

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
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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
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_____)	

COMMENTS OF NEW YORK STATE

New York State, through its chief economic development agency, Empire State Development (“ESD”), and the New York Public Service Commission (“NYPSC”),¹ respectfully submits these initial comments in response to the Commission’s Report and Order and Further Notice of Proposed Rulemaking issued in the above-captioned proceeding on May 26, 2016.²

I. SUMMARY

New York State commends the Commission for issuing the *Further Notice* to address issues of critical importance to the upcoming Connect America Fund (“CAF”) reverse auction. New York shares the Commission’s goals of universal broadband, and CAF funding is a critical component to deploying broadband services in the state and across the country.³ Unfortunately,

¹ The views expressed herein are not intended to represent those of any individual member of the NYPSC. Pursuant to the New York Public Service Law §12, the Chair is authorized to file comments on behalf of the NYPSC.

² See *In re: Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking*, FCC 16-46 (rel. May 25, 2016) (hereinafter, “*Report and Order*” or “*Further Notice*”).

³ See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-cost Universal Service Support; Developing an Unified Intercarrier* (cont’d)

the 2015 decisions of a number of price cap carriers to decline CAF funding has delayed disbursement of these critical funds and impeded the deployment of broadband services in a number of states, including New York. As the Commission recognized in the *Further Notice*, states affected by these decisions face a number of difficult funding and timing challenges in light of the uncertainty surrounding the upcoming reverse auction of unused CAF funding. The FCC must address these challenges prior to commencing the auction to ensure that states can access the CAF funding to which they are entitled and which is necessary to deploy broadband services in their communities.

To ensure the equitable and timely distribution of funding, the Commission should allow broadband providers in affected states to “step into the shoes” of the carriers that previously declined the CAF funding and access that funding if certain conditions are met. Under this approach, a carrier in an affected state would be entitled to receive the declined CAF funding if it has partnered with the state to deploy high-speed broadband services in affected communities prior to the commencement of the CAF auction at speeds higher than those originally required of price cap carriers under the CAF. As discussed more fully below, this approach would encourage states to commit their own funds for broadband deployment, minimizing additional burdens on the federal Universal Service Fund and increasing the likelihood of bringing broadband to affected states. It would also provide significant cost efficiencies and financial synergies that cannot be achieved under any of the alternative approaches proposed by the Commission in the *Further Notice*.

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Compensation Regime; Federal-State Joint Board, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 176673 (2011); Gov. Cuomo Broadband Press Release (“Access to high-speed internet is critical to ensuring that all New Yorkers can reach their full potential in today’s technology-driven world.”).

II. BACKGROUND

A. Broadband Investment in New York

Despite their urgent need for broadband, approximately 2.5 million housing units in New York have either limited or no access to high-speed broadband services.⁴ To help narrow this digital divide, Governor Andrew Cuomo launched the \$500 million New NY Broadband Program in 2015. This program, which is the boldest and most ambitious investment in broadband by any state, will help to expand high-speed broadband access to unserved and underserved areas in New York. Through a reverse auction that is similar to the planned CAF auction, ESD will award funding to broadband providers to assist them with deploying high-speed broadband networks in the State. Broadband providers must commit to providing download speeds of at least 100 Mbps in most areas, or 25 Mbps in the most remote areas, to qualify for the State funding. The auction will rely on a public-private partnership model that requires broadband providers to match State funding to leverage program funds. The first phase of the reverse auction recently concluded and ESD will announce awards in the near future, at which time ESD will launch the second phase of the auction.

