

**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

**OPPOSITION TO PETITIONS FOR RECONSIDERATION OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”), pursuant to Section 1.429(f) of the Commission’s Rules, hereby opposes certain aspects of the petitions for reconsideration of the *Further Notice of Proposed Rulemaking* (“*FNPRM*”) in the above-captioned proceeding.¹ In addition to opposing petitions that seek to undermine the technology-neutral approach the Commission adopted in the *Report and Order* (“*R&O*”), WISPA also supports aspects of those petitions that would advance the Commission’s policy objectives.

Discussion

**I. THE COMMISSION SHOULD REJECT VERIZON’S EFFORTS TO
FUNDAMENTALLY ALTER THE AUCTION RULES.**

In its petition, Verizon asks the Commission to reconsider three aspects of the *FNPRM*.²

The Commission should deny the Verizon Petition in all respects.

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*”). On August 18, 2016, the Federal Register provided notice of the filing of the petitions for reconsideration and established September 2, 2016 as the deadline for the filing of oppositions. See 81 Fed. Reg. 55166 (Aug. 18, 2016).

² See Verizon Petition for Reconsideration, WC Docket Nos. 10-90, 14-58 & 14-259 (filed Aug. 8, 2016) (“Verizon Petition”).

First, Verizon asks the Commission to rank bids for the Connect America Fund (“CAF”) auction according to a “dollar per location” method instead of the “ratio of bid to reserve” method that the Commission adopted.³ According to Verizon, the “ratio of bid to reserve” approach would enable a bid in one area to be selected over a bid in another area even where the selected bid is higher on a per-dollar basis. However, adopting Verizon’s recommendation would defeat the relevance of the cost model and the reserve price, which are intended to identify those areas where a higher level of support is necessary. Further, Verizon assumes that areas with a higher cost-model basis (and reserve price) will necessarily be selected first when, in fact, bidding on certain lower-cost areas may be more robust and lower bids, relative to the reserve price, may result. If adopted, Verizon’s proposal would unfairly prejudice consumers living in higher-cost areas, which may continue to be denied the benefits that CAF support can bring.

Second, Verizon seeks to overturn the Commission’s decision establishing unlimited usage capacity for the Above-Baseline and Gigabit tiers, arguing that the cost to deploy networks to accommodate unlimited usage will be too high and thereby discourage bidding.⁴ It instead suggests monthly usage capacity limits of 250-1,000 GB for these two tiers, which it states correlates to 100 Mbps speed packages in urban areas.⁵ WISPA does not object to lowering the usage cap to 250 GB per month for the Above-Baseline tier, but does not believe there should be any usage limits for the Gigabit tier. Given the Commission’s decision to include a “Lamborghini tier” in the auction, it should not throttle the horsepower by imposing a usage cap.

³ *See id.* at 2-3.

⁴ *See id.* at 4-5.

⁵ *See id.* at 5.

Third, Verizon asks the Commission to reduce the requirement that CAF recipients deploy networks from 95 percent of locations to 90 percent of locations.⁶ Verizon also seeks elimination of the requirement that providers return funds if they do not meet the minimum threshold.⁷ WISPA opposes these suggestions. Reducing the number of locations below 95 percent could allow price cap carriers that declined the offer of support to serve 95 percent of unserved locations to gain a windfall by deploying only to 90 percent of unserved locations when they get a second bite of the apple. Further, WISPA disagrees that the 95 percent deployment requirement will discourage bids; to the contrary, a 95 percent threshold will encourage thoughtful planning and efficient deployment of technology that can serve a higher percentage of locations, and thereby advance the Commission's statutory universal service objectives.

Taken together, Verizon's proposals will benefit price cap carriers that declined support in their efforts to bid on selected areas with technologies that cannot deliver unlimited usage and cannot meet a 95 percent build-out requirement. The Commission should maintain the auction framework it carefully crafted to ensure fairness to all prospective bidders, large and small.

II. ANY CLARIFICATION OF THE REQUIREMENT FOR BIDDERS PROPOSING TO USE SPECTRUM SHOULD BE COMPREHENSIVE.

The *FNPRM* and Sections 54.315(a)(6) and 54.804(b)(6) requires a bidder proposing to use spectrum to:

demonstrate it has the proper authorizations, *if applicable*, and access to operate on the spectrum it intends to use, and that the spectrum resources will be sufficient to cover peak network usage and deliver minimum performance requirements to serve all of the fixed locations in eligible areas, and certify that it will retain its access to the spectrum for at least 10 years from the date of the funding authorization.⁸

⁶ *See id.* at 5-8.

