

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

In the Matters of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Connect America Fund Phase II Auction)	AU Docket No. 17-182
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**COMMENTS OF
ITTA – THE VOICE OF AMERICA’S BROADBAND PROVIDERS**

ITTA – The Voice of America’s Broadband Providers (ITTA) hereby submits its comments in response to the *Public Notice* seeking comment on competitive bidding procedures and certain program requirements for the Connect America Fund Phase II (Phase II) auction.¹ The Commission should not impose upon applicants experienced in providing voice and broadband services its proposed five-point scale for evaluating financial qualifications prior to the auction, but should limit applicants to bidding on performance tier and latency combinations that they or similar providers are currently offering. In the absence of procedures for reallocating funding forfeited due to a winning bidder’s default, the Commission should establish such procedures prior to the auction so that consumers in rural and high-cost areas are not stranded without a service provider in the event a winning bidder defaults.

**I. THE COMMISSION SHOULD REFRAIN FROM IMPOSING UPON
EXPERIENCED VOICE AND BROADBAND APPLICANTS ITS PROPOSED
FIVE-POINT SCALE FOR EVALUATING FINANCIAL QUALIFICATIONS**

The *Public Notice* proposes to require an applicant to respond to one financial question and submit four financial metrics in order to satisfactorily demonstrate its financial qualifications

¹ *Comment Sought on Competitive Bidding Procedures and Certain Program Requirements for the Connect America Fund Phase II Auction (Auction 903)*, Public Notice, 32 FCC Rcd 6238 (2017) (*Public Notice*).

prior to the auction, with an applicant potentially receiving one point for each of the five areas. It asserts that the five-point scale should help Commission staff evaluate the applicant's financial qualifications quickly and efficiently. The Commission expects an applicant with a score of at least three points to be financially qualified to bid in the auction, but an applicant with a lesser score "would warrant a more in-depth review of the full set of financial statements submitted with the short-form application, as well as other information, to determine whether the applicant is qualified to bid in the Phase II auction."² ITTA agrees that "[t]he need to ensure that every Phase II auction recipient is in good financial health is critical."³ While ITTA believes the Commission is wise to seek to ensure prior to the auction that applicants are financially qualified, ITTA views this proposal as overkill with respect to companies that have provided voice and/or broadband services for at least two years, and urges the Commission to exempt such companies from the bulk of the proposed showings.

In the *Phase II Auction Order*, the Commission adopted a streamlined prequalification requirement that Phase II auction applicants certify in their short-form application that they have provided voice and/or broadband services for at least two years, or that they are the wholly-owned subsidiary of an entity that meets these requirements.⁴ The Commission adopted this measure to "provide assurance to the Commission that the entities that intend to bid in the auction have some experience operating networks or are otherwise financially qualified,"⁵ and to

² *Id.* at 6256, para. 58.

³ *Connect America Fund; ETC Annual Reports and Certifications; Rural Broadband Experiments*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5983, para. 101 (2016) (*Phase II Auction Order*).

⁴ The Commission also adopted an "alternative pathway" for auction participation for entities with less than two years of experience operating a voice and/or broadband network. *See id.* at 5985, para. 106.

⁵ *Id.* at 5982, para. 100. The Commission further concluded that "requiring an entity to have operated a network for more than a year will give [it] greater assurance that an entity has the

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“provide the Commission with sufficient assurance before the auction that an entity has at a minimum level demonstrated that it has the ability to build and maintain a network.”⁶ The Commission also required entities meeting those requirements to submit with their short-form application audited financial statements from the prior fiscal year, which it concluded “assur[es] the financial health of Phase II auction recipients.”⁷

With the Commission having clearly indicated in the *Phase II Auction Order* that an applicant having provided voice and/or broadband services for at least two years would bestow it with “sufficient assurance” of such an applicant’s financial qualifications, and that submission of audited financial statements from the prior fiscal year “assur[es] the financial health of Phase II auction recipients,” upping the ante, as proposed in the *Public Notice*, with additional hurdles for such applicants to clear before reaching the starting gate goes beyond reasonable precautions. It will unnecessarily burden such applicants and Commission staff, and potentially delay the auction and the deployment benefits it will yield.

It is also strikingly paradoxical. The Commission did not impose such a requirement upon companies vying for the Phase II state-wide offer of model-based support, and there have been no indications that any of the companies who accepted it are a threat to default on their deployment obligations. These same companies, who would far surpass the two-year service provision standard, would now be required to demonstrate they exceed certain thresholds of four

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qualifications to maintain a network,” *id.* at n.196, and that certifying at least two years of voice and/or broadband service “provides the Commission with sufficient assurance that the entity is qualified to bid.” *Id.* at 5983, para. 101 n.200.

⁶ *Id.* at para. 100.

