Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	WC Docket No. 10-90
Connect America Fund	)	WC Docket No. 14-58
	)	
ETC Annual Reports and Certifications	)	

PENNSYLVANIA PETITION FOR RECONSIDERATION, MODIFICATION, OR WAIVER

The Pennsylvania Public Utility Commission (PA PUC) and the Pennsylvania Department of Community and Economic Development (PA DCED) (jointly "Pennsylvania"), pursuant to Sections 1.3, 1.41, 1.106(a)(1), and 1.429(a) of the rules of the Federal Communications Commission (FCC or Commission), hereby respectfully request the FCC to reconsider one aspect of its Connect America Fund Phase II (CAF Phase II) auction rules[1] for the purpose of modifying its final action governing the award of the annual model-based CAF Phase II funding (CAF Phase II support) for Pennsylvania only to the extent described in this petition with respect to the CAF Phase II support declined by Verizon Pennsylvania LLC (Verizon PA) and Verizon North LLC (Verizon North) (collectively Verizon).

Specifically, Pennsylvania requests that the Commission modify the CAF Phase II auction formula for Pennsylvania bids by adding a negative weight to the recently-proposed auction formula to reflect additional resources brought to the auction through the state. Pennsylvania is requesting that this modification apply to Pennsylvania bids only on the basis of the facts and

[1] *See Connect America Fund et al.,* WC Docket No. 10-90, 31 FCC Rcd 5949 (released May 26, 2016) (*CAF Phase II Auction Order*) and *Report and Order on Reconsideration,* WC Docket Nos. 10-90 and 14-58 at FCC 17-12 (released March 2, 2017) (*CAF Phase II Auction Rules Order*).

argument presented herein and is not requesting general relief based upon its declined-state status.[2] This change will promote efficient and effective use of the FCC's CAF Phase II support.

Granting the relief requested is appropriate as it would allow carriers operating in the state to access up to the remaining $139.62 million of total CAF Phase II model-based support funding ($23.27 million in annual support over the next six-years under the CAF Phase II term) that was originally dedicated to providing broadband service at federally-designated speeds in rural, unserved eligible census blocks in Verizon's Pennsylvania service territory.

Pennsylvania's request for reconsideration and/or modification or waiver[3] is based upon the actual auction formula first announced by the Commission in the *CAF Phase II Auction Rules Order*, in which the Commission identified the dual objectives of effectiveness and efficiency of the auction rules. This request addresses those objectives. Pennsylvania's proposal incentivizes expanding the reach of the federal support with additional complementary support provided by the state to successful bidders under the *CAF Phase II Auction Rules Order* within Pennsylvania. Such complementary support will provide significant cost effectiveness and financial synergies that may not be available absent the modification. These complementary resources will be used to support broadband deployment and be limited to those census blocks for which the CAF Phase II support was previously allocated by the Commission.

As modified, the auction formula will continue to abide by the Commission's auction process, satisfying the Commission's objective of maintaining efficiency. Reconsideration in the form of modification of the auction formula would promote the public interest by ensuring the equitable distribution and efficient utilization of CAF funding by its formal recognition of

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[2] Pennsylvania recognizes that to the extent other "declined states" support a proposal specific to their state before the FCC, the FCC may consider grant of similar relief.

[3] Pennsylvania believes that the proper vehicle for the relief requested is modification of the auction formula in the *CAF Phase II Auction Rules Order* through reconsideration for Pennsylvania as described herein. If the Commission concludes a waiver is more appropriate, Pennsylvania submits that the relief requested also satisfies that standard.

Pennsylvania's value added to the federal broadband deployment effort. The modification would further the federal goal of accelerating Pennsylvania's broadband deployment in the rural unserved census blocks for which the CAF Phase II support was originally intended and that otherwise may not receive broadband services in a timely fashion if at all. Pennsylvania's proposal to modify the formula was only possible after the Commission fully identified its final formula, including its specific process for weighting bids, and therefore is timely.

I. Background

Following adoption of the CAF price cap cost model, the FCC published a list of eligible census blocks associated with each price cap incumbent local exchange carrier (ILEC) within each state. Each ILEC was given the opportunity to accept the public interest obligations associated with all eligible census blocks in its territory in exchange for an annual, objective, model-derived support amount associated with those census blocks for a period of six years. In Pennsylvania, Verizon declined to accept the annual statewide commitment offer of $23.27 million, or almost $140 million over six years, for the rural, unserved high-cost eligible census blocks in its service territory. The Commission decided to award remaining declined support through a *nationwide* reverse auction competitive bidding process, altering Pennsylvania's expectations that the auction would be *state-wide*.[4]

In its *CAF Phase II Auction Rules Order*, the Commission finalized its rules related to the design and implementation of the reverse auction, including the census blocks eligible for auction, the reserve price for each census block, the formula to be used including weights for specific factors, and the deployment milestones and service benchmarks applicable to winning bidders. To support the final formula announced in this Order, the Commission also relied on its

[4] *USF/ICC Transformation Order* at 424, ¶¶ 1191, 1192, and 1195 (analyses of state-wide auctions in areas where funds were declined).

overarching objective of using its finite budget in an efficient and cost-effective manner to meet consumer needs.[5] The Commission has not yet established the timing of the auction.