New York's broadband program will dramatically improve the State's broadband landscape in the coming years. The opportunity to combine these funds with additional federal resources would create opportunities for rural communities to receive even higher quality broadband services. The FCC intended that these federal resources would come from the CAF, which provides funding to support the deployment of broadband in states across the country. Recognizing the significant need for broadband funding in New York, the Wireline Competition

⁴ See New NY Broadband Grant Program Request for Proposal Guidelines at 3, available at: <http://nysbroadband.ny.gov/sites/default/files/documents/new-ny-broadband/New%20NY%20Broadband%20Program%20RFP%20Guidelines-%20FINAL.PDF>

Bureau in 2015 offered nearly \$50 million in annual funding to price cap carriers in the State.⁵ Three of the four carriers accepted the funds and have begun to use them to deploy broadband in the State. Verizon, by far the largest carrier in the State, declined to accept the funds for its own commercial reasons. This unfortunate decision resulted in the loss of nearly \$29 million in annual broadband investment in the State. New York was not the only state in which a carrier declined CAF funding. A total of \$175 million in annual support was declined by carriers in 20 states.⁶ The loss of these funds has substantially delayed broadband deployment in states like New York, which have urgent broadband needs that require substantial funding.

B. Further Notice

In the *Further Notice*, the Commission sought to address concerns raised by New York and other states in which carriers declined CAF funding regarding their ability to secure sufficient CAF support in the upcoming reverse auction. The Commission correctly concluded that the rejection of CAF funds by certain carriers “does not diminish our universal service obligation to connect consumers in areas that would have been reached had the offer been accepted and to provide sufficient universal service funds to do so.”⁷ Recognizing that an important public interest objective of the reverse auction is to achieve “appropriate support for all states,” the Commission acknowledged that it must ensure the efficient and equitable distribution of CAF funding. The Commission also recognized the value of state initiatives to

⁵ See *Public Notice*, Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband (Apr. 29, 2015), https://apps.fcc.gov/edocs_public/attachmatch/DA-15-509A1.pdf

⁶ See *Press Release*, Carriers Accept Over \$1.5 Billion in Annual Support from Connect America Fund to Expand and Support Broadband for Nearly 7.3 Million Rural Consumers in 45 States and One Territory (Aug. 27, 2015), (*Phase II Model-Based Support Acceptance Press Release*).

⁷ *Further Notice* at ¶ 217.

advance broadband deployment, expressing its desire to coordinate with such initiatives to achieve its universal service goals.

The Commission specifically sought comment on a number of measures it could implement to ensure that affected states retain some or all of the CAF funding originally allocated to them. The Commission asked whether it should establish auction weights to provide preferences for affected states or for those states that have made a meaningful commitment to advance broadband. The Commission also sought comment on whether it should create a “backstop” of funds that could be used to ensure the equitable distribution of CAF funding to affected states. The Commission further questioned whether it should set a ceiling for the aggregate total of winning bids in any state to prevent the substantial redistribution of CAF funds. Finally, the Commission requested comment on other auction procedures it could implement to ensure that affected states receive all or substantially all of the funds originally allocated to them.

III. DISCUSSION

A. Affected States Face Difficult Funding and Timing Challenges

New York appreciates the Commission’s focus on resolving the funding challenges presented by price cap carriers’ rejection of CAF funds. Any auction outcome that resulted in the reallocation of these funds to other states would unfairly penalize deserving communities for commercial decisions beyond their control and deprive them of the CAF resources the FCC had previously allocated to them. These funds are critical for the deployment of broadband services in New York and the other affected states. Without them, it is highly unlikely that broadband services can be provided in all unserved or underserved communities in these states.

In addition to the fact that the amount of CAF funding received by each state is of paramount importance, the Commission also should recognize the timing challenges raised by the upcoming auction. The declined funding was originally awarded more than a year ago with the goal of having carriers use it to quickly deploy broadband services. The decision by some carriers to decline the funding has delayed disbursement of these available funds, causing affected communities to go without broadband services. The uncertainty regarding this funding likely has displaced broadband investments altogether in these communities, as carriers focus resources on projects in areas with more funding certainty.

The extended auction timeframe further underscores the need for the Commission to expedite the funding process to affected states. The auction itself may not happen for some time as the Commission and the Bureau work to finalize its design and procedures. The post-auction application and approval processes will further extend the funding timeline such that auction winners may not receive their funding for two to four years. This could result in certain states and communities not receiving the CAF funds originally allocated to them in 2015 until 2020.

