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March 4, 2016

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: **Connect America Fund**  
**WC Docket No. 10-90**  
**Written Ex Parte Presentation**

Dear Ms. Dortch:

Over the last several months, the Commission has been considering a proposed framework for the Connect America Fund reverse auction. Based on a stakeholder briefing by the Wireline Competition Bureau (“Bureau”) in October 2015 and subsequent ex parte meetings with the Bureau and the Commissioners’ offices, it appears that the proposal lacks public support.<sup>1</sup>

WISPA has been critical of the proposal for two primary reasons. First, it favors fiber-to-the-home over other technologies that can be implemented quickly and in a cost effective manner. Second, it would effectively preclude bidders proposing to use unlicensed spectrum from competing in the auction, which will reduce competition and increase the amount of public subsidies. Unlicensed spectrum is a public resource that is already available and being successfully used to connect millions of rural Americans.

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<sup>1</sup> See Letter from Stephen E. Coran, WISPA Counsel, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90 (filed Nov. 23, 2015); Letter from Scott K. Bergmann, CTIA Vice President, Regulatory Affairs, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Nov. 16, 2015); Letter from John P. Janka and Jarrett S. Taubman, ViaSat Counsel, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 10-90, *et al.* (filed Feb. 2, 2016) (“ViaSat Letter”); Letter from Jennifer A. Manner, Hughes Vice President, Regulatory Affairs, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90 (filed Feb. 10, 2016) (“Hughes Letter”).



Recently, some parties have offered alternatives that address certain aspects of the auction framework.<sup>2</sup> These proposals, however, fail to recommend a comprehensive framework that is technology-neutral and cost-effective, and focused on the core broadband criteria the Commission identified in 2011 – speed, latency and data usage limits.<sup>3</sup> Rather, these proposals are intended either to promote fiber as a priority technology<sup>4</sup> or to ensure that the latency criterion does not exclude satellite providers.<sup>5</sup>

On December 3, 2015, Hughes and EchoStar submitted a joint proposal proposing bidding credits for bidders committing to achieve certain benchmarks for speed, latency, capacity and subsidy level.<sup>6</sup> WISPA agrees that the Hughes/EchoStar Proposal generally favors the appropriate criteria; however, the levels of bidding credit for each criterion are too numerous and too modest, defects that will complicate the auction process and not lead to deployment of robust networks. The Hughes/EchoStar Proposal is a good start and represents a counter to the Commission’s proposal, but it ultimately falls short of the goals that the competitive bidding process should strive to achieve.

## Overview

WISPA proposes herein a comprehensive proposal that would weigh reverse auction bids based on their relationship to baseline speed, latency and data usage criteria, along with one additional factor – build-out completion time – that support the Commission’s goals of cost-effective and expeditious build-out to unserved areas. WISPA believes that, taken together, these criteria will form the groundwork for a successful auction with broad participation among many technologies that rewards those bidders that best address Commission objectives. These limited criteria can be implemented in a way that does not make the reverse auction process overly complex.

In recommending this approach, and contrary to the Hughes/EchoStar Proposal, WISPA does not intend at this time to assign the specific level of weight, or bidding credit, a particular criterion should have. Rather, WISPA presents a framework that identifies the criteria and proposes a relative weight, and suggests that the Commission invite public comment on the specific aspects of the proposed framework in conjunction with auction design issues such as the

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<sup>2</sup> See, e.g., Letter from Brett Kilbourne, UTC Vice President and Deputy General Counsel, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 10-90 and 14-93 (filed Jan. 19, 2016) (“UTC Letter”); ViaSat Letter; Hughes Letter; Letter from Jack Richards, Esq. to Marlene H. Dortch, FCC Secretary, WC Docket No. 14-58 (filed Feb. 16, 2016).

<sup>3</sup> See *Connect America Fund*, 26 FCC Rcd 17663, ¶¶ 90-99 (2011).

<sup>4</sup> See UTC Letter.