⁷ *See id.* at 7.

⁸ Sections 54.315(a)(6) and 54.804(b)(6) (emphasis added). *See also FNPRM* at ¶¶ 35, 98.

ViaSat asks the Commission to clarify that a satellite broadband provider has a “proper authorization” if it has obtained authority to serve the United States using one or more space stations.⁹

To the extent the Commission clarifies Sections 54.315(a)(6) and 54.804(b)(6), it should also make further clarifications regarding terrestrial spectrum access, whether unlicensed or licensed. A bipartisan majority of Commissioners confirmed that the *FNPRM* does not preclude participation from bidders proposing to deploy service on unlicensed spectrum. Commissioner Pai stated that “we treat small carriers using *unlicensed spectrum* on par with larger licensees.”¹⁰ Commissioner Clyburn similarly observed that the bidding tiers “are structured in a way to encourage all providers – fixed or mobile, using *licensed or unlicensed spectrum*, terrestrial or satellite – to participate.”¹¹ Commissioner Rosenworcel pointed out that “we are open to any provider and technology that meets essential broadband performance and financial criteria.”¹²

The Commission clearly intends to allow bidders to meet their selected performance criteria with *unlicensed* spectrum, but the *FNPRM* and Sections 54.315(a)(6) and 54.804(b)(6) are not explicit. In addition, the *FNPRM* does not offer examples of what forms of licensed and unlicensed spectrum access will be acceptable to demonstrate compliance with the rules.

If the Commission clarifies the rules in response to the ViaSat Petition, it also should provide greater certainty to bidders proposing to use unlicensed and/or licensed spectrum as all or part of their bids. In so doing, the Commission should primarily rely on the professional engineer certification requirement described in Sections 54.315(b)(2)(iv) and 54.804(c)(2)(iv),

⁹ See ViaSat Petition for Reconsideration and Clarification of ViaSat, Inc., WC Docket Nos. 10-90, 14-58 & 14-259 (filed Aug. 8, 2016) (“ViaSat Petition”) at 6.

¹⁰ *R&O*, Statement of Commissioner Ajit Pai, Approving in Part and Concurring in Part, at 1 (emphasis added).

¹¹ *Id.*, Statement of Commissioner Mignon Clyburn, at 1 (emphasis added).

¹² *Id.*, Statement of Commissioner Jessica Rosenworcel, at 1.

which will provide the Commission with an independent basis to confirm that bidders can meet the performance requirements and can serve 95 percent of the eligible locations. WISPA offers the following recommendations:

Unlicensed Spectrum – The Commission should make clear that an applicant can meet Commission requirements by using unlicensed spectrum. In the rural broadband experiment program, the Commission required a professional engineer certification and carefully vetted projects relying on unlicensed spectrum before approving a Category 1 bidder for nearly \$17 million in funding.¹³ Sections 54.315(b)(2)(iv) and 54.804(c)(2)(iv) impose the same requirements on CAF and Remote Areas Fund winning bidders. The unlicensed spectrum should have the historical ability to provide fixed broadband services with speed, usage limits and latency that correspond to the performance criteria the bidder selected, as certified by the professional engineer.

Licensed Spectrum – The Commission should make clear that the following examples of spectrum access would meet the requirements of Sections 54.315(a)(6) and 54.804(b)(6):

- The bidder holds a license with sufficient bandwidth to meet the CAF performance and build-out requirements. Examples include licenses in the 3650-3700 MHz band and the 2.5 GHz band.
- The bidder is eligible to obtain a Priority Access License or General Authorized Access “license by rule” in the Citizens Broadband Radio Service band (3550-3700 MHz).
- The bidder has a valid lease or similar spectrum rights agreement with a third party to use licensed spectrum for the 10-year funding term or which is renewable to or beyond such date.

¹³ See, e.g., *Public Notice*, “Rural Broadband Experiment Support Authorized for Ten Winning Bids for Skybeam, LLC, Consolidated Communication Networks, Inc., Delta Communications LLC, and Allamakee-Clayton Electric Cooperative, Inc.,” DA 15-897 (rel. Aug. 7, 2015).

