Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Rural Broadband Experiments	)	WC Docket No. 14-259

To: The Commission

COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

The Wireless Internet Service Providers Association ("WISPA"), pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby comments on proposals described in the *Further Notice of Proposed Rulemaking* ("*FNPRM*") in the above-captioned proceeding.[1] For each defined performance tier proposed in the *FNPRM*, WISPA proposes a percentage-based weighting plan that meets the Commission's "overarching goal of providing households in the relevant high-cost areas with access to high quality broadband services, while making the most efficient use of finite universal service funds."[2] WISPA also urges the Commission to conduct a nationwide auction that does not direct minimum levels of support to one or more specific states.

Introduction

WISPA has actively advocated for small broadband providers that desire to participate in the Connect America Fund ("CAF") Phase II competitive bidding process. As part of these

[1] *See Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-64, WC Docket Nos. 10-90, 14-58 & 14-259 (rel. May 26, 2016) (by context, "*R&O*" or "*FNPRM*"). A synopsis of the *FNPRM* as published in the Federal Register on June 21, 2016 established deadlines of July 21, 2016 for the filing of Comments and August 5, 2016 for the filing of Reply Comments. *See* 81 Fed. Reg. 402235 (June 21, 2016).
[2] *FNPRM* at ¶ 207.

efforts, on March 4, 2016, WISPA filed an *ex parte* letter proposing bidding categories focusing on performance criteria, with bidding-credit tiers that would give greater relative weight for faster speeds, lower latency and higher data allowances.[3] The WISPA Proposal described important objectives:

- "the proposal does not favor one technology over another, enabling the highest level of participation by large and small bidders."
- "the proposal focuses on the Commission's criteria – speed, latency and data usage – and rewards those bidders that exceed the proposed benchmarks."
- "this proposal would be relatively easy to implement and administer for both bidders and Commission staff."[4]

In the *R&O*, the Commission adopted certain rules consistent with the WISPA Proposal,[5] including a technology-neutral framework that promotes cost-effectiveness and prioritizes faster speeds, higher usage allowances and low latency. The *R&O* incorporated these elements into four performance tiers based on specified combinations of speed and usage allowance – Minimum, Baseline, Above Baseline and Gigabit – with two latency options, for a total of eight performance tiers.

The Commission wisely deferred to the *FNPRM* adoption of the relative weights assigned to each performance tier. The Commission indicated its intention "to adopt procedures for weights that would take into account the relative benefits to consumers of the various service tiers" and sought comment on its proposal and other alternatives,[6] citing the statutory mandate "of ensuring consumers in rural and high-cost areas have access to services 'that are reasonably

[3] *See* Letter from Stephen E. Coran, WISPA Counsel, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90 (filed March 4, 2016) ("WISPA Proposal").
[4] *Id.* at 5-6.
[5] The Commission also adopted many proposals advanced by WISPA to promote robust participation by small broadband providers. These include changes to the letter of credit requirements, standards to greatly expand the number of banks eligible to issue letters of credit and flexibility in the timing for submission of audited financial statements. *See R&O* at ¶¶ 102-103, 122-124 & 126-130.
[6] *FNPRM* at ¶ 210. *See also id.* at ¶ 212.

comparable to those services provided in urban areas.'"[7] The *FNPRM* also invited comment on whether and to what extent the Commission should direct Phase II reverse auction support to certain states where price cap carriers declined support.[8]

Below, WISPA proposes a comprehensive specific bidding weight plan that achieves the Commission's statutory objective of supporting "reasonably comparable" service and its "policy goal[] to accelerate the deployment of broadband availability of new broadband infrastructure in these high-cost areas."[9] WISPA also strongly supports a nationwide auction that does not divert support to those states where price cap carriers declined the offer of funding.

Discussion

I. BIDDING CREDITS SHOULD BE MEASURED AS A PERCENTAGE OF BIDS THAT SUPPORT "REASONABLY COMPARABLE" SERVICE.

The Commission seeks comment on how it should compare bids of differing performance levels and proposes "procedures to assign a weight to each service tier as well as the high and low latency designations that would alter the initial cost-effectiveness of each bid."[10] The Commission rightfully describes the weights as representing the "*relative* benefits of service that provides higher speeds, higher usage allowance, and/or lower latency over service that meets lower requirements for participation in the Phase II auction."[11]

In designing its bidding weight system, WISPA followed three general principles. *First*, the system must advance the bedrock objective of cost-effectiveness. Any system with an over-sized gap between the highest and lowest weighted bid would be at odds with this objective.

