Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Wireline Competition Bureau Announces Deadlines for Filing Comments and Replies Regarding New York State's Petition for Expedited Waiver of the Connect America Phase II Auction Rules	)	

REPLY COMMENTS OF
HUGHES NETWORK SYSTEMS, LLC

Hughes Network Systems, LLC ("Hughes") presents this reply to the comments filed in the above-captioned docket regarding New York State's Petition for Expedited Waiver of certain of the Connect America Fund ("CAF") Phase II auction rules to distribute the amount of Phase II model-based support that Verizon declined in the state through the New NY Broadband Program.[1] Hughes concurs in the many comments lauding New York's commitment to promoting broadband availability throughout the state and commitment of resources through the New NY Broadband Program. However, as discussed in more detail below, if the Commission is going to channel CAF funds through the State program, the Commission must ensure that program will distribute the funding based on "technology neutral standards"[2] that "reflect the

[1] *Connect America Fund, et al.*, WC Docket No. 10-90 *et al.*, New York State Petition for Expedited Waiver (filed Oct. 12, 2016) ("Petition"). *See also Wireline Competition Bureau Announces Deadlines for Filing Comments and Replies Regarding New York State's Petition for Expedited Waiver of the Connect America Phase II Auction Rules*, WC Docket No. 10-90, DA 16-1180 (rel. Oct. 13, 2016) ("Public Notice").

[2] *Connect America Fund, et al.*, WC Docket Nos. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5956 ¶ 14 (2016) ("*Phase II Auction Order*" or "*Phase II Auction FNPRM*," as appropriate).

diversity of broadband offerings in the marketplace" and "maximize the number of consumers served within [the] finite budget."[3]

DISCUSSION

As the Petition describes, the New NY Broadband Program has had impressive success in expanding broadband access in rural parts of New York, and has expansive goals to continue to do so.[4] The Petition notes certain important similarities between the New York program and the CAF, including the distribution of support through competitive bidding,[5] and has agreed to conform the award of support, if the waiver is granted, to other CAF elements, including using the same eligible areas, reserve prices, and service requirements.[6]

As ViaSat points out, however, other restrictions in the New NY Broadband program "are significantly different than those adopted by the Commission – and far more likely to lead to inefficient outcomes."[7] Perhaps of greatest concern, the program would prioritize service to fiber and hybrid fiber/coax bidders offering 100 Mbps speeds.[8] As the Commission itself has acknowledged, high-capacity terrestrial facilities such as fiber are significantly more expensive per customer than other technologies, unnecessarily limiting the number of locations that can be served.[9] The Commission also has recognized that consumers take service from a broader array

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[3] *Id.* at 5957 ¶ 16.

[4] *See, e.g.,* Petition at 2-3.

[5] *Id.* at 1.

[6] *Id.* at 8.

[7] Comments of ViaSat, WC Docket No. 10-90 (filed Oct. 29, 2016) at 5 ("ViaSat Comments").

[8] *Id.* at 6.

[9] *See, e.g., Phase II Auction Order*, 31 FCC Rcd at 5957 ¶ 16. *See also* Letter from L. Charles Keller, counsel to Hughes, WC Docket No. 10-90 (filed Nov. 13, 2015) at 2-4.

of broadband service providers,[10] and CAF funding should be used in a manner consistent with the universal service principle of competitive neutrality.[11] As Chairman Wheeler observed upon the adoption of the CAF Phase II competitive bidding process: "More bidders means a more competitive auction. And that's a good thing."[12] CAF funding should not be distributed via rules that unduly limit the eligible bidders.

Consistent with New York's commitment to conform its broadband program, as a condition of the waiver, to important aspects of the CAF rules,[13] the Commission should require that New York open up bidding in the program to providers in all four service tiers and both latency levels available in the CAF program.[14] This will ensure that the public interest waiver standard is met by avoiding the otherwise likely outcome that CAF funds disbursed pursuant to the waiver will serve significantly fewer locations than if they had been disbursed through the CAF Phase II auction. As Commissioner O'Rielly has observed, if the bidding process "skews the results such that a few communities receive Gigabit service, but many more have no access at all, then the auction will have failed to deliver on the promise of universal service."[15] Such a condition is doubly important given that grant of the waiver also will have the impact of precluding the subject funds – a significant portion of the total CAF auction budget – from being

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[10] *Phase II Auction Order*, 31 FCC Rcd at 5957 ¶ 16

[11] *Id.* at 5956 ¶ 14.

[12] *Id.* at 6104 (Statement of Chairman Wheeler). *See also id.* at 6108 (Statement of Comr. Rosenworcel) ("We need broad participation because there is no one-size-fits-all solution when it comes to getting service in rural communities.").

[13] Petition at 8.

[14] *See Phase II Auction Order*, 31 FCC Rcd at 5957 ¶ 15.

[15] *Id.* at 6111 (Statement of Comr. O'Rielly).

used to extend broadband service to unserved locations in states other than New York, irrespective of relative need.[16] It is therefore crucial, if public interest for a waiver is to be found, that the funds be allocated as efficiently as possible in New York. In order to implement the CAF Phase II performance tiers and latency categories, New York will have to wait for the Commission's forthcoming adoption of weighting rules.[17] These rules are expected to be forthcoming in the near term, however, and the Petition offers no reason why the state process could not wait for such rules. Hughes supports quick Commission action on these rules so that New York (and the FCC's auction) can proceed.

CONCLUSION

If the Commission concludes that a waiver is necessary in this instance, it should condition the waiver on New York's commitment not to undermine important CAF Phase II goals. This includes the commitments that New York makes in the Petition to use the same eligible areas, reserve prices, and service requirements, as well as an additional condition that support be awarded to bidders in all four CAF service tiers and both latency categories, in order to ensure that the waiver does not significantly reduce the number of customers that will receive service under the program.

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[16] *See* ViaSat Comments at 4. *See also Phase II Auction FNPRM* at 6023-25 ¶¶ 217-24 (seeking comment on whether to tie declined support to any particular state); *id.* at 6111-12 (Statement of Comr. O'Rielly).

[17] *Id.* at 6021-23 ¶¶ 206-16 (seeking further comment on comparing bids of different performance levels).

Respectfully submitted,

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