These examples are not exhaustive, but represent common and expected spectrum use proposals that bidders may choose. To reiterate, the Commission should rely on the professional engineer certification to ensure that the bidder will have the ability to meet performance and build-out obligations.

Hybrid Proposals – Some bidders may propose to deploy a combination of technologies, such as fiber, unlicensed spectrum and satellite spectrum, to meet its selected performance requirements. The Commission should make clear that bidders are not limited to a single technology solution and that hybrid proposals will be permissible.

Wireless Internet service providers have made tremendous strides over the last several years in providing service to unserved and underserved areas using a variety of reliable spectrum and equipment solutions. The Commission should not contravene the objectives of the auction by interpreting Sections 54.315(a)(6) and 54.804(b)(6) in a manner that would undermine and preclude participation from bidders proposing to use unlicensed and/or licensed spectrum. Instead, the Commission should rely on its professional engineer certification requirement. To the extent the Commission clarifies its spectrum resource rule in response to the ViaSat Petition, WISPA asks the Commission to also clarify the requirements for terrestrial spectrum use and to provide examples so that bidders will have greater certainty before the auction on those types of spectrum solutions that would be in a “safe harbor” of permissibility.

III. THE COMMISSION SHOULD CLARIFY THAT LATENCY WILL BE BASED ON CONVERSATION-OPINION TESTS.

ADTRAN correctly points out that, in adopting a requirement that successful bidders selecting the high-latency option must demonstrate a Mean Opinion Score (“MOS”) of four or

higher, the Commission did not specify how the MOS would be measured.¹⁴ It asks the Commission to clarify that the MOS be based on ITU-T Recommendation P.800 using the Conversation-opinion tests and not the Listening-opinion tests.¹⁵ As ADTRAN observes, “the Listening-opinion tests do not provide an assurance of a high-quality voice service, because they do not measure the quality of a two-way conversation.”¹⁶

WISPA agrees that the Commission should adopt the requested clarification. Given the Commission’s inclusion of a high-latency option, it is critical that funded facilities are able to support quality, two-way voice services. To quote ADTRAN, “[i]t would run counter to the universal service goals of the Communications Act and the public interest for the Commission to subsidize a broadband service that does not support quality voice services.”¹⁷

IV. THE COMMISSION SHOULD PRESERVE ITS RIGHT TO RE-AUCTION AREAS WHERE ADOPTION SIGNIFICANTLY LAGS.

ViaSat asks the Commission to reverse its decision that enables the agency to terminate support and re-auction those areas where winning bidders meeting the high-latency standard achieve subscription levels that are more than 35 percent below than the national average at that time.¹⁸ According to ViaSat, “treating winning bidders that use satellite broadband technology in a fundamentally different manner than other winning bidders violates the principles of competitive and technological neutrality”¹⁹ and exposes satellite bidders to “significant risk and uncertainty.”²⁰

¹⁴ See Petition for Clarification or Reconsideration of ADTRAN, Inc., WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 5, 2016) at 2.

¹⁵ See *id.* at 3.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See ViaSat Petition.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 4.

The Commission is justified in monitoring subscription levels and taking action to cut its – and the American ratepayers’ – losses if the take rate for high-latency service is significantly below the national average. The Commission’s reservation of rights is not technology specific, as ViaSat implies, but applies to all high-latency services regardless of the technology.²¹ ViaSat cannot reasonably claim that there is uncertainty where the Commission has indicated that it will use a definitive standard of 35 percent below the national average, a threshold that can be readily determined and, as ViaSat concedes, is significantly deficient. In cases where high-latency service is deemed by consumers to be of insufficient quality, as measured by consumer adoption using a specific benchmark, the Commission has an obligation to American ratepayers to recognize that continuing to fund such service would disserve the public interest.

V. THE COMMISSION SHOULD FURTHER RELAX ITS LETTER OF CREDIT REQUIREMENTS.

In the *R&O*, the Commission relaxed its letter of credit requirements for winning bidders by “modestly reduc[ing]” the value of the letter of credit in an effort to reduce the cost of maintaining a letter of credit as the recipient meets certain service milestones.”²² Although the Commission recognized that adopting WISPA’s recommendation to reduce the value to 50 percent of the disbursed amount would further reduce costs to bidders, the Commission concluded that its ability to recover sufficient funds in the event of a default outweighed the benefits of a larger reduction in the value of the letter of credit over time.²³

²¹ See *FNPRM* at ¶ 34.