[7] *Id.* at ¶ 214, *quoting* 47 U.S.C. § 254(b)(3).
[8] *See id.* at ¶¶ 217-224.
[9] *R&O* at ¶ 41.
[10] *FNPRM* at ¶ 210 (footnote omitted).
[11] *Id.* at ¶ 211 (emphasis added).

Second, the system must not over-weight the Minimum Performance or the Gigabit Performance Tiers, neither of which is consistent with the "reasonably comparable" statutory mandate.[12] The Minimum Performance Tier's speed component of 10/1 Mbps does not meet the Commission's definition of "advanced telecommunications capability"[13] and, while this performance level may be appropriate in certain areas, bidders should not be eligible for a bidding credit. In addition, a very small percentage of consumers receive gigabit download speeds such that the speed component of the Gigabit Performance Tier is not "reasonably comparable" service under the statute. As Commissioner O'Rielly aptly stated:

> Reasonable comparability is about ensuring that rural consumers receive service that does not lag too far behind what a substantial majority of consumers are subscribing to in urban areas. Adding a tier that is significantly above market reality provides a nice soundbite, but it is a distraction from the effort to connect the maximum number of people with the limited dollars available under our budget. And as I have said before, we should buy fewer Lamborghinis and more Chevys.[14]

Third, as the Commission proposes in the *FNPRM*, and consistent with the approach the Commission has taken with spectrum auctions,[15] the system must use *relative* weights as a *percentage* of the applicant's bid, not real dollars.[16] In states where Phase II competitive bidding support will be available, average cost model pricing ranges from a low of $16.37 in the District of Columbia to a high of $56.38 in Kansas. Applying a dollar-based credit system thus would

---

[12] *R&O* at ¶ 10, *citing Connect America Fund*, 26 FCC Rcd 17663, 17721, 177626 and 17740 (2011), *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) ("*USF/ICC Transformation Order*"). According to the *2016 Broadband Progress Report*, more than 39 percent of Americans residing in rural areas lack access to 25/3 Mbps service, compared to four percent in urban areas. *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 31 FCC Rcd 699 (2016) ("*2016 Broadband Progress Report*").

[13] *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as amended by the Broadband Data Improvement Act*, 30 FCC Rcd 1375 (2015).

[14] *FNPRM*, Statement of Commissioner Michael O'Rielly ("O'Rielly Statement"), at 1.

[15] *See* 47 C.F.R. § 1.2110(f)(2).

[16] Thus, if the gross bid is $20.00 and the applicant is entitled to a 15% credit, its net bid for comparative purposes would be $17.00, or 15% less than $20.00.

skew bids in a way that would disproportionately benefit low-dollar areas and disproportionately harm high-dollar areas. Stated another way, a $5.00 credit in a lower-cost area would have a more significant impact on the net bid than a $5.00 credit in a higher-cost area.

With these principles in mind, WISPA proposes the following bidding credit system:

Performance Tier	Speed	Usage Allowance	Proposed Percentage Credit
Minimum	≥ 10/1 Mbps	≥150 GB	0
Baseline	≥ 25/3 Mbps	≥150 GB or U.S. median, whichever is higher	10
Above Baseline	≥ 100/20 Mbps	Unlimited	20
Gigabit	≥ 1Gbps/500 Mbps	Unlimited	25

Latency	Requirement	Proposed Percentage Credit
Low Latency	≤ 100 ms	0
High Latency	≤ 750 ms & MOS of ≥4	-75

Although the 10/1 Mbps speed criterion for the **Minimum Performance Tier** is identical to the speed requirement for price cap carriers, it is below the 25/3 Mbps minimum speed the Commission has defined as "advanced telecommunications capability"[17] and the minimum speed requirement for rate-of-return carriers electing Alternative Connect America Cost Model support.[18] Accordingly, because this tier does not meet the baseline speed, **no bidding credit** should apply.

