

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Connect America Fund)	WC Docket No. 10-90
A National Broadband Plan for Our Future)	GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
High-Cost Universal Service Support)	WC Docket No. 05-337
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
Lifeline and Link-Up)	WC Docket No. 03-109

To: The Commission

**JOINT REPLY COMMENTS OF
SATELLITE BROADBAND PROVIDERS
(DISH Network L.L.C., EchoStar Technologies L.L.C., Hughes Network Systems, LLC,
ViaSat, Inc., and WildBlue Communications, Inc.)**

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EXECUTIVE SUMMARY

The record demonstrates the benefits of allowing satellite broadband providers to participate fully and directly in all phases of the Connect America Fund (“CAF”). A wide range of commenters recognize the capabilities of satellite broadband and the potential satellite broadband technology has to serve many customers in a cost-effective manner. Next-generation satellite broadband service, which is launching this year, will excel at the high-speed, high-capacity applications that are most important to consumers. The record reflects that satellite broadband is the most economical way to provide broadband service to many unserved households, but the cost-efficiencies of satellite broadband service will translate into lower costs for the CAF only if satellite providers are able to participate fully and directly in all phases of the program. The few commenters that criticize the capabilities of satellite broadband base their conclusions on outdated, incorrect information and unfairly ignore the upcoming deployment of significant additional satellite broadband capacity.

The record also reflects strong support for the Commission’s proposal to distribute CAF support using reverse auctions, which will ensure that support flows to the most efficient provider, minimizing the demand on the fund. Significantly, the opening comments provide no valid justification for affording rights of first refusal or other special treatment to wireline incumbents. The Commission’s obligation is to provide support for rural consumers, not carriers, and competitive neutrality is a critical universal service principle. If rural incumbents are not the most efficient provider, the public interest would not be served by providing them with support. The Commission also can use the reverse-auction rules to ensure that CAF recipients make essential service commitments, such as commitments to serve all customers in

their designated service areas, provide E-911 access, and provide specific quality of service. The Satellite Broadband Providers would have no problem meeting such requirements.

At the end of the day, all technologies will have a vital role in serving the unserved—wireline (including ILECs), wireless and satellite alike. No single technology will be the best solution for every unserved household. In order to ensure that the best and most affordable technology is deployed in the most efficient manner, it is important that satellite providers be allowed to participate directly as “prime” bidders in the reverse auctions.

Finally, the opening comments show strong support for streamlining the ETC designation process and providing for national ETC designations, particularly for nationwide providers, such as satellite providers, that are not otherwise subject to state jurisdiction.

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DISH Network L.L.C., EchoStar Technologies L.L.C., Hughes Network Systems, LLC, ViaSat, Inc., and WildBlue Communications, Inc. (collectively, the “Satellite Broadband Providers”) provide these reply comments in response to opening comments in the above-captioned proceeding, which in turn respond to the Notice of Proposed Rulemaking (“*NPRM*”) in which the Commission (“*FCC*”) proposes the creation of a new Connect America Fund (“*CAF*”) to subsidize the provision of broadband service in areas where the Commission believes service otherwise would be uneconomical.¹ The Satellite Broadband Providers are the primary

¹ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on*

providers of consumer satellite broadband service in the United States, collectively serve over one million households today, and anticipate serving many more households after the launch of next-generation broadband satellites, beginning this summer.

The Satellite Broadband Providers file these joint reply comments to highlight the significant record support for allowing satellite broadband providers to compete for universal service support directly and on equal footing with other providers. The record demonstrates that satellite broadband providers can offer to a significant percentage of U.S. households high-quality broadband service that is far less expensive to deploy than other technologies. Therefore, to accomplish the Commission's goal of universal service in a cost-effective manner, satellite broadband providers should be allowed to participate fully and directly in the CAF, on equal footing with other broadband providers.

