance standards (speed, usage, and latency). This approach is consistent with, and indeed substantially furthers, the Section 254 principles of “reasonable comparability” and the notion of universal service as an “evolving level of service.”³ It places additional value on the use of limited Universal Service Fund (“USF”) dollars to go beyond merely “getting broadband out there” and instead focuses on ensuring that the networks built with CAF II funds are scalable and sustainable over the longer term.

II. CAF II COMPETITIVE BIDDING PROCEDURES THAT FOCUS SOLELY ON INITIAL DEPLOYMENT AT BASIC LEVELS OF SERVICE OR SUBJECTIVE DEFINITIONS OF “CONSUMER PREFERENCES” TO THE EXCLUSION OF SUSTAINABILITY AND REASONABLE COMPARABILITY OVER THE LONG RUN WOULD REPRESENT A SHORTSIGHTED, INEFFICIENT, AND WASTEFUL USE OF USF DOLLARS

NTCA’s proposal in this proceeding is a “network-focused” approach to universal service that looks both to consumer demands today as well as to the capability of the technology to be deployed *for the long-haul*. Universal service – especially as it enables investment in infrastructure intended to serve consumers for years to come – must not focus myopically on near-term deployment costs alone or simply look to claim credit for “getting broadband out there.” Instead, the rules adopted here should promote a focus on future-proof scalable facilities that will deliver better value over the life of the supported network assets than alternatives that lack the ability to quickly and easily scale over time to meet consumers’ needs both during and after the 10-year term of support.

As an initial matter, awarding additional weight to bids that meet a higher set of performance standards (speed, usage, and latency) is wholly consistent with the concept of

³ 47 U.S.C. § 254.

“competitive neutrality.” Indeed, as the Commission itself has said, “the competitive neutrality principle does not require all competitors to be treated alike, but ‘only prohibits the Commission from treating competitors differently in ‘unfair’ ways.’”⁴ Nothing in Section 254 specifically or the concept of “competitive neutrality” more generally requires the Commission to set aside consideration of the capabilities and limitations of various technologies and how those limits directly affect consumers now and over time. This is a one-time decision about how to invest in infrastructure for years to come, and that decision cannot turn upon the cheapest way to build something right now. As an analogy, it does not “discriminate” against lumber to decide that bridges are far better built from steel and iron than two-by-fours and nails if one presumes the bridge is intended to last for a period of decades rather than merely a few years’ time.

“Competitive neutrality” cannot be measured or gauged in a vacuum; rather, by law, it must be defined by reference to and measured against other statutory goals that mandate “reasonable comparability” between urban and rural consumers and an “evolving” level of universal service.

Thus, in the context of broadband, the Commission should reject any proposal that would ignore the very real limitations that latency, for example, will have on rural consumers’ ability to use real-time applications that urban consumers typically take for granted. More specifically, ViaSat proposes that the Commission adopt a weighting system that utilizes “consumer preferences to drive the selection of auction winners”⁵ by using “market data showing that higher speeds have far more of an impact than lower latency on consumer perceptions of broadband

⁴ *Connect America Fund*, WC Docket Nos 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking (rel. Nov. 18, 2011), *aff’d sub nom.* In re: FCC 11-161, 753 F.3d 1015 (10th Cir.2014).

⁵ Comments of ViaSat, Inc., WC Docket No. 10-90, WC Docket No. 14-58, WC Docket No, 14-259 (fil. Jul. 21, 2016), p. 5.

service quality.”⁶ While providers may use advertised speeds as a primary marketing tool, this is in part because consumers today take it as a given that their high-speed broadband will enable voice, video, and other advanced applications.⁷ Thus, asking the Commission to ignore the implications of latency-sensitive technologies is to relegate rural consumers to “second-class” broadband as compared to urban counterparts who can use their broadband to the fullest degree possible. Indeed, USTelecom correctly notes that “while satellite providers have spoken to the availability of ‘high quality home phone service’ through satellite broadband subscriptions, marketplace realities suggest that consumers do not view such services as reasonably comparable to those offered by terrestrial providers.”⁸ The Commission’s CAF II bidding procedures should ensure that they recognize the same distinctions as consumer preferences do (and will over time), ensuring that rural consumers have *sustainable* access to quality, reliable, and potentially life-saving voice service that is reasonably comparable to that available in urban areas. Additional weight applied to bids meeting a low-latency (< 100ms) standard will ensure that limited CAF II funds provide the Commission and rural consumers the most effective outcome in terms of service capabilities consumers can enjoy both immediately and over the life of the investment enabled by those CAF funds.