Pennsylvania supports the Commission's determination to use a market-based mechanism to more efficiently support broadband deployment. However, Pennsylvania is concerned that the reverse auction will defer the CAF Phase II declined support in Pennsylvania until finalization of the Remote Areas Fund (RAF) or, worse, reallocate CAF funding originally modeled for Pennsylvania's high cost rural areas to other high-cost rural areas outside of Pennsylvania due solely to one private carrier's business decision. Such an outcome does not account for Pennsylvania's unique circumstances, including that despite its very early broadband adopter status almost twenty-five years ago, the state still has unserved or underserved high cost rural areas. Nor does that outcome consider that reallocation of federal support away from Pennsylvania will create an intrastate, intra-county digital divide, denying it comparable services at comparable rates in contravention of Section 254 of the Telecommunications Act of 1996 (TCA-96).

Pennsylvania understands the challenges associated with funding broadband deployment for the two classes of high cost rural areas in the nation, *i.e.*, those within the parameters set by the CAF Phase II cost model (the *high cost rural areas*) and those beyond the CAF Phase II cost model (the *extremely high cost areas* reserved for the RAF). However, absent modification of the auction formula as requested, Pennsylvania will receive no recognition of the complementary roles its additional contributions have played and will continue to play in ensuring broadband access to Verizon's CAF Phase II eligible census blocks in Pennsylvania.

Pennsylvania has long supported the overall objectives of the federal program, preceding by three years the federal objectives with state mandates. The negative impact on Pennsylvania

[5] *CAF Phase II Auction Rules Order* at 4, ¶¶ 13, 14, at 6, ¶ 19, at 8, ¶ 25, at 12, ¶ 31, at 15, ¶ 34, at 21, ¶ 49, at 25, ¶ 62, and at 28, ¶ 70.

of the *CAF Phase II Auction Rules Order*, however, is easily remedied by approval of a simple modification of the formula for Pennsylvania bids to provide a weighting factor to reflect a complementary commitment from Pennsylvania. The modification incentivizes Pennsylvania to commit resources through the state to effectively and efficiently deploy broadband in the Commonwealth under federal standards and seeks to ensure that support already designated for Verizon's *high cost areas* is more likely to remain in Pennsylvania. As designed, the modest modification is operative only if there is a complementary commitment through the state.

II. PENNSYLVANIA'S BROADBAND COMMITMENT

A. The Pennsylvania Broadband Proposal

Pennsylvania proposes one modification to the FCC's final auction formula that will otherwise abide by all parameters of the FCC's auction while maximizing the effectiveness of the CAF Phase II funds to serve consumers across unserved areas with a finite budget. The modification will be applicable only to bids in Pennsylvania for Verizon-declined census blocks, thus avoiding complication of the formula and maximizing the efficiency of the auction as well as the effectiveness of the scope of federal support.

1. Pennsylvania's Historical Broadband Commitment

Pennsylvania has a long-standing commitment to broadband deployment. Historically, however, Pennsylvania's broadband commitment has been structured fundamentally differently from the New York Broadband Initiative, for example, which this Commission has viewed favorably as grounds for relief from the auction rules.[6] Pennsylvania's commitment has always been based on public/private partnerships involving its ILECs and their ratepayers. State government provided the means to the end through statutory flexibility not a dedicated broadband fund as is the case in New York. Pennsylvania government has never had and does not currently

[6] *Connect America Fund; ETC Annual Reports and Certifications*, Order FCC 17-2 (released January 26, 2017) (*New York Auction Order*).

have the financial means to support a $500 million broadband fund. Rather, the Pennsylvania General Assembly enacted supportive legislation that incentivized broadband deployment through statutorily-mandated initiatives and ratemaking incentives financed primarily by ratepayers with some shareholder contributions. There was no stand-alone state commitment.

Preceding the federal TCA-96 by three years, in 1993 the Pennsylvania General Assembly enacted a historic statutory framework that offered ILECs the then-unprecedented move to incentive regulation in lieu of rate base/rate of return regulation in exchange for a ubiquitous broadband commitment. Local service was opened to competition, and state jurisdiction was expanded to include a definition of and jurisdiction over statewide deployment of "broadband" by the addition of the original Chapter 30 to the Public Utility Code.[7]

The General Assembly's policy was to "[m]aintain universal telecommunications services at affordable rates while encouraging the accelerated deployment of a universally available state-of-the-art, interactive, public switched broadband telecommunications network in rural, suburban and urban areas."[8] Broadband was defined as a "communication channel using any technology and having a bandwidth equal to or greater than 1.544 Megabits per second [(Mbps)]."[9]

In exchange for a ratemaking plan that freed them from rate base/rate of return regulation, the ILECs were required to develop and implement a network modernization plan (NMP) that required the commitment to universal broadband deployment by December 31, 2015, balanced among rural, urban, and suburban areas and with targeted deployment dates. ILECs were then authorized to implement annual rate increases under price stability mechanisms that tied revenue increases to the rate of inflation minus a productivity offset.

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[7] 66 Pa. C.S. §§ 3001-3009, repealed and replaced in 2004 by Act 183 of 2004, 66 Pa. C.S. §§ 3301-3319.
[8] *See* 66 Pa. C.S. § 3001(1)(repealed and reenacted in substantially similar form at 66 Pa. C.S. § 3011(2)).
[9] 66 Pa. C.S. § 3002 (repealed). While the statute did not identify the channel speed as one-way or two-way, the PA PUC ultimately held the speed to be asynchronous, requiring a maximum download speed of 1.544 Mbps with an unspecified upload speed. *See Petition of ALLTEL Pennsylvania, Inc. for Approval of an Alternative Form of Regulation and Network Modernization Plan*, Docket No. P-00981423 (Order entered March 30, 2000).