I. THE RECORD DEMONSTRATES THE BENEFITS OF ALLOWING SATELLITE BROADBAND PROVIDERS TO PARTICIPATE FULLY AND DIRECTLY IN ALL PHASES OF THE CAF

A wide range of commenters recognize the capabilities of satellite broadband and the potential satellite broadband technology has to serve many customers in a cost-effective manner. The few commenters that criticize the capabilities of satellite broadband services base their conclusions on outdated, incorrect information and unfairly ignore the upcoming deployment of significant additional satellite broadband capacity.

Universal Service; Lifeline and Link-Up, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 ¶ 15 (rel. Feb. 9, 2011) (“*NPRM*”).

A. A Broad Array of Commenters Recognizes that Satellite Providers Will Offer Cost-Effective and High-Quality Broadband Service

The record demonstrates that satellite providers can and will offer cost-effective broadband service to consumers across the country, and will be able to provide quality broadband service to a substantial and increasing number of consumers. As the California PUC notes in its comments, “[s]atellite service at the target speed is already available in many remote areas.”² Other commenters acknowledge that satellite broadband providers are planning to launch new satellites that will dramatically increase available bandwidth and significantly improve service quality.³ As the Satellite Broadband Providers note in their opening comments, ViaSat and Hughes each will launch a new, next-generation broadband satellite in the next eighteen months, expanding satellite broadband capacity to *more than 20 times its current level*.⁴ These new satellites will “go even farther to fill the availability gap.”⁵ In addition to planned launches of these next generation satellites, commenters further acknowledge that satellite broadband providers are continuing to develop innovative technologies that will enhance further their ability to serve the public—particularly in high-cost areas.⁶

² California Public Utilities Commission Comments at 8 (“California PUC Comments”).

³ Verizon and Verizon Wireless Comments at 60 n.83 (“Verizon Comments”); California PUC Comments at 8; Free Press Comments at 4 (questioning the need for a high-cost telephony fund given the wide availability of mobile wireless services “and the improved nature of satellite services.”). *See also* Satellite Broadband Providers at 7, 10-11; ViaSat Comments at 14-15.

⁴ Satellite Broadband Providers at 7.

⁵ California PUC Comments at 8.

⁶ Public Utilities Commission of Ohio Comments at 31 n.91 (“[T]oday’s cutting-edge technology will likely seem antiquated at the end of [the ten-year transition] period as advancements are made in the deployment and delivery of broadband service... includ[ing] satellite service.”) (quoting Public Utilities Commission of Ohio Comments, WC Docket No. 10-90, GN Docket No. 09-51, at 11 (filed July 14, 2010)) (“Ohio PUC Comments”); ViaSat Comments at 15 (“[T]here is every reason to anticipate that the growth of satellite broadband capacity will track or, more likely outpace, similar growth in the satellite direct-to-home ... video industry.”).

Satellite services also offer significant cost-savings over terrestrial wireline and wireless broadband technologies. A wide range of commenters concur that satellite is the least expensive way to bring broadband to many consumers, and is therefore likely to play a key role in reaching the unserved.⁷ These views are consistent with ViaSat’s analysis showing that satellite is the least expensive delivery method for far more than 250,000 unserved households; according to that analysis, at least 3.3 million households (approximately 47% of those currently unserved)

