

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Connect America Fund |) | WC Docket No. 10-90 |
| |) | |
| Colorado Broadband Deployment Board |) | |
| Request for Waiver of the Connect America Fund |) | |
| Phase II Competitive Bidding Rules |) | |

ORDER

Adopted: July 6, 2018

Released: July 6, 2018

By the Chief, Wireline Competition Bureau and Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we deny a petition filed by the Colorado Broadband Deployment Board (the Board) seeking waiver of the Connect America Fund Phase II auction rules.¹ Because we find that the Board has failed to demonstrate that its request for waiver presents both special circumstances that warrant deviation from our Phase II auction rules and that its request serves the public interest by more effectively balancing our Connect America Fund policy objectives, we deny the Petition.²

II. BACKGROUND

2. *Connect America Fund.* In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the high-cost program within the universal service fund and the intercarrier compensation system to focus support on networks capable of providing voice and broadband services.³ The Commission created the Connect America Fund and for the first time established an overall budget for the high-cost program.⁴ The Commission concluded that support in price cap areas would be provided through a combination of “a new forward-looking model of the cost of constructing modern multi-purpose networks” and a competitive bidding process.⁵ Specifically, the

¹ Colorado Broadband Deployment Board Petition for Waiver, WC Docket No. 10-90 et al. (filed April 23, 2018) (Petition). In its Petition, the Board explains that it is acting in compliance with the legislature of the State of Colorado, which specifically directed: “[T]he board shall immediately petition the FCC for a waiver from the auction rules that prohibit a state entity from applying for Connect America Fund Phase II auction money to allow the board itself to allocate auction money for broadband deployment projects approved by the board.” *Id.* at 4 (see COLO. REV. STAT. § 40-15-509.5(10.5)(b)(I)). In addition to not establishing good cause to justify a waiver, see 47 CFR § 1.3, we separately find the request is procedurally defective for failing to identify the specific rules to be waived.

² See 47 CFR § 1.3; see also 47 U.S.C. § 254(b) (requiring that the Commission “base policies for the preservation and advancement of universal service” on certain principles).

³ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and/or FNPRM*) *aff’d sub nom.*, In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17710, para. 123.

⁵ *Id.* at 17725, para. 156.

Commission offered support based on a forward-looking cost model to incumbent price cap carriers in exchange for their commitment to offer voice and broadband services meeting certain requirements in certain high-cost areas.⁶ The Commission decided that support not accepted by the price cap carriers would be awarded through competitive bidding,⁷ and sought comment on proposed rules for this bidding process, including options regarding basic auction design and the application process.⁸ In the *April 2014 Connect America Order*, the Commission adopted certain rules for the Connect America Phase II auction (Phase II auction, auction, or Auction 903), including rules regarding participation and the term of support, the requirement for winning bidders to obtain an eligible telecommunications carrier (ETC) designation before receiving funding, and the inclusion of extremely high-cost census blocks in the auction.⁹

3. Ten carriers accepted a total of over \$1.5 billion in annual model-based support to provide broadband to nearly 7.3 million consumers in 45 states and the Commonwealth of the Northern Mariana Islands.¹⁰ Nearly \$175 million in annual Connect America Phase II model-based support was declined.¹¹ In Colorado, CenturyLink, Inc. accepted \$26,509,143 in annual support for a period of six years, but FairPoint Communications, Inc. declined \$426,530 in annual support.¹²

4. In May 2016, the Commission adopted a framework for the Connect America Phase II auction.¹³ Specifically, the Commission determined that it will accept bids for four technology-neutral performance tiers with varying speed and usage allowances, and for each tier will differentiate between bids that would offer either low or high latency.¹⁴ The Commission also adopted a budget of \$215 million per year for a 10-year support term,¹⁵ decided how it would determine areas that are eligible to be awarded support in the auction,¹⁶ adopted certain applicant eligibility requirements as well as post-auction obligations and oversight measures,¹⁷ and provided basic guidance about the auction process.¹⁸

⁶ *Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband*, Public Notice, 30 FCC Rcd 3905 (WCB 2015) (*Model-Based Support Offers Public Notice*).

⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17732, para. 179.

⁸ *Id.* at 18085-108, paras. 1189-295.

⁹ *Connect America Fund et al.*, Report and Order et al., 29 FCC Rcd 7051, 7060-66, paras. 29-47 (2014) (*April 2014 Connect America Order and/or FNPRM*).

¹⁰ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5953, para. 7 (2016) (*Phase II Auction Order and/or FNPRM*) (modified by Erratum *In the Matter of Connect America Fund ETC Annual Reports and Rural Broadband Experiments*, Second Erratum, DA 18-297 (WCB Mar. 26, 2018)).

¹¹ 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), http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0827/DOC-335082A1.pdf.

¹² *Id.*; Wireline Competition Bureau Authorizes FairPoint to Receive Over \$37 Million in Connect America Phase II Support in 14 States, Public Notice, 30 FCC Rcd 8435, n.2 (WCB 2015).

¹³ See generally, *Phase II Auction Order*.

¹⁴ *Id.* at 5957, para. 15.

¹⁵ *Id.* at 5975, para. 79.

¹⁶ *Id.* at 5968-74, paras. 51-73.

¹⁷ *Id.* at 5980-6018, paras. 91-194.

¹⁸ *Id.* at 5975-79, paras. 80-90.

5. Consistent with prior practice, the Commission left the specific details of the auction to be developed as part of the pre-auction process,¹⁹ which the Commission commenced with the *Phase II Comment Public Notice* in August 2017.²⁰ During that same year, the Commission conditionally waived the Phase II auction program rules to allocate Phase II support for Connect America-eligible areas in New York in coordination with New York's New NY Broadband Program, finding it could align its stated Phase II objectives with New York's existing program.²¹

6. In February 2018, the Commission released procedures for Auction 903,²² and the Wireline Competition Bureau released a final list of census blocks eligible to be awarded support in the auction.²³ On March 19, 2018, the window opened for entities seeking to participate in the Connect America Fund Phase II auction to file their pre-auction "short-form" applications,²⁴ in which potential bidders must establish their eligibility to participate, by providing, among other things, basic ownership information and certifying to their qualifications to receive support.²⁵ An applicant could certify that it has provided voice, broadband, and/or electric distribution or transmission services for at least two years or is the wholly-owned subsidiary of an entity that meets these requirements.²⁶ If an applicant could not make such a certification, it was required to submit 1) audited financial statements for that entity from the three most recent consecutive fiscal years, including balance sheets, net income, and cash flow, and 2) a letter of interest from a qualified bank, with terms acceptable to the Commission, that states the bank would provide a letter of credit to the bidder if the bidder were selected for bids of a certain dollar magnitude.²⁷ Each applicant was also required to acknowledge in its short-form application that it must be designated as an ETC for the areas in which it will receive Phase II support before being authorized to receive such support.²⁸ The short-form filing window closed on March 30, 2018.²⁹

7. Bidding in the Commission's Phase II auction is scheduled to begin on July 24, 2018. Auction 903 will be the first auction to award ongoing high-cost universal service support using a

¹⁹ *Id.*

²⁰ *See Comment Sought on Competitive Bidding Procedures and Certain Program Requirements for the Connect America Fund Phase II Auction (Auction 903)*, Public Notice, 32 FCC Rcd 6238, 6240-41, paras. 5-11 (2017) (*CAF II Auction Comment Public Notice*).

²¹ *Connect America Fund, ETC Annual Reports and Certifications*, Order, 32 FCC Rcd 968 (2017) (*New York Auction Order*) (conditionally waiving the Phase II auction program rules to allocate Phase II support in Connect America-eligible areas in New York in coordination with New York's New NY Broadband Program).

²² *Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 1428 (2018) (*Phase II Auction Procedures Public Notice*).

