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January 20, 2018

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Request for leave to accept late-filed notice of ex parte presentations*
CAF Phase II Competitive Bidding (WC Docket No. 10-90)

Dear Ms. Dortch:

Yesterday, on January 19, the attached ex parte letter was filed advising of meetings Hughes Network Systems, LLC ("Hughes") held with Commission staff on January 16, 2018, in the above-referenced docket. As a result of an inadvertent error by undersigned counsel, this letter was not filed on or before January 18, as was required by Section 1.1206(b)(2)(iii) of the Commission's Rules and intended by the filer. Hughes directed that the filing be made on or before January 18, consistent with the Rules, and the failure to do so was solely due to my inadvertent error. I therefore respectfully request leave for the Commission to accept the late-filed ex parte notice without sanction to Hughes.

Sincerely,

/s/

L. Charles Keller

cc: Jay Schwarz
Claude Aiken
Amy Bender
Jamie Susskind
Travis Litman
Jeffrey Westling

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January 18, 2018

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Notice of ex parte presentations*
CAF Phase II Competitive Bidding (WC Docket No. 10-90)

Dear Ms. Dortch:

On January 16, 2017, Hughes Network Systems, LLC, met with the Chairman's and Commissioners' legal advisors to discuss the draft order and order on reconsideration in the above-captioned docket proposed for the Commission's January 30, 2018 Open meeting. Specifically, Hughes met in separate meetings with Jay Schwarz of the Office of Commissioner Ajit Pai; Claude Aiken of the Office of Commissioner Mignon Clyburn; Amy Bender of the Office of Commissioner Michael O'Rielly; Jamie Susskind and Jeffrey Westling of the Office of Commissioner Brendan Carr; and Travis Litman of the Office of Commissioner Jessica Rosenworcel. In the meetings, Hughes was represented by Philip O'Brien, Vice President, Legal Affairs; Jodi Goldberg, Associate Corporate Counsel; and Melissa E. Newman and the undersigned of this firm.

In the meetings, the discussion followed the attached talking points, which were distributed to the attendees. Hughes also noted that, since it placed its Jupiter 2 satellite into service in March 2017, it has over 340,000 customers on that satellite, and its churn has been trending downward. In addition, churn for subscribers with Hughes' VoIP over satellite service is lower than that of Hughes' data only subscribers, which would indicate a high level of customer satisfaction in respect of a latency-sensitive service. Consistent with other evidence Hughes has placed in the record, noted in the talking points, these factors further demonstrate that customers are satisfied with satellite broadband service.

WILKINSON) BARKER) KNAUER) LLP

Marlene H. Dortch, Secretary
January 18, 2018
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Please direct any questions regarding this filing to the undersigned.

Sincerely,

/s/

L. Charles Keller

cc: Jay Schwarz
Claude Aiken
Amy Bender
Jamie Susskind
Travis Litman
Jeffrey Westling



CAF Phase II Auction

January 2018

- **The Commission should grant Hughes’s petition for reconsideration and modify the bid-weighting matrix to align weights with the values that consumers actually place on speed, capacity and latency.**
 - As Hughes demonstrated in its petition for reconsideration and as supported in the record, the weighting for each speed and capacity tier, and for latency, should be reasonable and not exceed 10 points each. USTelecom, ITTA, and Verizon all advocated a more reasonable approach that reflects consumer values on these attributes.
 - The August 2017 Technology Policy Institute study demonstrates that consumers do not share the high values the FCC has placed on high speed and capacity or low latency.
 - The current bid weights will erect high barriers to participation, leading to a less-competitive auction. Without participation in the auction by non-fiber-based providers, the likely result is fewer rural Americans receiving service.
 - Changing the tier weights will not delay the auction because they are variables in the bid consideration formula.
- **The draft Reconsideration Order does not refute the fundamental points underlying Hughes’s reconsideration petition – nor could it**
 - The draft fails to refute that the current weighting matrix will lead to fiber bids always winning (§§ 7-8).
 - Irrespective of any hypothetical, the current matrix imposes a 70-point penalty in an auction where the maximum bid is 100. The draft says that satellite bids “will have the opportunity to compete for support, but will have to be particularly cost-effective to compete with higher tier bids.” (§ 7) In reality, a satellite bid would have to be 70% lower relative to the reserve price than a fiber bid in order to beat it. That is not just “particularly cost-effective” – that is an insurmountable advantage.
 - The draft fails to refute that Hughes’s proposal is a more appropriate balancing of maximizing both the availability and the quality of service.
 - The draft sets up a strawman by suggesting that Hughes is proposing “minimal weight differences” when Hughes’s proposal would separate a satellite bid and a fiber bid by 30 points (10 points each for two speed tiers and 10 points for latency). The draft does not grapple at all with why this is not a more appropriate way to “balance – within a finite budget – its goal of lower support amounts and wider coverage with its goal of service at higher speeds and lower latency.” (§ 9)
 - The draft erroneously asserts that Hughes did not address concerns about voice service or other interactive, real-time applications. (§§ 10-11) But Hughes presented concrete data showing that consumers place higher value on speed than on latency or capacity, and that satellite broadband customers are as satisfied as customers of terrestrial broadband providers. Hughes also filed information showing that it has a commercially successful VoIP product, and demonstrating how little public Internet traffic is actually “real-time interactive.”

The draft refuses to consider this evidence, pointing to the Weighting Order's decision not to base weights on "specific data." This approach is repugnant to the Commission's focus on data-driven analysis, and ironic that it appears on the same meeting as the item creating the new Office of Economics and Analytics.

- **Failing to adopt a more reasonable bid weighting matrix will disserve the Commission's goals in the CAF-II auction.**
 - The Commission's stated goal here was "providing households in the relevant high-cost areas with access to high quality broadband services, while making the most efficient use of the finite universal service funds."¹
 - As now-Chairman Pai explained, the Commission's goal in CAF is "to maximize the broadband bang we get for our universal service buck by establishing a flexible weighting system that should incentivize carriers to deploy faster service to rural America at the lowest possible price to the taxpayer."²
 - As Commissioner O'Rielly has observed, government support for broadband deployment "should be done in a way that does not harm competition in the marketplace, [and] prevents bureaucrats from picking winners and losers."³

¹ See *Connect America Fund; ETC Annual Reports and Certifications*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 at ¶ 207 (May 25, 2016) ("FNPRM"), https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-64A1_Rcd.pdf.

² *Connect America Fund; ETC Annual Reports and Certifications*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 at 6109- 10 (Statement of Commissioner Ajit Pai, Approving in Part and Concurring in Part), https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-64A1_Rcd.pdf.

³ Commissioner Michael O'Rielly, *Federal Broadband Infrastructure Spending: Potential Pitfalls*, FCC (Feb. 1, 2017) ("O'Rielly Blog Post"), <https://www.fcc.gov/news-events/blog/2017/02/01/federal-broadband-infrastructure-spending-potential-pitfalls>.