<sup>5</sup> See ViaSat Letter and Hughes Letter.

<sup>6</sup> See Letter from L. Charles Keller, Counsel to Hughes Network Systems and EchoStar Satellite Operating Corporation, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90 and IB Docket No. 12-267 (filed Dec. 3, 2015) (“Hughes/EchoStar Proposal”).



minimum bidding unit, package bidding and multi-round bidding. WISPA thus seeks to advance the process in two steps – first, to establish a framework, and second, to establish the specific parameters of the auction design following further public comment. This process will hopefully pave the way for a reverse auction in 2017, for the benefit of consumers, businesses and anchor institutions in unserved areas where CAF Phase II support will be offered.

### **Recommended Framework**

Bidders would begin the auction process with 100 points. By adding points based on numerical values established by the Commission and claimed by the applicant, bidders could gain additional points, or bidding credits. For example, a bidder with 125 points would have a bidding credit of 25 percent to apply to its bids, and would be the winning bidder if no other bids were at least 25 percent lower. Thus, a bidder with a 25 percent credit bidding for a support level of \$24.00 would prevail over other bidders bidding for a support level of \$20.00.<sup>7</sup>

Below, a “0” identifies the baseline contained in the Commission’s proposal that was discussed with stakeholders in October 2015, and is used to indicate that no bidding credit is awarded. A “+” indicates that the bidder would get a certain level of credit, and a “++” indicates a higher level of credit. As stated above, WISPA does not propose at this time to assign values to each level of bidding credit, but intends to show their relative weights where the applicant exceeds the Commission’s baseline.

This framework is grounded in the Commission’s definitional criteria for broadband, accounts for the relative cost-effectiveness of proposals, supports the objective of connecting as many unserved locations as possible, as rapidly as possible, and enables a relatively simple auction process. The Commission has used bidding credits to promote small business participation in spectrum auctions, and can incorporate a bidding credit component into its auction software.

Below are the specific criteria and recommendations on how to weigh each based on its relationship to the baseline.

**Speed** – This criterion is based on the highest speed tier that the bidder must offer to every unserved location in the geographic area. Credits would be awarded to those bidders that commit to “offer” consumers speeds faster than the 25/3 Mbps minimum speed the Commission proposes as the baseline for auction participation, regardless of the technology they propose.<sup>8</sup> The network must be capable of delivering the speed the applicant selects.

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<sup>7</sup> WISPA recognizes that there are many details to be resolved, including how to address bids for overlapping geographic areas, reserve bids and package bidding. Upon adoption of a framework, WISPA looks forward to working with the Commission and other stakeholders to develop procedures that fit the framework.

<sup>8</sup> See *Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process*, FCC Public Notice, 29 FCC Rcd 7505, 7507-08 (2014). While technology-neutral, the Hughes/EchoStar Proposal would establish six separate tiers, none of which would award credits for speeds above 75 Mbps. See Hughes/EchoStar Proposal Talking Points, at 2.



Speed (Mbps)	Weight
25/3	0
50/5	+
100/25	++

**Latency** – The Commission has established a requirement that support recipients build networks with round-trip latency of 100 milliseconds or faster.<sup>9</sup> This means that the provider network path from the input device to the Internet core and from the Internet core to the output device must be no more than 100 milliseconds, represented by measurements taken during peak period weeknights (between 7:00 pm to 11:00 pm local time) between the customer premises and the closest designated Internet core peering interconnection point.<sup>10</sup> Lower latency can support applications such as video conferencing and distance learning, and applicants proposing lower latency should be entitled to bidding credits.

