

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58

ORDER

Adopted: January 26, 2017

Released: January 26, 2017

By the Commission: Chairman Pai issuing a statement; Commissioner O’Rielly approving in part, dissenting in part and issuing a statement.

I. INTRODUCTION

1. In this Order, subject to the conditions described herein, we grant a petition filed by New York State (New York) seeking waiver of the Connect America Phase II auction program rules to allow use of Connect America Phase II support in Connect America-eligible areas in New York in coordination with New York’s New NY Broadband Program.¹ Based on the record, we find that waiving the Commission’s program rules subject to the conditions described below will promote the rapid deployment of advanced broadband services to unserved areas and promote efficient and effective use of Connect America Phase II support.

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.² The Commission created the Connect America Fund and for the first time established an overall budget for the high-cost program.³ 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 (Connect America Phase II support).⁴ Specifically, in each state they serve, price cap carriers were offered a support amount calculated using a cost model for a six-year term in exchange for offering voice and broadband services meeting the Commission’s requirements to a defined number of locations in the eligible high-cost census blocks in that state.⁵

¹ New York State Petition for Expedited Waiver, WC Docket No. 10-90 et al. (filed Oct. 12, 2016) (Petition). New York filed its petition through Empire State Development, its “chief economic development agency.” *Id.* at 1.

² *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).

³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17710, para. 123.

⁴ *Id.* at 17725, para. 156.

⁵ *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*).

3. Ten carriers accepted a total of over \$1.5 billion in annual support to provide broadband to nearly 7.3 million consumers in 45 states and the Commonwealth of the Northern Mariana Islands. Nearly \$175 million in annual Connect America Phase II model-based support was declined.⁶ In New York, FairPoint, Frontier, and Windstream accepted Connect America Phase II support, but Verizon declined \$28.4 million in annual support, representing \$170.4 million of Connect America Phase II support over the six-year period.⁷

4. The Commission decided that support not accepted by the price cap carriers would be awarded through a competitive bidding process.⁸ In the *April 2014 Connect America Order*, the Commission decided that extremely high-cost census blocks nationwide would be eligible for the Connect America Phase II auction, adopting certain rules regarding participation in the competitive bidding process, the term of support, and eligible telecommunications carrier (ETC) designations.⁹

5. In May 2016, the Commission adopted a framework for the Connect America Phase II auction.¹⁰ Specifically, the Commission will accept bids for four technology-neutral service tiers with varying speed and usage allowances, and for each tier will differentiate between bids that would offer either low or high latency.¹¹ The Commission also adopted a budget of \$215 million per year for a 10-year support term,¹² finalized decisions regarding areas that are eligible for the auction,¹³ adopted certain eligibility requirements as well as post-auction obligations and oversight measures,¹⁴ and provided basic guidance about the auction process.¹⁵

6. The Commission also sought comment on a number of issues, including on how to apply weights to the different service tiers, on measures to achieve the public interest objective of ensuring appropriate support for all states, and on measures to achieve the public interest objective of expanding broadband on Tribal lands.¹⁶ Specific details regarding the mechanics of the auction will be determined by the Commission at a future date after further opportunity for comment.¹⁷

7. In August 2016, the Wireline Competition Bureau (Bureau) released a list of the census blocks that are preliminarily eligible for the Connect America Phase II auction. The Bureau will release a

⁶ 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.

⁷ *Id.*; *Model-Based Support Offers Public Notice*. Verizon declined \$28.4 million in annual Connect America Phase II model-based support for a six year term—\$170.4 million total over the course of the Connect America Phase II model-based support term.

⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17732, para. 179.

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 (2016) (*Phase II Auction Order and/or FNPRM*).

¹¹ *Id.* at 5957, para. 15.

¹² *Id.* at 5975, para. 79.

¹³ *Id.* at 5968-74, paras. 51-73.

¹⁴ *Id.* at 5980-6018, paras. 91-194.

¹⁵ *Id.* at 5975-79, paras. 80-90.

¹⁶ *Phase II Auction FNPRM*, 31 FCC Rcd at 6020-27, paras. 205-29.

¹⁷ *Phase II Auction Order*, 31 FCC Rcd at 5952, para. 3.

final list of the eligible census blocks approximately three months prior to the deadline for short-form applications.¹⁸

8. *New York Petition.* In January 2015, New York launched the New NY Broadband Program, a public-private initiative created to speed the deployment of broadband in the state.¹⁹ New York budgeted \$500 million for its Broadband Program to be disbursed through a competitive bidding process which NY is conducting in phases.²⁰ Participants are also required to contribute funds towards their projects to better leverage state funds.²¹ In the first two phases of the program, recipients were required to offer broadband at download speeds of at least 100 Mbps in most areas.²² If no “qualifying, commercially reasonable” application was submitted to offer download speeds at 100 Mbps in unserved areas, New York would consider applications that propose to offer download speeds below 100 Mbps.²³ However, all applications were required to offer download speeds of 25 Mbps at a minimum.²⁴ All build out for the first two phases must be completed by Dec. 31, 2018.²⁵ New York support is disbursed as frequently as quarterly to reimburse eligible expenses, provided that New York awardees are in compliance with the terms and conditions of the program, and that they submit the required status reports and documentation of their eligible expenses.²⁶ New York awardees are limited to using New York support for capital expenses.²⁷

9. New York has already selected Phase 1 applicants, which collectively will receive \$54.2 million in state funding, with applicants providing \$21.6 million in private investment.²⁸ New York recently conducted Phase 2 of its program and will announce winning bidders soon.²⁹ New York has indicated that it delayed making areas that are located in Verizon’s territory eligible for its program because of the uncertainty surrounding the Connect America funding.³⁰ In its petition, New York requests that the Commission waive its Connect America Phase II auction rules to make the entire amount

¹⁸ *Wireline Competition Bureau Releases Preliminary List and Map of Eligible Census Blocks for the Connect America Phase II Auction*, WC Docket No. 10-90, 31 FCC Rcd 8870 (WCB 2016) (*Phase II Auction Preliminarily Eligible Census Blocks Public Notice*).

