

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Comment Sought on Competitive Bidding)	AU Docket No. 17-182
Procedures and Certain Program)	WC Docket No. 10-90
Requirements for the Connect America)	
Fund Phase II Auction (Auction 903))	

To: The Commission

**REPLY COMMENTS OF THE
WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

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SUMMARY

The initial Comments in response to the Commission’s Public Notice seeking input on proposed eligibility and auction rules reflect strong and diverse interest in the upcoming Connect America Fund (“CAF”) Phase II auction. Overall, the Comments demonstrate a mixed bag – on some issues, parties disagree on the course the Commission should take, while on others there is general agreement on the need to modify the Commission’s proposals.

The Wireless Internet Service Providers Association (“WISPA”) disagrees with the Rural Coalition’s proposal to require applicants proposing spectrum-based bids to submit propagation maps with their short-form applications. Contrary to the Rural Coalition’s view, such a requirement would be very complicated and time-consuming, requiring the Commission to develop multiple propagation models to reduce subjectivity and requiring applicants to produce numerous coverage maps for each census block group in a package bid. Applicants would be required to spend countless hours preparing additional detailed exhibits with no countervailing benefit for the Commission. Indeed, this approach would add many hours of pre-auction vetting that would delay the beginning of the auction. The Commission has a process in place to ensure that bidders meet their performance obligations – the post-auction long-form application, in which Commission staff will be required to review only winning bid proposals, confirmed by a professional engineer, and not hundreds of “losing” bids. If the Commission nonetheless adopts the Rural Coalition’s proposal, it should require *all* bidders to submit maps of their networks. For fiber-based proposals, this would require showing the location of the fiber plant for each census block group, both on a standalone basis and in every combination, and show how the applicant will access poles, rights-of-way and other infrastructure.

The Commission should not preclude certain technologies from eligibility to participate in higher bidding tiers, but should instead rely on the performance criteria it has adopted. If a fixed wireless provider can, for instance, demonstrate an ability to provide Above Baseline or Gigabit tier performance, it should not be foreclosed from bidding in those performance tiers. Fixed wireless technology is improving at a rapid rate, with wireless data rates approaching the speed of cable broadband and ultimately likely to match fiber – at a lower cost and with greater ability to scale for incremental deployment.

The Commission should not require applicants to demonstrate in their short-form applications an ability to serve 100 percent of all eligible locations. Commission rules require service to 95 percent of eligible locations, certified by a professional engineer in the long-form application, and thus there is no justification for holding an applicant to a standard in the short-form application that the rules do not require it to meet. In reviewing applications, the Commission should rely on expertise within the Commission, not on additional USAC resources that would need to be hired and trained.

Many commenters agreed that the Commission’s proposed five-part financial screen is an inappropriate way to determine an experienced broadband provider’s financial qualifications, and no party supported the Commission’s proposal. As conceived, the screen would not accomplish its intended purpose of subjecting some audited financial statements to “more in-depth review” because all financial statements would fail the proposed screen. The Commission should adopt WISPA’s recommendation as one of two alternative paths to demonstrating financial qualification to better reflect the manner in which broadband providers operate and deploy capital.

Likewise, commenters took issue with the Commission’s proposed interpretation of its anti-collusion rules with respect to third parties. WISPA asks the Commission to establish a “safe harbor” that would permit third-party consultants to represent one bidder in any census block group and to require bidders to establish and share with consultants written procedures that identify prohibited communications.

As for the proposed auction design itself, a number of commenters agreed that it is overly complicated and will deter participation. WISPA suggests that the Commission take three steps to streamline the auction without harming the universal service objectives:

- Require bidders to maintain their performance and latency tiers throughout the auction instead of allowing them to shift these parameters round-by-round.
- Eliminate package bidding and permit unlimited census block group switching during the auction.
- Reject its proposed activity rule that would limit a bidder from bidding in areas where it did not bid in the previous round. (Adopting these final two recommendations will both simplify the auction process and ensure that bidders retain sufficient flexibility to place bids in response to auction conditions.)

WISPA remains open to suggestions from other stakeholders on additional ways to reduce auction complexity.

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**REPLY COMMENTS OF THE
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The Wireless Internet Service Providers Association (“WISPA”), pursuant to Sections 1.415 and 1.419 of the Commission’s Rules,¹ hereby responds to certain of the comments submitted in response to the above-captioned *Public Notice* regarding proposed eligibility and application requirements and competitive bidding procedures for the upcoming Connect America Fund (“CAF”) Phase II reverse auction.²

A number of parties agreed with WISPA that proposed eligibility and financial qualification screens would be unnecessary and ineffective in ensuring the success of the auction consistent with the Commission’s universal service objectives. Commenters seeking to burden bidders proposing to use spectrum with additional pre-auction obligations fail to demonstrate why spectrum-based proposals should be singled out for special treatment and why other technologies should not be subject to similar obligations. There is broad consensus in the record that the Commission’s proposed financial screen is ill-suited to making a threshold determination whether an applicant is financially qualified. WISPA recommends a simpler financial screen

¹ See 47 C.F.R. §§ 1.415 & 1.419.