Latency	Weight
≤100 ms	0
≤50 ms	+
≤30 ms	++

**Data Usage** – This criterion builds on the Commission’s proposal to require bidders to have a data cap that is equal to or greater than 80 percent of the average cap employed by the top five reporting participants for fixed broadband in the Measuring Broadband America program. It rewards bidders that exceed this baseline.<sup>11</sup>

Data Cap	Weight
80% of MBA	0
150% of MBA	+
200% of MBA	++

**Build-Out Term** – In addition to the basic speed, latency and data cap criteria, the Commission should reward bidders that construct their networks sooner than the end of the six-year support term. This criterion builds on the rural broadband experiment program, in which

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<sup>9</sup> See *Connect America Fund*, Report and Order, 28 FCC Rcd 15060, 15070 (WCB 2013) (“*Bureau Order*”). The Hughes/EchoStar Proposal would establish a “0” bidding credit at >800 milliseconds, which is significantly higher than the levels proposed by WISPA. See Hughes/EchoStar Proposal Talking Points, at 2.

<sup>10</sup> *Bureau Order* at 15070-71.

<sup>11</sup> Hughes/EchoStar would cap the credit at 100 GB such that bidders offering 250 GB or unlimited plans would be treated the same as those offering 100 GB plans. See Hughes/EchoStar Proposal Talking Points, at 2.



bidders could elect to receive support on an accelerated basis if they committed to accelerate deployment.<sup>12</sup>

Build-Out Term	Weight
40% by year 3	0
60% by year 4	
80% by year 5	
100% by year 6	
40% by year 2	+
60% by year 3	
100% by year 4	

### Benefits

WISPA believes this approach offers many benefits that will result in the public receiving expeditious and cost-effective services.

*First*, the proposal does not favor one technology over another, enabling the highest level of participation by large and small bidders. Stated another way, an approach that first supports fiber projects before other bidders will keep non-fiber bidders on the sidelines. In addition, bidders would not be confined to one particular technology in placing their bids, but rather could combine fiber, spectrum and satellite-based technologies into a single bid based on the characteristics of the area, the bidder’s expertise, and cost. For instance, a bidder with fiber deployed near the bidding area could rely on extending its fiber into the auctioned blocks and combining it with fixed wireless or satellite resale for “last-mile” service. By being technology neutral, this approach encourages greater participation and bids that are deemed by the bidder to be the best in the given case.<sup>13</sup>

*Second*, the proposal focuses on the Commission’s criteria – speed, latency and data usage – and rewards those bidders that exceed the proposed benchmarks. This approach favors bidders that can deploy networks that offer consumers greater benefits in relation to the amount of support the bidder desires and that far exceed the speeds that price cap carriers accepting support are required to provide with a greater level of support (i.e., at the cost model amount). Unlike the Hughes/EchoStar Proposal, this approach encourages deployment of robust networks.

*Third*, the proposal builds on these three criteria by adding a criterion that awards credit for accelerated build-out. WISPA believes that bidders agreeing to deploy broadband on an accelerated basis should recognize a benefit because they are offering service to the public two years before the end of the six-year support term proposed by the Commission.

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<sup>12</sup> See *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (2014).

<sup>13</sup> WISPA notes that a price cap carrier that accepted support is permitted to deploy *any* technology.



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*Fourth*, this proposal would be relatively easy to implement and administer for both bidders and Commission staff. Applicants would check the boxes in the application, which would generate the amount of the bidding credit. Given the Commission's historical use of bidding credits, the auction software would rank bids in each round of the auction. If additional criteria or tiers within each category were added, the process could become too complicated; by eliminating criteria, the Commission's objectives would not be realized.

In sum, WISPA's proposal combines cost-effectiveness with the three elements of the Commission's definition of broadband to determine the support recipient in a given area. It favors broad participation without precluding certain bidders at the starting gate, and can be implemented without undue complexity. WISPA urges other stakeholders and the Commission to give strong consideration to this approach.

Pursuant to Section 1.1206 of the Commission's Rules, this letter is being filed electronically via the Electronic Comment Filing System in the above-captioned proceeding.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Stephen E. Coran', with a long horizontal flourish extending to the right.

Stephen E. Coran  
*Counsel to WISPA*

cc: Stephanie Weiner  
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