

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Technology Transitions

Connect America Fund

GN Docket No. 13-5

WC Docket No. 10-90

**COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

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Dated: March 31, 2014

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The Massachusetts Department of Telecommunications and Cable (“MDTC”)¹ respectfully submits these comments in response to the Report and Order and Further Notice of Proposed Rulemaking (“Order and FNPRM”) released by the Federal Communications Commission (“FCC”) on January 31, 2014, in the Connect America Fund (“CAF”) docket.² In preparing for the anticipated competitive bidding portion of CAF Phase II, the FCC will conduct rural broadband experiments to help inform that process.³ These experiments will be funded by the CAF, and recipients of such funds will be required to receive an eligible telecommunications carrier (“ETC”) designation from the appropriate designating entity.⁴ Through the FNPRM, the

¹ The MDTC regulates telecommunications and cable services within the Commonwealth of Massachusetts and represents the Commonwealth before the FCC. MASS. GEN. LAWS ch. 25C, § 1; GEN. LAWS ch. 166A, § 16. The MDTC’s silence on any matter in the Order and FNPRM does not connote agreement or opposition by the MDTC.

² *In the Matter of Technology Transitions; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition; Connect America Fund; Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Numbering Policies for Modern Communications*, GN Docket Nos. 13-5, 12-353; WC Docket Nos. 10-90, 13-97; CG Docket Nos. 10-51, 03-123, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 14-5 (rel. Jan. 31, 2014) (“Order and FNPRM”).

³ *Id.* at ¶¶ 8, 83, 98, 102, 203. The FCC’s intention is “to leverage whatever knowledge can be developed quickly through such experiments to inform our judgment on an ongoing basis as we address critically important policy issues in several of our pending universal service rulemaking dockets.” *Id.* at ¶ 98.

⁴ *Id.* at ¶ 117. The MDTC designates ETCs operating in Massachusetts. *See Investigation by the Department of Telecommunications & Energy on its own motion concerning (1) designation of eligible telecommunications carriers, pursuant to Section 102 of the Telecommunications Act of 1996; (2) participation in the FCC’s modified*

FCC seeks comment on a number of discrete issues before it moves forward with seeking formal proposals for the experiment.⁵

The MDTC applauds the FCC's decision to move forward on a competitive bidding trial before implementing that mechanism under CAF Phase II. Like the FCC, the MDTC believes that such an approach could provide valuable information, including providing insight into the interest and ability of a wide range of entities to provide universal service to areas unserved by broadband today.⁶ Such an approach may also serve to guide the FCC and states in their joint universal service efforts.

The MDTC has previously offered input relating to CAF competitive bidding mechanisms.⁷ Building upon these recommendations, the MDTC strongly discourages the FCC against circumventing the state role in the ETC designation and relinquishment process, and encourages the FCC to garner state input on proposals submitted for areas in their states. In addition, the FCC should set aside a portion of the experiment funds for price cap areas, and assign priority consideration to proposals that would serve states where the incumbent has not utilized eligible CAF Phase I incremental support.⁸

Lifeline program and acceptance of increased federal funding, pursuant to 47 C.F.R. Part 54 Sections 54.400-54.417 et seq.; and (3) participation in the FCC's program for discounted intrastate rates for telecommunications services for rural health care providers, pursuant to Section 254(h) of the Telecommunications Act of 1996, MDTE Docket No. 97-103, Order Opening Investigation (Dec. 8, 1997), at 6 (asserting jurisdiction over ETCs operating in Massachusetts and directing entities to submit designation requests to the MDTC's predecessor).

⁵ Order and FNPRM at ¶¶ 202-230. The FCC directed entities to submit non-binding, initial expressions of interest for the experiments by March 7, 2014, with additional filings submitted on a rolling basis. *Id.* at ¶ 105. As of March 12, 2014, the FCC received nearly 1,000 expressions of interest from an assortment of entities. *See* Telecommunication Reports, *TRDaily*, "FCC Gets Nearly 1,000 Expressions Of Interest In Rural BB Experiments" (Mar. 12, 2014).

⁶ *See* MDTC Comments, WC Docket No. 10-90 (Jan. 28, 2013), at 2, 7; MDTC Comments, WC Docket No. 10-90 *et al.* (Jul. 12, 2010), at 10-11.

⁷ *See generally* MDTC Comments, WC Docket No. 10-90 (Jan. 28, 2013). *See also* MDTC Comments, WC Docket No. 10-90 *et al.* (Jan. 18, 2012), at 2-18, 22-26; MDTC Comments, WC Docket No. 10-90 *et al.* (Jul. 12, 2010), at 10-11.

⁸ The MDTC remains neutral on the proposals involving Massachusetts service areas at this time.