⁷ American Cable Association Comments at 14 (“ACA recognizes that certain areas will be prohibitively expensive to serve by fixed wireline service. In such areas, ... the Commission ... [should] consider seeking bids from all providers regardless of technology, including satellite and mobile broadband providers.”); AT&T Comments at 86 (“[T]he Commission should permit CAF recipients to fulfill their service requirements in some particularly high-cost areas using satellite broadband service.... [This] is the best way to ensure that all Americans have access to broadband without ballooning the size of the fund so much that consumers cannot afford it.”); CenturyLink Comments at 24 (“The Commission should permit wireline providers to partner with a broadband satellite provider to serve areas or locations where the cost of service would exceed a reasonable threshold.”); Free Press Comments at 5 (“...[G]iven the improvements in satellite broadband technology and the Commission’s own willingness to meet our universal service goals for the hardest to serve with satellite -- the need for a CAF, much less a large perpetual CAF, has not yet been demonstrated.”); Frontier Communications Comments at 21-22 (“The possible exception to this rule would be for satellite broadband providers that have partnered with facilities-base voice providers to cover areas that are too expensive to otherwise provide terrestrial-based broadband coverage.”); Independent Telephone and Telecommunications Alliance Comments at vi-vii (“Receipt of CAF funding ... should include the ability to partner with other lower-cost providers, such as satellite operators, to fill gaps in service to the hardest-to-reach subscribers.”); National Cable and Telecommunications Association Comments at 9 (“Rather than funding terrestrial facility construction in extremely high-cost areas, the Commission should provide consumers with discounts or vouchers to offset a portion of the cost of satellite service.”); Nebraska Public Service Commission Comments at 23 (“If there are no ETCs willing and able to provide broadband capable service to consumers in a particular high-cost area within a reasonable time frame, then the Commission could determine satellite would be the most suitable service and provide support to a satellite provider serving the area.”); State Members of the Federal State Joint Board on Universal Service Comments at 59 (proposing support for terrestrial service in extremely high cost areas at not more than \$100 per high-cost sector location per month, while noting that the “prevailing retail price of satellite service” for the same locations is approximately \$80 per month)(“State Members of the Joint Board Comments”).

would be most cost-effectively served by satellite broadband.⁸ Supporting satellite broadband service to these households would save the CAF approximately \$21 billion as compared to terrestrial solutions.⁹

B. There Is Broad Agreement that Satellite Providers' Participation Will Make the CAF More Efficient and Economical

As noted above, a broad range of commenters agree that satellite broadband is the most economical way to provide broadband service to many unserved households. Yet the cost-efficiencies of satellite broadband service will translate into lower costs for the CAF only if satellite providers are able to participate fully and directly in all phases of the program. For this reason, many commenters support rules that would permit satellite broadband providers to participate in the CAF and to compete for funding on equal terms with other providers.¹⁰ As Comcast argues “the Commission should ensure its auction eligibility rules do not have the effect of foreclosing the use of satellite or other technologies to expand broadband service [because] [p]ermittting parties from different industry segments to participate will more closely mimic the workings of a competitive marketplace.”¹¹ Multiple state PUCs also support full participation by satellite providers in order to minimize cost.¹² As the Ohio PUC states, “[s]atellite broadband providers should be permitted to bid” because “categorically excluding any broadband provider

⁸ ViaSat Comments at 16-17; Dr. Charles L. Jackson, *Satellite Service Can Help to Effectively Close the Broadband Gap* (Apr. 18, 2011), attached as Exhibit A to ViaSat Comments (“Jackson Paper”).

⁹ *Id.*

¹⁰ California PUC Comments at 7-10; Comcast Comments at 17; Ohio PUC Comments at 30-31; ViaSat Comments at 18-23; Satellite Broadband Providers Comments at 12-18.

¹¹ Comcast Comments at 17.

¹² California PUC Comments at 7; Ohio PUC Comments at 30-31.

from the bidding process raises questions about whether the most efficient provider will be selected to provide broadband service at the lowest cost.”¹³

Other key commenters generally support competitive and technological neutrality for the CAF.¹⁴ As such commenters note, the Commission has long embraced technical and competitive neutrality in the USF context. CTIA’s comments are representative of this view:

Any new support mechanisms – whether the CAF Phase I or Phase II – should be competitively and technologically neutral and support services commensurate with their importance to consumers. Given the evolution of technology and the marketplace, competitive neutrality has become an even more important universal service principle than when the Commission adopted the principle in 1997 [when, in] the *First Report and Order*, the Commission stated that “universal service support mechanisms and rules” should “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”¹⁵

As ViaSat’s comments observe, the Commission has previously concluded that the established USF principle of competitive neutrality requires equal treatment of satellite service providers.¹⁶ Furthermore, competitive and technological neutrality in the universal service context has been required by court decisions, as commenters indicate.¹⁷ And the National

¹³ Ohio PUC Comments at 30-31 (also noting that excluding satellite “would contradict the NBP’s stated principle of technology-neutrality”).

