



January 22, 2018

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: *Ex Parte* Communication: WC Docket Nos. 10-90, 14-58, 14-259, and AU
Docket No. 17-182**

Dear Ms. Dortch:

On January 18, 2018, Derrick Owens of WTA and Gerry Duffy representing WTA, Larry Thompson and Dusty Johnson of Vantage Point Solutions (participating by phone), and the undersigned of ITTA met with Amy Bender of the Office of Commissioner O’Rielly regarding the draft Order and Order on Reconsideration in the above-captioned proceedings to be considered by the Commission at its January 30, 2018 open meeting.¹

In our meeting, we expressed concern with Section III.D.1. of the Draft Order, regarding how to address the “locations gap” in the Connect America Phase II (Phase II) auction context. In prior analysis, Vantage Point found an overestimation of model-identified locations in 85 percent of 144 exchanges, with an average discrepancy of approximately 22 percent between model-identified locations and “real-world” locations.² While questioning perhaps the magnitude of a “locations gap” but not disputing the existence of a such a gap, the Draft Order suggests that due diligence prior to the auction will enable potential bidders either to make certain that they can identify and offer service to the required number of locations if they are ultimately authorized to receive support or decline to bid in certain blocks where sufficient locations cannot be found.³ Moreover, “if a discrepancy is later discovered due to special circumstances beyond a[n auction winner]’s control,” it can seek waiver of the deployment milestones,⁴ or it can serve additional locations in other eligible census blocks included in its winning bid.⁵

¹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order and Order on Reconsideration, FCC-CIRC1801-02 (Public Draft Jan. 9, 2018) (Draft Order).

² *Cf. id.* at 10, para. 23 n.61 (citing concerns of Vantage Point and the Illinois Electric Cooperative regarding overestimation of locations by the cost model). *See also, e.g.*, Letter from Larry Thompson, CEO, Vantage Point, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, Attach. D at 4 (filed July 13, 2015).

³ *See* Draft Order at 10, para. 23.

⁴ *Id.* at 11, para. 26.

⁵ *See id.* at para. 25.

These, however, are unduly burdensome measures to overcome, and they also risk leaving areas unserved in perpetuity because no bidder may ever be able to justify serving areas where “facts on the ground” differ materially from those identified in the model. In fact, the due diligence contemplated by the Draft Order may have the effect of dissuading prospective bidders, especially small businesses, from participating in the Phase II auction, if not at least directly contravening the Commission’s goal of maximizing participation in the auction. Vantage Point recounted in our meeting that the “windshield time” entailed to geocode actual locations in rural areas such as Phase II auction eligible census blocks amounts to approximately seven locations per hour per person. In the face of unforgiving alternatives in the likely event that there is a significant discrepancy between the model-identified locations and real-world locations, prospective bidders are presented with a Hobson’s Choice: either incur the resulting extensive time and expense required to conduct due diligence, which will be exacerbated by the upcoming short-form application deadline; or find themselves struggling to find real-world locations to satisfy their deployment obligations. This conundrum is likely to particularly discourage smaller companies from participating, either due to the high-stakes burdens of evaluating whether to participate in the auction, or due to the likelihood of them having smaller groups of census blocks in which to find other locations.⁶

To help address such concerns and to avoid the possibility that areas – and consumers – might be left behind due simply to model data unreflective of “facts on the ground,” we presented several solutions that could be easily accommodated within the contemplated auction structure without taking the auction off of its current pace.⁷ It is also worth noting that these solutions are not mutually exclusive, and could (and indeed, should) be used in concert to help address locations gap concerns. For example, the Commission could allocate full support for a census block where every actual location in the census block is served, or the Commission could broaden its definition of locations for purposes of fulfilling deployment obligations.⁸ Alternatively (or as a complement to such measures), the Commission could find that deployment to at least 95 percent of the locations identified by the cost model is sufficient and will not cause the winning bidder to relinquish any support,⁹ and for locations gaps that then cause an applicant to fall short of the initial 95 percent flexibility threshold, the Commission

⁶ And, of course, given the frequency and degree of overestimation of model-identified locations, the ability to rely on finding locations in other census blocks is highly questionable to begin with.

⁷ See Letter from Dusty Johnson, Vice President of Consulting, Vantage Point, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, (filed Sept. 18, 2017).

⁸ For instance, in the agricultural context there are fixed locations housing facilities that promote “smart ag” practices, and which are reliant on broadband.

⁹ The Draft Order would provide for such “flexibility” in meeting deployment obligations, but would also require a commensurate refund of support. See, e.g., *id.* at 14, para. 34. Against the backdrop of widely documented discrepancies between model-identified locations and real-world locations, and consistent with the Commission’s approach in other deployment contexts, this flexibility should not require any refund of support.

could reduce support on a pro rata basis relative to the number of actual deployment locations.¹⁰ In lieu of an unduly burdensome and high-stakes due diligence process prior to the auction, as well as a burdensome and time-consuming waiver process following the auction, the Commission could view the model-identified locations as a presumption, which can be rebutted either before or after the auction with engineering materials or other documented demonstration as to the extent of real-world locations available for deployment, and whose accuracy and completeness is attested to by certification.

In the absence of the Commission adopting one or more of these proposed solutions, at the very least it should include language confirming that its approach to the required number of locations in the Phase II auction context does not prejudice how the Commission will address any locations gaps in other universal service high-cost program deployment contexts. There are several bases for this distinction. First, while the Draft Order cites potential Phase II support authorization delays following the auction as a basis for denying relief relative to the locations gap,¹¹ there is no such time pressure in other high-cost support contexts.¹² Second, in other high-cost program contexts, support recipients have not been afforded the opportunity to be “as selective about which areas they choose” to vie to serve.¹³ Third, the discrepancy between theoretical locations and real-world locations may be prone to widen as even more time passes relative to the 2010 Census figures upon which theoretical results were based.

Under these circumstances, we suggest the addition of the following language to the Draft Order: “Nothing in our discussion in this section regarding the required number of locations in the Phase II auction context prejudices how the Commission would address a locations discrepancy situation in other high-cost program contexts, for example, where facts on the ground show there are fewer locations than the model indicates for A-CAM and other high-cost support recipients.”¹⁴

¹⁰ To ensure that all actual locations are served, the Commission could so condition this solution on a demonstration of such completeness of deployment to real-world locations. *Contra id.* at 13-14, para. 32 (accepting that, in light of the locations gap, some census blocks will not receive bids, because affording greater than 95 percent flexibility may leave certain locations in the census block stranded without service).

¹¹ *See id.* at 10, para. 24.

¹² For instance, rate-of-return carriers that opted to accept model-based (A-CAM) support have 10 years to fulfill deployment obligations.

¹³ *Id.* at para. 23. For example, even though A-CAM recipients had the choice whether to opt into model-based support, they had to do so on a statewide basis, without the opportunity to get as granular as census blocks. Legacy rate-of-return carriers have no ability to pick and choose their service areas.

¹⁴ This language could be added, for instance, at the end of n.65 of the Draft Order.

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Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,

/s/

Michael J. Jacobs
Vice President, Regulatory Affairs

cc: Amy Bender