² See *Public Notice*, “Comment Sought on Competitive Bidding Procedures and Certain Program Requirements for the Connect America Fund Phase II Auction (Auction 903),” AU Docket No. 17-182 and WC Docket No. 10-90 (rel. Aug. 4, 2017) (“*Public Notice*”).

that better reflects broadband industry realities to determine those applicants that should not be subject to more in-depth pre-auction scrutiny.

All parties commenting on the proposed auction design noted its complexity and the need to streamline the process. Based on its review of the record and its discussions with other stakeholders, WISPA believes that the Commission should not allow bidders to change performance and latency tiers after the initial bidding round, should not permit package bidding, and should not restrict switching among census block groups. Taken together, these simplifications will encourage greater participation in the auction by smaller entities.

Discussion

I. THE COMMISSION SHOULD REJECT PROPOSALS THAT WOULD IMPOSE ADDITIONAL ELIGIBILITY OBLIGATIONS ON SOME APPLICANTS

Apparently concerned that experienced applicants proposing to use cost-effective spectrum to meet their performance requirements will enjoy a decisive advantage over its members' higher-priced fiber-based technology, the Rural Coalition seeks to erect unnecessary barriers that would increase upfront costs only for spectrum-based bidders, limit participation in certain bidding tiers, and subject spectrum-based proposals to greater pre-auction scrutiny. There is no technical or other reason for the Commission to subject spectrum-based proposals to the additional costs and burdens that the Rural Coalition's proposal would impose on both bidders and Commission staff. The Commission should see its proposals for what they are – a transparent attempt to tilt the playing field to reduce competition from experienced broadband providers and exclude alternatives that could lower bids and enable support to flow to a larger number of unserved areas.

A. The Commission Should Not Require Spectrum-Based Applicants To Submit Propagation Maps With Their Short-Form Applications

The Rural Coalition asks the Commission to require applicants proposing to rely on spectrum to submit propagation maps of their planned coverage areas as part of their short-form applications.³ It argues that “the unique and varying nature of terrain in rural areas, and the attendant complexities in deploying fixed wireless in such areas,” warrants special treatment for spectrum-based applicants.⁴ The Rural Coalition suggests that this will not significantly burden short-form applicants.

The Commission should reject the Rural Coalition’s self-serving and unsupported suggestion. Requiring spectrum-based applicants – and only those applicants – to submit propagation maps for each census block group would be both unnecessary and unfair, and would impose substantial burdens on a distinct category of bidders based solely on the technology they choose, and on Commission staff that would have to review the propagation maps submitted by these bidders.

First, requiring propagation maps suggests that the Commission also should adopt standardized propagation models to reduce subjectivity in the Commission staff review of short-form applications. In fact, the Commission would need to adopt a large number of propagation models, one for each spectrum band and perhaps more based on different technologies (e.g., proprietary equipment, Wi-MAX, LTE, etc.). For instance, RF propagation in TV white space spectrum is very different than RF propagation in the 5 GHz band, and RF propagation using proprietary technology may be very different than technology using LTE technology. WISPA has raised concerns about the Commission’s proposed use of propagation data with respect to the

³ See Comments of the Rural Coalition, WC Docket No. 10-90 and AU Docket No. 17-182 (filed Sept. 18, 2017) (“Rural Coalition Comments”), at 19.

⁴ *Id.* (footnote omitted).

rate-of-return overlap areas,⁵ and the complexities associated with submitting maps for multiple spectrum bands and multiple technologies would be orders of magnitude more difficult for the Commission to analyze and assess. The short-form application process is not intended to require applicants to make final network design decisions or to increase the level of Commission staff review to such an extent.

Second, the Rural Coalition's proposal ignores the fact that different network architectures may be employed based on the outcome of the auction. A fixed wireless network design for a single census block group might look very different than a network design for multiple contiguous census block groups for which an applicant may be the high bidder, even if the same spectrum band(s) and technolog(ies) are used. In order for purported benefits of the Rural Coalition's proposal to be useful, every possible scenario (e.g., antenna height, azimuth, etc.) would need to be submitted, necessitating a varied and dizzying array of provisional propagation maps. An applicant selecting, say, ten census block groups might be required to submit hundreds of alternative scenarios, one for every possible combination of one or more census block groups. Applicants would be required to spend countless hours preparing additional detailed exhibits with no countervailing benefit for the Commission. For the Rural Coalition to suggest that this exercise would not impose significant burdens is therefore patently false, and also ignores Commission staff time and resources that would be required to review the information based on objective engineering standards that have not been developed or made available for public comment.

Third, to the extent they exist, the "attendant complexities" to which the Rural Coalition refers are not unique to fixed wireless technologies, but rather apply to any terrestrial-based

⁵ See Letter from Stephen E. Coran, Counsel to WISPA, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90 (filed Aug. 25, 2017).

technology.⁶ For example, design of a fiber network depends on the location of poles (for aerial installation) and rights-of-way (for in-ground fiber), the former of which requires access from the pole owner and the latter of which is also subject to varying terrain such as bedrock, waterways and street materials, as well as wetlands and historic preservation rules.

