

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

In the Matter of

Connect America Fund

ETC Annual Reports and Certifications

Rural Broadband Experiments

WC Docket No. 10-90

WC Docket No. 14-58

WC Docket No. 14-259

**JOINT COMMENTS OF THE MASSACHUSETTS DEPARTMENT
OF TELECOMMUNICATIONS AND CABLE AND THE
MASSACHUSETTS BROADBAND INSTITUTE**

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The Massachusetts Department of Telecommunications and Cable (“MDTC”)¹ and the Massachusetts Broadband Institute (“MBI”)² (jointly “Massachusetts”) respectfully submit these comments responding to the Further Notice of Proposed Rulemaking (“FNPRM”) released by the Federal Communications Commission (“Commission”) on May 26, 2016.³ Building upon its Connect America Fund (“CAF”) reforms, the Commission seeks additional comment on the CAF Phase II Auction (“Auction”) designed to allocate CAF funds to support broadband development largely in areas where price cap incumbent local exchange carriers (“ILECs”)

¹ The MDTC regulates telecommunications and cable services within Massachusetts and represents the Commonwealth in matters before the Commission. *See* MASS. GEN. LAWS ch. 25C, § 1; MASS. GEN. LAWS ch. 166A, § 16.

² The MBI is a division of the Massachusetts Technology Collaborative and the state authority responsible for leading the efforts of the Commonwealth to close the broadband access divide in its rural communities. *See* MASS. GEN. LAWS ch. 40J, § 6B.

³ *In re Connect America Fund, ETC Annual Reports and Certifications, Rural Broadband Experiments*, WC Docket Nos. 10-90, 14-58, 14-259, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 16-64 (“*CAF II Auction Order & FNPRM*”) (rel. May 26, 2016). Silence on any matter not addressed in these comments does not connote agreement or opposition by Massachusetts.

rejected model-based CAF II support.⁴ Massachusetts appreciates this opportunity to comment and focuses on the Commission’s consideration of how best to ensure equitable and appropriate support to all states and on how to best coordinate distribution of CAF funding with state-level efforts to fund broadband development in unserved areas.⁵

Many rural consumers in price cap territories have long been at a disadvantage within the federal universal service framework.⁶ This is especially true for Massachusetts, which has been a net-payor state receiving limited high-cost funding since the federal Universal Service Fund’s (“USF”) inception.⁷ Between 2010 and 2014, Commission estimates indicate that Massachusetts has paid a net total of nearly \$679 million into the USF.⁸ Unserved Massachusetts consumers

⁴ *CAF II Auction Order & FNPRM* at ¶¶ 205-229; *see also In re Connect America Fund*, WC Docket No. 10-90 *et al.*, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161 (rel. Nov. 18, 2011) (“*Comprehensive Reform Order*”) at ¶¶ 178-179, 1190-1222 (specifying that the Commission would conduct an auction for CAF support where price cap ILECs rejected model-based CAF support and sought comment on that process).

⁵ *See CAF II Auction Order & FNPRM* at ¶¶ 3, 217-224; *see also* 47 U.S.C. § 254(b).

⁶ *See, e.g., Comprehensive Reform Order* at ¶¶ 21, 127 (targeting specific CAF support to price cap territories, noting that more than 83% of the Americans that lacked access to residential broadband at or above the Commission’s benchmark at the time resided in these areas). Especially affected are those rural consumers living in states like Massachusetts where all but three towns are in a price cap territory and to which very little high cost support has been distributed. *See* Universal Service Administrative Company, High Cost Funding Disbursement webpage, available at <http://www.usac.org/hc/tools/disbursements/default.aspx> (last viewed Jul. 20, 2016) (used to search and compare high cost support and disbursement totals and reflecting the very limited high cost support flowing into Massachusetts); Commission, *Study Area Boundaries* webpage, available at <https://www.fcc.gov/maps/study-area-boundaries/> (last viewed Jul. 20, 2016) (displaying ILEC territories with the exception of price cap carriers Verizon and AT&T); Federal-State Joint Board on Universal Service (“USF Joint Bd.”), *Universal Service Monitoring Report 2015*, CC Docket No. 96-45 *et al.* (rel. Dec. 2015) (“*2015 USF Monitoring Report*”), at 35, Table 3.4, “High-Cost Support Fund Claims – by Mechanisms and State: 2014” (displaying high cost fund claims by state and reflecting that Massachusetts receives a very limited amount of high cost support in comparison to other states); MDTC, *Competition Status Report* (Feb. 12, 2010) at 11, Fig. 2, “ILEC Service Territories,” available at <http://www.mass.gov/ocabr/docs/dtc/compreport/competitionreport-combined.pdf> (last viewed Jul. 20, 2016) (showing that Verizon serves as the ILEC in the entire state with the exception of the towns of Richmond, Granby, Gosnold, and a portion of the Town of Hancock).