²³ The list of census blocks can be found at <https://www.fcc.gov/files/caf2auctionpublishblockfeb2018csv>. The map can be found at <https://www.fcc.gov/maps/caf2-auction-final-areas>. The list of census block groups can be found at <https://www.fcc.gov/files/caf2auctionpublishcbgfeb2018csv>. The revised lists remove census block groups with a \$0 reserve price and census blocks that overlap certain rate-of-return carrier study area boundaries. Based on this revised list, 30,033 census block groups, containing a total of 210,647 eligible census blocks, will be available for bidding in Auction 903.

²⁴ *Phase II Auction Procedures Public Notice*, 33 FCC Rcd at 1432, para. 10.

²⁵ *Id.* at 1438, para. 20.

²⁶ *Id.* at 1444-46, paras. 40-45.

²⁷ *Id.*

²⁸ *Id.* at 1472-73, paras. 120-121. *See also*, 47 CFR § 54.315(a)(3).

²⁹ *Phase II Auction Procedures Public Notice*, 33 FCC Rcd at 1432, para. 10.

multiple-round, reverse auction.³⁰ Through Auction 903, the Commission intends to maximize the value that the American people receive for the Nation's universal service dollars, thereby balancing higher-quality services with cost efficiencies.³¹

8. *Colorado Petition.* In January of this year, the State of Colorado enacted House Bill 18-1116, directing its Broadband Deployment Board to file for waiver of the Commission's Phase II auction rules.³² In its Petition, the Board contends that special circumstances in Colorado warrant a deviation from the Commission's Phase II auction rules and that grant of its request for waiver serves the public interest.³³

9. As explained in the Petition, beginning in 2014, Colorado allocated state funds for the Board to award grants to broadband service providers that submit applications to participate in Colorado's broadband deployment program and satisfy the state statutory criteria.³⁴ Under the program, approved projects must be completed within two years.³⁵ Applicants are reimbursed for documented infrastructure expenses up to the amount of the grant awarded, on a quarterly basis.³⁶ Funding for these grants began in 2016, and has been awarded in two grant cycles.³⁷ On April 2, 2018, Colorado's Governor also signed legislation providing for additional state broadband funding for "upward of \$100 million" over the next six years.³⁸ In its Petition, the Board explains that it has concluded that using separate state and federal programs to address broadband deployment gaps in Colorado is difficult and may result in an inefficient allocation of funds, which could delay the availability of broadband service.³⁹ Thus, the Board contends that granting a waiver of the Commission's Phase II auction rules to allow the Board "to apply" for Connect America Fund support and to permit the Board to allocate the support to the broadband projects it approves will best coordinate state and federal funding, and is necessary to most effectively and expeditiously deploy broadband in Colorado's unserved areas.⁴⁰

III. DISCUSSION

10. Generally, the Commission's rules may be waived for good cause shown.⁴¹ Waiver of the Commission's rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.⁴² As explained fully below, the Board's Waiver Request reflects a clear preference for the State of Colorado's own broadband program, but it does not present evidence of the special circumstances specific to the State of Colorado that warrant

³⁰ In prior Mobility Fund and Tribal Mobility Fund auctions, the Commission awarded one-time universal service support using a single-round, reverse auction. *USF/ICC Transformation Order*, 26 FCC Rcd at 17773-824, paras. 301-492.

³¹ *Phase II Auction Procedures Public Notice*, 33 FCC Rcd at 1429, para. 2.

³² Petition at 4.

³³ As explained below, the Petition does not identify which rule(s) the Commission should waive, nor is the Petition otherwise sufficiently clear to allow us to infer the Board's full intent in this regard.

³⁴ Petition at 2.

³⁵ *Id.* at 3.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 4.

³⁹ *Id.* at 2.

⁴⁰ *Id.* at 2, 4.

⁴¹ 47 CFR § 1.3.