¹⁹ Petition at 2.

²⁰ *Id.* at 2.

²¹ Petition at 2; New York State, New NY Broadband Program: Phase 2 Requests for Proposal Guidelines, at 13-14 & n.27 (2016), <https://nysbroadband.ny.gov/sites/default/files/documents/new-ny-broadband/New-NY-Broadband-Program-Phase-2-RFP-Guidelines-8-3.pdf> (New NY Broadband Program Guidelines) (requiring that at least 10 percent of the total eligible project costs be “equity capital injected into the project by the applicant,” and stating that New York will not consider an application proposing a co-investment of less than 20 percent of total eligible project costs).

²² Petition at 2.

²³ New NY Broadband Program Guidelines at 14-15.

²⁴ *Id.* at 14-15.

²⁵ Petition at 2.

²⁶ New NY Broadband Program Guidelines at Appx. D “Phase II Disbursement Agreement” 4(a) & Exh. E.

²⁷ *Id.* at Appx. C “Phase II Eligible and Ineligible Expenses”.

²⁸ Petition at 3. See New York State Broadband Program Office, New NY Broadband Program – Phase 1 Awards, <https://nysbroadband.ny.gov/new-ny-broadband-program/phase-1-awards> (last visited Nov. 23, 2016).

²⁹ New York has adopted requirements for Phase 2 of its program and required applications to be submitted by Nov. 30, 2016. New NY Broadband Program Guidelines at 27-28. New York also invited applicants to submit “preliminary proposals” for serving Connect America-eligible areas. New NY Broadband Program Guidelines at 20.

³⁰ Petition at 13.

of funding declined by Verizon available to New York for allocation through New York's broadband program.³¹ New York claims that such an approach would align the Connect America Phase II auction with its broadband program, which would lead to the expedited deployment of broadband in New York, consistent with the Commission's goals.³² New York commits to meet certain conditions to ensure that such an arrangement will fulfill the Commission's objectives for Connect America Phase II support.³³

10. *Waiver Standard.* Generally, the Commission's rules may be waived for good cause shown.³⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³⁵ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³⁶ Waiver of the Commission's rules is appropriate if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.³⁷

III. DISCUSSION

11. We find that New York has demonstrated good cause warranting waiver of the Connect America Phase II program rules, subject to the conditions we adopt in this Order. Accordingly, we will make an amount up to the amount of Connect America Phase II model-based support that Verizon declined in New York—\$170.4 million—available to applicants selected in New York's New NY

³¹ *Id.* at 7.

³² *Id.* at 7-8.

³³ *Id.* at 8. A number of service providers that serve New York submitted similar letters supporting New York's petition. See Letter from Shawn Beqaj, Vice President Regulatory and Interconnection, Armstrong Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 31, 2016); Letter from Mark R. Maytum, President & Chief Operating Officer, Cassadaga Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 24, 2016); Letter from James P. Forcier, Chief Executive Officer, Chazy and Westport Telephone Co., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 24, 2016); Letter from Donald A. Ceresoli, Jr., President, Citizens Telephone Company of Hammond, New York, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 24, 2016); Letter from Shana Macey, President, Crown Point Telephone Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 24, 2016); Letter from Mark R. Maytum, President & Chief Operating Officer, Dunkirk and Fredonia Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 24, 2016); Letter from Brian Ketchum, Vice President & General Manager, Empire Telephone Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 21, 2016); Letter from Michael T. Skrivan, Vice President Regulatory, FairPoint Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 24, 2016); Letter from Jason Shelton, General Manager, Germantown Telephone Co., Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 24, 2016); Letter from Glen Faulkner, General Manager, The Margaretville Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 24, 2016); Letter from James R. Becker, President, The Middleburgh Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 24, 2016); Letter from Harley M. Ruppert, President, Newport Telephone Company, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 24, 2016); Letter from Jeffrey S. McGrath, Vice President Regulatory Affairs, Nicholville Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 24, 2016); Letter from James P. McCarthy, President, Oneida County Rural Telephone Co., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 24, 2016); Letter from Kevin P. Lynch, Vice President Technical Operations, Slic Network Solutions, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 24, 2016) (collectively, New York Service Providers). See also Letter from Robert R. Puckett, President, New York State Telecommunications Association, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed Dec. 20, 2016).

³⁴ 47 CFR § 1.3.

³⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

³⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

³⁷ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

Broadband Program in accordance with the framework we set below. Specifically, we waive certain portions of the Part 54 program rules and certain decisions adopted in the Commission's orders related to the Connect America Phase II auction to the extent described in this Order.³⁸ Because Connect America Phase II support will be allocated in partnership with New York's program rather than through the Commission's nationwide Phase II auction, the Commission's competitive bidding rules for universal service are not applicable.³⁹

12. For each New York winning bid that includes Connect America-eligible areas, we will authorize Connect America support up to the total reserve prices of all of the Connect America Phase II auction eligible census blocks that are included in the bid, provided that New York has committed, at a minimum, the same dollar amount of New York support to the Connect America-eligible areas in that bid. Before Connect America Phase II support is authorized, the Bureau will closely review the winning bidders to ensure that they have met the eligibility requirements we have adopted below and that they are technically and financially qualified to meet the terms and conditions of Connect America support. Authorized recipients of Connect America Phase II support will receive equal monthly payments of Connect America support over a 10-year support term and must offer voice and broadband service meeting the Commission's requirements to the required number of locations by the Commission's deadlines. They will be subject to the same level of oversight and non-compliance measures as all other Connect America Phase II recipients.

13. We note that New York intends to include Connect America-eligible areas in Phase 3 of its program and will make available at least \$200 million in New York support to serve Connect America Phase II auction-eligible areas.⁴⁰ New York has indicated that it will adopt requirements for Phase 3 of its program that are largely similar to the requirements adopted for Phase 2 of its program. We expressly condition our waiver on the requirement that any modifications New York makes to its Phase 2 requirements must be consistent with Communications Act of 1934, as amended (the Act), must allow for the provision of Connect America support only to entities that are eligible under Commission rules, and must not conflict with the conditions set forth in this Order and the requirements the Commission has adopted for the Phase II auction and the Connect America Fund generally. New York shall file with the Bureau and in WC Docket No. 10-90 the Phase 3 requirements once adopted along with a description of any changes, and we reserve the right to reexamine our public interest findings if requirements are materially changed.⁴¹ New York shall also notify the Bureau in the event it grants any waivers of the requirements so that the Bureau can evaluate the continued consistency of New York's program and/or the individual waiver recipient with the Act and Connect America Fund rules.