I. THE FCC SHOULD NOT CIRCUMVENT THE STATE ROLE IN THE ETC DESIGNATION OR RELINQUISHMENT PROCESS.

The FCC acknowledges the key cooperative role that states play in ensuring access to universal services.⁹ The FCC should not interfere with state jurisdiction involving ETC service areas, voice service obligations, or ETC status.¹⁰ Yet, the FCC’s directives may ultimately circumvent the state role in those processes.¹¹ Specifically, the FCC expects ETC designations to occur within 90 days of the funding award¹² and seeks comment on whether to assert jurisdiction where a state does not act on an ETC application within a specified time period.¹³ The FCC also seeks comment on relieving incumbent providers of their federal ETC high-cost obligations for those areas where support is awarded to another entity.¹⁴

The FCC should, instead, refrain from imposing time limits on state action and should incorporate a process to garner state input before naming funding awardees. Mandating time frames for state action may negatively impact states’ ability to thoroughly investigate entities seeking an ETC designation. Regardless of whether the FCC defines state “action” to mean initiating or concluding an ETC designation proceeding, such a mandate may not align with established state processes; could hamper states’ abilities to coordinate the application with state universal service fund requirements; and may unduly burden the limited resources of states to

⁹ Order and FNPRM at ¶ 97.

¹⁰ See MDTC Comments, WC Docket No. 10-90 *et al.* (Jan. 18, 2012), at 12-15, 26-29; MDTC Comments, WC Docket No. 10-90 *et al.* (Apr. 15, 2011), at 17-18. Section 254(e) requires that a carrier be designated as an ETC to receive universal service support, and section 214(e) describes the parameters by which ETC designations (and relinquishments) may be made. See 47 U.S.C. §§ 214(e) and 254(e).

¹¹ Although the FCC does not “seek[] to resolve the legal and policy questions arising from the technology transitions in the context of an experiment[,]” the FCC’s actions in the experiments will impact its decisions on universal service mechanisms going forward. Order and FNPRM at ¶¶ 8, 98. The FCC seeks to “refresh the record on” and streamline the ETC designation process. *Id.* at ¶¶ 94, 222.

¹² *Id.* at ¶ 118.

¹³ *Id.* at ¶ 222 (contemplating assertion of jurisdiction if a state “fails to act” on an ETC application within 60 days).

¹⁴ *Id.* at ¶ 223.

address other matters.¹⁵ The FCC’s own actions dictate, in part, state ETC designation proceedings.¹⁶ Establishing time limits for purposes of CAF ETC designations may not align with the FCC’s own Lifeline-only ETC designation process.¹⁷ Further, unlike other, unrelated statutory provisions, nothing in Section 214(e) specifies or implies that states must act within a specified time period on ETC-related petitions.¹⁸ The MDTC appreciates that the FCC is moving forward on CAF Phase II competitive bidding considerations but urges a measured approach that respects state ETC processes.

Further, the FCC can improve the federal-state cooperative framework by garnering state input prior to naming funding awardees, as state entities better understand the unique conditions and requirements of their states.¹⁹ One possible approach is to have the appropriate state entities²⁰ prioritize rural broadband experiment proposals submitted for an area in their state, similar to the process utilized by National Telecommunications and Information Administration

¹⁵ Massachusetts, for instance, conducts in-depth evidentiary proceedings involving discovery, legal briefs, and public and evidentiary hearings. This process enables the MDTC to determine whether an entity’s assertions accurately reflect both federal and state law; analyze whether an entity is technically and financially capable of providing service as an ETC; and determine whether granting an application is in the public interest consistent with section 214(e)(2). *See, e.g., Application of BLC Management, LLC d/b/a Angles Communication Solutions for Certification as an Eligible Telecommunications Carrier*, MDTC Docket No. 09-2, *Order* (Aug. 23, 2010), at 1, 19 (denying the entity’s petition for designation as an ETC); *Petition for Limited Designation as an Eligible Telecommunications Carrier for Purposes of Low Income Support Only*, MDTC Docket No. 12-4, *Order Approving Petition* (Aug. 30, 2012), at 2, 25 (granting entity’s petition for designation as an ETC).

¹⁶ *See, e.g., Petition of Aegis Telecom, Inc. d/b/a Off the Hook Telecom for Limited Designation as an Eligible Telecommunications Carrier*, MDTC Docket No. 11-5, *Order of Dismissal Without Prejudice* (Mar. 1, 2012) (dismissing the company’s ETC petition and permitting a re-filing only after the FCC approves the company’s Compliance Plan).

¹⁷ *See* List of Lifeline ETC Petitions Pending at FCC, *available at*: <http://www.fcc.gov/encyclopedia/lifeline-compliance-plans-etc-petitions> (last viewed Mar. 12, 2014).

