BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
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	)	
Rural Broadband Experiments	)	WC Docket No. 14-259
	)	
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REPLY COMMENTS

The American Cable Association[1] ("ACA") hereby submits reply comments in response to the Further Notice of Proposed Rulemaking in the above-referenced dockets.[2] As ACA discussed in its initial comments, the Commission's effort to develop a weighting methodology for the Connect America Fund ("CAF") Phase II competitive bidding program is not only novel but challenging.[3] For the program to achieve its objectives and for the process to have integrity,

[1] ACA represents approximately 750 smaller cable operators and other local providers of broadband Internet access, voice, and video programming services to residential and commercial customers. These providers pass approximately 19 million households of which 7 million are served. Many of these providers offer service in rural communities and more remote areas.

[2] *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Rural Broadband Experiments*, WC Docket No. 14-259, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-64 (rel. May 26, 2016) (referred to herein as the "Report and Order" for rules adopted on May 25, 2016 or the "FNPRM" for the proceeding where comment is being sought on additional matters).

[3] Comments of the American Cable Association, WC Docket Nos. 10-90 *et al.*, (July 21, 2016) ("ACA Comments").

the weighting methodology needs to have a sound statutory basis and any weighting factors need to emanate from that basis, be based upon a methodology, and be quantified based on market data. Unfortunately, many parties submitted comments proposing a weighting system that strayed from the statute's "reasonable comparability" requirement. Instead, these commenters tended to emphasize the need to maximize the number of locations served within the budget, but, as ACA discusses herein, not only does this approach downplay the statute, it also will limit the cost-effective distribution of support. Further, many parties proposed weights without any effort to link them to the statute, a methodology, or actual data. The Commission cannot adopt such weights, which are arbitrary and will skew the competitive bidding process. ACA continues to recommend that the Commission weight bids based on the statutory requirement that consumers in eligible areas receive reasonably comparable service to urban consumer preferences for broadband Internet access services over the 10-year timeframe of the program and that, to maximize participation, the cost of bids in different performance tiers be normalized. Both of these factors can be determined using a methodology based on market data and are quantifiable.

I. "REASONABLY COMPARABLE" BROADBAND SERVICE SHOULD BE THE PRIMARY TOUCHSTONE OF ANY WEIGHTING METHODOLOGY

In seeking to develop a weighting methodology, the Commission prefers higher speed over lower, higher usage allowances over lower, and lower latency over higher but also seeks to ensure funding is provided most cost-effectively and remains within the limited budget.[4] How then are these potentially competing objectives to be balanced? ACA submits that answers to these questions must emanate from the statute, which the Commission cites as a "guide" in the

[4] FNPRM, ¶¶ 207-208.

FNPRM[5] and which directs the Commission to use universal service support to provide to rural residents service that is reasonably comparable to the service urban residents are receiving.[6] Thus, ACA agrees with NTCA and other commenters that the weighting methodology must be consistent with "the Section 254 principles of 'reasonable comparability' and universal service as an 'evolving level of service.'"[7]

Certain commenters urged the Commission to adopt a weighting criterion that maximizes the locations served by favoring bids for performance tiers below the top (Gigabit) tier. Verizon, for instance, argued that such an approach would be "fiscally responsible and consistent with the Commission's universal service obligations."[8] ACA appreciates Verizon's intent to ensure support is distributed most cost-effectively, but its approach, and that of other commenters that make "maximizing locations" the primary weighting criteria, suffers in many ways:

First, this approach largely ignores the statutory requirement of "reasonable comparability," and by favoring lower tiers would shortchange hundreds of thousands of residents in eligible areas and their communities. Based on public sources, ACA estimates that

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[5] *Id.*, ¶ 214.

[6] 47 U.S.C. § 254(b)(3).

[7] *See* Comments of NTCA – The Rural Broadband Association, WC Docket Nos. 10-90 *et al*. at 4 (July 21, 2016) ("NTCA Comments"). *See also e.g*. Comments of the United States Telecom Association, WC Docket Nos. 10-90 *et al*. at 2 (July 21, 2016) ("USTelecom Comments") ("such valuation also must be consistent with the Communications Act's requirements that USF support be directed towards reasonably comparable service that have 'been subscribed to by a substantial majority of residential customers.'"); Comments of the Wireless Internet Service Providers Association, WC Docket Nos. 10-90 *et al*. at 2-4 (July 21, 2016) ("WISPA Comments") (citing to the FNPRM support for this standard); Comments of ViaSat, Inc., WC Docket Nos. 10-90 *et al*. at 4 (July 21, 2016) ("ViaSat Comments") ("the Commission [should] ground those weights in empirical data that reflect the actual preferences of consumers.").