¹⁴ MTPCS d/b/a Cellular One and N.E. Colorado Cellular d/b/a Viaero Wireless Joint Comments at 5-6 (“Cellular One and Viaero Joint Comments”); Telecommunications Industry Association Comments at 3, 7-8; T-Mobile Comments at 2, 6-7.

¹⁵ CITA Comments at 22-23 (quoting *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8801 ¶ 47 (1997) (subsequent history omitted) (“*USF First Report and Order*”)); see also *id.* at 24 (“[G]ranteeing ILECs a right of first refusal . . . would lock in the ILEC’s monopoly by indefinitely hindering competitive alternatives, whether cable, satellite, or terrestrial wireless.”).

¹⁶ ViaSat Comments at 9.

¹⁷ See, e.g., CTIA—The Wireless Association Comments at 23 (“As the United States Court of Appeals for the Fifth Circuit held, the universal service program ‘must treat all market participants equally . . . so that the market, and not local or federal regulators, determines who shall compete for and deliver services to customers.’”) (quoting *Alenco Commun., Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000)).

Broadband Plan also advocates neutrality in establishing the CAF, as commenters recognize.¹⁸ The Commission should continue to preserve and promote competitive neutrality by permitting all broadband providers, including satellite, to participate in the CAF—consistent with Commission precedent and the record in this proceeding.

At the end of the day, all technologies will have a vital role in serving the unserved—wireline (including ILECs), wireless and satellite alike. No single technology will be the best solution for every unserved household. In order to ensure that the best and most affordable technology is deployed in the most efficient manner, it is important that satellite providers be allowed to participate directly as “prime” bidders in the reverse auctions.

C. The Few Commenters that Seek to Limit Participation by Satellite Broadband Providers Fail to Make Any Convincing Case for Doing So

The above-referenced comments, together with comments filed by the satellite industry itself, demonstrate that satellite broadband will provide high-quality broadband service to the end user. While a few parties voice concerns about the cost or quality of satellite broadband service, these concerns are based on outdated and incorrect information. The fundamental flaw common to these analyses is a failure to appreciate the impact of the next generation of broadband satellites. Given that significant performance-boosting satellite broadband technologies will soon be available, an analysis that only considers current capabilities does not reflect the full potential benefit that satellite broadband providers can bring within the time horizon for universal service reform.

¹⁸ National Broadband Plan at 145, Rec. 8.2 (“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.”). *See also* CTIA—The Wireless Association Comments at 23.

For example, some parties express concerns about latency of satellite communications.¹⁹ The State Joint Board Members assert that consumer complaints about latency and weather sensitivity belie the Commission’s finding that “satellite service is ideally suited for serving housing units that are the most expensive to reach via terrestrial technologies.”²⁰ The State Members’ concerns are effectively refuted, however, in comments filed by the Satellite Broadband Providers and ViaSat, which explain the capabilities of the next generation of satellites.²¹ As discussed therein, differences in latency between satellite and terrestrial wireless services are imperceptible for most uses of broadband, including the most popular broadband applications such as Web browsing, streaming audio and video, and VoIP and video conferencing involving a “single hop.” In fact, satellite broadband performs just as well as terrestrial wireless broadband for highly latency-sensitive applications such as gaming.²² Other applications, including those that require a “double hop” (*e.g.*, some VoIP and video conferencing calls), can be addressed in a variety of ways, including:

- Partnering with terrestrial providers to ensure the availability of a terrestrial voice network in the satellite provider’s designated service area.
- Requiring satellite providers to identify double-hop situations and switch the call to LEO or MEO service with lower latency.
- Designating separate providers for voice and broadband service (although this is probably the least efficient/desirable option).