These delays present challenges for all affected states, but the challenges are particularly acute for New York given the reverse auction process the State has commenced. To ensure that affected communities in the State can receive the broadband services they desperately need, New York must quickly align its auction with the reallocation of unused CAF funds. ESD recently completed phase one of its auction, and the results are expected to demonstrate the success of its auction structure in bringing high-speed broadband services (including fiber-to-the-home) to rural communities. The FCC must leverage this structure to ensure that the CAF and the next phase of New York's auction, which will include many of the affected communities, can bring high-speed broadband to these areas. It is vital for auction participants to understand that they

will be able to leverage federal funding in the same communities for which they are bidding to receive state funds. Local providers have informed ESD that CAF funding is a critical component of their plans to offer high-quality broadband in the affected New York communities. They have also indicated that both sources of funding cannot leverage each other without this structure, and only this structure can succeed in bringing the highest quality broadband to these communities.

B. Carriers in Affected States Should Be Permitted to Access CAF Funds

To resolve the above funding and timing challenges, the Commission should allow carriers in affected states to “step into the shoes” of price cap carriers and access the declined CAF funds in their state. Under this approach, a carrier that prior to the commencement of the CAF auction has (i) partnered with an affected state to use state funding, through an auction or otherwise; and, (ii) committed to use the state funding to deploy high-speed broadband with download speeds greater than 100 Mbps in affected communities (or greater than 25 Mbps in the most rural and remote overbuild areas), shall be entitled to receive the same amount of CAF funding that was previously declined by carriers in the state. This funding should be provided by the FCC directly to carriers awarded the state funds on an ongoing basis for ten years in the same census blocks and the same amount per census block per year as was declined by price cap carriers in the state. Each carrier receiving such funds would be otherwise subject to the FCC’s regulations governing CAF funding.

Allocating declined funding directly to carriers in states that have implemented ambitious broadband programs is undoubtedly in the public interest. It would ensure the equitable distribution of CAF funds as the funding originally targeted to a state would be used to deploy broadband services in the same state. These services would include fiber-to-the home and other

high-speed services that rural communities often cannot obtain. This approach would also resolve the timing challenges discussed above as carriers in certain states would have the opportunity to access CAF funding more promptly than at the commencement of the reverse auction. Indeed, carriers in states like New York that have existing broadband programs could quickly access CAF funding, allowing them to deploy high-quality broadband within a very short time.

Partnering with and providing CAF funding directly to carriers in states such as New York that are providing their own funds is consistent with the Commission’s long-standing goal of encouraging state funding of broadband development. The Commission recently indicated that it was “particularly interested in proposals that would encourage [broadband] contributions from state and Tribal governments or entities.”⁸ In previous proceedings allocating universal service funding, the Commission has also explicitly recognized “the role states can and do play in spurring broadband connectivity” by advancing additional funding to states with their own programs.⁹ Existing state broadband programs, such as the New NY Broadband Program, provide an excellent mechanism for the distribution of CAF funds. In addition, a number of other states are likely to develop and implement their own broadband programs to ensure that carriers can deploy high-quality broadband in their state.

Allowing carriers in states to access declined funding would also allow the CAF reverse auction to proceed on schedule, which New York recognizes is an important Commission

⁸ *In re: Connect America Fund*, WC Docket No. 10-90, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, at ¶ 305 (rel. June 10, 2014) (discussing proposals for funding rate-of-return carriers).

⁹ *See In re: Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, *Connect America Fund*, WC Docket 10-90, Second Report and Order on Reconsideration (Dec. 11, 2014), at ¶ 56 (“To encourage state participation, beginning in funding year 2016, we will increase an applicant’s discount rate for special construction charges up to an additional 10 percent in order to match state funding the applicant receives on a one-dollar-to-one-dollar basis.”).

objective. The decision of certain states to opt out of the auction and receive the funding directly should have no impact on the auction's timing or outcome. In fact, permitting carriers to access declined funds would increase the prospects for achieving the FCC's goals of bringing high-speed broadband to underserved and unserved areas. This approach could thus achieve the competitive benefits, performance standards and deployment obligations established by the Commission for the auction.