[8] *See* Comments of Verizon, WC Docket Nos. 10-90 *et al.* at 2 (July 21, 2016) ("Verizon Comments").

by 2027 (the currently expected end of the program), approximately 50 percent of all (not just urban) consumers will be subscribing to broadband at speeds of at least 100 Mbps and that the average speed for all consumers will be 200 Mbps. In contrast, only five percent of consumers will be subscribing to service below 30 Mbps – the two lowest performance tiers.[9]

Second, this approach would run counter to its proponents' claims that it would be a fiscally responsible means to distribute support. This approach would decrease participation in the competitive bidding process since providers that do not have network facilities in eligible areas would be at such a disadvantage they would be unlikely to participate. This would reduce cost-effectiveness because, with fewer bidders for the upper tiers, bidders for the lower tiers could prevail without needing to place their lowest bids. The Commission would then end with the worst of both worlds – lower performance and the provision of too much support for the delivery of that low performance.

Finally, this approach is driven by an artificial construct: the Commission's decision to add to the auction approximately 300,000 "extremely high cost" locations but not provide sufficient support to account for this very large number of new and much higher cost locations.[10] In other words, an approach that over weights the middle performance tiers to maximize locations served, including many locations that are unlikely to receive bids from any provider

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[9] To make its projections, ACA analyzed projected consumer broadband speeds by: (1) examining projected consumer broadband subscriptions (using data from Ovum) by speed and identifying what tier of service the majority of consumers are expected to subscribe to by 2027, and (2) using historical quarter-over-quarter growth in average broadband speeds from 2011 to 2015 to project average U.S. broadband speeds by 2027.

[10] The Commission also is adding other eligible locations to the competitive bidding process, but, to the extent the locations are so far known, these do not require substantial additional funding. More specifically, the Commission is adding approximately 43,000 locations served by subsidized wireline providers, which were removed from the offer of Phase II model-based support. ACA calculates that on average the amount of support for each of these locations, based on the cost-model (reserve price), is approximately $400 per year, and that in aggregate, assuming all bids are at the reserve price, the total amount of annual support would be approximately $17 million.

other than an existing satellite broadband provider offering the lower performance tier, is a specious solution: seeking to squeeze the limited funding provided by the Commission into these additional, costly locations. ACA does not object to the Commission's decision to permit applicants to bid to serve extremely high cost locations. However, the Commission should recognize that its approach has greatly increased the likelihood that there will not be sufficient funding to bring service to all eligible areas, and it should not permit this decision to drive poor outcomes for many consumers in eligible areas that are likely to receive bids from non-satellite broadband providers. Rather, it should base its weighting methodology using ACA's proposal and recognize that the competitive bidding process is likely to result in many extremely high cost locations not being served. That is, it should not permit a lesser, albeit important, factor to trump the primary objective of bringing reasonably comparable service to eligible locations. The Commission should then place these remaining locations which were not funded into the upcoming Remote Areas Fund process.[11]

The "reasonable comparability" criterion not only stems from the statute, but, as ACA demonstrated in its comments, it is a methodology that can be used to produce a quantifiable weighting factor. The Commission can use public data such as provided above along with its own data to project broadband needs and subscriptions for urban consumers over the 10-year life of the program for each performance tier. Once these are known, ACA believes the Commission should construct straightforward weights, *e.g.* if 50 percent of consumers are expected to subscribe to the highest tier and only 5 percent the lowest, the weighting ratio

[11] Verizon also proposed, to serve more locations within the budget, that bids be scored based on "dollars per location" rather than the "ratio of the bid to the reserve price." Verizon Comments at 3. Verizon argues that because the Commission did not decide to use Verizon's approach, it should set weights to maximize the number of locations served. Again, ACA shares Verizon's concern about being fiscally responsible, but the Commission should not let the "policy tail wag the dog."

should be 10:1. In addition to using this approach to constructing weights for the performance tier factors, the Commission can employ it to develop an additional weighting factor for latency.[12]

Whereas ACA sought to develop a methodology for assigning weights based on the statute and pointed to relevant market data that could be relied upon to quantify weights, most commenters proposed numbers without any foundation.[13] Hughes Network Systems, for instance, discussed various percentage bidding credits without justification for any amount.[14] WISPA too proposed percentage bidding credits without providing a detailed rationale for the proposed amount.[15] These and similar proposals are not tied to the statute and actual data are arbitrary, and accordingly, cannot be adopted by the Commission.[16]

ITTA at least provided some data about broadband take rates, seeking to anchor weights based on "empirical observation of consumer behavior and preferences."[17] But ITTA

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[12] Like ACA, other commenting parties sought a substantial demerit for higher latency. *See, e.g.*, Comments of ITTA – The Voice of Mid-Size Communications Companies, WC Docket Nos. 10-90 *et al*. at 10 (July 21, 2016) ("ITTA Comments") ("From the consumer perspective, latency is a more critical factor in the quality of the user experience than incremental speed differences…the Commission should weight high latency negatively."); USTelecom Comments at 7 ("-75 points" for high latency).

[13] The development of weights for the competitive bidding process is fundamental and critical to making the simultaneous auction successful and thus requires precision to "represent the relative benefits of service." FNPRM, ¶ 211. Accordingly, ACA submits the development of weights differs materially from the Commission's previous efforts to develop incentives for certain parties, such as small businesses, to participate and prevail in forward auctions where a general approximation of value was seen as sufficient.

[14] Comments of Hughes Network Systems, LLC, WC Docket Nos. 10-90 *et al*. at 4 (July 21, 2016) ("Hughes Network Comments").