A. Special Circumstances

14. We conclude that New York has demonstrated that special circumstances warrant deviation from the Connect America Phase II auction program rules. We find that New York is uniquely situated to quickly and efficiently further our goal of broadband deployment. New York has committed a significant amount of its own support—at least \$200 million—to Phase 3 of its broadband program that is

³⁸ See 47 CFR §§ 54.309(a)(2), 54.315.

³⁹ See 47 CFR §§ 1.21001-1.21004.

⁴⁰ New York Jan. 24, 2017 *Ex Parte* Letter at 1; Letter from John M. Beahn, Counsel to Empire State Development, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1-2 (filed Dec. 15, 2016) (New York Dec. 15, 2016 *Ex Parte* Letter).

⁴¹ We note that requiring New York to submit its program requirements to the record will give interested parties an opportunity to review the requirements for consistency with this waiver. See Letter from John P. Janka, Counsel to ViaSat, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 3 (filed Dec. 22, 2016) (ViaSat Dec. 22, 2016 *Ex Parte* Letter) (urging the Commission to “provide the public an opportunity to comment” upon New York's program guidelines).

designed to be compatible with and achieve the goals of Connect America Phase II.⁴² Moreover, New York is poised to quickly implement the next phase of its program in a matter of months so that deployment of broadband of speeds that meet or exceed the Commission's baseline requirements for Connect America can be achieved while the Commission is in the process of finalizing and implementing the Connect America Phase II auction.⁴³

15. New York has also demonstrated that there are unique timing considerations given it has already commenced implementation of its own state broadband program.⁴⁴ As one commenter notes, if New York were to exclude Connect America Phase II eligible areas from its program to avoid overlap with the Connect America Phase II auction, it would be "impossible" for broadband providers to build an efficient network because the Connect America Phase II census blocks are interspersed with census blocks that are eligible for the New York program.⁴⁵ On the other hand, if New York were to postpone its program to wait for Connect America Phase II support to be authorized, it would not be able to achieve its aggressive build-out objectives, thereby delaying service to consumers.⁴⁶

16. We are not persuaded by commenters that claim that New York has not demonstrated special circumstances because New York made a voluntary decision to establish a program with the knowledge that Verizon could decline support, and that New York should instead align its program with Connect America Phase II.⁴⁷ We believe such a stance would be contrary to our efforts to encourage states to implement their own funding programs and could lead to further delay in the deployment of broadband to unserved communities. We decline to take action that would effectively dissuade states from taking any action to disburse their own funds until the Commission first acts on its own program.⁴⁸

17. Based on the record before us, we conclude that New York appears to be uniquely situated among states to coordinate with the Commission for purposes of the Connect America Phase II auction, and we would not expect to find other states providing the same level of funding nor facing the same timing constraints as New York. Nonetheless, we do not address here arguments that other states

⁴² Petition at 2, 12; Letter from John M. Beahn, Counsel to Empire State Development, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1 (filed Jan. 24, 2017) (New York Jan. 24, 2017 *Ex Parte* Letter) (confirming that New York "would make at least \$200 million available in the upcoming phase of its reverse auction to ensure that State broadband funding would meet or exceed any federal [Connect America] funding allocated and awarded pursuant to the waiver"). See also Comments of the Pennsylvania Public Utility Commission, WC Docket No. 10-90 et al., at 4 (filed Oct. 24, 2016) (Pennsylvania PUC Comments) ("New York is in a unique position as it is currently implementing a state broadband deployment initiative."); Comments of Verizon, WC Docket No. 10-90 et al., at 4 (filed Oct. 24, 2016) (Verizon Comments) (noting "the significant amount of broadband funding provided by New York" and "the overlap between the [Connect America] program and the New York program").

⁴³ Petition at 12-13.

⁴⁴ Verizon Comments at 4 (noting that the "timing differences between the two programs" demonstrates special circumstances).

⁴⁵ Comments of Haefele TV Inc., WC Docket No. 10-90 (filed Oct. 21, 2016).

⁴⁶ Petition at 12-13.

⁴⁷ Opposition of the Wireless Internet Service Providers Association to New York State Petition for Expedited Waiver, WC Docket No. 10-90 et al., at 7-8 (filed Oct. 24, 2016) (WISPA Comments).

⁴⁸ John P. Janka, Counsel to ViaSat, Inc., and Stephen E. Coran, Counsel to WISPA, WC Docket No. 10-90, at 2 (filed Dec. 7, 2016) (ViaSat and WISPA Dec. 7, 2016 *Ex Parte* Letter) (suggesting that New York "could condition its support" in Connect America-eligible areas "on the outcome of" the Connect America Phase II auction"). See also *Phase II Auction Order*, 31 FCC Rcd at 5977, para. 86 (recognizing and applauding state-based initiatives to advance broadband deployment).

are in a similar position to New York, as we have before us only a waiver request by one state.⁴⁹ No other state has requested a similar waiver.⁵⁰

B. Public Interest

18. We also conclude that New York has demonstrated that the public interest will be served by waiving the Connect America Phase II auction program rules to the extent described herein and subject to the conditions we adopt below to ensure that the support is allocated, used, and monitored consistent with the objectives the Commission has established for the Connect America Fund.