¹⁹ State Members of the Joint Board Comments at 132-33; *see generally* Stephen Cobb, Rural Mobile & Broadband Alliance, “Satellite Internet Connection for Rural Broadband,” *available at* <http://www.rumbausa.net/whitepapers/> (analyzing performance of last-generation satellite services).

²⁰ State Members of the Joint Board Comments at 132-133.

²¹ Satellite Broadband Providers Comments at 6-12; Jackson Report at 4-6.

²² California PUC Comments at 9 (“[S]atellite is competitive with wireless terrestrial broadband in many areas, since wireless quality varies with location and time.”).

Indeed, the FCC already has determined that satellite networks can support quality voice service that is eligible for support under existing USF high-cost mechanisms.²³

Satellite also delivers significant offsetting advantages with respect to other dimensions of broadband service—including speed, symmetric capabilities, and low jitter (changes in latency).²⁴ Many customers would likely prefer a 12/3 Mbps satellite broadband service with moderate latency when compared to a 4/1 Mbps long-loop DSL service with somewhat lower latency. The next-generation of broadband satellites will enable such speeds with deployment costs far lower than other options.

Concerns about the cost of satellite service²⁵ are effectively addressed by the Commission’s own analysis and the record consensus that satellite is significantly less expensive than other technologies for a substantial portion of the unserved.²⁶ In any event, it is unfair and unreasonable to compare rates for *existing* satellite services with rates for services that are heavily subsidized by legacy high-cost support mechanisms. The commenters that raise these concerns likewise fail to recognize that next-generation satellites will dramatically increase available capacity, thus supporting the provision of service at very competitive rates. But even assuming for the sake of argument that next-generation satellite broadband services were more costly than alternative delivery mechanisms, that alone would not provide a basis for excluding

²³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 *et al.*, Fourth Order on Reconsideration and Report and Order, 13 FCC Rcd 5318, 5325 ¶ 10 (1997) (“[C]onsistent with the principles of competitive and technological neutrality ... non-landline telecommunications providers should be eligible to receive universal service support even though their local calls are completed via satellite.”).

²⁴ Satellite Broadband Providers Comments at 10-12.

²⁵ *See, e.g.*, Sacred Wind Comments at 5 (“A satellite solution would likely involve a ... monthly cost of transponder access exceeding \$150/month for latent voice and limited broadband.”).

²⁶ *See supra* note [7] and associated text.

satellite providers from participating in a CAF reverse auction. Higher costs would simply mean that satellite-based proposals would be more likely to lose at auction.

Similarly misplaced are Public Knowledge's concerns about satellite broadband usage caps. Such caps are not unique to satellite broadband providers. As Public Knowledge itself notes, "[m]ost ISPs, wired and wireless, impose usage caps."²⁷ Public Knowledge criticizes one particular satellite broadband download cap,²⁸ but this criticism is based on current technology and ignores the positive effect of massive amount of additional broadband capacity that upcoming satellite deployments will provide.

Furthermore, existing broadband caps for one particular service have nothing to do with whether satellite providers should participate fully and directly in the CAF. Traffic caps for all broadband technologies are simply a function of cost, and can be raised or lowered depending on the desired target cost of service. The Satellite Broadband Providers fully anticipate providing broadband service that compares favorably with other technologies on many dimensions including cost, speed, and permitted usage. Regardless of what caps may currently be in place for non-USF supported services, the Satellite Broadband Providers ask only that they be treated the same as providers using other broadband technologies in consideration for CAF support.

II. THE RECORD REFLECTS STRONG SUPPORT FOR THE COMMISSION'S PROPOSAL TO DISTRIBUTE CAF SUPPORT USING REVERSE AUCTIONS IN ALL AREAS

A. The Opening Comments Demonstrate the Benefits of Reverse Auctions

A diverse array of commenters supports the use of reverse auctions to ensure that CAF support is distributed in a cost-efficient manner and used to extend service to "unserved"

²⁷ Public Knowledge and Benton Foundation Comments at 15.