As monumental a shift in telecommunications regulatory policy as TCA-96 was on the national level, by 1996 Pennsylvania was already three years into opening local markets to competition and mandating ubiquitous broadband deployment. Through incentive regulation including a public/private partnership, Pennsylvania was self-financing ubiquitous broadband.

As reenacted in 2004, the state's initiative was the most aggressive rural broadband deployment program of its kind in the nation.[10] Under the new law, ILECs with existing NMPs and alternative regulation plans could remain under their approved plans or amend them. The driver incenting carriers to amend their plans and undertake new NMP obligations that increased broadband speeds and advanced deployment was, again, the financial incentive of alternative regulation not a dedicated broadband fund. ILECs were permitted to reduce or eliminate the productivity offsets contained in their original price cap plans if they committed to advance broadband deployment. Moreover, to further spur deployment where the economic business case for deployment was becoming increasingly difficult, the General Assembly charged the PA DCED with developing and administering programs to help bring broadband services to higher-cost and generally lower-income communities. These programs included development of a state-wide broadband availability map a full five years before the FCC and other agencies were tasked with a similar federal requirement.[11]

These Pennsylvania programs also included targeted funding sourced from ILECs and their ratepayers for education and demand aggregation resources to assist in deployment.[12]

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[10] United States Internet Association, *Deployment of Broadband to Rural America: An Evaluation of Current Broadband Services to Rural Americans and the Impact of Internet Public Policy on Broadband Deployment* (March 2008) at 4-5, 13.

[11] *Compare* 66 Pa. C.S. § 3014(m) (tasking the PA DCED with publishing available broadband resources by location and provider) enacted in 2004 and Section 6001(l) of the American Recovery and Reinvestment Act of 2009 (Public Law No. 111-5) (tasking federal agencies with development of a national broadband map).

[12] *See* 66 Pa. C.S. §§ 3014(c) and (d) (implementing Bona Fide Retail Request program and Business Attraction or Retention Program to support demand aggregation and further facilitate economic development); §§ 3014(i) and (j) and 3015(c) and (d) (initiating the Broadband Outreach and Aggregation Program and the Education Technology Program, each supporting deployment by financially assisting political subdivisions, schools, health care facilities,

Again, these broadband deployment programs represented a combined public/private effort through the use of ratepayer and shareholder contributions, but did not include a dedicated broadband fund such as New York's Broadband Initiative. Over the effective period of Chapter 30 as amended, the PA PUC approved almost $1 billion in cumulative ILEC revenue and rate increases, including almost $68 million in mandatory ILEC contributions to support specific broadband programs. Over that same time period, Pennsylvania's net contributions to federal universal service support mechanisms grew to approximately $1.7 billion.[13]

2. Pennsylvania's Broadband Proposal Going Forward

a. Maintaining effectiveness by maximizing finite resources

While Pennsylvania does not have the structure or funding of a large, uncommitted broadband appropriation like New York, Pennsylvania does have a proven tradition of providing local, decentralized, conservative funding through public/private partnerships that will add substantial value to the FCC's finite CAF Phase II resources by harnessing complementary resources available in the state.

The PA DCED administers economic development funds in the form of state grants and other forms of financial assistance to qualified applicants who have submitted proposals to foster economic development, including broadband deployment, to areas of the state lacking high-speed access. The PA DCED currently has several economic development initiatives through which complementary funding may be available for application. For example, DCED administers the following: (1) Business in Our Sites, which provides grants and loans to local governments and authorities, industrial development organizations, and private developers, for site preparation for business uses; (2) Keystone Communities, which provides grants to local governments and

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economic development entities, and business and residential customers through funds from ILECs via mandatory assessments on revenue increases authorized under Chapter 30).

[13] *FCC Universal Service Monitoring Report*, Docket No. 98-202, 2005-16 Reports, Table 1.12 (2005-11), Table 1.13 (2012-13), Table 1.9 (2014-16).

authorities and economic development-related organizations for a variety of development activities; (3) Local Share Accounts, which provide grants funded by gaming revenue and are available to certain county governments, local governments, and/or economic development agencies for economic development activities; (4) the Fay-Penn Program, which provides grants, loans, loan guarantees, and tax incentives to Fay-Penn Economic Development Council for economic development activities in Fayette County; (5) PA First, which includes grants, loans, and loan guarantees to businesses for activities including infrastructure, land and building improvements, right-of-way acquisition, and site preparation; and (6) a commitment of One-Hundred Thousand Dollars ($100,000.00) from the Commonwealth of Pennsylvania in supplementary funding dedicated to complement CAF Phase II auction bids made in Pennsylvania to expand broadband deployment under the Commission's auction for service to Verizon-declined census blocks.

Another resource available through the PA DCED is the Appalachian Regional Commission (ARC), available to fund economic development including telecommunications deployment. This includes strategic planning, hardware and software, telecommunications service inventory and assessment activities, aggregation of demand projects, community awareness information technology (IT) outreach training, sector-specific training in IT/e-commerce for small and medium-sized businesses, activities related to IT business development, the acquisition of telecommunications equipment and software, general operational and administrative expenses associated with project implementation, and the installation of telecommunication infrastructure necessary to implement projects or support the development of IT incubators or "Smart Parks." ARC has been a potential source of revenue for funding broadband development and has a match requirement to which PA DCED has looked to state and

local resources as well as private foundations for support. Approximately $1.8 to $2 million from ARC potentially could be available for broadband development purposes.