⁴² See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972)).

deviation from the Commission's rules. Moreover, while the Board argues that the grant of its request may serve the public interest of the residents of the State of Colorado, it does not show, or even assert, how a grant of the Petition, particularly at this late stage in the pre-auction process, serves the broader public interest of establishing an efficient, transparent, nationwide competitive bidding process that is fair to all potential Auction 903 bidders. Accordingly, we conclude that the Board has failed to meet the Commission's waiver standard.⁴³ As a separate, independent basis, we also find the Petition to be procedurally defective because it fails to explain the Board's request for waiver with specificity and untimely seeks reconsideration of the Commission's rules.

11. We are not persuaded by the Board's arguments that special circumstances exist in Colorado to warrant waiver of the Phase II auction rules. Specifically, the Board contends that the eligible areas in Colorado are unlikely to attract a winning bid in Auction 903, in part because the Phase II auction rules require that bidders bid on census block groups, which the Board argues will eliminate the ability of local providers to economically maintain service offerings in Colorado.⁴⁴ The Board further reasons that because the majority of the unserved areas in Colorado are in vast, sparsely populated, or mountainous regions in which it is difficult to build, those areas will not appeal to bidders in a nationwide auction.⁴⁵ The Board also claims that service providers in Colorado may not be able to leverage both state and federal broadband programs because historically the Colorado legislature has prevented the Board from duplicating federal support.⁴⁶ While these assertions regarding the minimum geographic area for bidding on eligible areas, population density, and potential lack of bidder interest demonstrate the Board's preference for its own broadband program, they do not warrant the waiver of the Phase II auction rules. . . . Notably, the Board presents no evidence to support its claims that bidders in a nationwide auction will not be interested in the eligible areas of Colorado, as compared to the rural, high-cost areas eligible in other states, or that the minimum geographic area for bidding on areas eligible for support in Auction 903 will fail to elicit a winning bid. Thus, the Board fails to demonstrate that the eligible areas in Colorado are uniquely situated to present special circumstances that warrant a waiver of the Commission's rules.

12. Similarly, the Petition asserts that the Commission has "miscalculated" the identification of areas eligible for federal funds but provides no substantiation regarding specific areas in Colorado. Instead, the Petition relies on a general preference for its own more "granular" approach for identifying unserved areas to support this allegation.⁴⁷ This preference is not a special circumstance. Furthermore, we find this argument also lacks merit because, even if true, it leaves open the possibility that unserved areas that are eligible for state-awarded grants may differ from the areas that are eligible for Phase II auction support. This disparity undermines the Board's conjecture that service providers will not be able to benefit from both state-awarded grants and Phase II funds without overbuilding.⁴⁸ In sum, we recognize that the Board may believe that the State of Colorado has a superior broadband program to the Commission's, but without further explanation or support, that belief does not rise to the level of "special circumstances" necessary to support the grant of a waiver.

13. The Board's other assertions about "special circumstance" are equally unconvincing. The Board claims that in contrast to the two-year deployment schedule followed by Colorado's broadband program, the Commission's adopted timeline for allocating support for Auction 903 may delay

⁴³ See 47 CFR § 1.3; *see also* 47 U.S.C. § 254(b) (requiring that the Commission "base policies for the preservation and advancement of universal service" on certain principles).

⁴⁴ Petition at 5-6.

⁴⁵ *Id.* at 6.

⁴⁶ *Id.* at 7.

⁴⁷ *Id.* at 6.

⁴⁸ *Id.*

deployment of service for Colorado residents.⁴⁹ The Board also seems to suggest “depending on the location of” the geographic areas that are eligible for federal support under Phase II auction rules that federal support may make “nearby unserved areas” less appealing to another service provider, notwithstanding the incentive of the available state support.⁵⁰ The Board therefore presumes that having separate state and federal programs may have the unintended consequence of inhibiting applicants from seeking state funding in the future, potentially making it more likely that pockets of the state will remain unserved.⁵¹ While these arguments also demonstrate the Board’s clear preference for the State of Colorado’s broadband deployment program, they too are based on general statements and provide no specific factual basis to support the Board’s claim that adhering to its own broadband program will lead to better service results for Colorado than following the Commission’s plan for the Connect America Fund. As a result, these arguments do not substantiate the Board’s claim that special circumstances exist in Colorado that warrant deviation from the Commission’s Phase II auction rules. The Board, like all interested parties, had years to express its concerns about the Phase II performance requirements, disbursements of funds, and the potential for state and federal funding overlaps. Having chosen not to do so, it cannot now raise these issues as “special circumstances” that merit waiver of the Commission’s finalized rules.