⁷ *Id.* at para. 101. The Commission added that a financial audit provides more assurances than reviewed financial statements. *See id.* The Commission adopted alternative measures for entities that have not already obtained an audit of their financial statements in the ordinary course of business. *See id.* at 5983-84, para. 102.

different financial metrics under the *Public Notice*'s proposal.⁸ Yet, they may not be able to so demonstrate and thus would be subject to the burdensome and delay-inducing “more in-depth review” of their financial statements as well as unspecified “other information” as proposed by the *Public Notice*.⁹

This is because providers of telecommunications infrastructure routinely leverage debt to fund significant capital expenditures to expand and upgrade networks. So, for example, ITTA member CenturyLink – who accepted over one-half *billion* dollars of Phase II model-based support, the most by any company¹⁰ – would not clear the thresholds for at least the last two metrics proposed by the *Public Notice*,¹¹ and if it failed to exceed the specified threshold for one more metric, it would then be subject to the cumbersome “more in-depth review.” This points to the patent disconnect between the reality of the capabilities and resources of certain applicants versus the purported ability of the *Public Notice*'s specified metrics to ensure these applicants' financial qualifications.

Other proposals in the *Public Notice*, if adopted, would provide further safeguards of the bona fides of such applicants. For instance, the *Public Notice* proposes requiring an applicant to certify under penalty of perjury that it has performed due diligence concerning its potential

⁸ See *Public Notice*, 32 FCC Rcd at 6256 at para. 59.

⁹ See *id.* at para. 58.

¹⁰ See News Release, FCC, 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), https://apps.fcc.gov/edocs_public/attachmatch/DOC-335082A1.pdf; News Release, FCC, CenturyLink Accepts Nearly \$506 Million in Annual Support from Connect America Fund to Expand and Support Broadband for Over 2.3 Million Consumers in 33 States (Aug. 27, 2015), https://apps.fcc.gov/edocs_public/attachmatch/DOC-335071A1.pdf.

¹¹ These metrics are: “(3) current ratio (i.e., current assets divided by current liabilities), where a ratio greater than or equal to 2 would receive one point; and (4) total equity divided by total capital, where a result greater or equal to 0.5 would receive one point.” *Public Notice*, 32 FCC Rcd at 6256, para. 59.

participation in the Phase II auction and ability to build and operate facilities in accordance with Connect America Fund obligations and the Commission's rules.¹² In addition, while addressing post-auction failures to achieve certain deployment milestones, Section 54.320(d) of the Commission's rules¹³ is a further deterrent against applicants committing to more than they realistically can deliver.

In sum, for applicants that have provided voice and/or broadband services for at least two years, the *Public Notice*'s proposed five-point evaluation scale far exceeds any rational need for the Commission to properly scrutinize an applicant's financial qualifications to participate in the Phase II auction. The Commission should find such an applicant financially qualified to participate in the auction if, pursuant to the *Phase II Auction Order* and the *Public Notice*, the applicant submits audited financial statements from the prior fiscal year, and such statements received an unmodified, non-qualified opinion from the auditor.¹⁴

II. THE COMMISSION SHOULD PRECLUDE ELIGIBILITY TO BID FOR CERTAIN PERFORMANCE TIER AND LATENCY COMBINATIONS

The *Public Notice* proposes to preclude an applicant from selecting certain performance tier and latency combinations that are inconsistent with the technologies the applicant intends to use. For example, the *Public Notice* proposes to prohibit satellite providers from selecting low latency in combination with any of the performance tiers.¹⁵ ITTA supports these proposals. The *Public Notice* also asserts that “[w]hile a certain technology may eventually be able to meet the public interest obligations required by some performance tier and latency combinations, it may

¹² See *id.* at 6257, para. 62.

¹³ 47 CFR § 54.320(d).

¹⁴ See *Public Notice*, 32 FCC Rcd at 6256, para. 59 (proposing that applicant receive one point for a “yes” answer to short-form application question whether, to the extent applicant's prior year-end financial statements were audited, it had received an unmodified, non-qualified opinion from the auditor).

¹⁵ See *id.* at 6253, para. 49.

not serve the public interest to award Phase II support for such a technology at this time based on possible future technological advances.”¹⁶ The *Public Notice* seeks comment on whether applicants should be limited to bidding on performance tier and latency combinations that they or similar providers are currently offering.¹⁷ ITTA supports such a limitation.

ITTA supports the Commission imposing reasonable measures to promote its objectives of assessing an applicant’s capability to meet the Phase II obligations and reducing the risk of defaults, while not saddling applicants or the Commission with undue costs.¹⁸ Just as a threshold of prior experience with providing voice or broadband service imbues the Commission with sufficient assurance of an applicant’s financial qualifications, experience with offering certain performance tier and latency combinations should likewise provide the Commission with confidence in an applicant’s ability to continue to provide that level of service. In contrast, attempting to evaluate speculative, unproven service levels based on eventual technological advances would defeat the objectives of assuring that applicants are qualified and conducting an efficient auction process.¹⁹ The Commission would either have to rely on a certain level of faith in the applicant’s ability to meet by a certain time the public interest obligations required by certain performance tier and latency combinations, or it would need to commit significant technical resources towards evaluating the applicant’s technological bona fides, imposing undue

¹⁶ *Id.* at 6254, para. 50.