19. We conclude that granting the waiver will advance several key objectives of the Connect America program, and that strict application of the Connect America Phase II auction program rules would frustrate those objectives. First, the waiver will promote the rapid deployment of advanced broadband services to unserved areas.⁵¹ Moving swiftly to authorize entities to receive Connect America Phase II support in New York in coordination with New York's broadband program will accelerate the deployment of broadband that meets or exceeds the Commission's baseline Connect America Phase II

⁴⁹ Comments of ViaSat, WC Docket No. 10-90, at 4-5 (filed Oct. 24, 2016) (ViaSat Comments); Reply Comments of ViaSat, WC Docket No. 10-90, at 4-5 (filed Oct. 31, 2016) (ViaSat Reply); Reply Comments of the Wireless Internet Service Providers Association to New York State Petition for Expedited Waiver, WC Docket No. 10-90 et al., at 2 (filed Oct. 31, 2016) (WISPA Reply); Letter from John P. Janka, Counsel to ViaSat, Inc., and Stephen E. Coran, Counsel to WISPA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2-3 (filed Jan. 24, 2017) (ViaSat and WISPA Jan. 24, 2017 *Ex Parte* Letter). *See also* WISPA Comments at 8 (“[I]t may be true that other states and territories are waiting for the Commission to schedule the [Connect America] reverse auction before they move forward with their own plans . . .”).

⁵⁰ We note that several other states in the past have made us aware of their contributions to broadband deployment and existing state initiatives. *See, e.g.*, Pennsylvania PUC Comments at 4-5 (noting that that the state “does not currently have an operating broadband deployment program,” but has “developed and implemented a statutorily-mandated, multiyear initiative to deploy broadband networks and advanced services provided by [incumbent local exchange carriers] that operate under incentive regulation”); Letter from Peter Larkin, Chair, Board of Directors, Massachusetts Broadband Institute and Karen Charles Peterson, Commissioner, Massachusetts Department of Telecommunications and Cable, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 (filed Jan. 9, 2017) (noting that “[T]he Massachusetts Legislature authorized the MBI to invest up to \$40 million in state capital funds for infrastructure” in unserved communities) (Massachusetts Jan. 9, 2017 *Ex Parte* Letter); Letter from Edmund Donnelly, Deputy 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 the state’s allocation of \$50 million of funding to extend broadband to communities in Western Massachusetts); 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 2-3 (filed Sept. 2, 2014) (describing California’s various state universal service support mechanisms and California Broadband Council).

⁵¹ *Phase II Auction Order*, 31 FCC Rcd at 5964, para. 41 (“Given the importance of the availability of broadband in the 21st century, one of the Commission’s policy goals is to accelerate the deployment of broadband-capable networks”); *USF/ICC Transformation Order*, 26 FCC Rcd at 17681, para. 51 (adopting a performance goal of ensuring “the universal availability of modern networks capable of delivering broadband and voice service to homes, businesses, and community anchor institutions”). *See also* Petition at 7, 12 (noting that the Commission’s “speed and buildout goals . . . would be enhanced as the requirements of the New York program are more rigorous than those applicable to [Connect America]” and that “New York’s broadband program is also operating on an extremely rapid deadline”).

auction speed requirements.⁵² In prior phases, providers participating in New York's program were required to commit to offer broadband at speeds of 100 Mbps downstream in most areas, or a minimum of 25 Mbps downstream in unserved areas.⁵³ These downstream speeds fall within the speed tiers the Commission adopted for the Connect America Phase II auction, which include downstream speeds of 10 Mbps, 25 Mbps, 100 Mbps, and 1 Gbps.⁵⁴ New York has indicated that it is ready to implement the third phase of its program that will include Connect America-eligible areas as soon as its petition for waiver has been granted and will require that recipients complete their deployment at an accelerated pace as compared to the Connect America Phase II auction deployment schedule.⁵⁵ By contrast, we still have a number of steps to take before the Connect America Phase II auction will be conducted, and Connect America Phase II support will be awarded.⁵⁶ Once Connect America Phase II support is awarded through the Connect America Phase II auction, recipients will have six years to fully deploy broadband throughout the areas where they have been authorized to receive support.⁵⁷

20. Second, the requested waiver will aid the Commission's objective of ensuring that Connect America Phase II support is used efficiently and effectively.⁵⁸ As we discuss in more detail below, granting the waiver will result in aligning New York's support with up to the same amount of Connect America Phase II model-based support that was declined by Verizon for the six-year term. The conditions we adopt below require that the support that we award in coordination with New York's program be no more than the support calculated by the cost model (or the cap we adopt below for extremely high-cost census blocks). We will only authorize Connect America Phase II support to match whatever amount New York commits through its program, subject to a cap.⁵⁹ By requiring New York to commit the same or more support to the areas where we authorize Connect America Phase II support, we will likely be able to stretch the available Connect America support to more areas, potentially resulting in the deployment of broadband to more unserved and underserved Americans.⁶⁰

21. Similarly, aligning Connect America Phase II support with New York's broadband program will help ensure that the Connect America Phase II auction does not award support to entities to serve areas where New York has already funded another recipient to offer broadband.⁶¹ This would be

⁵² See also Letter from Anthony G. Collins, President, Clarkson University, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1 (filed Oct. 21, 2016) (noting the increased speeds requirements for the New NY Broadband program).

⁵³ Petition at 2; New NY Broadband Program Guidelines at 14-15.

⁵⁴ *Phase II Auction Order*, 31 FCC Rcd at 5957, para. 15.

⁵⁵ Petition at 2; Letter from John M. Beahn, Counsel to Empire State Development, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1 (filed Dec. 5, 2016).

⁵⁶ *Phase II Auction Order*, 31 FCC Rcd at 5952, para. 3 (noting that a forthcoming Auction Comment Public Notice will seek comment on other action procedures that must be resolved in order to conduct the auction).

⁵⁷ *Id.* at 5964, para. 40.

⁵⁸ *Id.* at 5986, para. 109 ("As stewards of the public's funding, it is our responsibility to implement safeguards to ensure that these funds are being used efficiently and effectively . . .").

⁵⁹ Pursuant to New York's program rules, participants will be required to make a private investment as well. New NY Broadband Program Guidelines at 13 & n.27.

⁶⁰ See Comments of Tioga County, WC Docket No. 10-90 et al. (filed Oct. 21, 2016) (noting that "[b]y pooling (New York and Connect America support) together, they will have a much greater impact and increase the ability of the New NY Broadband program to enhance broadband services in New York State").