14. With regard to the second prong of the waiver standard, we find that the Petition fails to explain, or even assert, how the deviation of any specific auction rule might serve the public interest. Moreover, because it would wholly disrupt the final stages of the pre-auction process and is inconsistent with waiver precedent⁵² we conclude that grant of the Petition does not serve the public interest. Separately, as an independent basis, we find the request fails on procedural grounds because it lacks specificity and untimely seeks reconsideration of the Commission’s rules.⁵³ We address each of these problems in turn below.

15. As a threshold matter, we cannot determine that a request for a deviation from the Commission’s Phase II auction rules serves the public interest unless we can first identify the specific rule(s) at issue and evaluate how the public interest would be affected by the grant of a waiver. Here, the Petition fails to explain with particularity whether the Board is seeking a waiver of the rules so that it may apply as a late-filed applicant in Auction 903, or whether it is seeking a waiver to establish a set aside of federal universal service funds for the State of Colorado outside of the auction process. Notably, if the request is for the latter, the Petition does not include any reference to the dollar amount of federal funding that should be made available for the state. Similarly, although the Petition seeks a waiver of the Commission’s rules to allow the Board itself to allocate any Phase II auction support to the recipient(s) it chooses, it provides no further explanation regarding the specific rules that would need to be waived to accomplish this request or, for that matter, how a grant of the Petition would comport with the Commission’s statutory obligations.⁵⁴ Thus, although the Board seeks a waiver of the Connect America Fund Phase II auction rules, purportedly to better coordinate state and federal funding efforts, the Petition lacks any specificity regarding which rules should be waived, and does not show how the grant of a waiver of any specific auction rule would serve the public interest.

16. We further conclude that a grant of this Petition, particularly at this late date, would not

⁴⁹ *Id.* at 6-7.

⁵⁰ Petition at 7.

⁵¹ *Id.*

⁵² See generally *New York Auction Order*.

⁵³ See e.g., 47 CFR §§ 54.309, 54.310, 54.315.

⁵⁴ Among the many unanswered questions raised by the Petition are how the Board’s request could satisfy the Commission’s eligibility criteria for auction participation, or the Commission’s statutory obligations to distribute universal service support. See generally, 47 U.S.C. §§ 214(e)(1), 254(e) (“[O]nly an eligible telecommunications carrier designated under section 214(e) . . . shall be eligible to receive specific Federal universal service support.”).

serve the public interest. First, a grant of this request would wholly disrupt the pre-auction process. The Board's request for waiver was filed a mere three months before the commencement of bidding in a long-planned and highly-anticipated auction, and seemingly seeks permission for the Board to operate largely, perhaps even entirely, outside of the Connect America Fund auction rules. Notably, the Petition, which was submitted after the filing deadline to participate in the auction, provides no basis as to how it could be implemented practically or in a manner that would serve the broader public interest objectives of the Connect America Fund.⁵⁵ To grant the Board's request now, especially in the final stages before an auction, would not only disrupt a process that has taken years to finalize,⁵⁶ it would undermine the entire framework of Auction 903, and it could significantly impede the business plans and bidding strategies of applicants that have already applied to participate in competitive bidding.