Applicants committing to meet the **Baseline Performance Tier** should enjoy a significant benefit over applicants proposing the Minimum Tier of service. In addition to

[17] *See 2016 Broadband Progress Report*.
[18] *See Connect America Fund*, Report and Order, FCC 16-33, WC Docket No. 10-90 (rel. Mar. 30, 2016).

providing speed that meets the Commission's definition of "advanced telecommunications capability," the usage allowance is also higher and will evolve over time to a median level that undoubtedly will increase. In order to meet the foregoing requirement, regular upgrades will be required as recipients invest further to keep pace with their funded customers' increasing data usage demands. For these reasons, WISPA recommends a weight of **plus 10 percent**.

The **Above Baseline Performance Tier** may be achievable for nearly all technologies over the six-year build-out term and, at some point, 100/20 Mbps may reflect "reasonably comparable" service.[19] However, relative to the Baseline Performance Tier, this tier should not be given substantial additional weight at this time. WISPA recommends a weight of **plus 20 percent**.

WISPA believes that the Commission should not be using CAF dollars to support the **Gigabit Performance Tier**. Only one technology – fiber – may meet these speeds at this time. Most importantly, fiber broadband is not "reasonably comparable" to broadband services in urban areas. While broadband providers have incentive to build more robust networks, that does not mean that the Commission should now be supporting gigabit deployment when there are areas that are not served with 10/1, 25/3 or 100/20 Mbps service. Insofar as the Commission has nonetheless decided to have a Gigabit Performance Tier, the auction structure should ensure that the vast majority of support flows to bidders applying for the Baseline and Above Baseline Performance tiers. The bidding credit for this tier should have a weight of **plus 25 percent** – only 5 percent more than the Above Baseline Performance Tier.

[19] WISPA notes that the upload speed of 20 Mbps departs from the 10:1 ratio of the Minimum and Baseline Tiers and thus requires a greater amount of overall bandwidth. The Commission should consider adjusting the Above Baseline speeds to 100/10 Mbps.

With respect to **latency**, there is a significant difference to the consumer between 100 ms and 750 ms. As the Commission stated, "[l]ow latency, that is, shorter delays, is essential for most network-based applications and critical for others, such as VoIP and other interactive and highly interactive applications."[20] High latency technologies simply cannot support these functions. While the Commission rightfully desires to make the auction "as competitive as possible,"[21] it risks making the auction non-competitive by under-weighting a significant aspect of the CAF program – voice service. WISPA believes that applicants committing to meet the 100 ms latency requirement should be given **zero percent** weight and that applicants proposing higher latency should be given a **minus 75 percent** adjustment.

To the extent satellite companies are concerned that this large adjustment may be too limiting, nothing in the Commission's rules prevents them from incorporating a terrestrial option or from partnering with a carrier that will provide low-latency terrestrial service. The Commission wisely adopted its performance tiers without favoring any specific technology or restricting bidders to a single technology, instead deferring to its speed, usage allowance and latency criteria as factors that would complement cost-effectiveness.

---

[20] *R&O* at ¶ 32 (citation omitted).
[21] *Id.* at ¶ 33.

II. THE COMMISSION SHOULD CONDUCT A NATIONWIDE AUCTION THAT DOES NOT DIVERT SUPPORT TO STATES WHERE PRICE CAP CARRIERS DECLINED SUPPORT.

The Commission seeks comment on whether it should designate a certain amount of support to those states where price cap carriers declined the Commission's offer of Phase II support.[22] In WISPA's view, the Commission should establish no support thresholds or requirements on a state-by-state basis. Instead, the Commission should conduct a nationwide auction to achieve cost-effectiveness without artificial constraints that will lead to the rejection of more cost-effective bids in some states in order to accept less cost-effective bids in other states.