⁶ *Id.*

⁷ *See*, For the First Time, More Than Half of Americans Will Watch Streaming TV, <http://www.emarketer.com> (finding that “2016 will be the first time more than half of the US population will watch TV shows online at least once a month.”), available at: <http://www.emarketer.com/Article/First-Time-More-Than-Half-of-Americans-Will-Watch-Streaming-TV/1013543>; *See also*, Voice Telephone Services: Status as of December 31, 2014 Industry Analysis and Technology Division Wireline Competition Bureau March 2016 (finding that from 2011 to 2014 “interconnected VoIP subscriptions increased at a compound annual growth rate of 14%.”), available at: https://apps.fcc.gov/edocs_public/attachmatch/DOC-338629A1.pdf.

⁸ Comments of USTelecom, WC Docket No. 10-90, WC Docket No. 14-58, WC Docket No. 14-259 (fil. Jul. 21, 2016), p. 7.

The Commission should also reject CAF II competitive bidding proposals that seek to promote the sheer number of locations served as the primary factor (or even only factor) in weighting bids⁹ or proposals that actively aim for the lowest common denominator in terms of service made available to rural consumers.¹⁰ These proposals will define universal service downward and produce broadband networks that in just a few years will seem antiquated and will be incapable of satisfying consumer demand – making terribly inefficient misuse of CAF funds in a way that will necessitate “rebUILds” and additional use of CAF funds in just a handful of years. Indeed, in some cases, facilities built pursuant to such criteria may in fact be unable to deliver reliable voice service even today. At a time when speeds of 25/3 Mbps have been deemed as “table stakes” in today’s world,¹¹ and given that consumers’ need for broadband of higher speeds and lower latency is increasing rapidly, a lowest common denominator approach to the CAF II competitive bidding process that actively encourages baseline service as a default is an admission of defeat with respect to “reasonable comparability” – in the face of a statute that does not permit the waving of such a white flag. In fact, as the Fiber to the Home Council states in comments, market research data shows that, “the Minimum Performance tier is expected as *early*

⁹ Comments of Verizon, WC Docket No. 10-90, WC Docket No. 14-58, WC Docket No. 14-259 (fil. Jul. 21, 2016), p. 4.

¹⁰ Comments of Hughes Network Systems, LLC, WC Docket No. 10-90, WC Docket No. 14-58, WC Docket No. 14-259 (fil. Jul. 21, 2016), pp. 2-3; Comments of the Wireless Internet Service Providers Association, WC Docket No. 10-90, WC Docket No. 14-58, WC Docket No. 14-259 (fil. Jul. 21, 2016), p. 6.

¹¹ Prepared Remarks of FCC Chairman Tom Wheeler “The Facts and Future of Broadband Competition” 1776 Headquarters, Washington, D.C. September 4, 2014, available at: https://apps.fcc.gov/edocs_public/attachmatch/DOC-329161A1.pdf; *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 2016 Broadband Progress Report, GN Docket No. 15-191, FCC 16-6 (rel. Jan. 29, 2016), statement of Chairman Tom Wheeler (“A 25 Mbps connection has become “table stakes” in 21st century communications.”).

as next year to have insufficient capability to enable a consumer with one device to have a satisfactory experience accessing video content. The Baseline Performance service tier faces similar constraints, especially when consumers use multiple devices.”¹² With this in mind, the Commission should instead promote the availability of broadband networks that are scalable and sustainable over time, supporting consumers’ (and community anchor institutions’) ¹³ needs for high-quality broadband service *now and far beyond the 10-year term of support*.

To be clear, these arguments should not be taken to assert that wireless or satellite technologies are not important options to address consumer needs in certain areas of the nation where providers are unwilling or unable to deploy more robust networks or where providers choose such alternatives for small portions of their service areas where other options are not feasible. To the contrary, they are important “tools in the toolkit” for solving the challenges of rural broadband where other alternatives that provide actual “reasonable comparability” and enable quality, reliable voice service are unachievable. But as a general public policy matter, universal service requires “reasonable comparability” as a matter of law – and any bidding process developed in this proceeding must as a matter of law attempt to deliver on that promise first before retreating to other options as fallbacks where needed to deliver a minimal level of coverage.