An applicant's short-form certification and its responses to the questions in Appendix A should be more than sufficient for the Commission to conduct an appropriate level of pre-auction review to determine whether an applicant is "reasonably capable" of meeting its proposed performance.⁷ If the Rural Coalition is concerned about the level of due diligence that a fixed wireless provider conducts, its solution is either overly burdensome, as WISPA believes, or all bidders should be required to submit maps of their proposed networks. For fiber proposals, this would include a requirement that bidders submit maps showing the location of the fiber plant for each census block group, both on a standalone basis and in every combination, and show how it will access poles, rights-of-way and other infrastructure. In this way, the Commission would ensure that *all* applicants, regardless of the technolog(ies) it proposes, have "considered and evaluated local geography and topography, invested sufficient financial and engineering resources, and are committed to deploying the necessary infrastructure to meet their performance obligations and connect unserved households."⁸ Instead of pursuing such a burdensome and hyper-regulatory course, the Commission should defer any further assurances to the post-auction phase – in which case staff will not need to spend time reviewing hundreds or thousands of

⁶ The Rural Coalition attempts to bolster its argument by citing a 2015 news article about the ability of one fixed wireless provider, Vivint, to adapt its specific technology solution to two different scenarios. *See* Rural Coalition at 19, n.46. The citation to the article is misleading for a number of reasons. The article itself points out that Vivint's target market is suburban areas, not rural areas, and that Vivint is using 5 GHz unlicensed spectrum for last-mile delivery. If Vivint were implementing a different business model, it likely would have considered also using other spectrum bands that could serve rural areas or areas where there are a large number of mature trees.

⁷ *Public Notice* at 11 (¶ 34).

⁸ Rural Coalition Comments at 19.

“losing” bid proposals, and can instead rely on each winning bidder’s professional engineer’s certification and post-auction verification.

B. The Commission Should Not Preclude Certain Technologies From Being Eligible To Support Certain Performance Tiers

Another example of the Rural Coalition’s apparent effort to eliminate competition from the bidding is its suggestion that the Commission prevent providers that propose to use fixed wireless technologies from bidding in the Above Baseline and Gigabit performance tiers.⁹ These proposed categorical exclusions are based on the Rural Coalition’s review of Form 477 submitted by fixed wireless providers showing that only a small percentage have deployed 100+ Mbps download speeds, and none report meeting the Commission’s upload or data usage performance metrics for the Above Baseline and Gigabit tiers.

As a simple matter of ensuring fidelity to the Commission’s technology-neutral objectives, the Commission should not preclude any applicant from proposing any technology and any performance tier, but it should ensure that the technolog(ies) the applicant proposes are capable of meeting the performance tier(s) it selects. The purpose of the bid weighting system is to account for performance, not technology, so the Commission can “maximize the broadband bang we get for our universal service buck. . . .”¹⁰ As WISPA stated in its Comments,

The critical point is whether the applicant demonstrates its ability to meet its selected performance tier(s) and the post-auction build-out requirements, *irrespective of the technology the applicant plans to use*. There should be no special rules or special showings for any technology or class of bidder, just the requirement to satisfy the public interest obligations.¹¹

⁹ See *id.* at 26.

¹⁰ *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6109 (2016), Statement of Commissioner Ajit Pai Approving in Part and Concurring in Part. See also *id.* at 6106, Statement of Commissioner Mignon L. Clyburn (CAF II rules “creat[e] a flexible process to enable entities to use a range of technological solutions to provide service to unserved areas”).

¹¹ WISPA Comments at 18 (emphasis added).

Even if the Commission were to deviate from its technology neutral approach, the Rural Coalition’s reliance on Form 477 filings is undercut by its own admission. The Rural Coalition acknowledges “the Commission’s recognition of the shortcomings with the Form 477 data,” yet relies on it anyway.¹² Despite the unsurprising “anomalies,”¹³ the Rural Coalition points to data where speeds of 100+ Mbps download (i.e., *more than* 100 Mbps) were reported, whereas the Above Baseline tier establishes a top speed of 100 Mbps download. Moreover, the Rural Coalition misplaces its reliance on those purported shortcomings in failing to take into account that fixed wireless (and perhaps other) networks are designed to meet consumer demand over time.¹⁴ That a fixed wireless provider may not have deployed 100 Mbps download service as of the date of the Form 477 reporting period does not mean that it cannot easily increase the capabilities of its network by adding access points, leveraging better or newer technology, or adding spectrum bands. In fact, performance over fixed wireless networks is typically improved incrementally over time as consumer demand dictates, and has been improving rapidly over the past few years, whereas fiber performance has been relatively static. Fixed wireless data rates now approach the speed of cable broadband and are ultimately likely to match fiber data rates— at a lower cost and with greater ability to scale for incremental deployment.¹⁵

While it is true that “[i]t makes little sense for the Commission to entertain bids that applicants cannot ultimately deliver due to network limitations,”¹⁶ it does not follow that certain technologies should be precluded from participating for certain tiers absent a finding that they

¹² Rural Coalition Comments at 26.

