



March 21, 2019

VIA ELECTRONIC SUBMISSION

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

Re: WC Docket No. 10-90

Dear Ms. Dortch:

New York State, through its chief economic development agency, Empire State Development (“ESD”), writes to request that the Commission promptly approve the eligible telecommunications carrier (“ETC”) application of Hughes Network Systems in New York. The Commission’s delay in approving Hughes’ ETC application has held up launch of the company’s broadband services in New York, threatening the many benefits the Commission originally identified in partnering with New York for distribution of Connect America Fund (“CAF”) funding in the State.

In January 2017, the Commission waived its CAF rules to allow distribution of Phase II support in New York State through the New NY Broadband Program.¹ The Commission reasoned that waiving the CAF rules was in the public interest, as it would facilitate the rapid deployment of broadband services in New York. ESD subsequently launched and concluded the New York broadband auction in late 2017. The auction complied with the terms of the *NY CAF Waiver*, including the requirement that New York structure its auction to ensure technological neutrality and provide satellite operators with a meaningful opportunity to participate. In fact, one of the winning bidders in the auction was Hughes Network Systems, which received CAF funding to serve more than 22,000 CAF-eligible locations—the most of any winning bidder—in the most remote areas of New York. Following completion of the New York auction, Hughes promptly applied to the Commission for ETC status, and the comment period on its application is long closed.

Since conclusion of the New York broadband auction, the Commission released new requirements for receipt of CAF funding. These requirements were included in the July 6, 2018

¹ See Connect America Fund, *Report and Order*, 32 FCC Rcd 968 (2017) (“*NY CAF Waiver*”).

Metrics Order that was issued long after the Commission adopted the *NY CAF Waiver* and more than a year after New York completed its broadband auction.² While New York recognizes the Commission's authority to modify its requirements for CAF funding, it should promptly designate Hughes as an ETC in New York under the Commission rules that were in effect at the time of the New York auction. Any other outcome could constitute impermissible retroactive rulemaking and further delay deployment of Hughes' CAF-supported services.

New York understands that Hughes cannot receive CAF support for its broadband service until the Commission approves its ETC application, and the continued delay in approving its ETC application is denying much-needed broadband services to thousands of New York residents. The Commission could not have intended to delay their deployment given that it undercuts many of the original benefits the Commission identified in granting the *NY CAF Waiver* in the first place. It also contravenes the Commission's specific goal in demanding that New York modify its auction structure to accommodate satellite providers.

The Commission cannot permit an outcome in which it compelled New York to modify its auction structure to ensure that satellite providers could participate in the State's auction and then delay approval of the ETC application for a winning satellite bidder. The continued inaction on Hughes' ETC application is inconsistent with the express terms of the *NY CAF Waiver*, including the requirement that New York restructure its auction to allow satellite providers to participate, and the expectations of winning bidders in the New York broadband auction.

In summary, New York State requests that the Commission honor the *NY CAF Waiver* and allow Hughes to access CAF support for the locations that the company was awarded as the winning bidder over one year ago through New York's broadband auction process. New York, Hughes and the other winning bidders in New York's auction relied on the terms of the *NY CAF Waiver*, and New York has worked closely with the Commission and restructured its auction to satisfy every condition set forth therein. Continued delay in approving Hughes' ETC designation will only harm residents in the most remote areas of New York State and would undermine the benefits of the Commission's partnership with New York.

Respectfully submitted,

Empire State Development

² See Connect America Fund, *Order*, DA 18-710 at ¶ 44 (rel. July 6, 2018) ("*Metrics Order*")