Finally, directly funding carriers in states that offer their own broadband programs is consistent with the goals the Commission previously set forth when establishing the Connect America Fund:

(1) preserve and advance universal availability of service; (2) ensure universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions; (3) ensure universal availability of modern networks capable of providing mobile voice and broadband service where Americans live, work, and travel; (4) ensure that rates are reasonably comparable in all regions of the nation, for voice as well as broadband services; and (5) minimize the universal service contribution burden on consumers and businesses.¹⁰

By combining CAF support with state resources, the Commission would actually advance these goals through funding synergies that would bring ultra-fast broadband networks to underserved and unserved areas. Importantly, these networks could be deployed without additional federal contributions or excessive burdens on federal ratepayers. Given the inherent overlap between state broadband initiatives and the CAF program, it would unquestionably be more efficient for the declined CAF funding to be distributed directly to carriers that have partnered with states to provide broadband in affected communities in an effort to coordinate and enhance its effectiveness. The networks deployed with this

¹⁰ *USF/ICC Transformation Order*, 26 FCC Rcd. at 17680, para. 48.

funding could support a variety of services for consumer and commercial activities and spur economic development in areas in desperate need of investment. This federal-state coordination would also meet the Commission’s objectives in originally establishing the CAF in 2011.¹¹

C. Alternative Approaches Do Not Fully Address the Challenges of Affected States

In the *Further Notice*, the Commission proposed a number of potential measures for ensuring sufficient CAF funding for states affected by declined CAF funding. While each of these approaches offers certain benefits, none fully addresses the funding and timing challenges of the affected states. They also do not provide the cost efficiencies or financial synergies that would result from allowing carriers in affected states to access the declined CAF funding.

1. Weighting Mechanisms

The Commission sought comment on establishing weighting mechanisms that would provide a preference for affected states, including those that have made a meaningful commitment to advance broadband. While this approach would promote the equitable distribution of CAF funding, it would not address the timing challenges of affected states as carriers in these states would need to participate (and prevail) in the reverse auction to receive the funding. As discussed above, the conclusion of the reverse auction and the awarding of funding to prevailing bidders is at least several years away. Affected states should not be subject to extensive delays to receive the CAF funding that the FCC had previously determined was

¹¹ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-cost Universal Service Support; Developing an Unified Inter-carrier Compensation Regime; Federal-State Joint Board*, 26 FCC Rcd. 18085-18086 (2011) (determining that one of the primary goals is to bring “advanced services to as many consumers as possible in areas where there is no economic business case for the private sector to do so”).

necessary for the deployment of broadband in their communities. These delays would be especially problematic for New York given that the State’s reverse auction for the affected areas is scheduled to commence later this year. The lack of certainty regarding the federal funding available to auction winners would adversely affect the auction and diminish participant interest, leading to reduced broadband investment and deployment in the State.

2. Funding Floors and Ceilings

The Commission also sought comment on the feasibility of using funding floor or ceiling mechanisms to help affected states access CAF funding. These approaches likely would help to ensure the equitable distribution of CAF funding to each of the affected states, but they would not facilitate the prompt disbursement of CAF funds. They would also not provide the significant financial synergies that would result from the combination of federal and state broadband resources. As such, they could lead to wasteful or duplicative spending of precious CAF resources.

3. Remote Areas Fund

Lastly, the Commission suggested that the Remote Areas Fund (“RAF”) could be made available to provide CAF funding to any state that did not receive adequate support through the reverse auction. While well intentioned, this proposal would further delay the availability of funding to affected states as RAF funds would only be available *after* completion of the reverse auction and the funding of auction winners. It would also provide no incentive for states to dedicate their own resources for the deployment of broadband services. One of the primary benefits of allowing states to directly access CAF funding is to encourage them to allocate their own funding for the rapid deployment of broadband in their state.

IV. CONCLUSION

New York State commends the Commission for issuing the *Further Notice* to review issues of critical importance to the deployment of broadband services across the country. As discussed herein, the Commission should allow carriers in states that have implemented their own broadband programs to access the CAF funding previously declined by carriers in the state. This approach would resolve a number of funding and timing challenges faced by these states and ensure the most cost effective and efficient use of CAF funding.

Respectfully submitted,

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