Notably, there is substantial overlap between the economically-challenged ARC counties and the counties where Verizon declined CAF Phase II support.[14] To illustrate, Verizon-declined support was intended for the following locations, all in Appalachian counties eligible for ARC as well as additional PA DCED funding:

County	Carrier	Locations (households or businesses)	Total Support	Annual Average Support by Location
Indiana	Verizon	6,295	$2,167,620	$344.34
Jefferson		1,229	$491,361	$399.81
Allegheny		571	$168,218	$294.60
Centre		3,226	$1,114,835	$345.58
Clearfield		3,023	$1,461,178	$483.35
Westmoreland		1,633	$546,017	$334.36
Huntingdon		2,839	$1,132,610	$398.95

In contrast, in those same counties and fifty others, Pennsylvania's other price-cap carriers accepted CAF Phase II support. As demonstrated below, the business decision of one carrier, Verizon, will result in lost opportunities and extensive intra-county digital divides:

County	Carrier	Locations (households or businesses	Total Support	Average Annual Support by Location
Indiana	Windstream	460	$175,728	$382.02
Jefferson	Windstream	2,760	$942,751	$341.58
Allegheny	Windstream	23	$8,765	$381.09
	Consolidated	29	$14,673	$505.97
Centre	Windstream	405	$120,939	$298.61
	Consolidated	410	$127,005	$308.77
Clearfield	Windstream	1,561	$731,842	$468.83
Westmoreland	Windstream	435	$107,866	$247.97
	Consolidated	9	$700	$77.78
Huntingdon	Frontier	48	$20,810	$435.54
	CenturyLink	3,693	$1,340,562	$363.00
	Windstream	89	$34,723	$390.15

Source: https://www.fcc.gov/reports-research/maps/connect-america-phase-ii-final-eligible-areas-map/ (zoomed to isolate FCC data embedded by county).

[14] Verizon has declined CAF Phase II support in every Appalachian county it serves: Allegheny, Armstrong, Beaver, Bedford, Blair, Bradford, Butler, Cambria, Cameron, Carbon, Centre, Clarion, Clearfield, Clinton, Columbia, Crawford, Elk, Erie, Fayette, Forest, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lackawanna, Lawrence, Luzerne, Lycoming, McKean, Mercer, Mifflin, Monroe, Montour, Northumberland, Pike, Potter, Schuylkill, Snyder, Somerset, Sullivan, Tioga, Union, Venango, Warren, Washington, Wayne, and Westmoreland.

Without Pennsylvania's requested modification, the rural consumers in each of Pennsylvania's Verizon-declined counties are at risk of losing the full and current federal public support to receive modern broadband service entirely because of Verizon's private business decision. This outcome imperils the availability of comparable rates for comparable high-speed broadband service envisioned by the FCC.

If Pennsylvania's request is denied and the FCC allows Verizon's declined CAF Phase II support to be reallocated outside of Pennsylvania, the FCC will sanction, on a Pennsylvania-specific intra-county basis, the very same digital divide that CAF Phase II support was designed to remedy. Pennsylvania has developed a simple, objective, resource-enhancing modification to the auction formula that would ameliorate this. Pennsylvania respectfully urges this Commission not to penalize consumers within the sixty-four Pennsylvania counties served by Verizon simply because the largest incumbent carrier in the state declined CAF Phase II support.

In sum, Pennsylvania will continue to support broadband development on a local and decentralized basis using a conservative approach that harnesses resources available within the state. Used in tandem with the FCC's CAF Phase II support, these resources will expand the reach of that federal support, satisfying the FCC's objective of maximizing effectiveness of finite funds. The modification requested below makes it more likely that Pennsylvania consumers who have supported state and federal broadband programs will receive the benefit of federal CAF Phase II support by providing an explicit incentive for Pennsylvania to affirm resource availability to support broadband deployment, including ongoing exploration for additional funding sources.[15]

b. Maintaining efficiency through a simple, uncomplicated process

Under the FCC's final auction formula, the bidder's score will be determined by dividing the bid price by the reserve price and adding weights for the tier of service bid (determined by

[15] Pennsylvania commits to inform the Commission, by amending this Petition or otherwise, at any time additional funds become available.

speed of service and availability of monthly usage) and the service latency. The lower the speed and usage, and the higher the latency, the higher the resulting score. Successful bidders are those with the lowest score.

The FCC illustrated application of the formula and weights as follows:

- S = 100 x B/R + T + L, where S equals score, B is the current bid price, R is the reserve price, T is the weight assigned to the bid's proposed service tier, and L is the weight assigned to the latency in the proposed bid.

- The FCC illustrated use of this formula as follows: An area has a reserve price of $160.

- The first bidder asks for $120 to offer baseline service (the second lowest tier of service with speeds of 25 Mbps up/3 down and 150 gig/months usage) with high latency. The score is 145 (Score = 100 x $120/$160 = 75 + 45 (weight for the baseline service) + 25 (weight for the high latency), for a final score of 145.)

- A competing bidder asks for $140, which is higher than the first bid, and for the same performance level (baseline service of 25/3, 150 G usage). However, the second bidder offers low latency, so 0 points are added to the score for latency. The second bidder's score is 132.5 (100 x $140/$160 = 87.5 + 45 + 0 = 132.5).