17. Second, the Petition also directly conflicts with Commission precedent for granting a waiver to support a state initiative. As the Commission explained in 2017 when it granted the State of New York's request to allocate federal support outside of the Connect America Phase II auction program rules, any other state that filed for waiver of the auction rules would be required to demonstrate that its request does not delay the Connect America Phase II auction, and that it achieves the goals of the Connect America Fund.⁵⁷ The Board's Petition fails to demonstrate either conclusion affirmatively. Furthermore, in the *New York Auction Order*, the Commission specifically conditioned its waiver, requiring that the Commission would maintain control over the funds at all times, by: (1) specifying where Connect America Phase II support can be awarded and placing limitations on how much support can be allocated to those areas, (2) ensuring that the recipients are qualified to meet the obligations and individually authorizing the recipients, (3) having USAC directly disburse the support to authorized ETCs in monthly installments, (4) requiring the recipients to comply with the same level of oversight as all other Connect America Phase II recipients, and 5) subjecting the recipients to non-compliance measures if they do not comply with Connect America Fund program requirements.⁵⁸ The Board's Petition provides no explanation as to why we should reach a contrary result here. Moreover, our decision here is consistent with the Commission's denial of other state requests for special treatment in connection with finalizing the rules for Auction 903.⁵⁹ Recently, at least one state has developed a state broadband initiative that does not require waiver of the rules established for the Connect America Fund.⁶⁰ No Commission rules prevent Colorado from doing the same.

18. We therefore conclude that the public interest is best served by the application of the Commission's Auction 903 rules, including the Commission's continued exercise of control over the oversight and distribution of the Phase II auction support in Colorado. It would not serve the broader

⁵⁵ It was not until January 2018 that the Colorado legislature directed the Board to seek the instant waiver, a request that was not filed with the Commission until after the March 30, 2018 deadline for Phase II auction short-form applications.

⁵⁶ The Petition recognizes that the Phase II auction rules were adopted after a long and careful process. *See* Petition at 5, n.15.

⁵⁷ *New York Auction Order*, 32 FCC Rcd at 980-81, para. 32.

⁵⁸ *Id.* at 973, para 26.

⁵⁹ In the *Phase II Auction FNPRM Order*, the Commission declined to adopt state-based preferences for the Phase II auction, preferring to award support to cost-effective bids and to wait until the Remote Areas Fund auction to prioritize unserved areas in states where the Phase II offer of support to price cap carriers was declined. *Connect America Fund et al.*, Report and Order and Order on Reconsideration, 32 FCC Rcd 1624, 1641-44, paras. 43-50 (2017). Subsequently, the Commission declined to reconsider its weighting formula to give bids placed in Pennsylvania an advantage over other bids and declined to waive its rules to add such a weight to Pennsylvania bids. *Connect America Fund et al.*, Order on Reconsideration, 33 FCC Rcd 1380, 1410-16, paras. 74-83 (2018).

⁶⁰ In March 2018, Pennsylvania announced its Broadband Investment Incentive Program, which will offer \$35 million of financial incentives to providers who are bidding on Pennsylvania service areas in the CAF Phase II Auction. *See* Pennsylvania Broadband Initiative, <https://www.governor.pa.gov/broadband/>.

public interest of establishing an efficient, transparent, nationwide competitive bidding process that is fair to all potential Auction 903 bidders, including those seeking support in Colorado, to decide otherwise.

19. As separate matter, we also find the Petition to be procedurally defective because it fails to specify the rules that are being requested to be waived, and it untimely seeks reconsideration of the Commission's rules. The Petition summarily concludes that by allowing the Board to oversee deployment of broadband in Colorado, and by allowing the Board itself to allocate Phase II auction funds to the projects it chooses, the Commission can serve the public interest by remedying what the Board perceives to be conflicts in state and federal funding for broadband deployment. Yet, the Board does not point to any particular rule that should be waived to accomplish its desired outcome. Instead, by seemingly requesting to replace the entirety of the Commission's rules with those of the State of Colorado, the Board is essentially seeking reconsideration of several Phase II auction decisions made by the Commission. These decisions include, but are not limited to, determination and sizing of eligible geographic areas, allocation of support, and the time period in which to demonstrate program performance.⁶¹ Having reached the final stages of the pre-auction process for Auction 903, the time for such reconsideration has long since passed.⁶² All of the decisions that the Commission has made for the nationwide Phase II auction have been based on its statutory obligation to advance – for the entire country – the section 254 statutory principles of ensuring that consumers in rural and high-cost areas of the country have access to advanced telecommunications and information services that are reasonably comparable to those services in urban areas, at reasonably comparable rates.⁶³ An important component of this commitment included the Commission's recognition and support of state broadband initiatives,⁶⁴ as well as its efforts to seek early comment from interested parties on how to coordinate with state initiatives within the framework of the Connect America Phase II auction.⁶⁵ Notably, in the instant matter, neither the Board nor the State of Colorado filed any comments during the rulemaking to raise their coordination concerns, nor did they seek reconsideration of any of the Commission's rules. We find that the Petitioner's filing, which cloaks an untimely filed request for reconsideration in an ambiguous petition for

