



State of West Virginia

Jim Justice
Governor

H. Wood Thrasher, Cabinet Secretary
DEPARTMENT OF COMMERCE

www.wvcommerce.org
(304) 558-2234

September 18, 2017

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Filing of Comment by the West Virginia Broadband Enhancement Council
Competitive Bidding Procedures and Certain Program Requirements for the Connect America Fund
Phase II Auction (Auction 903); WC Docket No. 10-90; Document Number 2017-18041

Dear Chairman Pai:

The West Virginia Broadband Enhancement Council (the "Council") is keenly interested in the Connect America Fund Phase II Auction (Auction 903) bidding procedures and processes. The Phase II Auction will award up to \$198 million annually for 10 years to service providers that commit to offer voice and broadband services to fixed locations in unserved high-cost areas.

The Council is committed to pursuing broadband development on behalf of the State of West Virginia. The comments provided herein represent the Council's commitment to this important endeavor.

Because the thoughtful and strategic commitment of this funding is critical to the future economic development of the State of West Virginia, the Council respectfully requests the careful consideration of the Federal Communications Commission (FCC) in its evaluation of the comments provided in this letter. The State of West Virginia is both rural and mountainous, and is unfortunately designated with measurements of broadband connectivity that rank near the lowest levels in the nation, according to Federal Communication Commission 2016 Broadband Progress Report (<https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2016-broadband-progress-report>). This designation threatens to bisect the State from the economic opportunities derived from high-speed broadband service.

While our residents and businesses continue to pursue high-speed, high-quality broadband, our State faces a persistent and growing digital divide. This pervasive divide, which touches numerous aspects of life, including education, health care, and employment, creates an acute hardship, especially for the most vulnerable populations in underserved and unserved communities.

To alter this situation, the Council seeks the partnership of providers that are committed to the efficient deployment of this vital economic infrastructure. As Chairman of the West Virginia Broadband Enhancement Council, I share the Federal Communications Commission's desire to, "...maximize the value the American people receive for the universal service dollars it spends, balancing higher-quality services with cost efficiencies." In this regard, partnership with providers that diligently work to deploy technology in rural areas is of paramount concern.

Because the Phase II Auction is specifically designed to select bids from providers that would deploy high-speed broadband and voice services in unserved communities for lower relative levels of support, the Council requests that maximum flexibility be granted to provide the greatest levels of competition possible. The Council is compelled to request maximum feasible deference with respect to the eligibility of census blocks, as detailed in *Section II: Minimum Geographic Bidding*.

In this regard, the Council requests that census blocks, previously claimed as part of the Connect America Fund, be granted eligibility for inclusion in the Phase II Auction if no deployment of broadband infrastructure has occurred. The Council further requests that previously claimed census blocks be granted eligibility if it can be demonstrated that the level of service delivered within those census blocks fails to meet the standard conditioned within the initial commitment of funding.

The State of West Virginia has attempted to resolve the connectivity issues that continue to confront rural residents and businesses. To this end, the West Virginia Attorney General's Office executed an Assurance of Voluntary Compliance in November 2015, in which the incumbent agreed to make a total of at least \$150 million in capital expenditures in West Virginia over a period of three years, in addition to the investments during this period from the \$180 million the incumbent expected to expend from the Connect American Fund II. This \$150 million in capital expenditures would allow the incumbent to further expand and build out its existing network to deliver internet access service at a rate of at least 6 Mbps download/1 Mbps upload, and to improve internet speed and reliability to customers receiving download speeds of 1.5 Mbps or lower.

The connectivity issues within West Virginia are extremely dynamic and challenging. Therefore, the Council requests that the FCC give special consideration to the identification of eligible census blocks. Inclusion of previously claimed census blocks will provide the opportunity for development of scalable infrastructure derived through a more competitive environment. In contrast, the lack of inclusion would render these communities to a limited future in which the digital divide will continue to grow. It is vital that the Phase II Auction casts a wide net to permit the inclusion of new technology to meet current needs without imposing restriction within these areas based upon previous inclusion in the absence of analysis of previous performance.

The Council specifically requests that the Commission allow the inclusion of previously claimed census blocks in the Phase II Auction under the following conditions:

1. Lack of construction activity within the census block claimed by Cap Rate Incumbent Providers;
2. Lack of higher-quality services with cost efficiencies. In light of the discrepancies between the service the incumbent has claimed to provide and the service the incumbent has actually provided as shown in the Assurance of Voluntary Compliance, the Council requests special consideration regarding the veracity of the incumbent's claims regarding the level of service delivered through the utilization of Connect America Funds. The Council requests that the Commission consider rescinding all eligible census blocks claimed by the incumbent and, subsequently requiring the incumbent to bid against Rate of Return Carriers under the CAF Phase II Auction in order to continue service in those census blocks.

3. Lack of minimum level of service according to the current program requirement. The Council requests a method by which the Commission would consider alternate data provided by the same. Should the Council provide sufficient evidence, deemed acceptable by the Commission, to demonstrate that previously awarded census blocks are not receiving minimum level of service of 10:1 Mbps, the Commission may consider a petition by the Council to consider inclusion of the census blocks group for Phase II Auction eligibility.

The Council respectfully requests consideration of the comments provided in this letter, with particular attention to, and consideration of, concerns regarding previous performance as indicted above.

It is noted that the Phase II Auction, scheduled to begin in early 2018, will be the first auction to award ongoing high-cost universal service support through competitive bidding in a multiple-round, reverse auction. The auction is designed to select bids from providers that would deploy high-speed broadband and voice services in unserved communities for lower relative levels of support.

The Council has observed that multiple providers are willing to deploy service within the parameters described above. This willingness is the critical aspect of service delivery that reaches West Virginia's small- to medium-sized communities and rural areas. It is the Council's position that multiple providers will create a more robust Phase II Auction process, in contrast to an allocation or initiative involving a single provider.

The State has taken steps to create an environment in which multiple providers can effectively reach new service areas through the passage of legislation in early 2017. As a result, the State is well positioned to exercise the degree of oversight necessary to execute projects in a manner that serves the needs of its residents. We request that the Commission support the State's effort to achieve significant progress in the expansion of high-speed broadband service.

It is my sincere hope that these comments are useful to you in the deliberation of the procedures and processes associated with the Phase II Auction.

I appreciate the opportunity to comment, as well as the Commission's support of policies to enhance broadband in West Virginia. If you have any questions, or if I may be of assistance, please do not hesitate to contact me.

Sincerely,



Robert Hinton

Chairman

West Virginia Broadband Enhancement Council

cc: West Virginia Broadband Enhancement Council