

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

**REPLY 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 replies to comments concerning the proposals described in the *Further Notice of Proposed Rulemaking* (“*FNPRM*”) in the above-captioned proceeding regarding rules for the auction of Connect America Fund (“CAF”) support.<sup>1</sup> More than a dozen parties filed comments in response to the Commission’s request for public input on how it should weight performance criteria and whether certain states should be given funding priority. As further discussed below, and consistent with WISPA’s views,<sup>2</sup> the record reflects support for weighting percentages that prioritize cost-effectiveness, faster speeds, higher usage allowances and lower latency measured against the Commission’s statutory obligation to ensure that it supports “reasonably comparable” service.<sup>3</sup> Although those few state governments that filed comments

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<sup>1</sup> See *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016) (“*FNPRM*”). A summary of the *FNPRM* was published in the Federal Register on June 21, 2016, establishing July 21, 2016 as the deadline for filing Comments and August 5, 2016 as the deadline for filing Reply Comments. See 81 Fed. Reg. 402235 (June 21, 2016).

<sup>2</sup> See Comments of WISPA, WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 21, 2016) (“WISPA Comments”).

<sup>3</sup> *FNPRM* at 6021 (¶ 207).

would prefer otherwise, the overall record supports a nationwide auction that does not artificially redirect support to states where incumbent price cap carriers exercised their long-standing right to decline CAF Phase II support.

### Discussion

#### I. THE COMMISSION SHOULD ADOPT A BIDDING CREDIT SYSTEM BASED ON PERCENTAGES IN RELATION TO “REASONABLY COMPARABLE” SERVICE, AS PROPOSED BY WISPA, USTELECOM AND OTHERS.

A principal element of the *FNPRM* was the Commission’s request for comment on how it should compare bids of differing performance levels, including “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 score of each bid.”<sup>4</sup> In its initial comments, WISPA proposed the following weighting structure for the Commission’s bidding credit system:<sup>5</sup>

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

<sup>4</sup> *Id.* at 6021 (¶ 210).

<sup>5</sup> See WISPA Comments at 5.

In designing its bidding weight proposal, WISPA followed three guiding principles: cost-effectiveness, adherence to the statutory “reasonably comparable” service mandate, and the use of *relative weights as a percentage of the applicant’s bid*.<sup>6</sup> WISPA believes that this approach comports best with the Commission’s expressed goal that the weights represent 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.”<sup>7</sup>

There is substantial support in the record for precisely this approach, as well as significant additional advocacy for weighting parameters that embody the same general principles without proposing the identical weighting percentages. For example, the United States Telecom Association (“USTelecom”) makes the same numerical weighting proposal, noting that it “encourages deployment of robust networks within statutory considerations . . . without losing sight of cost considerations.”<sup>8</sup> Verizon’s proposal is also entirely consistent with the USTelecom/WISPA approach in that it advances the same incremental progression of bidding credits, even though it does not endorse concrete numbers for each level of service.<sup>9</sup>

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<sup>6</sup> *See id.* at 3-5.

<sup>7</sup> *FNPRM* at 6022 (¶ 211).

<sup>8</sup> USTelecom Comments at 3.

<sup>9</sup> *See* Comments of Verizon, WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 21, 2016) (“Verizon Comments”) at 4 (“the Commission should set the weight for the baseline tier in the range of 10 percent; the weight for the above-baseline tier 10 percent above the weight for the baseline tier; and the weight for the gigabit tier 5 percent above the weight for the above-baseline tier”).

Similarly, ITTA proposed to establish bidding credit tiers in five percentage point increments.<sup>10</sup> While this is similar in approach by seeking not to over-incentivize very high-throughput service proposals at the expense of broad-based deployment, WISPA believes that the narrow increments would not optimize service quality and thus would not sufficiently encourage proposals at the Baseline and Above Baseline levels that correspond to the most “reasonably comparable” services. ACA does not propose specific bidding credits, but its methodology is also consistent with the proposal advanced by USTelecom and WISPA.<sup>11</sup>

To the extent that commenters making concrete weighting proposals differ markedly from the USTelecom/WISPA/Verizon recommendation, they do so largely at the upper end of the service range, proposing out-sized enhancement factors for Above Baseline and Gigabit service tiers.<sup>12</sup> Placing such a heavy regulatory thumb on the scale in favor of higher cost service options, however, would be both functionally inequitable and economically inefficient. The goal of CAF subsidies should be to support cost-effective provision of the best quality service to the largest number of eligible unserved locations, not to provide “Lamborghini-type” service to a much smaller number of locations.<sup>13</sup> The question is not what level of service consumers may desire now or in the future,

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<sup>10</sup> See Comments of ITTA – The Voice of Mid-Size Communications Companies, WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 21, 2016) (“ITTA Comments”) at 9-10.