²⁸ *Id.* at 16.

households in a timely fashion.²⁹ As XO Communications notes, reverse auctions have numerous benefits, including that they: (i) harness competition through a market-based mechanism to distribute support efficiently; (ii) can encourage new competitors to enter a service market, potentially increasing overall competition; (iii) are more transparent than legacy support mechanisms; (iv) can lead to the delivery of universal service funds more quickly than other methods; and (v) can reduce the contribution burden on consumers.³⁰ The Satellite Broadband Providers agree, and reiterate their support for the use of reverse auctions to distribute CAF support in all areas.

Objections to the use of reverse auctions rest on incomplete or inaccurate interpretations of the statutory framework for universal service. For example, U.S. Cellular claims that the use of single-winner reverse auctions would be inconsistent with Section 214(e)(2) of the Act because only a single ETC would receive support in a given area, regardless of how many ETCs a state may have designated.³¹ As the Commission notes in the *NPRM*, though, ETC “designation merely makes a provider eligible to receive support; it does not guarantee support.”³² In fact, the distribution of support is governed by Section 254—not Section 214—of the Act.³³ The Commission has broad discretion to determine how support can be distributed

²⁹ See, e.g., New Jersey Board of Public Utilities Comments at 3; Florida Public Service Commission Comments at 4; American Cable Association Comments at 24; CTIA—The Wireless Association Comments at 13; COMPTTEL Comments at 31; Sprint Nextel Corporation Comments at 45.

³⁰ XO Communications Comments at 43-44.

³¹ United States Cellular Corporation Comments at 21-22.

³² *NPRM* ¶ 264.

³³ 47 U.S.C. § 254.

most effectively to accomplish the goals set forth therein,³⁴ and may adopt mechanisms that accomplish universal service goals while minimizing the contribution burden on consumers.³⁵ In any event, the use of reverse auctions for high-cost funding would not preclude ETCs from receiving support from other universal service mechanisms, including the Lifeline and Link Up programs.

B. The Opening Comments Provide No Valid Justification for Affording Special Treatment to Rural Incumbents

Unsurprisingly, a number of rural local exchange carriers (“RLECs”) and other incumbent interests seek preferential treatment (*e.g.*, rights of first refusal) so that they can continue to receive support even where they are not the most efficient broadband provider.³⁶ These commenters apparently understand that: (i) RLECs would not be the most efficient broadband provider in many parts of the country; and (ii) RLECs consequently are at risk of losing support over time if a reverse-auction mechanism is utilized in all supported areas. The Commission should recognize these arguments for what they are: self-interested attempts to advance private interests at the expense of the public.

In this regard, it is important to remember that the Commission’s statutory universal service mandate “requires sufficient funding of customers, not providers.”³⁷ Further, as the Commission recognized in the *NPRM*, “competitive neutrality”—defined as the state in which “universal service support mechanisms and rules neither unfairly advantage nor disadvantage

³⁴ Notably, Section 254(e) distinguishes between ETCs *eligible* for support and carriers that *receive* support. 47 U.S.C. § 254(e).

³⁵ *See Alenco Commun., Inc. v. FCC*, 201 F.3d 608 (5th Cir. 2000).

³⁶ *See, e.g.*, AT&T Comments at 98; CenturyLink Comments at 38; FairPoint Communications Comments at 20.