⁶¹ See generally, Connect America Fund, ETC Annual Reports and Certifications, Petition of USTelecom for Forbearance From Obsolete ILEC Regulatory Obligations That Inhibit Deployment of Next-Generation Networks, 80 Fed. Reg. 4477 (Jan. 27, 2015) as amended at 80 Fed. Reg. 5987 (2015); Connect America Fund, ETC Annual Reports and Certifications, Rural Broadband Experiments, 81 Fed. Reg. 44448-9 (July 7, 2016), as amended at 83 Fed. Reg. 15994 (2018); Technology Transitions; Connect America Fund, 79 Fed. Reg. 11335 (Feb. 28, 2014), as amended at 79 Fed. Reg. 39188 (2014); Connect America Fund, ETC Annual Reports and Certifications, Rural Broadband Experiments, 83 Fed. Reg. 18454 (Apr. 27, 2018).

⁶² See generally, 47 U.S.C. § 405 (requiring petitions for reconsideration to be filed within 30 days from the date upon which public notice is given of an order, decision, or action by the Commission or Bureau).

⁶³ 47 U.S.C. § 254(b); *Phase II Auction Order*, 31 FCC Rcd at 5976-77, para. 84.

⁶⁴ See, e.g., Letter from Karen Peterson, Director, Massachusetts Broadband Institute, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1-2 (filed May 17, 2016) (describing MassBroadband 123 and describing state allocation of \$50 million of funding to extend broadband to communities in Western Massachusetts); Letter from Howard Zemsky, President and Chief Executive Officer, Empire State Development & Audrey Zibelman, Chair, New York State Public Service Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Apr. 13, 2016) (describing New NY Broadband Program distributing up to \$500 million in funding to unserved and underserved communities to construct next generation networks offering download speeds of 100 Mbps or better); Letter from Michael R. Peevey, President, California Public Utilities Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed Sept. 19, 2014) (describing California Advanced Services Fund's \$315 million to support unserved and underserved areas); Reply Comments of the Office of Broadband Deployment, Minnesota Department of Employment and Economic Development, WC Docket Nos. 10-90 & 14-58, at 1 (filed Sept. 17, 2014) (noting the Minnesota legislature appropriated \$20 million for a broadband infrastructure grant program in 2014); Comments of the California Public Utilities Commission, WC Docket Nos. 10-90 & 14-58, at 3 (filed Sept. 2, 2014) (describing California Advanced Services Fund and California Broadband Council).

⁶⁵ *Phase II Auction FNRPM*, 31 FCC Rcd at 6024, para. 218.

waiver, is procedurally defective.

20. For all of the reasons discussed above, we deny the Board's Petition.

IV. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 254, 303(r), of the Communications Act of 1934, as amended, , 47 U.S.C. §§ 151, , 254, 303(r), , and to the authority delegated in sections 0.91, 0.291, 0.131, 0.331, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 0.131, 0.331, and 1.3, that the petition for waiver, filed by the Colorado Broadband Deployment Board, IS DENIED as described herein.

22. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

Donald K. Stockdale
Chief
Wireless Telecommunications Bureau