



December 29, 2015

**VIA ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**Subject:** *Written ex parte submission – WC Docket No. 10-90  
CAF Phase II competitive bidding requirements; auction procedures*

Dear Ms. Dortch:

This letter is to oppose the recent filing by the Utilities Telecom Council (“UTC”) proposing an auction framework for the CAF Phase II competitive bidding process.<sup>1</sup> As discussed in more detail below, the UTC Proposal incorporates precisely the type of technology-specific preference that Hughes Network Systems<sup>2</sup> (“Hughes”) and numerous other parties<sup>3</sup> have opposed in this proceeding and is inconsistent with long standing FCC precedent. The Commission should reject the UTC Proposal, as well as any auction framework that would reach the same result in a single auction by grouping fiber-based providers in a specific tier of service. Such an approach would violate the FCC’s technology neutrality principle and would result in higher costs, limiting the number of American households that would receive service through CAF Phase II.

The National Broadband Plan recommended that the Commission find ways to allow the market (competitive bidding) to “identify the provider that will serve the area at the lowest cost.”<sup>4</sup> For this reason, the Plan recommended that the “eligibility criteria for obtaining support from CAF should be company- and technology-agnostic so long as the service provided meets the specifications set by the FCC.”<sup>5</sup> Accordingly, the Plan recommended that the CAF “consider alternative approaches, such as satellite broadband, for addressing the most costly areas of the

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<sup>1</sup> Letter from Brett Kilbourne, UTC, to Marlene Dortch, FCC, WC Docket No. 10-90 (filed Dec. 17, 2015) (“UTC Proposal”).

<sup>2</sup> See, e.g., Letter from Jennifer A. Manner, Hughes, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Oct. 26, 2015); Letter from L. Charles Keller, counsel to Hughes, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Nov. 13, 2015); Letter from L. Charles Keller, counsel to Hughes, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Dec. 3, 2015) (“Hughes Dec. 3 ex parte”); Letter from Jennifer A. Manner, Hughes, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Dec. 11, 2015) (“Hughes Dec. 11 ex parte”); Letter from Jennifer A. Manner, Hughes, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Dec. 21, 2015).

<sup>3</sup> See, e.g., Letter from John P. Janka, counsel to ViaSat, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Dec. 18, 2015); Letter from Matthew Gerst, CTIA, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Dec. 17, 2015); Letter from Stephen E. Coran, counsel to WISPA, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Nov. 23, 2015).

<sup>4</sup> National Broadband Plan at 145, Rec. 8.2.

<sup>5</sup> *Id.*

country to minimize the contribution burden on consumers across America.”<sup>6</sup> This aspect of the Plan furthers both fiscal responsibility and the Commission’s longstanding universal service principle of competitive neutrality.<sup>7</sup>

The Commission adopted the National Broadband Plan’s approach in the *USF/ICC Transformation Order*, concluding that it would use competitive bidding to allocate CAF Phase II funding in order to “identify those providers that will make the most effective use of the budgeted funds, thereby extending services to as many consumers as possible.”<sup>8</sup> The Commission also concluded that the CAF should be an “efficient, technology-neutral system that uses tools, including competitive bidding, to ensure that scarce public resources support the best possible communications services for rural Americans.”<sup>9</sup>

Consistent with the National Broadband Plan and the *USF/ICC Transformation Order*, Hughes and others have urged the Commission to adopt a bidding framework for CAF Phase II that gives all bidders a fair opportunity to compete and appropriately weighs the relative benefits of the different broadband technologies proposed in each bid.<sup>10</sup> By contrast, the UTC Proposal calls for a two-stage auction process, with a first stage limited to applicants proposing fiber-to-the-home (“FTTH”) projects.<sup>11</sup> UTC makes clear that the objective of its proposal is to fund fiber projects wherever possible, and only secondarily to “provide access to other forms of broadband services in unserved areas where there were no bids submitted to provide fiber optic broadband services.”<sup>12</sup>

The UTC Proposal is antithetical to the CAF approach outlined in the National Broadband Plan and adopted in the *USF/ICC Transformation Order* because its first-stage auction for only fiber-based providers would (1) abandon the Commission’s longstanding universal service principle of competitive neutrality and the technology neutral approach adopted for the CAF and (2) skew the allocation of scarce CAF funding towards fiber, even in areas where other technologies would be more efficient. Thus, the Commission should reject the UTC Proposal.

For the same reason, the Commission should reject any approach that reaches the same result as the UTC Proposal, even in a single-stage auction. For example, the Commission should not adopt an auction framework that places fiber-based providers in a favored category of bidders, or that creates a favored category of bidders based on performance criteria that only fiber can meet.

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<sup>6</sup> *Id.* at 150 Rec. 8.13.

<sup>7</sup> The principle of competitive neutrality states that “[u]niversal service support mechanisms and rules should be competitively neutral,” which means that they should not “unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.” *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order et al., 26 FCC Rcd 17663, 17731 ¶ 176 (2011) (“*USF/ICC Transformation Order*”), *aff’d sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10<sup>th</sup> Cir. 2014) *citing Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801 ¶ 47 (subsequent history omitted).

<sup>8</sup> *Id.* at 17732 ¶ 179.

<sup>9</sup> *Id.* at 17709 ¶ 120.

<sup>10</sup> *See supra* note 2.

<sup>11</sup> UTC Proposal at 1.

<sup>12</sup> *Id.*