³⁷ *Alenco*, 201 F.3d at 620.

one provider over another, and neither unfairly favor nor disfavor one technology over another”—has been a guiding principle for the administration of the USF.³⁸ The Commission has long aimed to adopt rules that minimize competitive and technological bias, and that “facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier.”³⁹

The protectionist measures advocated by incumbent interests fly in the face of this longstanding approach, which is grounded in Section 254 of the Act. There simply is no principled reason for favoring incumbents, and doing so would serve only to entrench further a group of carriers that historically have used support inefficiently *because* they have not been subject to competition for that support. The goal of the CAF is to provide rural consumers with reasonable access to broadband service at reasonably comparable rates—not to ensure that any provider or class of providers receives support.⁴⁰ High-cost support should be earned through merit (best service for lowest cost), and not viewed as a perpetual form of corporate welfare to which RLECs are *entitled*.

Thus, the fact that RLECs might lose in reverse auctions simply is not a valid objection to their use. RLECs *should* lose if that is the most efficient result, as judged through an objective reverse-auction mechanism.⁴¹ On the other hand, RLECs *should* win where that would be the most efficient result. Consequently, the fact that RLEC costs may be *lower* than those other bidders in certain areas (due to sunk costs, economies of scale, etc.) is not a valid objection to the

³⁸ *USF First Report and Order*, 12 FCC Rcd at 8801 ¶ 47; *see NPRM* ¶ 82.

³⁹ *USF First Report and Order*, 12 FCC Rcd at 8802 ¶ 48.

⁴⁰ *See supra* note [36] and associated text.

⁴¹ Reasonable transition mechanisms will allow ILECs to adjust to the new support paradigm.

use of reverse auctions. If the incumbent's costs of upgrading and extending service actually are lower than the costs of new entrants, as many RLEC interests claim, that incumbent should prevail at auction. However, where RLEC costs are not the lowest for comparable service quality, reverse auctions may appropriately ensure the selection of the provider whose costs are lower.

C. The Commission Could Use Reverse-Auction Rules To Ensure that All CAF Recipients Make Certain Essential Service Commitments

Although the reverse-auction mechanism would leave incumbents without support in some cases, the Commission could ensure that consumers continue to receive essential services by properly structuring the rules for the CAF. For example:

The Commission could adopt rules requiring the support recipient to serve as a broadband provider of last resort throughout the relevant service area. Such rules could provide that a support recipient has fulfilled its service obligation only if it makes service ubiquitously available to all customers within the designated service area (*i.e.*, no refusal of service, or higher price, for any prospective customers, including truly remote customers, in a given service area). The Satellite Broadband Providers would have no problem committing to provide service on a ubiquitous basis in this fashion, assuming they were allowed to participate fully and directly in all aspects of the CAF. Indeed, such a requirement would lead to more accurate bids that internalize the true costs of extending service *throughout* an unserved area. This would enable the Commission to make true apples-to-apples comparisons as it selects auction winners. Notably, where satellite broadband capacity is available for resale, no provider would have an excuse for not providing ubiquitous coverage.⁴²

⁴² The Commission can and should allow winning bidders to meet this ubiquitous coverage obligation either directly or through partnership arrangements. That being said, satellite

The Commission could adopt rules requiring the award recipient to provide certain essential capabilities, such as E-911 access. While ETCs already are required to provide 911 and other services that are supported by universal service,⁴³ the Commission certainly could expand this list or otherwise require support recipients to provide critical capabilities to consumers. These requirements could be enforced both directly through the Commission’s rules and through milestones backed by performance bonds. The Satellite Broadband Providers would have no problem committing to provide such capabilities, either directly or through partnership arrangements.

The Commission could adopt auction rules to ensure that consumers in supported areas receive quality service at affordable rates. Consistent with the requirements of Section 253(b)(3) and ViaSat’s opening comments,⁴⁴ the Commission could require all auction participants to present bids based on their provision of service at an “affordable” price, in a manner that satisfies certain minimum standards of quality. The Satellite Broadband Providers would have no problem crafting their bids to conform to specific affordability and service quality standards.

III. THE RECORD SUPPORTS PROPOSALS TO STREAMLINE THE ETC DESIGNATION PROCESS, PARTICULARLY FOR “NATIONWIDE” PROVIDERS

Many of the largest providers of broadband services recognize that, in order to achieve the Commission’s goal to transform “a 20th century [universal service] program into an

broadband providers should be permitted to serve as either the “prime” or “sub” in these arrangements.