¹³ *Id.*

¹⁴ The Commission’s own data shows that the adoption rate for fixed services at speeds of 25/3 Mbps or higher is 37 percent, “illustrating that many consumers are not subscribing to 25/3 Mbps service even where it is available.” Letter from Stephen E. Coran, WISPA Counsel, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 10-90, 14-58 and 14-259 (filed Jan. 31, 2017), at 7, *citing* 2016 Broadband Progress Report, 31 FCC Rcd 699, 743-44 (2016).

¹⁵ See The Carmel Group, *Ready for Takeoff: Broadband Wireless Access Providers Prepare to Soar with Fixed Wireless* (2017), at 12.

¹⁶ Rural Coalition Comments at 25.

are not “reasonably capable” of meeting the performance criteria. The Commission should reject the Rural Coalition’s proposal to substitute its self-serving judgment of whether a particular applicant’s technology proposal is “reasonably capable” of satisfying its performance obligations, and should instead rely on the short-form review process to make such a determination. For the Commission to deny entry into the auction based solely on technology would potentially harm unserved rural Americans that could otherwise receive cost-effective fixed wireless services and instead leave them on the sidelines while a smaller number of areas receive a higher level of support for fiber deployments.

Likewise, contrary to ITTA’s views,¹⁷ the Commission should not impose *ex ante* prohibitions on the performance and latency tiers an applicant may propose in its short-form application. To do so would constitute a predetermination that, say, a fiber broadband company proposing to use fixed wireless technology in its network design is necessarily not able to offer “reasonably comparable” performance when that may not in fact be the case. ADTRAN agreed, stating that “it would not serve the public interest to limit applicants to currently offered technologies.”¹⁸ Similarly, as SpaceX stated, “[i]f the Commission wants all Americans to have cost-effective, high-speed broadband, and it intends to provide support for as long as ten years with one auction, then its rules must encourage – or at least not preclude – participation by new entrants using new, transformative models and technologies.”¹⁹ The Commission should remain true to its proposal “to evaluate *all* combinations selected by *each* applicant to determine its eligibility to bid for any such combination.”²⁰

¹⁷ See Comments of ITTA – The Voice of America’s Broadband Providers, WC Docket No. 10-90 and AU Docket No. 17-182 (filed Sept. 18, 2017) (“ITTA Comments”), at 6.

¹⁸ Comments of ADTRAN, Inc., WC Docket No. 10-90 and AU Docket No. 17-182 (filed Sept. 18, 2017), at 2.

¹⁹ Comments of Space Exploration Technologies Corp., WC Docket No. 10-90 and AU Docket No. 17-182 (filed Sept. 18, 2017) (“SpaceX Comments”), at 5.

²⁰ *Public Notice* at 12 (¶ 34) (emphases added).

C. The Commission Should Affirm That Appendix B Is Not Exhaustive

In response to the Commission’s invitation to suggest “other spectrum bands that can offer sufficient uplink or downlink bandwidth,” WISPA’s Comments²¹ asked the Commission to include on Appendix B additional examples of spectrum bands that it “anticipate[s] could be used for the last mile to meet Phase II obligations. . . .”²² WISPA also asked the Commission to make clear that Appendix B is not exhaustive.²³

Other parties agreed with WISPA and made their own suggestions on spectrum bands the Commission should add to Appendix B. Like WISPA, SpaceX also asked the Commission to clarify that “Appendix B will only be used as a non-mandatory guide for spectrum that could be used by applicants, but not an exclusive list.”²⁴ Like WISPA,²⁵ Microsoft urged the Commission to include TV white space spectrum as part of Appendix B.²⁶ The Commission therefore should make clear that Appendix B is not exhaustive and that all spectrum bands can be proposed to meet an applicant’s proposed performance obligations.

D. The Commission Should Not Require Applicants To Demonstrate Their Ability To Serve All Eligible Locations

Other commenters agreed with WISPA that the Commission should not require short-form applicants to demonstrate their ability to serve 100 percent of all eligible locations, and should instead follow its rule requiring service to 95 percent of eligible locations.²⁷ In supporting a 95 percent threshold, Vantage Point stated that bidders should have greater deployment

²¹ See WISPA Comments at 17-18. See also Comments of California Internet, L.P. dba GeoLinks, WC Docket No. 10-90 and AU Docket No. 17-182 (filed Sept. 18, 2017) (“GeoLinks Comments”), at 3-4.

²² *Public Notice* at 14 (¶ 40).

²³ See WISPA Comments at 17.

²⁴ SpaceX Comments at 10.

²⁵ See WISPA Comments at 17.

²⁶ See Comments of Microsoft Corporation, WC Docket No. 10-90 and AU Docket No. 17-182 (filed Sept. 18, 2017).