⁶¹ Petition at 7, 13-14 (noting that "[t]here is no certainty that the broadband providers funded through the New York program would be the same providers funded through the [Connect America Phase II auction]"); Comments of New York Service Providers at 1-2 (noting that New York's requested waiver "mitigates concerns presented by holding separate and uncoordinated federal and state auction processes" including "potential funding of duplicative broadband networks and disparate federal-state funding requirements").

contrary to the Commission's general policy objective of not providing support to multiple entities in the same geographic area.⁶² The Commission has made clear that it would not be an efficient use of Connect America Phase II support to make eligible areas where a provider is already serving the area with service that meets its requirements.⁶³ While it is true that to avoid such overlap New York could make Connect America Phase II areas ineligible for its program,⁶⁴ we conclude that the public interest is better served by permitting recipients of the New York program to leverage Connect America support, New York support, and private investment to deploy broadband in Connect America Phase II areas on an accelerated timetable, thereby directly benefiting those consumers who will be served more quickly than otherwise would be the case. Moreover, potentially less Connect America support will be used to serve these unserved areas than if the areas were auctioned through the Connect America Phase II auction, given the significant state investment that will be coupled with federal support.

22. In a similar vein, this arrangement will ensure that the significant funds that New York has committed towards the deployment of broadband are used in a manner that is consistent with the Commission's own efforts.⁶⁵ It will enable the Commission to leverage New York's program that was developed based on local knowledge regarding the needs of consumers living in New York and the capabilities of the potential recipients to efficiently and effectively allocate Connect America support.⁶⁶ And the lessons learned from partnering with New York may help inform the Commission's decisions for implementing the nationwide Connect America Phase II auction and also will provide an opportunity to set an example for how state and Commission partnerships could work in the future.⁶⁷

23. We are not convinced by arguments that we are required to address New York's waiver petition in the context of the Further Notice where we sought comment on issues relating to state

⁶² *USF/ICC Transformation Order*, 26 FCC Rcd at 17701, para. 103.

⁶³ See, e.g., *Phase II Auction Order*, 31 FCC Rcd at 5968, para. 52 (finding that "it would not be an efficient use of the Phase II support to make eligible in the auction high-cost or extremely high-cost census blocks in the declined states where the price cap carrier is already providing 10/1 Mbps or better service").

⁶⁴ ViaSat Comments at 3-4; ViaSat Reply at 9.

⁶⁵ The Commission has previously recognized that "states remain key partners even as [our universal service] programs evolve and traditional roles shift." *USF/ICC Transformation Order*, 26 FCC Rcd at 17671, para. 15; see also 47 U.S.C. §§ 214, 254 (emphasizing the state's role in the preservation and advancement of universal service); Petition at 10-12 ("Grant of a waiver would help to promote the public interest by facilitating the type of federal-state partnership that Congress, the courts, and the Commission have long recognized as vital to promoting and advancing universal service goals."); Comments of New York Service Providers at 1 ("[S]tates have an important role in advancing the country's Universal Service goals.").

⁶⁶ Petition at 6, 11 (stating that the state "has conducted an extensive and granular review of the State's broadband needs in connection with its implementation of New York's broadband program"); Comments of New York Service Providers at 1-2 ("The State has invested significant time and resources in the development of an auction process, including extensive outreach with varied interested parties in the State These efforts allowed New York to acquire an in-depth understanding of local broadband needs, which resulted in a successful and extremely timely conclusion in the first round of auctions conducted by [the state]."). We disagree with ViaSat's suggestion that New York's local knowledge is irrelevant to New York's program given that the most cost-efficient applications will be chosen. ViaSat Comments at 4 n.6. Instead, a state's local knowledge regarding its consumers, its broadband providers, and the eligible areas can be useful for determining such issues as the required speeds or for assessing whether a broadband provider is qualified to meet the program's terms and conditions. See also New York Reply at 5 (noting that New York is "able to work with existing partners to ensure strong participation in the auction" and "avoid duplicative capital spending as a result of its extensive and proprietary mapping efforts").

⁶⁷ Petition at 11-12 (stating that "[s]uch a partnership could also facilitate further coordination between the Commission and the states on the key broadband policy issues that are necessary to make broadband available throughout the country" and noting that "[g]rant of a waiver would likely spur other states to develop and implement their own broadband programs or enjoy a similar partnership yielding a beneficial outcome for the citizens of their state through co-investment and coordination").

distribution of funding for the Connect America Phase II auction.⁶⁸ There, the Commission specifically noted that it sought to “design a Phase II auction that achieves an efficient and equitable distribution across the states for Connect America Phase II funding,” and focused its proposals on achieving this goal within the Connect America Phase II and Remote Areas Fund auction frameworks.⁶⁹ While the Commission solicited other suggestions, it specifically directed commenters to explain “how each of the approaches they advocate would affect the efficiency of the Phase II auction.”⁷⁰ Here, New York has sought waiver of the Connect America Phase II auction program rules so that the relevant support could be allocated outside of the Connect America Phase II auction. Granting this waiver does not prejudice any decision the Commission might make regarding the issues raised in the Connect America Phase II auction rulemaking.

24. We are also not persuaded by commenters’ other attempts to argue that we should as a threshold matter dismiss the petition as improper. We disagree with claims that the petition is insufficient because it is seeking waiver of rules that are not yet in place and that could potentially be adopted in the context of the Further Notice.⁷¹ Instead, we conclude that New York has properly sought waiver of the decisions the Commission has already made to allocate Connect America Phase II support through one nationwide auction program.⁷²

25. We also are not persuaded that we lack the authority to grant New York’s petition.⁷³ As New York points out, section 254 of the Act gives the Commission “significant leeway” to implement and fulfill the objectives of the universal service fund.⁷⁴ Rather than giving New York a “block grant,”⁷⁵ we are leveraging the competitive process that New York already has in place to determine who we will authorize to receive Connect America Phase II support in New York. The Commission is the entity that will be authorizing federal funds. Contrary to the suggestions of some commenters, support will not be

⁶⁸ WISPA Comments at 3-4; ViaSat Comments at 8; American Cable Association Reply Comments on New York State Petition for Expedited Waiver, WC Docket No. 10-90 et al., at 4-5 (Oct. 31, 2016) (ACA Reply); ViaSat Reply at 10.