¹⁷ *See id.*

¹⁸ *See id.* at para. 51; *id.* at 6248-49, para. 34 (“to reduce the risk of defaults, [the Commission] propose(s) to evaluate all combinations selected by each applicant to determine its eligibility to bid for any such combination”). *See also id.* at 6248, para. 32 (“We intend to use the short-form application to assess the likelihood that an applicant will default if selected as a winning bidder.”).

¹⁹ *See Phase II Auction Order*, 31 FCC Rcd at 5950, para. 2 (*Phase II Auction Order* designed to promote a more efficient auction).

costs on Commission staff, as well as on competing applicants to challenge the applicant's qualifications, and potentially delaying the auction. Neither outcome serves the public interest.

III. THE COMMISSION SHOULD DETERMINE WHAT BECOMES OF FORFEITED FUNDING IN THE EVENT OF A WINNING BIDDER'S DEFAULT

Notwithstanding discussion in both the *Phase II Auction Order*²⁰ and the *Public Notice*²¹ regarding the consequences for an applicant that defaults, nowhere does the Commission discuss how it will reallocate subject funds where the winning bidder defaults either prior to or upon Commission staff's review of the winning bidder's long-form application. Among the objectives of the auction process are to "prevent unreasonable delays in authorizing Phase II auction support so that winning bidders can begin deploying broadband to unserved consumers,"²² and, even more saliently in this context, "protect[ing] consumers in rural and high-cost areas against being stranded without a service provider in the event a winning bidder defaults when another qualified competing bidder could have won the support instead."²³ In light of these objectives, ITTA urges the Commission to delineate in advance how it will reallocate subject funds if the winning bidder defaults.

In the event that the remaining winning bids aggregate to more than the amount budgeted for the auction, the Commission may wish to reallocate the funding amounts that were subject to default to the bidder(s) with the next lowest score(s), regardless of the geographic area(s) on which it/they bid.²⁴ This would be consistent with the Commission's objective of "maximizing

²⁰ See, e.g., *id.* at 5999-6001, paras. 142-45.

²¹ See, e.g., *Public Notice*, 32 FCC Rcd at 6255, para. 54.

²² *Phase II Auction Order*, 31 FCC Rcd at 5984, para. 103.

²³ *Id.* at 5986, para. 109.

²⁴ Because Phase II auction "scores" will be determined based on a weighted bid-price-to-reserve-price ratio, winners are actually determined by low scores. See *Connect America Fund; ETC Annual Reports and Certifications*, Report and Order and Order on Reconsideration, 32

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the effectiveness of [the Commission's] funds to serve consumers across unserved areas with [the Commission's] finite budget.”²⁵ It would also be consistent with the national design of the auction. As articulated by the Commission in the *Phase II Auction Order*, “this approach is more likely to ensure winning bidders across a wide range of states than selecting bids based on the dollar per location, which could result in support disproportionately flowing to those states where the cost to serve per location is, relatively speaking, lower than other states.”²⁶

If, however, the aggregated winning bids still fall short of the auction budget, the Commission may wish to reallocate the funding amounts that were subject to default to the bidder(s) with the next lowest score(s) for the geographic area(s) where the bidder(s) defaulted. Regardless of which method the Commission chooses to reallocate funds that were subject to a winning bidder default, the Commission should select a method in advance so that there is no delay in deployment to the unserved areas that were subject to the defaulted bid(s).

IV. CONCLUSION

The long-awaited Phase II auction presents a welcome opportunity to finally bring broadband to areas that still lack it. The progress towards conducting and completing the auction should not get encumbered and prone to delay by imposition of unduly rigorous financial qualification showings upon experienced providers, nor by unnecessary pre-auction analyses that would be entailed were the Commission not to limit applicants to bidding on performance tier and latency combinations that they or similar providers are currently offering. And to help maintain the momentum towards broadband deployment resulting from the auction, the Commission should immunize the process from delays that would arise in the unfortunate event

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FCC Rcd 1624, 1627-28, para. 15 (2017) (*Phase II Auction Weights Order*); *Phase II Auction Order*, 31 FCC Rcd at 5977, para. 85.

²⁵ *Phase II Auction Weights Order*, 32 FCC Rcd at 1627, para. 14.

²⁶ *Phase II Auction Order*, 31 FCC Rcd at 5977, para. 85.

of default by one or more winning bidder(s), by determining now how it would reallocate the funds that were subject to default.

Respectfully submitted,

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