²⁷ See WISPA Comments at 11-12. The relevant rule is 47 C.F.R. § 54.315(b)(2)(iv) (requiring a professional engineer to certify *in the long-form application* that the network is capable of delivering voice and broadband service that meets the performance requirements to 95 percent of the required number of locations).

flexibility based on “facts on the ground” and noted that non-incumbent bidders have less of an opportunity to conduct robust due diligence.²⁸ Vantage Point further acknowledged that a 95 percent deployment obligation would be consistent with rules applicable to price cap carriers and rate-of-return carriers.²⁹ GeoLinks noted that deploying to 100 percent of locations may in some cases be impossible for any carrier and, even if technically feasible to serve, may be prohibitively expensive to do so.³⁰

Only one commenter appears to disagree. The Institute for Local Self-Reliance (“ILSR”) asks the Commission to require that “any bidder must have a plan to connect every premise within the territory” and to “reject some technologies that are not likely to offer that 100 percent coverage or ensure that it has a rapid and efficient respond [sic] to CAF recipients that are not able to meet their promises.”³¹ ILSR’s argument should be rejected because it is essentially a late-filed petition for reconsideration of Section 54.315(b)(2)(iv) requiring 95 percent deployment, which was adopted in 2016 *Phase II Auction Order*.³² The *Public Notice* is not an invitation to re-open the auction framework rules the Commission adopted more than a year ago. Moreover, ILSR ignores the fact that the Commission has enforcement authority and rules to govern non-compliance and thus can respond rapidly and efficiently – but not to punish recipients that meet the Commission’s 95 percent deployment standard.

²⁸ See Comments of Vantage Point, WC Docket No. 10-90 (filed Sept. 18, 2017), at 6.

²⁹ See *id.*

³⁰ See GeoLinks Comments at 2.

³¹ Comments of the Institute for Local Self-Reliance, WC Docket No. 10-90 and AU Docket No. 17-182 (filed Sept. 18, 2017) (“ILSR Comments”), at 2.

³² See *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5979 (2016) (“*Phase II Auction Order*”). For the same reason, the Commission should not again reconsider its decision to set data caps for certain of the performance tiers. See ILSR Comments at 3.

E. The Commission Should Rely On Qualified Commission Staff, Not USAC Staff, To Review Short-Form Applications

The Rural Coalition reiterates its proposal that the Commission “direct USAC to hire a third party with technical expertise” to review short-form applications.³³ There are a number of problems with this approach. USAC would first need to establish requirements for third parties, solicit bids from third parties, ensure that the selected third party is independent, vet the third party to ensure that it has the technical experience and expertise in all wireless, wireline and satellite technologies, train the third party, and incorporate the new party into the Commission’s workflow. This process will no doubt add time, complexity, and taxpayer cost to the short-form application process (particularly if short-forms were required to include maps), with no clear benefit over an approach that relies on existing Commission staff that has expertise in various technologies based on its day-to-day work. In its Comments, WISPA indicated that it “anticipates that the [Wireline Telecommunications] Bureau will seek assistance from WTB (for applications or portions thereof proposing to use licensed spectrum), the Office of Engineering and Technology (for applications or portions thereof proposing to use unlicensed spectrum), and the International Bureau (for applications or portions thereof proposing to use satellite technology) in reviewing the spectrum information that an applicant may be required to submit in its short-form application.”³⁴ The Commission should reject the Rural Coalition’s proposal and instead rely on its experienced internal staff in reviewing short-form applications.

³³ Rural Coalition Comments at 23.

³⁴ WISPA Comments at 18.

F. The Commission Should Reject Pennsylvania’s Proposed Revision To Appendix A

Continuing its quest to match CAF Phase II funds with support the Commonwealth of Pennsylvania may or may not have under terms that are completely undefined and unknowable,³⁵ Pennsylvania asks the Commission to add a new question to Appendix A that would require each bidder to disclose whether it is “eligible to receive additional broadband deployment resources through the Commonwealth of Pennsylvania.”³⁶ Underlying any certifiable response to this question is an understanding of the eligibility requirements for an unfunded, unapproved broadband support program that Pennsylvania may or may not adopt before the short-form deadline. In its previous filings, WISPA pointed out that Pennsylvania’s policies have long favored incumbent local exchange carriers, and the Commonwealth has not said anything that would indicate that its eligibility requirements will be inclusive of all broadband providers regardless of their classification, technology or size.³⁷ In addition, the Commission proposes to withhold from the public – including the Commonwealth of Pennsylvania – the “state(s) identified by an applicant in which it is interested in bidding” and the “state(s) for which the applicant has been determined to be eligible to bid.”³⁸ So Pennsylvania would gain nothing from this new Appendix A requirement if the Commission kept the bidding area information

³⁵ See, e.g., Letter from Stephen E. Coran, WISPA Counsel, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 10-90, 14-58 and 14-259 (filed June 20, 2017).