¹² Comments of Fiber to the Home Council Americas, WC Docket No. 10-90, WC Docket No. 14-58, WC Docket No, 14-259 (fil. Jul. 21, 2016), p. 6 (emphasis added).

¹³ As NTCA stated in initial comments, the Commission should consider the community-wide benefits of CAF II support for services that are enabled by fiber network facilities. The promotion of future-proof and scalable networks in areas where CAF II resources will be directed can have an immediate impact on the schools, libraries and rural health care facilities (as well as Lifeline-eligible consumers) that will benefit in the first instance from the availability of a high-capacity network. The availability of a robust network can in turn be leveraged by beneficiaries of the Schools and Libraries, Lifeline, and Rural Health Care mechanisms, ensuring that CAF II funds can have the widest community impact as possible.

As NTCA proposed in initial comments, the Commission should therefore use weights (as set forth in the table below) as applied to speed, usage, and latency that would provide additional points to CAF II bids proposing to deploy networks that will exceed the minimum requirements of each of the four performance tiers as established by the Report and Order.

Performance Tier	Speed	Usage Allowance	Additional Points Awarded
Minimum	≥ 10/1 Mbps	≥ 150 GB	0
Baseline	≥ 25/3 Mbps	≥150 GB or U.S. median, whichever is higher	0
Above Baseline	≥100/20 Mbps	Unlimited	25
Gigabit	≥ 1 Gbps/500 Mbps	Unlimited	50

Within each of the four performance tiers, the Commission should also more heavily weight bids in the “low latency” (≤ 100ms) category. Latency is a key metric in terms of consumers’ ability to use Voice over Internet Protocol (“VoIP”) applications and have reliable access to emergency services and therefore additional weight as applied to this metric advances both the goal of “reasonably comparability” and the Commission’s continued commitment to public safety.¹⁴ Bids within each performance tier proposing to provide service with latency less

¹⁴ *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications*, PS Docket No. 14-174, Report and Order, FCC 15-98 (rel. Aug. 7, 2015), ¶ 3 (adopting “backup power obligations on providers of facilities-based fixed, residential voice services that are not line-powered to ensure that such service providers meet their obligation to provide access to 911 service during a power outage”); *Technology Transitions*, GN Docket No. 13-5, *et al.* Declaratory Ruling, Second Report and Order, and Order on Reconsideration, FCC 16-90 (rel. Jul. 15, 2016), ¶ 5 (adopting “a three- pronged test for determining whether a new service qualifies as an adequate replacement for a legacy voice service as part of [the Commission’s] Section 214 discontinuance application process” to “ensure that consumers can continue to expect strong service quality, *access to critical applications such as 911*, and interoperability with other key applications and functionalities”) (emphasis added); *Improving 911 Reliability*, PS Docket No. 13-75, *Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket No. 11-60, Report and Order, FCC 13-158 (rel. Dec. 12, 2013).

than 100ms should receive an additional 25 points above and beyond the weights as proposed in the table above.

Latency	Requirement	Additional Points Awarded
Low Latency	$ms \leq 100$	25
High Latency	$ms \leq 750$ & MOS of ≥ 4	0

Finally, the Commission should also adopt a reduction in points (a “negative weighting”) for bids using the Mean Opinion Score (“MOS”) in place of the millisecond measurement for latency.¹⁵ The effectiveness of this approach in terms of measuring consumers’ ability to utilize VoIP services is questionable at best, and given the emphasis that the Commission has placed on voice services in other contexts including public safety, the bidding procedures developed in this proceeding should not countenance substandard service for rural consumers unless there is truly no other option by which to reach those consumers.

III. CONCLUSION

For the reasons discussed above, the Commission should adopt CAF II competitive bidding procedures that actively encourage the deployment of “future-proof” broadband facilities that can stand the test of time, meet an evolving level of universal service, and represent the most effective use of CAF II resources measured over the lives of the networks that are enabled through CAF funds.

¹⁵ See, Comments of The National Rural Electric Cooperative Association (NRECA) and the Utilities Technology Council (UTC), WC Docket No. 10-90, WC Docket No. 14-58, WC Docket No. 14-259 (fil. Jul. 21, 2016), pp. 8-9.

Respectfully Submitted,



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