<sup>11</sup> See Comments of the American Cable Association, WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 21, 2016) (“ACA Comments”) at 7-9.

<sup>12</sup> See, e.g., Comments of the National Rural Electric Cooperative Association and the Utilities Telecom Council, WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 21, 2016) (“NRECA/UTC Comments”) at 6-7; Comments of NTCA – The Rural Broadband Association, WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 21, 2016) (“NTCA Comments”) at 9-10.

<sup>13</sup> See WISPA Comments at 4, *citing FNPRM* at 6111, Statement of Commissioner Michael O’Rielly Approving in Part and Dissenting in Part.

but rather the extent to which “reasonably comparable” service should be subsidized with a finite amount of federal support.<sup>14</sup>

Conversely, the Commission should not disfavor the Baseline tier merely because of “capacity limitations” in mobile wireless networks, especially where 25/3 Mbps is the definition of “advanced telecommunications capability” the Commission has adopted.<sup>15</sup> The auction structure should therefore encourage the flow of a substantial majority of support to bidders applying for the Baseline and Above Baseline performance tiers. Criteria that skew in favor of provision of higher cost services will necessarily diminish the number of eligible locations served. This is not an outcome that advances the public interest.

Other commenters, in requests for clarification or reconsideration of Commission rules, suggest bid weight increments of 100 or more.<sup>16</sup> In addition to severely and unreasonably tilting the performance criteria to the Gigabit tier, these concepts completely gut the importance of cost-effectiveness to the auction model and should be rejected.

There is virtually universal agreement that low latency service proposals must be favored in relation to high latency service proposals, although there is some disagreement concerning whether

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<sup>14</sup> *Cf.* Comments of the Fiber to the Home Council Americas, WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 21, 2016) at 5-6 (suggesting that the Commission rely on consumer preferences rather than what is “reasonably comparable”). The Commission should not entertain this suggestion, which would contravene its statutory obligations.

<sup>15</sup> Comments of the Rural Wireless Association, WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 21, 2016). As for claims that the Baseline tier is not technology neutral, WISPA submits that the Mobility Fund does not permit participation by fiber and other technology platforms.

<sup>16</sup> *See, e.g.*, Request for Clarification or Partial Reconsideration of Southern Tier Wireless, Inc., WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 20, 2016); Petition for Clarification or Reconsideration of Crocker Telecommunications, Inc., WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 18, 2016); Petition for Reconsideration of Broad Valley Micro Fiber Networks, Inc., WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 20, 2016).

it is more appropriate to afford low latency proposals with an enhanced credit or to penalize proposals for high latency service.<sup>17</sup> WISPA continues to believe that the importance of providing quality voice and other “real-time” services necessitates an approach that provides a strong incentive for providers to meet the low latency benchmark. Many other commenters concur in this approach to assign a significant negative weight to the high-latency option.<sup>18</sup> As Verizon states, “the Commission should set the weights such that a high latency bid will be awarded support only in exceptional circumstances, *i.e.*, only if the bid is substantially lower than a low-latency bid.”<sup>19</sup> Accordingly, the Commission should reject the notion that high latency applications should be lightly discounted relative to low latency applications.<sup>20</sup>

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

The *FNPRM* also sought comment on the appropriateness of establishing set-asides or benchmarks to preserve for certain states some guaranteed portion of the available funding that

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<sup>17</sup> *See, e.g.*, USTelecom Comments at 6 (“Latency delays result in voice offerings that are not comparable to traditional voice services”). *See also* “2015 Measuring Broadband America Fixed Broadband Report: A Report on Consumer Fixed Broadband Performance in the United States,” FCC Office of Engineering and Technology and Consumer and Governmental Affairs Bureau (Dec. 30, 2015) (“Latency may affect the perceived quality of highly interactive applications such as phone calls over the Internet, video chat, or online multiplayer games. The higher latencies of satellite-based broadband services may negatively affect the perceived quality of such highly interactive applications.”)