²² *R&O* at ¶ 136 (citation omitted). See also Sections 54.315(c) and 54.804(c). Under the new rules, entities meeting the 60 percent service milestone can reduce the value of the letter of credit to 90 percent of the support amount plus the amount to be disbursed the following year. Entities meeting the 80 percent service milestone can reduce the value of the letter of credit to 80 percent of the support amount plus the amount to be disbursed the following year.

²³ See *id.* at ¶ 137.

Two petitioners ask the Commission to reconsider its decision.²⁴ They propose that the amount covered by the letter of credit decline at the same rate that the recipient meets deployment milestones.²⁵ Crocker explains that the rules adopted in the *R&O* would place “an unnecessary burden on small businesses.”²⁶

WISPA appreciates that the Commission has relaxed its letter of credit rules (including expanding the number of banks eligible to issue letters of credit), but supports rules that would further ease the carrying cost of letters of credit. In an *ex parte* letter filed in connection with its rural broadband experiment application, Skybeam explained the costs associated with letter of credit for its \$17 million in support:

the LOC is considered to be funded debt, which means that it is treated as if the amount was funded by a third party and spent such that it counts against JAB’s [Skybeam’s parent] borrowing capacity. In addition, the LOC carries a 3.75 percent annual fee. . . . At the end of the ten-year LOC term, JAB will have paid \$5.1 million in bank fees and will have nearly \$20 million in funded debt that cannot otherwise be utilized for network expansion, equipment replacement, acquisitions and other investments that would enhance consumer access to fixed broadband service. In each year that the LOC accumulates, the funded debt is offset by only a single year of the company’s cash flow. This creates significant debt leverage and constrains the company’s borrowing capability well beyond the amount of the LOC and the funding itself.²⁷

The Commission acknowledged that obtaining and maintaining letters of credit “will impose costs on participants,” but simply stated that bidders should factor these costs into their bids.²⁸

The Commission, however, does not appear to have accounted for three significant points. First, in addition to maintaining the letter of credit, bidders also must demonstrate the ability to fund

²⁴ See Petition for Reconsideration of Broad Valley Micro Fiber Networks Inc., WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 20, 2016) (“Broad Valley Petition”) at 3; Petition for Clarification or Reconsideration of Crocker Telecommunication, LLC, WC Docket Nos. 10-90, 14-58 & 14-259 (filed July 18, 2016) (“Crocker Petition”) at 4.

²⁵ See Broad Valley Petition at 3; Crocker Petition at 4.

²⁶ Crocker Petition at 5.

²⁷ See Letter from Stephen E. Coran, Counsel to Skybeam, LLC, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 10-90 & 14-259 (filed Mar. 19, 2015).

²⁸ *R&O* at ¶ 139.

those project costs above the support amount for two years.²⁹ Those costs will, by definition, include the carrying costs and annual fees of the letters of credit, which will be highest in the early years of the support term. Second, these costs will burden small companies in a manner disproportionate to large companies, making it less likely that they will bid as aggressively in the auction. Third, by further reducing the letter of credit in conjunction with satisfaction of service milestones, the Commission will stimulate expeditious build-out in a manner that does not require accelerated support.³⁰

The Commission should reconsider its decision to “modestly reduce” the value of the letter of credit, and instead permit the value to decline to the extent recipients meet their annual build-out milestones.

Conclusion

WISPA respectfully asks that the Commission act on the petitions for reconsideration in the manner set forth above.

Respectfully submitted,

**WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION**

September 2, 2016

By: */s/ Alex Phillips*, President
/s/ Mark Radabaugh, FCC Committee Chair
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²⁹ See Sections 54.315(b)(2)(v) and 54.804(c)(2)(v).

³⁰ See Crocker Petition at 5-6.

CERTIFICATE OF SERVICE

I, Sharon Krantzman, hereby certify that on this 2nd day of September, 2016, a copy of the foregoing "Opposition to Petitions for Reconsideration," was sent by first-class, postage prepaid mail to the following:

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