⁷ *Supra* at n.6.

⁸ Massachusetts’ total estimated contributions for this period exceeded \$985 million with just over \$306 million in federal support received from the various USF programs. *Compare 2015 USF Monitoring Report* at 18, Table 1.9 (“Universal Service Support Mechanisms by State: 2014 (Annual Payments and Contributions in Thousands of Dollars)”) with similar data tables in the *USF Monitoring Reports* released in 2011 through 2014 available at <https://www.fcc.gov/general/federal-state-joint-board-monitoring-reports> (last viewed Jul. 20, 2016); *see also 2015*

should not continue to be disadvantaged simply by virtue of a carrier's decision to reject support. The Commission's considerations in the instant rulemaking are a step in the right direction. Specifically, the Commission's commitment to ensure equitable support to states is commendable,⁹ since an auction approach does not necessarily guarantee support to the eligible areas where it is needed.¹⁰ As the Commission recognizes, those areas where ILECs declined a significant amount of model-based CAF support require special consideration in the present rulemaking, since consumers in these areas remain without a clear path to universal broadband service.¹¹ This makes it necessary for the Commission to adopt a process that will serve these unmet needs and ensure that the federal program is structured "to provide sufficient universal service funds to [meet those needs]."¹²

The Commission should adopt Auction rules that prioritize the need for service in these unserved areas by dedicating specific funding to the states where ILECs declined a significant amount of model-based support and otherwise receive limited CAF funding. In the event this dedicated funding is not awarded in the Auction, the Commission should ensure its delivery to still unserved areas within the declined states by establishing a new CAF mechanism to award funds outside of the Auction process. Specifically, the Commission can accomplish these objectives by:

- First, defining "declined states" as states where ILECs in the aggregate declined at least 80% of the model-based support ("declined states");

USF Monitoring Report, Supplementary Material, "Technical Appendix: Estimating End-User Telecommunication Revenue by State in 2013" (discussing how the Commission estimates USF contributions totals at the state level).

⁹ *CAF II Auction Order & FNPRM* at ¶¶ 86 and 217, n.413.

¹⁰ *Id.* at ¶ 196 (recognizing that "there may not be winning bidders for all of the high-cost census blocks in the declined states that are included in the Phase II auction").

¹¹ *Id.* at ¶¶ 3, 217-224.

¹² *Id.* at ¶¶ 86, 217; *see also* 47 U.S.C. § 254(b).

- Second, assigning added weight to bids made for eligible areas in the declined states and giving those bids priority consideration;
- Third, committing to provide dedicated funds to each declined state in an amount equal to or greater than the model-based support declined by the ILECs;¹³ and
- Finally, developing a new grant-based CAF mechanism to support expansion of infrastructure projects funded under appropriate state initiatives. This mechanism would act as an additional “backstop” for declined states where the support through the Auction process remains less than that rejected by the ILECs.

Massachusetts discusses each of these recommendations in detail below.

I. The Commission Should Define “Declined States” as Those Where ILECs Declined at Least 80% of Model-Based Support

Massachusetts agrees with the Commission’s commonsense proposal to favor states where ILECs rejected “substantial” or “significant” amounts of model-based support.¹⁴ Unserved residents in declined states are no less in need of broadband service today than they were when the Commission made its original CAF funding allocations. The Commission should ensure that the funding reaches its intended target. To meet this objective, the Commission should set clear expectations and specify the states to which this preference will apply. Massachusetts recommends that the Commission define “declined states” as those where ILECs declined at least 80% of model-based support. An 80% threshold represents more than a simple majority and more than a *de minimis* level of accepted support,¹⁵ and, as such, appropriately quantifies a “substantial” or “significant” amount of declined support in this instance. This

¹³ This would equate to a baseline amount of approximately \$4.4 million in annual support to Massachusetts. *Infra* at 6 and n.23.