[15] WISPA Comments at 5-6.

[16] *See* USTelecom Comments at 3. While acknowledging the need to follow the "reasonably comparable" standard, US Telecom does not provide any data connecting that standard to its proposed weights nor does it project expected broadband take-rates over the life of the program.

[17] *See* ITTA Comments at 4-7.

provided data on current broadband adoption rates by rural consumers and not on the adoption rates for urban consumers upon which the "reasonably comparable" standard is based.[18] Further, ITTA's rates were historical and not forward-looking. In essence, under ITTA's approach, rural residents would be locked-in to lower broadband speeds because these consumers have historically not purchased higher speed service – or because these higher speed services have not been available to them to take. That is bad policy since it would guarantee that rural residents and their communities would lag farther and farther behind, expanding the urban-rural digital divide. It also is inconsistent with the statute. Finally, even assuming *arguendo* there is validity in its approach, ITTA makes no effort to link the data quantitatively to its proposed weights, relying instead on a vague approach to "differentiate minimally" among the tiers.[19]

II. THE WEIGHTING METHODOLOGY SHOULD NORMALIZE DEPLOYMENT COSTS AMONG ASSUMED TECHNOLOGIES FOR EACH PERFORMANCE TIER TO MAXIMIZE PARTICIPATION AND TO REFLECT CONSUMER BROADBAND PREFERENCES

In its initial comments, ACA proposed that to maximize participation and reflect consumer preferences, weighting should account for the significant differences in costs for deploying different network technologies in different geographies among the performance tiers.[20] While no other party proposed directly a deployment cost normalization process, some parties touched on this same issue in different ways. NTCA, for instance, proposed that the

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[18] *See id*. at 4-6.

[19] *Id.* at 8-10. ACA also notes that "Americans living in rural and urban areas adopt broadband at similar rates where 25 Mbps/ 3 Mbps service is available, 28 percent in rural areas and 30 percent in urban areas." *See* FCC, *2016 Broadband Progress Report*, (Jan. 29, 2016), https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2016-broadband-progress-report.

[20] ACA Comments at 8.

Commission adopt a "total cost of ownership" approach to valuing bids.[21] A similar rationale for weighting bids was proposed by the National Rural Electric Cooperative Association and the Utilities Technology Council.[22]

ViaSat also addresses the issue of deployment cost but from a different perspective. It contends that it is incorrect to presume "that satellite providers necessarily would deploy service using existing infrastructure with minimal cost…inasmuch as satellite providers likely would incur significant additional costs to serve areas deemed 'unserved' by the Commission."[23] While it does not quantify these additional costs, ViaSat argues they include "up-front investment, installation and support costs" and "opportunity costs."[24] ACA disagrees with ViaSat and submits these costs either are minimal or are likely to be incurred by all applicants bidding in any performance tier.[25] Moreover, ViaSat's comments that it will incur substantial additional costs to serve eligible areas stand in contrast to those of Hughes Network Systems,

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[21] *See* NTCA Comments at 8 ("A 'total cost of ownership' approach would look beyond the initial direct costs of network deployment and take account as well of the indirect costs that are part of networks that lack the necessary scalability.").

[22] *See* Joint Comments of the National Rural Electric Cooperative Association and the Utilities Technology Council, WC Docket Nos. 10-90 *et al*. at 8 (July 21, 2016) ("Gigabit services are typically delivered over fiber-based networks having useful economic lives in excess of 20 years and supported by a dynamic technology ecosystem that has consistently enhanced the derivable bandwidth from discrete fibers.").

[23] ViaSat Comments at 2.

[24] ViaSat today promotes its ability to provide broadband Internet access service via its wildblue satellite network. *See wildblue website* at www.wildblue.com ("Finally, high speed Internet service no matter where you live…Exede satellite internet gives you the freedom to be online at the speed that today's websites demand.") (last viewed Aug. 5, 2016).

[25] A report on broadband access by Empire State Development (New York) further validates ACA's view that there is not significant additional investment needed for satellite to serve low density areas, noting that "satellite providers are apparently able to recover their costs at their current pricing levels for even the lowest density single case user." *See* Empire State Development, "Policy Alternatives Supporting Deployment of Broadband Services in Rural Areas of New York State" Appendix I at 7, (May 2007), http://esd.ny.gov/Resources/broadband.pdf.

"the nation's leading provider of satellite consumer broadband services, currently serving over one million customers, principally in rural and remote areas."[26] Not only is Hughes using existing infrastructure to serve rural and remote areas, later in 2016, it will launch "a second next-generation broadband satellite…which will provide advanced satellite broadband coverage across the United States, increase the speeds…to upwards of 25 Mbps and beyond, and increase Hughes's capacity to provide service to customers."[27] Hughes is planning an even higher performance satellite launch later in the decade. Thus, in essence, the incremental cost for Hughes to serve eligible locations appears to be minimal at most.

In sum, ACA believes its cost normalization approach has support in the record and should be used as part of the weighting methodology to maximize participation and reflect consumer preferences.

Respectfully submitted,

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[26] Hughes Network Comments at 1.

[27] *Id.*