- Even though the second bidder came in higher compared to the reserve price, weights affecting the bid, in this case zero points added due to low latency, resulted in an overall lower, and therefore, winning, bid.[16]

Using the FCC's auction process and formula identified in the *CAF Phase II Auction Rules Order*, Pennsylvania requests the Commission to reconsider its decision not to adopt a weight for Pennsylvania as that weight is now specifically identified herein. Rather, on the basis of that recently released Order, Pennsylvania proposes one specific modification applicable to the auction formula for Pennsylvania bids only to recognize a "bidder's premium," which is to be reflected in the formula and effectuated through the addition of a negative weight.

The negative weight will recognize any bid made for support in a Verizon-declined census block that maximizes CAF Phase II funding whenever additional resources from the state are

[16] *See CAF Phase II Auction Rules Order* at 5, ¶ 28.

identified and secured for use in Pennsylvania prior to the auction. The weight is determined as a percentage of the reserve price depending on the amount of complementary resources the bidder obtains. Those resources would be determined in advance of the auction, and the bidder would be obligated to identify those additional resources in order for it to be reflected in the scoring process. Additionally, to receive any state resources geared towards broadband deployment, the applicant would be required to commit to the FCC's CAF II program parameters, including the Commission's process and all conditions. Support will have to be used in the same eligible census blocks in Verizon's territory to which the CAF Phase II funding was originally offered.

Using the FCC's formula and illustration, scoring would be restated as follows:

- S = 100 x B/R + T + L – (P/R), where S equals score, B is the current bid price, R is the reserve price, T is the weight assigned to the bid's proposed service tier, L is the weight assigned to the latency in the proposed bid, P is the bidder's premium from resources available through the state, and P/R equals the value added by the bidder's premium as a percentage of the reserve price (converted to a negative weight).

- Using the FCC's example above with a reserve price of $160 and formally recognizing a bidder's premium of $80 (the additional resources from the state brought to the auction by the bidder), the formula would appear as follows: The first bidder asks for $120 to offer baseline service (the second lowest tier of service with speeds of 25 Mbps up/3 down and 150 gig/months usage) with high latency *and* a bidders' premium. The score is 95 (Score = 100 x $120/$160 + 45 + 25 – ($80/$160) = 75 + 45 (weight for the baseline service) + 25 (weight for the high latency) – 50 (negative weight for value added) for a final score of 95).

As demonstrated in this example, a bidder that brings complementary Pennsylvania resources to a bid for support in a declined census block will have that value formally recognized in proportion to the value it adds to the FCC's reserve. This expands the FCC's support and satisfies the FCC's goal of "maximizing the effectiveness of [CAF II] funds to serve consumers across unserved areas with our finite budget."[17] Further, by staying within the confines of the FCC's formula and performance requirements, a score that may have lost and resulted in

[17] *CAF Phase II Auction Rules Order* at 4, ¶ 14.

resources being diverted outside of Pennsylvania contrary to the FCC's original model becomes less likely. It is also a more competitive and viable bid through one simple modification. Thus, Pennsylvania's proposal does not complicate the FCC's formula, eliminating one reason set forth by the FCC in declining to recognize a state-specific bidding credit or preference.[18]

At the time the PA PUC filed comments in this docket and in response to the New York petition, the FCC had not yet determined the final formula or weighting. Because the formula and weighting are now clear, a Pennsylvania petition requesting this modification is timely and the facts presented are ripe for consideration. Thus, unlike when the FCC granted the New York petition and noted that "[n]o other state ha[d] requested a similar waiver[,]"[19] now that the FCC has finalized its auction formula, Pennsylvania is positioned to act. This eliminates another reason the FCC previously declined to act favorably upon Pennsylvania's comments.

III. REQUEST FOR RECONSIDERATION, MODIFICATION, OR WAIVER OF THE FINAL CAF PHASE II AUCTION FORMULA RULES

A. Standard For Reconsideration And Modification Of Final Rules

The Commission will grant a petition for reconsideration that relies on facts or argument that have not previously been presented to the Commission if (1) the facts or arguments relied on relate to events that have occurred or circumstances that have changed since the last opportunity to present such matters to the Commission; (2) the facts or arguments relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and petitioner could not through the exercise or ordinary diligence have learned of the facts or arguments in question prior to such opportunity; or (3) the Commission determines that consideration of the facts or arguments relied on is required in the public interest.[20]

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[18] *Id.* at 20, ¶ 48.
[19] *New York Auction Order* at 6, ¶ 17.
[20] 47 C.F.R § 1.429(b)(1)-(3).

The Commission's granting reconsideration, modification, or waiver of the auction formula and its decision not to adopt a state-based modification for Pennsylvania bids under the facts and arguments presented herein will promote the public interest by facilitating federal-state coordination on broadband issues. Moreover, doing so will further the Commission goals identified in the *CAF Phase II Auction Rules Order*, expanding the reach of finite federal support in an efficient manner by incentivizing additional broadband investment by Pennsylvania and its bidders for the Verizon-declined census blocks through an efficient modification of the formula for Pennsylvania through a negative weight to recognize state-awarded complementary resources.