³⁶ Comments of the Pennsylvania Public Utility Commission and the Pennsylvania Department of Community and Economic Development, WC Docket No. 10-90 and AU Docket No. 17-182 (filed Sept. 18, 2017), at Appendix A. The predicate for the question is whether “the applicant *has submitted* a bid for an eligible census block where Verizon . . . declined the offer of CAF Phase II annual support.” *Id.* (emphasis added). Of course, at the time of the short-form filing, no applicant will have submitted a bid. Also, the CAF auction includes census blocks in addition to those that Verizon (and other price cap carriers) declined. See *Public Notice*, “Wireline Competition Bureau Releases Preliminary List and Map of Eligible Census Blocks for the Connect America Phase II Auction, DA 16-908, WC Docket No. 10-90 (rel. Aug. 10, 2016). Pennsylvania does not indicate how these additional census blocks should be treated.

³⁷ See, e.g., Reply Comments of the Wireless Internet Service Providers Association to New York State Petition for Expedited Waiver, WC Docket Nos. 10-90, 14-58 and 14-259 (filed Oct. 31, 2016) (reply to Pennsylvania’s Comments seeking declined CAF II support for Pennsylvania).

³⁸ *Public Notice* at 35 (¶ 138).

confidential, and it would be a serious problem if the Commission changed course so that a certain state, or perhaps the public at large and other bidders, knew the locations where applicants might be placing bids. Accordingly, Pennsylvania's proposal should be rejected.

II. THE RECORD REFLECTS A NEED FOR THE COMMISSION TO MODIFY ITS PROPOSED FINANCIAL SCREEN

WISPA demonstrated the serious deficiencies in the Commission's plan to require applicants, regardless of their experience, to meet a five-point financial screen in order to avoid being subject to "more in-depth review of the full set of financial statements."³⁹ Pointing out the problems with each criterion, WISPA explained that the proposed criteria:

would unfairly and without any stated grounds hold CAF Phase II applicants to a higher standard than price cap carriers that have accepted 10 times more federal support dollars than is available for all Phase II recipients combined. It would penalize those applicants that re-invest capital into network upgrade and expansion over those that keep cash on hand. It would especially prejudice small broadband providers, regardless of the technology or technologies they propose because they do not maintain a capital structure similar to large publicly traded companies. If the Commission were to apply its proposed test, it would be *less* quick and *less* efficient because Commission staff would almost always be required to undertake the "more in-depth review of the full set of financial statements" – the intended screen would be totally ineffective. And, beyond that in-depth review, the Commission proposes no standard at all to determine an applicant's financial qualifications.⁴⁰

As WISPA stated, "[t]he problem is not the ability of applicants to meet the test, but with elements of the test itself that do not determine whether an applicant is financially qualified."⁴¹

WISPA urged the Commission to abandon its proposal and to instead adopt a new standard that would require "more in-depth review" only if the applicant's EBITDA margin as shown on its audited financial statement is below ten percent.⁴²

³⁹ *Id.* at 19 (¶ 58).

⁴⁰ WISPA Comments at 21 (footnote omitted) (emphasis in original).

⁴¹ *Id.* at 22.

⁴² *See id.* at 24. WISPA also pointed out that the Commission did not propose any standard for applicants that do not submit audited financial statements with their short-form applications. *See* WISPA Comments at 22-23.

A number of other commenters, representing both small and large entities, supported eliminating or modifying the proposed financial screen. In sum, each of these parties pointed out that the Commission's proposed screen would not accomplish its goal of making an initial determination about which applications are financially qualified and which would be subject to greater scrutiny because nearly every applicant would fail the screen. Significantly, no party commented in favor of the Commission's proposal.

Sacred Wind Communications, which serves tribal areas, objected to the Commission's proposed inclusion of a Time Interest Earned Ratio ("TIER") metric. It explained that TIER "is not an accurate depiction of a company's financial resources and has no relevance at all for companies that have no outstanding debt, or to a company's ability to complete a construction project and provide service."⁴³ BEK Communications found fault with the Commission's proposal to subject applicants to greater financial scrutiny if their ratio of current assets to current liabilities ratio is less than two.⁴⁴ It stated that it "does not believe that having a current ratio of less than two is an indication that an applicant is in poor financial shape – if anything, it is an indication that the company is utilizing its cash to fund broadband deployment and network upgrades and expansion."⁴⁵

Noting that the Commission had not imposed similar financial eligibility requirements on Phase II recipients that accepted the state-wide offer,⁴⁶ ITTA characterized the Commission's proposal as "overkill with respect to companies that have provided voice and/or broadband for at least two years," and asked the Commission to exempt such bidders "from the bulk" of the

⁴³ Comments of Sacred Wind Communications, WC Docket No. 10-90 and AU Docket No. 17-182 (filed Sept. 18, 2017), at 8.

⁴⁴ See Comments of BEK Communications, WC Docket No. 10-90 and AU Docket No. 17-182 (filed Sept. 18, 2017), at 1.

⁴⁵ *Id.* at 2.

⁴⁶ See ITTA Comments at 3.

screening criteria.”⁴⁷ It specifically proposed that the Commission should deem an applicant financially qualified if it submits audited financial statements from the prior fiscal year with an unmodified, non-qualified auditor’s opinion.⁴⁸ This would reduce the Commission’s five-point test to the first proposed criterion, a simple yes/no question along with the submission of one year of audited financial statements.