⁶⁹ *Phase II Auction FNPRM*, 31 FCC Rcd at 6024-25, paras. 217-24.

⁷⁰ *Id.* at 6025, para. 224.

⁷¹ WISPA Comments at 3-4; ACA Reply at 3. ACA subsequently acknowledged that it “better appreciates the timing and funding challenges presented” and now supports “rapid grant of the requested waiver.” Letter from Ross J. Lieberman, Senior Vice President of Government Affairs, America Cable Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 3 (filed Jan. 13, 2017) (ACA Jan. 13, 2017 *Ex Parte* Letter).

⁷² See, e.g., 47 CFR §§ 54.309, 54.310, 54.313, 54.315, 54.316, 54.320 (setting forth the application process, eligibility requirements, eligible areas, support term, deployment obligations, reporting requirements, and non-compliance measures for the Connect America Phase II auction); *Phase II Auction Order*, 31 FCC Rcd at 5968-74, 5975, 5976, paras. 51-73, 79, 84 (finalizing the eligible areas for the Phase II auction and setting a budget of \$215 million annually that includes the Connect America Phase II model-based support that was declined); *Connect America Fund et al.*, Report and Order, 29 FCC Rcd 15644, 15672, para. 75 (2014) (*December 2014 Connect America Order*) (making certain census blocks nationwide eligible for the Connect America Phase II auction); *April 2014 Connect America Order*, 29 FCC Rcd at 7060-61, paras. 30-32 (making extremely high-cost census blocks nationwide eligible for the Connect America Phase II auction).

⁷³ ViaSat Comments at 6-7 (claiming that the “Commission should retain ultimate control over the disbursement of universal service funds” and granting the petition would “instead delegate responsibility for such matters to New York”); ACA Reply at 3; ViaSat Reply at 8.

⁷⁴ 47 U.S.C. § 254(b) (stating that the Commission shall base policies for the preservation and advancement of universal service on certain principles); Petition at 14 (citing *Clark-Cowlitz Joint Operating Agency v. FERC*, 826 F.2d 1074, 1080 (DC Cir. 1987)).

⁷⁵ WISPA Comments at 9; ViaSat Comments at 7; ViaSat Reply at 8-9.

disbursed to the New York state government.⁷⁶ Rather, the Universal Service Administrative Company (USAC) will disburse the support directly to the authorized carriers, which as explained below must all obtain ETC designations before they are authorized to receive support.

26. Moreover, we adopt conditions below to ensure that this partnership with New York achieves our Connect America objectives, and that the Commission retains control of the oversight and distribution of the funds. As discussed in more detail below, the Commission will maintain control over the funds at all times, 1) by specifying where Connect America Phase II support can be awarded and placing limitations on how much support can be allocated to those areas, 2) by ensuring that the recipients are qualified to meet the obligations and individually authorizing the recipients, 3) by having USAC directly disburse the support to authorized ETCs in monthly installments, 4) by requiring the recipients to comply with the same level of oversight as all other Connect America Phase II recipients, and 5) by subjecting the recipients to non-compliance measures if they do not comply the program requirements.⁷⁷ For all of these reasons, this partnership is fully consistent with the Telecommunications Act of 1996.⁷⁸

27. We address some of the differences between the framework the Commission has adopted for the Connect America Phase II auction and New York's program in the conditions to this waiver discussed below,⁷⁹ which are designed to ensure that federal funds are used in a manner consistent with the objectives of the Connect America Fund. We do not find that the remaining differences alter our analysis of the costs and benefits of granting a waiver.⁸⁰ Nor do those differences require a finding that granting the waiver petition is not in the public interest. Most notably, whereas the Commission has adopted several performance and latency tiers for the Phase II auction and has sought comment on how to weight those tiers,⁸¹ we do not require New York to use this particular methodology for allocating support. The New York program also scores bids using a cost to serve per location methodology, whereas the Commission has decided to score bids relative to the reserve price in the Connect America Phase II auction.⁸²

28. Each of the decisions that the Commission made for the nationwide Connect America Phase II auction was based on a desire 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.⁸³ While in the context of a nationwide auction, the Commission determined that the framework it adopted for the Connect America Phase II auction served the public interest, that does not preclude us now, in the context of a waiver proceeding, from weighing in the balance the public interest benefits of bringing more robust service to consumers more quickly, by leveraging New York's existing program and additional funds.⁸⁴ Moreover, by coordinating our efforts

⁷⁶ See WISPA Comments at 2 (claiming that New York is "statutorily ineligible" to receive Connect America support because it is not an ETC); ACA Reply at 3; ViaSat Reply at 8-9.

⁷⁷ See also New York Reply at 7.

⁷⁸ 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.").

⁷⁹ See *infra* Section III.

⁸⁰ ViaSat Comments at 5-6; ViaSat Reply at 7; Reply Comments of Hughes Network Systems, LLC, WC Docket No. 10-90, at 2-4 (filed Oct. 31, 2016) (Hughes Reply); ViaSat and WISPA Dec. 7, 2016 *Ex Parte* Letter at 1-2.

⁸¹ *Phase II Auction Order*, 31 FCC Rcd at 5957, 5976, paras. 15, 84.

⁸² New NY Broadband Program Guidelines at 28; *Phase II Auction Order*, 31 FCC Rcd at 5977, para. 84.

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

⁸⁴ See ViaSat and WISPA Jan. 24, 2017 *Ex Parte* Letter at 5 (arguing that if New York decided to require bidders to commit to higher speeds it would be "fundamentally inconsistent with the Commission's decision *not* to require providers to meet higher speeds than the Commission's minimum speeds") (emphasis in original).

with New York's program, we can be confident that the support is being targeted to offer service that meets consumers' needs and at speeds that can be accomplished by New York's service providers, given that New York's program will be implemented with New York's local knowledge about its broadband providers' capabilities and the needs of its consumers.⁸⁵ We conclude that even if coordinating our efforts with New York's program results in some differences in how the federal support may be allocated in one state, these public interest benefits outweigh the potential harm.