¹⁴ *CAF II Auction Order & FNPRM* at ¶¶ 86, 217-224.

¹⁵ The Commission contemplates automatically excluding from these proposals six states where ILECs declined a *de minimis* amount of support, namely where ILECs accepted more than 97% of support proffered. *See id.* at ¶ 217, n.413. Massachusetts supports this commonsense approach to ensure a more equitable disbursement of funding by limiting the pool of declined states.

threshold would also preserve a preference to a number of states that have received limited support from other CAF mechanisms and so continue to face a greater unfunded need for broadband service.¹⁶

II. The Commission Should Award Bidding Credits or Additional Weights to Bids for Areas in Declined States and Give Those Bids Priority Consideration

Massachusetts agrees fully with the Commission's proposal to award automatic bidding credits or additional weights to bids for areas in declined states.¹⁷ As a general matter, awarding automatic bidding credits or additional weights to bids for areas in declined states makes inherent sense when striving for an equitable disbursement of funds. The approach is therefore consistent with the Commission's stated purpose to ensure an equitable distribution of support where it is most needed, and, further, the approach may help to remedy the continued disparities resulting from the ILECs' decline of certain model-based support.

The Commission seeks comment on Auction design procedures that would permit "a comparison of bids to ensure equitable funding to [declined] states."¹⁸ Although the Commission's other equitable disbursement proposals, including creation of a backstop auction approach, setting a ceiling for the aggregate total of winning bids in any given state, and reserving specific funding in the Remote Areas Fund generally have merit and should be considered for the Auction,¹⁹ none of those approaches will guarantee that sufficient CAF

¹⁶ Indeed, if the Commission seeks to strengthen the possibility of a more equitable disbursement of funding, then it should also consider limiting the definition of "declined states" to those like Massachusetts that otherwise receive limited CAF funding through support to rate-of-return ILECs. *See supra* at n.6 (discussing state-level disbursements of high cost support).

¹⁷ *CAF II Auction Order & FNPRM* at ¶ 219.

¹⁸ *Id.* at ¶¶ 219-223.

¹⁹ *Id.* at ¶¶ 220-222.

funding will flow to where it is most needed in the declined states.²⁰ Further, there are too many unknowns with respect to the Auction, including the possible weights to be assigned to other bidding factors,²¹ for Massachusetts to offer definitive comment on particular values that should be assigned to bids for areas in declined states. Specifically, the interplay between different bidding factors ultimately adopted by the Commission, as well as the final Auction design, would inevitably impact the values that Massachusetts would otherwise propose. Massachusetts instead urges the Commission to give priority consideration to bids for areas in declined states by assigning weights that significantly exceed most if not all other weighted bidding factors.²²

III. The Commission Should Dedicate Funding to Each Declined State in an Amount Equal to or Greater Than the Amount Declined by the ILECs

The Commission should dedicate CAF funding to each declined state in an amount equal to or greater than the amount of model-based support declined by the ILECs. The Commission should institute this commitment at the outset of the Auction and maintain the commitment until it is fulfilled. As an example, Massachusetts ILECs rejected more than \$4.4 million in guaranteed annual support that, over the associated 6-year term, would have provided approximately \$26.4 million in subsidies to benefit unserved communities in the Commonwealth.²³ This is funding that the Commission has deemed necessary and appropriate to

²⁰ See *id.* at ¶ 196 (recognizing that “there may not be winning bidders for all of the high-cost census blocks in the declined states that are included in the Phase II auction”).

²¹ *Id.* at ¶¶ 206-216.

²² This approach reverses the order of the “backstop” proposal advanced by the Commission by prioritizing funding to the declined states. *Id.* at ¶ 220.