The special circumstances arising from Pennsylvania's extensive historic and continuing prospective public/private model for facilitating broadband deployment, which will cover the same territories in advance of the CAF auction, also warrants grant of this request. Granting the modification does not frustrate Commission CAF objectives because no census blocks where Verizon declined support have an unsubsidized competitor present. For these and the other reasons that follow, good cause exists for the Commission to grant reconsideration through modification or waiver of the competitive bidding auction formula for Pennsylvania and, in so doing, to further the deployment of broadband services in the Commonwealth consistent with the FCC's universal service obligations.[21]

B. Absent Grant Of Pennsylvania's Single Modification To The Auction Formula, The CAF Phase II Competitive Bidding Process Will Undermine The Universal Service Goals Of The CAF Program And The Achievements Intended By The CAF II Model-Based Support Mechanism

[21] If the Commission believes a request for waiver is appropriate, Section 1.3 of the Commission's rules permits the Commission to waive a rule for good cause shown. Waiver should be granted "where particular facts would make strict compliance inconsistent with the public interest." *AT&T Corp. v. FCC*, 448 F.3d 426, 433 (D.C.Cir. 2006). The Commission may also grant a waiver when application of the rule would be contrary to the public interest and special circumstances warrant a deviation from the rule. *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990). Finally, the Commission may "take into account considerations of hardship, equity, or more effective implementation of overall policy." *WAIT Radio v. FCC*, 418 F.2d 1153, 1159.

The reallocation of objectively-determined but unclaimed CAF II model support away from Pennsylvania will undermine both the Commission's and Pennsylvania's own broadband deployment initiatives by impeding the deployment of comparable services across urban and rural areas. Most problematic is the resulting intra-county digital divide within the Pennsylvania counties where Verizon declined but other ILECs accepted CAF Phase II support. Pennsylvania shares the FCC's concerns that the decision of one carrier to decline the CAF Phase II support should not deny the same opportunities for modern broadband services for the many thousands of Verizon households and businesses who are neighbors to those non-Verizon locations where the ILECs accepted CAF Phase II support. Retaining Verizon-declined CAF funding is essential to Pennsylvania's ability to ensure that consumers residing in the Verizon's unserved communities receive the same broadband services offered elsewhere in Pennsylvania and the nation.

In the *New York Auction Order*, the Commission acknowledged that if a state has already implemented a broadband program it could enhance the reach and effectiveness of the CAF. While Pennsylvania does not have $500 million in centralized resources to support broadband expansion in the style of New York, Pennsylvania has committed an equally persuasive structure for maximizing the FCC's intended efficiency and effectiveness for CAF II broadband deployment, deployment that is a *sine qua non* to economic growth and sustainability.

Absent the requested Pennsylvania-specific modification, Pennsylvania will be detrimentally impacted by the competitive bidding process in a way that will frustrate the deployment of broadband in high-cost support-eligible areas in the Commonwealth. This concern exists across the nation. At its February 2017 winter session, the National Association of Regulatory Utility Commissioners (NARUC) passed a resolution supporting states' retention of CAF II declined funds. Specifically, NARUC resolved as follows:

> That NARUC urges the FCC to provide the waivers or changes in rules and policies needed so that the model-based support declined by price-cap carriers in State-specific census blocks or tracts in the CAF Phase II list, as it exists or may come to exist, remains within the respective State or State-specific census blocks or tracts so that the bidders and States affected by a price-cap carrier's refusal of model-based support know that the model-based support will remain within the State or the State-specific census blocks or tracts, thereby avoiding the negative universal service impact triggered by any increase in rates that would occur to recover that loss of federal support.[22]

Modification of the Commission's auction formula for Pennsylvania is in the public interest because it will ensure that unserved communities will timely receive comparable broadband services by facilitating sustainable business models and the accelerated buildout of broadband networks.

Pennsylvania acknowledges and appreciates the Commission's commitment in the *CAF Phase II Auction Rules Order* to reserve funding in the RAF for any state that did not receive support as part of the Phase II auction equal to the amount of the declined support by the relevant price cap carriers.[23] However, to minimize the amount of funding that may be required from the RAF and to help ensure that Pennsylvania, with *high cost areas,* receives a timely and equitable distribution of funds to deploy broadband in those areas, the Commission should reconsider its determination for Pennsylvania.

One reason the FCC offered in rejecting the PA PUC's prior comments at these dockets was a concern that including an as-of-then undefined state preference for declined states would add unnecessary complexity to the auction.[24] As illustrated above, however, adopting the negative weight proposed by Pennsylvania to recognize the added value Pennsylvania bidders bring through complementary resources obtained through the state does not add complexity to the Phase

[22] Available at www.naruc.org.
[23] *CAF Phase II Auction Rules Order* at 18, ¶ 43.
[24] *Id.* at 20, ¶ 48.

II auction. Pennsylvania's ability to formulate a modification was only made possible after the Commission identified a final formula, hence warranting reconsideration.

A second reason the FCC offered was its conclusion that additional state-available resources that complement broadband deployment can be reflected in the auction process through the form of lower bids without adopting a weight or preference.[25] However, in order to maximize cost-effectiveness and encourage state engagement in the deployment process, the approach adopted by the FCC in the *CAF Phase II Auction Rules Order* should provide an *explicit* incentive for Pennsylvania to provide and for carriers to take advantage of the availability of additional complementary broadband support within its borders. Weighting these express contributions as part of an auction bid in Pennsylvania provides that explicit incentive and provides additional financial resources to expand the reach of finite federal funds. In doing so, modification of the formula benefits consumers by expanding competition and innovation and minimizing the Pennsylvania digital divide, furthering the public interest.

In its third stated reason for rejecting a request for a declined-state preference, the Commission repudiated Pennsylvania's assertion that it is a consistent net-contributor to the federal universal service support mechanisms.[26] Pennsylvania appreciates this opportunity to clarify that it is not advocating that universal service support originally designed for high cost census blocks in Pennsylvania must stay in Pennsylvania because its ratepayers are net-contributors to federal universal service support. Pennsylvania's status as a net contributor is a fact that speaks for itself.