⁴³ 47 C.F.R. § 54.101(5).

⁴⁴ ViaSat Comments at 29.

integrated program tailored for 21st century needs,”⁴⁵ the Commission must adopt uniform, national eligibility requirements for nationwide providers of supported services.⁴⁶ Even supporters of the current eligible telecommunications carrier (“ETC”) designation process describe it as a lengthy, state-by-state process in which applicants are “subject” to “scrutiny by state regulatory commissions” and which “typically involve[s] extensive proceedings.”⁴⁷

Commenters recognize that streamlined federal ETC processes would remove barriers to entry,⁴⁸ expedite the provision of broadband service to unserved areas,⁴⁹ and lower CAF support costs.⁵⁰ A number of commenters express views consistent with the opening comments of the Satellite Broadband Providers, which encourage the Commission to establish procedures for the nationwide designation of nationwide ETCs at the federal level and to create uniform national

⁴⁵ *NPRM* ¶ 1.

⁴⁶ *See, e.g.*, CTIA—The Wireless Association Comments at 31-32 (“The Commission, not individual states, should adopt rules establishing the public interest obligations for recipients of near-term and long-term CAF support. These obligations must be explicitly spelled out in the federal rules so that ‘providers know how they are expected to use the funding and that the public will receive specific benefits from its investment’,” quoting *NPRM* ¶ 90); AT&T Comments at 75-79 (urging the Commission to limit ETC obligations and preempt states if necessary); Cox Communications Comments at 8 (“The Commission also should evaluate the extent to which it can make funding available to entities that are not eligible telecommunications carriers (‘ETCs’) or, if that is not possible, how it can make it easier for providers to become ETCs.”).

⁴⁷ Cellular One and Viaero Joint Comments at 16.

⁴⁸ Cox Communications Comments at 8 (“Obtaining ETC designation is a significant barrier to competitors that wish to qualify for high cost funding for telecommunications service today.”).

⁴⁹ Public Knowledge and Benton Foundation Comments at 10 (“As such, it is appropriate to remove regulatory hurdles – such as ETC funding eligibility requirements – that form barriers to deployment in all regions.”).

⁵⁰ ViaSat Comments at 41 (noting that the existing ETC designation process would harm the ability of nationwide broadband providers to extend broadband service quickly and at low cost).

service obligations to replace the mish-mash of state obligations that are the legacy of the monopoly POTS era.⁵¹

A number of state regulators and others argue that the states should play a significant role in designating ETCs for purposes of the CAF.⁵² However, as discussed above, non-uniform, legacy state ETC requirements impose barriers to competition and raise costs of deployment, discouraging the provision of broadband to unserved areas. The Commission should act to protect the achievement of the critical national goal of universal service by streamlining these requirements. In particular, inherently interstate satellite networks should not be subject to state regulatory jurisdiction. States may, however, continue to have involvement with terrestrial providers that provide significant amounts of intrastate service over which the states have historically exercised jurisdiction.

⁵¹ T-Mobile Comments at 7-8 (“The Commission should use this opportunity to harmonize ETC obligations through a clear set of federal requirements.”); CTIA—The Wireless Association Comments at 31 (“The Commission, not individual states, should adopt rules establishing the public interest obligations for recipients of near-term and long-term CAF support.”); Satellite Broadband Providers Comments at 19-24; ViaSat Comments at 41-43.

⁵² Cellular One and Viaero Joint Comments at 15-16; National Association of State Utility Consumer Advocates Comments at 39; Ohio PUC Comments at 6.

IV. CONCLUSION

Satellite broadband can and should play a key role in achieving the Commission's universal services goals. The Satellite Broadband Providers urge the Commission to adopt universal service reforms consistent with these comments.

Respectfully submitted,

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