<sup>18</sup> *See, e.g.*, Verizon Comments at 5 (“The Commission should assign a significant negative weight to the high-latency option because it fails to meet one of the dimensions of the CAF II offers’ performance standard”); USTelecom Comments at 6-7; ITTA Comments at 10-11.

<sup>19</sup> Verizon Comments at 5.

<sup>20</sup> *See* Comments of Hughes Network Systems, LLC, WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 21, 2016) at 4-5; Comments of ViaSat, Inc., WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 21, 2016) at 5-6.

price cap carriers declined.<sup>21</sup> In its comments, WISPA explained that because each of the states so affected had no expectation that price cap carriers would accept funding, thereby affording them a specific amount of support, there is no reason to steer any specific segment of the available monies to any of these states.<sup>22</sup> Moreover, diverting support to specific states would be fundamentally at odds with the Commission’s core objective of ensuring that the maximum number of unserved locations can receive funding through the efficient allocation of dollars on a per-location basis. Requiring specific allocations for each state would likely result in higher subsidies for fewer locations, the opposite of the result the CAF auction is intended to achieve. Accordingly, WISPA concluded that the Commission should not establish any particularized state support thresholds or requirements, and instead should conduct an unfettered nationwide auction that will achieve maximum cost-effectiveness.<sup>23</sup>

A majority of the industry commenters addressing this issue oppose manipulation of the funding mechanism. For example, NRECA/UTC state that “all remaining CAF II funds should be available in all states under the Phase II auction.”<sup>24</sup> Similarly, “USTelecom would oppose auctions limited by state or a threshold that did not allow CAF II funding to be awarded where competitive forces direct it.”<sup>25</sup> And ITTA agrees that the Commission should “maximize the number of locations served via the auction, regardless of how individual states fared when incumbents were offered model-based support.”<sup>26</sup> While some of these commenters do not

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<sup>21</sup> See *FNPRM* at 6024-25 (¶¶ 219-222).

<sup>22</sup> See WISPA Comments at 8-9.

<sup>23</sup> See *id.* at 10.

<sup>24</sup> NRECA/UTC Comments at 10.

<sup>25</sup> USTelecom Comments at 8.

<sup>26</sup> ITTA Comments at 11.

categorically reject some sort of accommodation to ensure that states are not entirely shut out of CAF II funding, the thrust of their comments is to allow the market and the Commission's bidding credit mechanisms alone to efficiently allocate funds to the maximum number of eligible locations at the optimum cost per end user.

To the extent that commenters support some direction of funding to specific states in which CAF support was declined, that support comes almost exclusively from state regulatory entities in states where the incumbent has declined a substantial portion of the available funding. They generally suggest that any CAF II funding unclaimed by price cap carriers be dedicated for use only within the state to which it would originally been allocated with bidding for such funds limited to applicants that would provide service within the state.<sup>27</sup> The Massachusetts commenters further suggest the possibility of “an additional backstop in the form of a grant-based CAF mechanism ... [that] would target support to state broadband expansion efforts in declined states.”<sup>28</sup>

As described above and in its initial comments, WISPA opposes these state-focused proposals, which would distort the allocation of funding by subjecting it to factors other than cost or performance. Importantly, in the absence of set-asides or preferences, service providers in the declined states will still be able to compete for funding on the basis of these important metrics, which is optimal in terms of both cost-effectiveness and service deployment. To the extent

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<sup>27</sup> See, e.g., Comments of New York State, WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 21, 2016); Comments of the Pennsylvania Public Utility Commission, WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 21, 2016); Joint Comments of the Massachusetts Department of Telecommunications and Cable and the Massachusetts Broadband Institute, WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 21, 2016) (“Massachusetts Comments”).

<sup>28</sup> Massachusetts Comments at 7. Massachusetts also asks that state set-asides be “in an amount equal to or greater than the model-based support declined by the ILECs.” *Id.* at 4. That would clearly be antithetical to the reverse auction structure the Commission has adopted.

certain states want to encourage applicants to bid on certain census blocks in their states, they are free to provide supplemental support or other incentives to help achieve that goal.

### **Conclusion**

For the foregoing reasons and those expressed in its initial comments, WISPA urges the Commission to remain faithful to the overarching goals of achieving cost-effectiveness, encouraging robust performance, and adhering to the statutory obligation to support “reasonably comparable” services. The Commission should reject positions that would award preferences or priorities to certain states where carriers declined model-based support at the expense of other states, and instead maintain its nationwide auction structure.

Respectfully submitted,

### **WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

August 5, 2016

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