That said, Pennsylvania's focus is on the demonstrated need for federal support to deploy broadband in high cost areas in census blocks where Verizon declined CAF Phase II support,

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[25] *Id.*
[26] *Id.*

particularly those in economically-challenged locations in the Appalachian region. Failure to acknowledge Pennsylvania's need in those declined census blocks likewise fails to account for the fact that Pennsylvania retains thousands of locations that need public support. These locations should not lose support merely because one private carrier made a private economic decision. The fact that much needed support is likely to be lost absent grant of Pennsylvania's modest modification makes it likewise inescapable that Pennsylvania's net contributor status will be exacerbated if declined CAF II monies are reallocated outside the Commonwealth.

Importantly, such a result operates to create a perverse outcome that further punishes Verizon's ratepayers by removing support from them to provide support to consumers in other high cost areas. Drilling down to the local census block-based targeting of the FCC's CAF Phase II support, reallocation of Verizon-declined support puts those Verizon ratepayers who already contribute the bulk of Pennsylvania's federal Universal Service Fund (USF) support in the perverse situation of paying to maintain their own intra-county digital divide.

The Commission has expressed a desire for more active state involvement in funding broadband deployment, a response reflected in the Pennsylvania proposal. This proposal is consistent with the Commission's long-standing goal of encouraging state support for broadband deployment. By utilizing the FCC's auction process and formula with the one requested Pennsylvania modification, the FCC will satisfy its goal of maximizing effectiveness and efficiency while enabling the deployment of reasonably comparable services where a business case for service providers has not been made without support. To these ends, Pennsylvania asserts that its petition satisfies the standards for reconsideration and requests that the Commission modify for Pennsylvania bidders its Phase II auction rules as presented in this petition.

In sum, Pennsylvania asserts that its request for a modification of the final auction formula to recognize a Pennsylvania-specific weight based upon the modification requested herein satisfies

the criteria for relief set forth in the *CAF Phase II Auction Rules Order*. First, it is not complicated. A Pennsylvania-specific weight to acknowledge complementary support can be recognized through a simple modification of the formula. In all other respects, the FCC's auction parameters and conditions will apply.

Second, it is necessary to incentivize state action and thereby maximize the cost-effectiveness of the Commission's finite resources. While packaged differently, Pennsylvania's complementary state support, albeit not $500 million, is no less an effective means of extending the CAF Phase II finite budget than the New York Broadband Initiative.

Third, it is not based upon Pennsylvania's status as a USF net-contributor. Grant of the modification, however, would forestall the perverse outcome whereby the same consumers who largely support Pennsylvania's net contributor status also would be on the losing side of an intra-county digital divide in Verizon-declined counties.

Finally, it is no longer undefined and not presented before the Commission for consideration. Now that the FCC has disclosed its final formula, Pennsylvania has affirmatively acted in response to the Commission's prior observation that while other parties' comments supporting the New York petition were before it, none had presented a specific request for waiver.[27] On the basis of facts and arguments now known, Pennsylvania specifically presents this request for modification of the final auction rules formula as in the public interest.

C. Reconsideration To Modify Or Waive The CAF Phase II Auction Formula Will Facilitate Federal-State Broadband Coordination And Encourage Additional State Broadband Support

Modification of the Commission's formula for Pennsylvania as proposed herein would promote the public interest by facilitating the type of federal-state partnership in Pennsylvania that Congress, the courts, and the Commission have long recognized as vital to advancing

[27] *New York Auction Order* at 6, ¶17.

universal service goals. Congress acknowledged the important role that states have in developing and accomplishing key universal service objectives. To the point made herein, Congress did not envision the requirement that states match federal efforts in order to be considered. Rather, states can play an important role through "complementary" efforts.[28] TCA-96 affords states important roles in universal service fund implementation such as permitting them to create their own universal service funds[29] or to designate carriers as Eligible Telecommunications Carriers (ETCs) when appropriate.[30]

Moreover, the courts have recognized that TCA-96 "plainly contemplates a partnership between the federal and state governments to support universal service,"[31] and that "it is appropriate—even necessary—for the FCC to rely on state action."[32] Meanwhile, the Commission itself has acknowledged the important role that states must have in advancing universal service and has undertaken a variety of efforts to achieve such a partnership.[33] By harnessing and making readily available to potential bidders all resources available through the state, Pennsylvania has satisfied the Congressional intent of complementary efforts that merits favorable Commission action on this petition.

Modifying the auction formula for Pennsylvania would promote the public interest by providing for the efficient and most cost-effective use of both federal and state broadband resources. This partnership would allow the Commission to maximize the reach of the Connect

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[28] *See, e.g.,* PUBLIC LAW 110–385, Section 1301(4) ("The Federal Government should also recognize and encourage *complementary State efforts* to improve the quality and usefulness of broadband data and should encourage and support the partnership of the public and private sectors in the continued growth of broadband services and information technology for the residents and businesses of the Nation.") (emphasis added).
[29] *See* 47 U.S.C. § 254(f). The PA PUC notes that it has established a state universal service fund that supports access reform.
[30] *See* 47 U.S.C. § 214(e).
[31] *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001).
[32] *Id.*, 258 F.3d at 1203.
[33] *See, e.g., Federal-State Joint Board on Universal Service*, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22,559, 22,568 ¶ 17 (2003) (noting "[t]he Act makes clear that preserving and advancing universal service is a shared federal and state responsibility.").