Like WISPA, USTelecom objected to nearly every element of the financial screen, proposing to retain only two criteria, and to add a third. USTelecom proposed to retain the yes/no question concerning the auditor’s un-modified (unqualified) opinion and to require the applicant to demonstrate an operating margin of >0.⁴⁹ It also would require applicants to certify whether they will not bid for annual funding exceeding 50 percent of its average annual GAAP operating cash flow from the previous two fiscal years.⁵⁰ This latter proposed criterion favors large companies with greater cash flow over smaller entities, and could therefore squander Commission staff resources by subjecting experienced, well-managed companies to unnecessary secondary examination.

Based on its review of the record, WISPA recommends that the Commission permit a bidder to comply with one of two alternative financial screens. An applicant would be deemed financially qualified if: (1) it submits audited financial statements showing EBITDA margin of 10 percent or greater, as proposed by WISPA, *or* (2) it submits audited financial statements from the prior fiscal year with an unmodified, non-qualified auditor’s opinion, as proposed by ITTA. An applicant would only need to meet one of these two alternatives in order to be deemed financially qualified, a determination that would avoid the need for Commission staff to expend

⁴⁷ *Id.* at 2.

⁴⁸ *See id.* at 5.

⁴⁹ *See* USTelecom Comments at 4.

⁵⁰ *See id.*

scarce administrative resources and time to conduct more in-depth review. This more flexible approach will afford applicants more than one path for financial qualification, will be easy for Commission staff to administer, and will better reflect the manner in which broadband companies manage their cash and invest in their networks.

III. THE COMMISSION SHOULD DECLARE THAT BIDDERS MAY ENGAGE THIRD-PARTY CONSULTANTS THAT DO NOT REPRESENT MULTIPLE BIDDERS FOR THE SAME CENSUS BLOCK GROUP

WISPA and other commenters raised concerns about the Commission’s proposed application of its anti-collusion rules that would inhibit the ability of small providers to obtain bidding and bidding strategy advice from a finite number of qualified consultants. WISPA recommended that the Commission adopt a “safe harbor” that would enable a bidder to engage a third-party consultant so long as the consultant does not advise another bidder for the same census block group.⁵¹ WISPA explained that “[g]iven the large number of census block groups available for auction, their small size, and the improbability that a bid for one location may affect a bid for another location, WISPA believes that this is a reasonable and appropriate interpretation of the anti-collusion rules for purposes of the CAF Phase II auction.”⁵² Multiple bidders for the same census block groups that engage with the same consultant would not be covered by the “safe harbor,” and would therefore be subject to the interpretation expressed in the *Public Notice*.

Other commenters agreed that the existing interpretation of the anti-collusion rules poses a problem, especially as pertains to smaller bidders, but disagreed on the particular solution. While similarly cautioning against overly restrictive application of the anti-collusion rules, RWA

⁵¹ See WISPA Comments at 5. See also Comments of the American Cable Association, WC Docket No. 10-90 and AU Docket No. 17-182 (filed Sept. 18, 2017) (“ACA Comments”), at 7-8 (asking Commission to “affirm that a third-party consultant or consulting firm can consult with multiple parties in the same state”). WISPA believes that the Commission should adopt a “safe harbor” at the census block group level, not the state level, to provide bidders with more flexibility and expertise without increasing the potential for prohibited communications.

⁵² *Id.* at 6.

proposed that bidders' attorneys retain third party consultants on behalf of their clients.⁵³ RWA noted that attorneys are "duty bound to ensure that others whose services he or she utilizes do not disclose or use the confidences or secrets of a client."⁵⁴ This proposal assumes that all bidders have attorneys, which may not be the case, and would mandate unnecessary and artificial firewalls. While certainly this is an approach that could provide greater protection against prohibited communications, it should not be the only model that is free from scrutiny. The Rural Coalition, a consortium of rural cooperatives, electric utilities and trade associations, urged the Commission to "adopt a flexible approach to the application of the prohibited communications rule, and specifically permit small business participants to retain, on an individual basis, the same consultants, experts, and counsel that are retained by other bidders."⁵⁵ Because this approach does not place any geographic limitations and would, presumably, allow a consultant to advise multiple bidders for the same census block group, it is more susceptible to prohibited communications than WISPA's proposal.

WISPA agrees with one aspect of ACA's proposal, which would require bidders to establish and share with consultants written procedures that identify prohibited communications.⁵⁶ In combination with WISPA's proposal to establish a "safe harbor" for bidders engaging consultants that also do not advise other bidders for the same census block group, the Commission can balance its objectives of ensuring a large pool of informed bidders and prohibiting communications that are likely to affect the integrity of the auction.

⁵³ See Comments of the Rural Wireless Association, Inc., WC Docket No. 10-90 and AU Docket No. 17-182 (filed Sept. 18, 2017) ("RWA Comments"), at 5.

⁵⁴ *Id.* at 6 (footnote omitted).

⁵⁵ Rural Coalition Comments at 8-9.

