January 19, 2018

Ex Parte
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: CAF Phase II Auction (WC Docket No. 10-90; Auction 903)

Dear Ms. Dortch:

On Wednesday, January 17, 2018, Alan Buzacott (Verizon), Mary Henze (AT&T), Malena Barzilai (Windstream), AJ Burton (Frontier) and I met with Amy Bender, Legal Advisor to Commissioner O'Rielly. We discussed issues related to the proposed CAF Phase II Auction PN and the CAF Phase II Order and Order on Reconsideration (Draft Recon Order).

Concerning the Draft Recon Order, we focused on the issue raised by a number of parties regarding the potentially substantial gap between the location commitments identified by the CAM (and included in the Eligible Areas PN) and the number of locations that may actually exist on the ground in the CAF Auction eligible CBGs. As discussed below, our due diligence effort revealed approximately 18% fewer locations in these CBGs. Because paragraph 25 of the Draft Recon Order would require auction winners to build out to the number of locations identified in the model regardless of the actual number of locations, a location deficit of this size could significantly reduce participation in the auction. For example, the Draft Recon Order would penalize companies that build out to every location in the area of their winning bid but still fall short of the modelled number of locations by 18% by requiring them to return 10% of their funding plus 1.89 times the amount of support for the shortfall. In this example, a winning bidder would be required to return roughly 44% of its funding even though it may have built to every actual location. Looked at another way, the winning bidder would receive only 56% of its funding even though it built to 82% of the modelled locations, and every actual location. This approach could substantially lower auction participation.

In the Draft Recon Order, the Commission claims that the mismatch problem is insignificant because 94-96% of the locations in the CAM are accurately geocoded. Although accurate across the entire model as it covers both urban and rural America, the 4-6% of locations that were not able to be geocoded are overwhelming in rural, CAF eligible areas. The CAM model Order makes clear that model contains "surrogated" locations or locations distributed across some areas randomly because they could not be geocoded. The CAM simply reflects the lack of strong geocoding data on the very rural locations at issue in the CAF II auction.

The potential impact of the location mismatch is very real. Auction winners must build to 100% of all the locations identified by the CAM. As set out in paragraph 28 of the Draft Recon Order, if winning bidders are only able to build to 95%-99% of the CAM required locations they will be required to return 1.89 times the average cost of a location in funding but will not subject to an additional fine. However, returning almost twice the amount of funding received is a substantial penalty itself for areas where the modelled locations may simply not exist. If a winner deploys to fewer than 95% of the locations they must return funding at a 1.89 multiplier and be fined an additional 10% of their auction funding. This regime applies regardless of the reason for a location shortfall. As the Order now stands, auction participants may be penalized because they have not deployed to locations that do not exist.

The Draft Recon Order dismisses the concerns on the record and declines to adopt either Verizon's 90% deployment proposal or a post-auction correction period proposed by a number of parties. The Order claims that location mismatches will naturally work themselves out because some CBGs have more locations than the model and thus will offset any undercounts and unlike the CAF model-based program bidders can be selective about where they bid. The Draft Recon Order at paragraphs 23-26 relies on bidders doing "their due diligence" before participating. If they believe there are fewer locations in a CBG than the CAM requires they should simply not bid on it. However, "due diligence" may only reveal a very substantial mismatch between location counts. It cannot remedy it.

USTelecom simulated "due diligence" by using commercially available residential and small business address databases and recognized geocoding software to identify the number of locations in CAF Auction eligible CBGs only. We then compared these location counts to those released in the CAF Auction Eligible Areas PN. We do not claim that the location counts that resulted from this process are necessarily more "accurate" than the CAM. In fact, it is very likely that all the rural data suffer from the same reduced reliability in rural areas as the CAM, highlighting a need for a solution. Using different commercial databases would likely result in slightly different results. However, because our exercise would be one of the methods of "due diligence" available to potential bidders we believe the results are instructive.

From a nationwide perspective, our analysis produced roughly 18% fewer locations in the CAF Auction areas than identified by the CAM. Across states this percentage varied from 0% to 80% fewer locations than the CAM. In five states, the mismatch was significant enough that a winner who bid and won the whole state could build to all the locations identified by our analysis and still be required to return 100% of the CAF auction funding. Of the 30,310 CBGs in the CAF Auction, 19,232 had fewer locations than the CAM while only 7,356 had more locations than the CAM. Location counts matched in 3,722 CBGs.

To understand the potential impact at a state level, we looked more closely at Missouri, which showed approximately 11% fewer locations than the CAM. Of the 1,334 CBGs in that state, 860 had fewer locations than the CAM while 358 had more locations (116 matched). However, the number of "missing" locations was just over 14,000 while the number of "extra" locations was only 900. This suggests that it would be difficult to combine CBGs to balance the location

mismatches even with the benefit of the "due diligence" we performed. Based on this information a potential Missouri bidder might either choose not to participate in the auction or to define their auction strategy based on presumed location counts rather than on areas they most desire to serve. Neither result would be good public policy.

Another method of "due diligence" that could be conducted is examining satellite images to identify and count visible locations. Based on the experience of USTelecom members who use this method when preparing to file in the HUBB these images can be helpful but not dispositive. Residences or business located within tree cover are not visible and it is often not possible to determine if a structure is a residence or simply a barn or other outbuilding.

We suggested that providing winning bidders an opportunity to work with the Commission to adjust location commitments to actual location counts would best serve the auction and encouraging participation in it. Winning bidders should be given adequate time to conduct engineering studies and network planning that would include determining actual location counts in the areas included in their winning bids. If actual location counts across those areas are below model estimates, the winning bidder should be able to take advantage of a clear path to arrive at corrected counts. The Commission could consider delegating the design of this path to Wireline Competition Bureau staff.

Concerning the CAF II Auction Public Notice, we reiterated the importance of supporting package bidding as set out in our comments and previous ex partes,[1] and substantially increased switching percentages.[2] We also discussed the proposed financial qualifications metrics and suggested that they be revised to simplify the review process and provide greater clarity to potential bidders.[3]

Sincerely yours,

Jonathan Banks
Senior Vice President
Law & Policy

cc: Amy Bender

---

[1] *See, e.g.* Letter from Jonathan Banks, SVP, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 (filed December 1, 2017).
[2] *See*, USTelecom Comments at 9-11.
[3] *See* USTelecom Comments at 3-6.