America Fund budget and leverage additional complementary resources available through additional state public and/or private bidder efforts to extend broadband to as many household as possible. This achieves important Commission policies.

More importantly, partnering with Pennsylvania will result in no additional cost to federal ratepayers as Pennsylvania is only asking the Commission to recognize the added value Pennsylvania's special circumstances identified herein bring to the reserve price of the Verizon-declined eligible census blocks. Modification would thus result in significant benefits for the affected local communities while not burdening federal ratepayers with additional universal service fund obligations or detract from support already being provided to consumers in similarly-situated census blocks. Further, the conditions discussed above would ensure that the specific Commission requirements in distributing the CAF funding to carriers in the state are applied. Accordingly, such a partnership could also facilitate further coordination between the Commission and the states on the key broadband policy issues that are necessary to make broadband available throughout the country.

Furthermore, permitting the allocation and distribution of CAF Phase II model-based funding to a state that demonstrates value added is consistent with the Commission's long-standing goal of encouraging state funding of broadband development. Throughout this proceeding, the Commission has expressed its desire for more active state involvement in funding broadband deployment. Pennsylvania's requested modest modification to acknowledge state involvement is reasonable given Pennsylvania's extensive broadband support at both the state and federal levels. Since 1993 Pennsylvania has been an active proponent and financial supporter of broadband deployment. Modification of the FCC's auction formula will continue to leverage resources made available within Pennsylvania and, more importantly, further important Commission policies of driving broadband investment in rural, unserved communities.

D. Modification Of The CAF Phase II Auction Rules Is In The Public Interest, Facilitates The Efficient Use Of CAF Funding, And Furthers The Goals of Section 254

Pennsylvania is detrimentally impacted by the auction formula established in the *CAF Phase II Auction Order* in that the business decision of one price cap carrier to decline its model-based CAF Phase II support may frustrate the deployment of broadband infrastructure in high-cost areas across the entire state. This is particularly so for rural consumers living in the economically-challenged counties in the Appalachian region where Verizon declined public support for private economic reasons.

Grant of this petition will harness and align federal and state broadband resources. As noted above, this would result in the rapid deployment of broadband in those unserved rural high-cost eligible census blocks in Verizon's service territory in Pennsylvania as opposed to waiting for an RAF allocation that may not materialize. As currently constructed, the FCC's final auction formula rules in Pennsylvania would frustrate important Commission objectives. There is no certainty that the broadband providers will submit bids for the eligible census blocks in Verizon's service territory in Pennsylvania during the auction absent the modification requested herein.

By contrast, absent grant of the simple modification Pennsylvania proposes, it is more than likely that consumers living in economically-challenged rural areas where Verizon declined support will have to wait longer than necessary to receive broadband services, and may in the end receive little to nothing. This is an important factor when reconsideration and modification of the existing auction rules would more clearly reflect a government's commitment to promoting broadband in its unserved areas.

Finally, modification of the auction formula for Pennsylvania on the basis of the facts and arguments made herein would further Congressional intent and the express terms of Section 254 of TCA-96. Both the Commission and the courts have agreed that the extensive grant of

authority provided to the FCC by Congress under Section 254 provides the Commission significant leeway to effect the broader purposes of the universal service fund.[34] This includes modifying the auction formula to allow the Commission to leverage CAF funds to advance the deployment of broadband services in partnership with the state, clearly within the goals of the Connect America Fund. Accommodating Pennsylvania's request within the CAF Phase II auction formula aligns with the goals of the *USF/ICC Transformation Order*,[35] in which the Commission determined that "nothing in section 254 [] requires us simply to provide federal funds to carriers and hope that they will use such support to deploy broadband facilities."[36]

Pennsylvania believes its concerns and proposal as stated herein address the Commission's prior rejections of a state-specific weight that would apply uniformly but in a manner that can also reflect express state-specific support known in advance of an auction. The specific modification that Pennsylvania now places before the Commission addresses the Commission's concerns in a manner that is consistent with the FCC's prior disposition and the unique state circumstances that exist in the Commonwealth.

IV. CONCLUSION

The Pennsylvania Public Utility Commission and the Pennsylvania Department of Community and Economic Development respectfully request the Commission to modify the competitive bidding auction formula for the Pennsylvania bids only to allow carriers in the

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[34] *See, e.g., Federal State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8901 (1997) ("The language of section 254(h)(2) grants the Commission broad authority to enhance access to advanced telecommunications and information services, constrained only by the concepts of competitive neutrality, technical feasibility, and economical reasonableness."); *see also Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) ("[W]e are convinced that Congress intended to allow the FCC broad authority to implement this section of the Act."); *Clark-Cowlitz Joint Operating Agency v. FERC*, 826 F.2d 1074, 1080 (D.C. Cir. 1987) (citations omitted) (noting that a broadly worded statute provides an agency with "flexibility in carrying out its duties[.]").

[35] *Connect America Fund Order,* Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), *aff'd sub nom., In re: FCC,* 11-161, 753 F.3d 1015 (10th Cir. 2014) (*USF/ICC Transformation Order*).

[36] *Id.* at 24, ¶ 65.

Commonwealth to access the annual CAF model-based funding in partnership with the state available complementary resources that bring added value to bid for support in a Verizon-declined census block. As discussed herein, good cause exists for grant of reconsideration in the form of modification or waiver, as it is in the public interest, is supported by facts and argument that could not have been previously made, and ensures the most cost effective and efficient use of finite CAF Phase II support.

Respectfully submitted,

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