¹⁸ For instance, Congress clearly defined a 90-day period for state commencement of action relating to interconnection agreements and final action “within a reasonable period of time” after a wireless siting application is filed. *See* 47 U.S.C. §§ 252(e)(5) and § 332(c)(7)(B)(ii). The FCC determined that the phrase “reasonable period of time” is presumptively (but a rebuttable) 90 days to process an application to place a new antenna on an existing tower and 150 days to process all other applications. *See In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, WT Docket No. 08-165, *Declaratory Ruling*, FCC 09-99 (rel. Nov. 18, 2009), at ¶¶ 4, 32 (subsequent history omitted).

¹⁹ *See* State Member Comments of the Federal-State Joint Board on Universal Service, WC Docket No. 10-90 *et al.* (May 2, 2011), at 88-89.

²⁰ “Appropriate state entities” may include state commissions, state broadband offices, and Governors’ offices.

for awarding Broadband Technology Opportunities Program funds.²¹ The FCC has received letters of interest from a diverse pool of applicants, including nontraditional communications providers. State knowledge of the organizational history, business practices, financial stability and general effectiveness of these applicants could be valuable to the FCC's identification of successful proposals. Further, this would provide state commissions with a more solid basis to move forward on ETC petitions received for CAF-related projects.

Finally, to the extent that the FCC further contemplates relieving incumbents of their federal high-cost ETC obligations, the FCC should make clear that this does not extend to the ETCs' Lifeline-related requirements.²² In addition, the FCC should remind ETCs that any desire to relinquish their designations or redefine their service territories for purposes of universal service support must be submitted to any state commission that asserts jurisdiction.²³

II. THE FCC SHOULD SET ASIDE A PORTION OF THE FUNDING FOR PRICE CAP AREAS AND ASSIGN PRIORITY CONSIDERATION TO PROPOSALS THAT SERVE STATES WHERE THE INCUMBENT HAS NOT UTILIZED CAF PHASE I INCREMENTAL SUPPORT.

The FCC suggests allocating a specific portion of the CAF Phase II experiment funds to price cap areas.²⁴ The FCC should devote a substantial amount of the CAF Phase II experiment funding to price cap areas because much of the areas unserved by broadband are located in price cap territories and because some of the funding derives from price cap carrier rejection of CAF

²¹ See 47 U.S.C. § 1305(c) (permitting NTIA to consult with States on the identification of eligible areas and allocation of grant funds within their States); National Telecommunications and Information Administration ("NTIA"), Department of Commerce, RIN 0660-ZA28, *Notice of Funds Availability and Solicitation of Applications*, 74 FR 33104-01, 33108 (Jul. 9, 2009) (indicating that "the Governor's office of each state will receive a list of the applications under consideration" and permitting states to "provide a list and prioritization of recommended projects, along with an explanation of why the selected proposals meet the greatest needs of the state").

²² Currently, high-cost/CAF ETCs must also provide Lifeline service throughout their designated service area. See 47 C.F.R. § 54.405(a); *In the Matter of Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161 (rel. Nov. 18, 2011), at ¶ 79 (subsequent history omitted).

²³ See 47 U.S.C. §§ 214(e)(4) and (5); MDTC Comments, WC Docket No. 10-90 *et al.* (Jan. 18, 2012), at 26-31.

²⁴ Order and FNPRM at ¶ 204.

Phase I incremental support for their eligible areas. This approach will also better inform the FCC on the CAF Phase II competitive bidding mechanism in price cap areas.

Furthermore, the FCC should assign priority consideration²⁵ to proposals that would serve states where the incumbent has not utilized incremental support, such as in Massachusetts.²⁶ Based on current timelines and FCC action thus far, implementing this mechanism is unlikely until at least 2-3 years from now. Giving priority consideration to proposals submitted for these price cap areas could ease the delay of much-needed funding into these areas for broadband deployment.

III. CONCLUSION

The MDTC fully supports the use of competitive bidding trials to inform CAF Phase II. However, because universal service is a joint federal-state concern, the MDTC urges the FCC to take steps to ensure that it does not circumvent the state role in the ETC designation and relinquishment process, and to garner state input on proposals submitted for areas in their states. In addition, the MDTC recommends that the FCC set aside funding for price cap areas and assign priority consideration to proposals that would serve states where the incumbent has not utilized CAF Phase I incremental support.

²⁵ The MDTC does not urge guaranteed approval but, instead, recommends that these proposals be the first to be reviewed and considered for possible funding.

²⁶ The dominant incumbent for Massachusetts has rejected all incremental support for which it has been eligible nationwide for the past two funding years. *See* Verizon Letter, WC Docket No. 10-90 (Aug. 20, 2013) (declining 2013 CAF Phase I Round 2 incremental support funding); Verizon Letter, WC Docket No. 10-90 (Jul. 24, 2012) (declining over \$19.7 million in 2012 CAF Phase I Round 1 incremental support funding).

Respectfully submitted,

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