²³ Compare Public Notice, WC Docket No. 10-90, *Wireline Competition Bureau Announces CAF II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband*, DA 15-509 (rel. Apr. 29, 2015), at Appendix (reflecting nearly \$4.5 million in annual support offered to price cap ILECs operating in Massachusetts) with Commission Press Release, *Carriers Accept Over \$1.5 Billion in Annual Support from Connect America Fund to Expand and Support Broadband for Nearly 7.3 Million Rural Consumers in 45 States and One Territory* (Aug. 27, 2015) (indicating that price cap ILECs accepted only \$63,258 in annual support for eligible Massachusetts areas) and Letter from Christopher Creager, Senior Vice President West Area Operations, Strategic Initiatives, Verizon

support delivery of basic broadband service to Massachusetts residents living in communities where commercial providers have concluded that financial returns or associated obligations will not justify delivery of service. Without a dedicated commitment of at least \$4.4 million in annual CAF support to eligible Massachusetts price cap areas, delivery of broadband service to rural Massachusetts consumers may once again be indefinitely postponed.²⁴ By dedicating a set amount of funding to declined states, with the amount of rejected model-based support as a baseline, the Commission will be acting to ensure specific, predictable, and sufficient support to states like Massachusetts.²⁵

IV. The Commission Should Develop a Grant-Based CAF Mechanism as a Backstop to Ensure an Equitable Distribution of Funding to Declined States

Massachusetts generally supports the Commission’s proposal to create a backstop of funds for declined states in the event the Auction does not result in funding to provide broadband service for eligible areas.²⁶ Massachusetts suggests, however, that in such an event, a targeted grant program is likely to provide a more effective means of delivering CAF support to these unserved areas than the possibility of a further auction. Massachusetts therefore proposes that the Commission establish an additional backstop in the form of a grant-based CAF mechanism. This mechanism would target support to state broadband expansion efforts in declined states.²⁷ States that have successfully executed Broadband Technology Opportunities Program (“BTOP”)

Communications Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Aug. 26, 2015) (conditionally accepting model-based CAF support only for eligible areas in California and Texas).

²⁴ *CAF II Auction Order & FNPRM* at ¶ 196 (recognizing that “there may not be winning bidders for all of the high-cost census blocks in the declined states that are included in the Phase II auction”).

²⁵ 47 U.S.C. § 254(b)(5).

²⁶ *CAF II Auction Order & FNPRM* at ¶ 220.

²⁷ See Department of Commerce, *BroadbandUSA BTOP Map* webpage, available at <http://www2.ntia.doc.gov/BTOPmap/> (last viewed Jul. 7, 2016).

infrastructure projects would be particularly well-suited to co-invest grant funds with a grant-based CAF backstop mechanism. This approach would fulfill the Commission's goal of coordinating with state initiatives to achieve our common universal service goals.²⁸ Under this mechanism, if a state falls short of winning aggregate bids that total the declined amount, grant funding would be directed to eligible BTOP recipients or other state-funded broadband projects like those administered by the MBI.²⁹ Preliminary awards could be directed towards eligible areas that remain unserved after the Auction, with possible additional funding for unserved locations in partially-served census blocks. Implementation of such a mechanism would be a prudent investment in state efforts and would maximize the efficient use of public funds and local market expertise.³⁰ The Commission could also use this grant-based backstop approach in the event that additional CAF funds remain after all declined states are awarded their dedicated funding amounts.

V. CONCLUSION

Massachusetts appreciates the opportunity to comment on the important task of disbursing the remaining CAF funds. We are encouraged by the Commission's recognition of the need to address unserved areas in declined states, and, particularly, by the Commission's proposal to ensure equitable distribution to all states. Massachusetts submits that the

²⁸ See *CAF II Auction Order & FNPRM* at ¶ 218; see also National Association of Regulatory Utility Commissioners ("NARUC"), *NARUC Federalism Task Force Report: Cooperative Federalism and Telecom In the 21st Century* (Nov. 2013), at 4 (noting that the 1996 Telecommunications Act retained shared jurisdiction over communications matters between the federal government and the states and envisioned collaboration between the Commission and states on universal service and other matters).

²⁹ See MBI, *Building Networks* webpage, available at <http://broadband.masstech.org/building-networks> (last viewed Jul. 7, 2016).

³⁰ Massachusetts acknowledges that this is a very general recommendation. Clearly, numerous details would need to be addressed in a Further Rulemaking. We simply urge the Commission to consider this approach as it moves forward on further CAF reform.

Commission can properly support residents in the declined states by clearly defining declined states, assigning added weight to bids made for eligible areas in these states, committing dedicated funding to each declined state, and establishing a grant-based backstop for these states in the event the Auction does not result in carriers in a declined state being awarded the dedicated funding amount.

Respectfully submitted,

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