⁵⁶ See ACA Comments at 8.

IV. THE COMMISSION SHOULD ADOPT ITS PROPOSAL FOR COMPETITIVE BIDDING BY CENSUS BLOCK GROUPS

RWA agreed with WISPA⁵⁷ that the Commission should use census block groups as the minimum geographic bidding unit for the Phase II auction.⁵⁸ RWA emphasized that “census tracts are much larger, have lower population density, and are difficult to cover.”⁵⁹ No party opposed census block groups, and the Commission therefore should adopt its proposal.⁶⁰

V. THE RECORD DEMONSTRATES STRONG SUPPORT FOR SIMPLIFYING THE CAF II AUCTION DESIGN

WISPA⁶¹ and other commenters agreed that the Commission’s proposed auction scheme was overly complex and should be simplified in order to avoid discouraging potential bidders, especially smaller entities, from participating in the auction.⁶² WISPA did not have specific suggestions in its initial Comments, but indicated that it would review other parties’ Comments and had agreed to meet with other stakeholders to consider ways in which the auction could be simplified and streamlined.⁶³

Based its review of the record and its discussions with other stakeholders, WISPA believes that the Commission should, at a minimum, take the following steps:

First, consistent with ACA’s proposal, a bidder should not be permitted to shift its performance and latency tiers during the auction, but should be required to maintain those weight

⁵⁷ WISPA Comments at 2-3.

⁵⁸ RWA Comments at 1-2.

⁵⁹ *Id.* at 2 (footnote omitted).

⁶⁰ *See Phase II Auction Order* at 5979; *Public Notice* at 4 (¶ 12).

⁶¹ *See* WISPA Comments at 26-27. *See also* Letter from Ross Lieberman (ACA), Michael Romano (NTCA) and Stephen Coran (WISPA) to The Hon. Chairman Ajit Pai, *et al.*, AU Docket No. 17-182 and WC Docket No. 10-90 (filed Sept. 15, 2017), at 1 (“auction design and associated proposals in the *Public Notice*, especially when taken in the aggregate, are so inordinately complex that they will deter many potential bidders from participating”).

⁶² *See* Comments of the American Cable Association, AU Docket No. 17-182 and WC Docket No. 10-90 (filed Sept. 18, 2017) (“ACA Comments”), at 1; USTelecom Comments at 5; Rural Coalition Comments at 6; RWA Comments at 3.

⁶³ *See* WISPA Comments at 27.

values throughout the auction.⁶⁴ Not only would this “avoid[] complex gaming strategies that would undermine price discovery,”⁶⁵ it would also simplify the auction for bidders and reduce the opportunity for collusive behavior.

Second, the Commission should both eliminate package bidding and permit unlimited switching during the auction. Package bidding creates a number of questions and complexities, such as the effect of the Minimum Scale Percentage (“MSP”) on infrastructure costs⁶⁶ and the Commission’s apparent but mistaken belief that “all census block groups within a package are essentially fungible.”⁶⁷ As US Cellular observed, package bidding also could disadvantage smaller bidders that may only have an interest in one or a few census blocks,⁶⁸ and an “auction without package bidding would still give bidders ample opportunity to piece together a desirable package of areas, without the complexity and bias inherent in a package auction.”⁶⁹

WISPA recognizes, however, that if package bidding is not permissible, some bidders may lack flexibility to respond to circumstances that arise during the auction, especially if the Commission adopts an approach that limits bidders’ ability to switch between census block groups.⁷⁰ Accordingly, WISPA believes that the Commission should not adopt its proposed activity rule that would limit a bidder from bidding in areas where it did not bid in the previous round. Adopting these recommendations will both simplify the auction process and ensure that bidders retain sufficient flexibility to place bids in response to auction conditions.

⁶⁴ See ACA Comments at 7. Bidders should be able to select different performance and latency tiers for different census block groups.

⁶⁵ *Id.*

⁶⁶ See USTelecom Comments at 6.

⁶⁷ Sacred Wind Comments at 6.

⁶⁸ See Comments of United States Cellular Corporation, AU Docket No. 17-182 and WC Docket No. 10-90 (filed Sept. 18, 2017), at 6-8.

⁶⁹ ACA Comments at 7 (citation omitted).

⁷⁰ See USTelecom Comments at 9-11.

WISPA remains open to other suggestions and further engagement with other stakeholders, but believes the Commission can significantly reduce complexity and better ensure a successful auction with robust participation from large and small providers if it adopts the recommendations described above.

Conclusion

The Commission should reject efforts to increase short-form filing burdens on applicants proposing to use spectrum and should not limit applicants from proposing performance tiers based on the technology they would employ. All parties commenting on the Commission's proposed financial screen demonstrated that it would not achieve its stated purposes, and the Commission therefore should adopt the alternative financial screens discussed above. The Commission also should simplify and streamline its auction process by eliminating tier switching and package bidding, and by permitting unlimited switching. WISPA urges the Commission to adopt and implement its recommendations.

Respectfully submitted,

**WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION**

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