

United States Senate

WASHINGTON, DC 20510

February 6, 2017

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Pai:

On December 22, 2016, I wrote to former Federal Communications Commission (FCC) Chairman Tom Wheeler expressing support for a recommendation included in comments filed by the Pennsylvania Public Utility Commission (PA PUC) with the FCC in response to a petition for expedited waiver of the FCC's Connect America Phase II (CAF II) filed by the state of New York (NY).^{1 2} The PA PUC recommended that support identified for census blocks within states with carriers that declined funds, such as the \$23.27 million declined in PA, should be retained for those states, rather than subject to a competitive auction that could see at least a portion of the support transferred to another state. Given your recent appointment as Chairman of the FCC, I write to reiterate my support for this recommendation and update my request in light of the FCC's recent action on the NY petition.

In the *USF/ICC Transformation Order*, the FCC decided that any CAF II model-based support that was declined by a price cap carrier would be awarded through a competitive bidding process.³ Subsequently, in its *Phase II Auction Order* released May 26, 2016,⁴ the FCC acknowledged that approximately \$1.05 billion of the \$2.15 billion that is available in the auction is comprised of declined CAF II funding originally offered to specific states. In PA, Verizon Pennsylvania incumbent local exchange carriers (Verizon Pennsylvania LLC and Verizon North LLC), declined \$23.27 million in annual CAF II funding, or 45.66 percent of the total CAF II allotment to the state. The FCC sought comment on adopting alternative auction procedures to ensure that states receive funds that had been declined by the incumbent carrier.⁵

The PA PUC submitted comments to the FCC on October 24, 2016, in response to the NY waiver petition. The PA PUC's recommendation, for which I expressed support in my December

¹ Original letter enclosed.

² In the Matter of Connect America Fund, ETC Annual Reports and Certifications, and Rural Broadband Experiments, WC Docket Nos. 10-90, 14-58, and 15-259.

³ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17332, ¶ 179 (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 *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016) (*Phase II Auction Order and/or FNPRM*).

⁵ *Phase II Auction Order* at ¶¶ 217-24.

letter to the FCC, agreed with the principle underlying the NY petition: that states with declined funds should retain those funds, since the needs of residents in those states remain.

On January 26, 2017, the FCC released an order granting NY's petition. The FCC concluded that NY had demonstrated that special circumstances warranted an exception to CAF Phase II auction program rules, citing NY's commitment of at least \$200 million to additional broadband deployment in declined areas. While noting the PA PUC's comments, the FCC declined to address directly its request for continued assured access to declined CAF Phase II funds in PA.

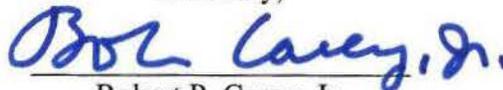
Additionally, in the *FCC's Phase II Auction Order*, the FCC suggested it was open to tweaking the procedures and bidding rules of the auction so that declined states like PA would be able to retain all CAF II funds. The FCC also stated that weights would be granted based upon a state's meaningful commitment to advancing broadband deployment – a commitment clearly demonstrated by PA, a consistent net Universal Service Fund (USF) contributor where the PA PUC awarded \$969.01 million in rate and revenue relief to carriers through a broadband infrastructure incentive program in 2005-2015. However, the FCC's NY wavier order provided no assurance that PA's demonstrated, longstanding commitment to expanding broadband deployment will be afforded due consideration and no guarantee that the FCC will adopt weights that will allow PA to retain all declined CAF II funds.

Last, even if proper weighting and auction procedures are implemented, I am concerned that PA could still be excluded from full participation in the CAF II auction. The FCC stated that if it considered declined funds to be *de minimis* in certain locations, any weights adopted may not be applicable to bids in those states.⁶ This fails to recognize that funds that may be considered *de minimus* by the FCC still would provide vital aid to Pennsylvanians who lack access to broadband. The loss of all or part of the \$23.27 million of declined funding in PA would also exacerbate PA's consistent net USF contributor status, with PA's net USF contributions in the FCC's most recent *Universal Service Monitoring Report* exceeding \$169.1 million.⁷

As I noted in my December letter, this funding is of critical importance to PA, where we have a significant digital divide between rural and urban residents. According to FCC data, 20 percent of Pennsylvanians living in rural areas do not have broadband access to high-speed internet, compared to just 3 percent in urban areas.⁸ In order to ensure all residents have fast and affordable internet access, I urge you to take steps, in accordance with the recommendation of the PA PUC, to ensure PA receives its full and objectively allocated share of CAF II support.

I appreciate your attention to this important matter.

Sincerely,



Robert P. Casey, Jr.
United States Senator

⁶ *Id.* at ¶ 217 n.413.

⁷ *Universal Service Monitoring Report* (2016), Table 1.9

⁸ *Broadband Progress Report*, GN Docket No. 15-191 (January 29, 2016), Appendix D.