29. We find that our decision to authorize Connect America Phase II support to an entity selected by New York does not violate the principle of competitive neutrality, even though the New York program may choose to award preferences to bidders committing to meet higher speeds, higher usage allowances, and lower latencies.⁸⁶ The principle of competitive neutrality does not require all competitors to be treated alike, but "only prohibits the Commission from treating competitors differently in 'unfair' ways."⁸⁷ Standards which are designed to meet reasonable regulatory objectives are not "unfair" simply because some technologies or service providers cannot meet those standards. Below we address commenters' concerns about the absolute preferences New York has given in previous phases to certain technologies and broadband speeds and the lack of clarity regarding which technologies would be eligible in upcoming phases of its program by requiring that New York adopt a technology-neutral allocation methodology as a condition of this waiver.⁸⁸

30. Furthermore, we disagree with commenters that argue that granting this waiver will undermine the nationwide Connect America Phase II auction.⁸⁹ New York is a single state, engaged in an innovative approach to broadband deployment that is the fundamental goal of the Connect America Phase II auction. We are not persuaded by comments that suggest that granting the waiver request will necessarily harm other states by leaving less support for broadband providers that want to serve unserved consumers in those states.⁹⁰ Under the approach adopted in this Order, we may authorize up to the

⁸⁵ For these reasons, we are not persuaded that we should condition our waiver on requiring New York to adopt the speed and latency tiers the Commission adopted for the Connect America Phase II auction. See Hughes Reply at 3.

⁸⁶ See *id.* at 3 (stating that Connect America funding "should be used in a manner consistent with the universal service principle of competitive neutrality").

⁸⁷ *Rural Cellular Ass'n. v. FCC*, 588 F.3d 1095, 1104 (D.C. Cir. 2009). See also *Phase II Auction Order*, 31 FCC Rcd at 5986, para. 109 & n.211 (noting that the eligibility requirements that we adopted for the Connect America Phase II auction potentially preclude certain interested bidders, but that these requirements do not violate the principle of competitive neutrality); *USF/ICC Transformation Order*, 26 FCC Rcd at 17731, para. 176 (noting that the Commission's decision to offer price cap carriers model-based support does not violate the principle of competitive neutrality).

⁸⁸ See *infra* Section III ("Support Allocation"). See also ViaSat Reply at 7 (claiming that "New York State's approach unnecessarily limits from the outset the number of households that can be served within a limited budget"); ViaSat and WISPA Dec. 7, 2016 *Ex Parte* Letter at 1-2 (claiming that New York's program guidelines for Phase 2 would "effectively grant a right-of-first-refusal to the most expensive technologies to deploy," "[r]elegate other specific technologies to second-tier status while apparently excluding other technologies altogether," "[f]avor bidders proposing 'gold-plated' service," and "[p]reclude meaningful competition for available funds").

⁸⁹ See, e.g., WISPA Comments at 8-9 (claiming that by granting New York's waiver, "[a]ssuming there is even enough money to go around, the reverse auction process would quickly devolve into a chaotic mess in which states extend their hand and the Commission fills it with support, to the detriment of private investment and the benefits of a reverse auction designed to award support to cost-effective bids"); ViaSat Comments at 2, 4 ("Granting the Petition would also encourage similar requests from other states, undermining the overall integrity of Phase II of [Connect America]"); WISPA Reply at 1-2, 5-6.

⁹⁰ See, e.g., WISPA Comments at 5-6, 8-9 (claiming that granting New York's waiver "would be grossly unfair to consumers in every other state or territory where there are unserved locations"); ViaSat Reply at 3-4 (claiming that "the limited budget available to competitive providers in [Connect America Phase II] creates a zero-sum dynamic in which providing funds to one state . . . necessarily would deprive other states of funds they otherwise would receive through the competitive auction that the full Commission has decided to implement"); ViaSat Comments at 4

(continued....)

amount that Verizon declined in the State of New York for a 10-year support term, which represents approximately eight percent of the total Connect America Phase II auction budget.⁹¹ Even if all of the \$170.4 million is allocated in partnership with New York, almost \$1.98 billion will remain in the Phase II auction budget and will be made available in the other states. Below, we adopt certain measures that may stretch the up to \$170.4 million in support beyond the census blocks in New York that were eligible for the offer of model-based support. We adopt reserve prices that will ensure that no more support than what was calculated by the Connect America Cost Model (CAM) will be available to the eligible census blocks, require New York to provide matching support at a minimum, and require that the up to \$170.4 million we make available to New York be spread across a ten-year support term for recipients even though the Phase II offer made to Verizon was for a six-year term of support. It is possible that due to these conditions, less of the Connect America Phase II auction budget will be allocated to serve Connect America Phase II eligible areas in New York than if those areas were included in the nationwide auction, potentially leaving more funding for other areas that are eligible for the Connect America Phase II auction.⁹² We also note that if the support we make available here is not authorized to entities in New York, it may remain in the Connect America Phase II auction budget. And we remain committed to efficiently and effectively allocating Connect America support to all states.

31. We disagree with suggestions that we should be more focused on states that have not implemented broadband programs or only “minimally” support broadband deployment because that is where consumers are in the greatest need for support for broadband.⁹³ We made clear that we recognize and applaud state broadband initiatives and sought comment on how to coordinate with such initiatives within the framework of the Connect America Phase II auction.⁹⁴ It would affirmatively discourage states from connecting their own citizens to penalize states that have undertaken such initiatives in favor of states that have not made a commitment to invest in broadband. Nor are we ignoring states that do not have state programs similar to New York’s; we will address those states through the Connect America Phase II auction.