There are several reasons. First, despite the views of at least one Commissioner,[23] consumers in states where price cap carriers declined support neither state governments nor consumers have any expectation of receiving support from the auction. The Commission has consistently made clear that it was *offering* Phase II support to price cap carriers, not requiring it, and that price cap carriers could decline the support if, for instance, they would not agree to the public interest obligations.[24] The Commission stated that "[t]o the extent a carrier believes the support offered is insufficient to meet the obligations, *it may turn down the offer of Phase II*

[22] *See FNPRM* at ¶¶ 217-224. The Commission indicated that it does not intend to apply state-by-state earmarking in those states where price cap carriers accepted the vast majority of the offered support. *See id.* at ¶ 217 n.413.
[23] *See id.*, Statement of Commissioner Jessica Rosenworcel ("It would be unacceptable for the residents in these states to lose out again if this auction does not deliver the broadband and funding they expect and deserve").
[24] *See, e.g., USF/ICC Transformation Order* at 17729 ("incumbent carrier will then be given an *opportunity to accept*, for each state it serves, the public interest obligations associated with all the eligible census blocks in its territory") (emphasis added); *Connect America Fund*, 29 FCC Rcd 15644, 15645 (2014) ("*December 2014 Connect America Order*") ("We finalize the decisions necessary to proceed with the offer of support to price cap carriers"); *Public Notice*, "Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband," WC Docket No. 10-90, DA 15-509 (rel. Apr. 29, 2015) (carriers have until August 27, 2015 "to decide *whether to accept* the offers on a state-by-state basis") (emphasis added); *R&O* at ¶ 70 n.139 ("price cap carriers have already had the opportunity to accept model-based support to serve these areas and have chosen to decline that support").

model-based support."[25] Those carriers that declined support could also have refused the offer if deployment of a preferred technology was too costly, or if it decided the reporting and audit requirements were too onerous, or for any other business reason. Where the Commission has, consistent with the *2011 USF/ICC Transformation Order*, *offered* support in a state and afforded carriers an explicit opportunity to accept or decline the support on a statewide basis, there can be no legitimate expectation of state-based support.

Second, the Commission afforded price cap carriers, not the states, the right to decline support.[26] To the extent any particular state may be concerned about not receiving federal support, it could have discussed with carriers a relationship by which the state would match the federal support or otherwise induce carriers to accept the Commission's offer of support.

Third, as Commissioner O'Rielly articulated, "the purpose of a reverse auction is to use competition to bid down the reserve price so that we could free up dollars to connect additional consumers elsewhere. If the Commission ultimately adopts quotas or set asides, against my wishes, it will have the effect of bypassing lower bids in some states in order to fund costlier bids in other states."[27] In other words, the Commission could ignore a lower relative bid in Wyoming to provide more support in New York. The effect of this "nutty outcome"[28] would be higher subsidies for fewer locations, the exact opposite of what the CAF auction is intended to achieve.

Fourth, the addition of $40 million per year to the $175 million in declined annual support should ease the fears of legislators concerned that a particular state will not receive sufficient federal support. The $175 million is the amount of declined support at the cost model

[25] *December 2014 Connect America Order* at 15652-53 (emphasis added).
[26] *Cf.* Letter dated May 13, 2016 from Sen. Kirsten Gillibrand (D-NY), to Chairman Tom Wheeler (suggesting that the Commission should award funds to New York State); letter dated May 11, 2016 from Sen. Charles E. Schumer to Chairman Tom Wheeler ("would be particularly unfair for New York to lose this money").
[27] O'Rielly Statement at 2.
[28] *Id.*

price; the combination of lower levels of per-location support resulting from the reverse auction and the additional $40 million annual budget should ensure that more areas receive support.

In sum, states had no expectation that the price cap carriers would accept funding. To divert support to specific states would be contrary to the Commission's objective of ensuring that more unserved locations will be supported with fewer per-location dollars.

Conclusion

WISPA appreciates the opportunity to make a specific bidding weight proposal by which the Commission can maintain fidelity to cost-effectiveness, performance criteria and the statutory obligation to support "reasonably comparable" services so that "rural America is not left behind."[29] In establishing this structure, the Commission should not undercut its objectives by setting artificial constraints on a nationwide auction that would divert support to certain states at the expense of others.

Respectfully submitted,

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

By: */s/ Alex Phillips*, President
/s/ Mark Radabaugh, FCC Committee Chair
/s/ Fred Goldstein, Technical Consultant

Stephen E. Coran
Lerman Senter PLLC
2001 L Street, NW, Suite 400
Washington, DC 20036
(202) 416-6744
Counsel to the Wireless Internet Service Providers Association

July 21, 2016

[29] *FNPRM* at ¶ 208.