32. At this time, we act only on the New York waiver petition. We decline to act on the suggestion of commenters that we should expand New York’s waiver request to directly allocate the support that was declined by other price cap carriers in other states to the states where they declined the support.⁹⁵ As we have emphasized, New York has heavily invested resources in designing a program that will allocate a significant portion of its own support. That program is ready to be implemented, and New York has committed that the program will be compatible with the objectives of Connect America Phase II. No other state program is before us today. If another state were to seek a waiver, we would expect to

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(claiming “the requested waiver would result in even more residents of other states being left without access to critical broadband services”); WISPA Reply at 4; ViaSat and WISPA Dec. 7, 2016 *Ex Parte* Letter at 2.

⁹¹ New York Reply at 8.

⁹² As explained above, the New York awardees are limited to using their New York support for capital expenses, and New York awardees have been required to submit status reports and documentation of their expenses before support will be disbursed. See *supra* para. 8. Such measures will provide some assurance that New York bidders will not be able to place bids based on inflated costs.

⁹³ WISPA Comments at 9.

⁹⁴ *Phase II Auction FNRPM*, 31 FCC Rcd at 6024, para. 218.

⁹⁵ Pennsylvania PUC Comments at 4-5 (requesting that the Commission expand New York’s proposal to award declined Connect America Phase II model-based support to “states like Pennsylvania that have already implemented a state-level broadband deployment program” and claiming that support should be allocated directly to carriers that are willing to “step into the shoes” of a declining price cap carrier in all states); Massachusetts Jan. 9, 2017 *Ex Parte* Letter at 2 (“To the extent that the Commission approves New York’s petition, it should do so broadly so as to permit states like Massachusetts that similarly dedicate state funds to broadband expansion to receive dedicated [Connect America] support”).

engage in the same analysis we have conducted here to ensure that such a program would serve the public interest, that it would not delay the Connect America Phase II auction, and that it would achieve the goals of the Connect America Fund.⁹⁶ We would also expect to impose conditions to ensure the goals of Connect America are achieved and that would facilitate coordination with the state.⁹⁷

33. Finally, we are not convinced that by granting New York's petition for waiver we are permitting Verizon to "game" Connect America by avoiding its Connect America Phase II model-based obligations and instead receive support through New York's broadband program, or that our decision would provide an incentive for other price cap carriers that declined Connect America Phase II model-based support to do the same.⁹⁸ First, we note that every price cap carrier had the option of turning down Connect America Phase II model-based support and instead participating in the Connect America Phase II auction. By making this decision, such price cap carriers risk getting no support at all in these areas if they do not place competitive bids. Second, Verizon would face significantly more aggressive build-out requirements through New York's broadband program given the higher speed requirements and a more rapid build-out schedule. Finally, below we impose upon all recipients of Connect America Phase II support that is authorized in coordination with New York's program the same public interest obligations and oversight and non-compliance measures that the Commission imposed on Connect America Phase II auction recipients to ensure that support is being used for its intended purpose.

34. Based on the record before us, we conclude that it serves the public interest to waive the Connect America Phase II auction program rules so that entities receiving Connect America Phase II support in New York will be authorized by the Commission in coordination with the New York program, rather than through a nationwide competitive auction, consistent with the conditions we adopt below. As discussed above, the public interest benefits of authorizing support to service providers in New York outside of the Connect America Phase II auction are not just limited to New York.⁹⁹ Instead, the opportunity to more efficiently and effectively use Connect America support by leveraging a federal-state partnership benefits all consumers that pay into the universal service fund, could potentially lead to Connect America Phase II support being used to serve more unserved and underserved Americans across the country, and may offer lessons that inform decisions we make for the Connect America Phase II auction. These public benefits, coupled with the opportunity to rapidly deploy broadband to unserved consumers, outweigh the potential harms raised by commenters, particularly given that the decisions we make in this Order do not prejudice any decisions we make for how support will be allocated through the Connect America Phase II auction.

C. Conditions

35. We grant New York's petition subject to the conditions we adopt below. These conditions will ensure that support is allocated in partnership with New York in a manner that is consistent with Connect America objectives and that the Commission will retain oversight over the

⁹⁶ We conclude that by considering these issues we will be taking a "holistic" approach for evaluating each individual waiver request and its impact on the Phase II auction generally. See *ViaSat and WISPA* Jan. 24, 2017 *Ex Parte* Letter at 6 (suggesting that "the proper role of states and state broadband programs within the [Connect America] framework is a complicated question that should be addressed in a holistic fashion, and not solely in connection with individual requests filed by states").

⁹⁷ See *id.* (citing *ACA* Jan. 13, 2017 *Ex Parte* Letter and noting the "need for a deliberative approach" given the potential costs of coordinating with a state program).

⁹⁸ *ViaSat* Reply at 6-7.

⁹⁹ *ViaSat* Reply at 3 (suggesting that the Commission should focus on "whether the requested waiver would benefit the broader public interest"); Reply Comments of the United States Telecom Association, WC Docket No. 1-90, at 3 (filed Oct. 31, 2106) (*USTelecom* Reply) (noting that "[i]n its role as the federal agency with jurisdiction over the [Connect America] program, the Commission must continue to focus on consumers nationwide").

support. We direct the Bureau to resolve any implementation details in a manner consistent with this Order and the Commission's overarching objectives of the Connect America Fund.

36. *Eligible Areas.* One of our core objectives for Connect America is to ensure that we do not provide support in areas where unsubsidized competitors are offering voice and broadband services meeting the Commission's requirements.¹⁰⁰ Consistent with this objective, we direct the Bureau to publish expeditiously an updated list of census blocks in New York that are not served by unsubsidized competitors or incumbent price cap carriers with voice and fixed broadband at speeds of 10/1 Mbps or greater according to the most recent publicly available FCC Form 477 data.¹⁰¹ This list shall be used to determine which census blocks will be eligible for the authorization of Connect America Phase II support in coordination with the New York program. Any census blocks that do not receive any winning bids through the New York competitive bidding process will be eligible for the nationwide Remote Areas Fund auction if they remain unserved and would otherwise be eligible for the Remote Areas Fund auction at the time the Bureau finalizes the list of census blocks for the Remote Areas Fund auction.

37. The Bureau released the first preliminary list of eligible census blocks in August 2016 based on June 30, 2015 FCC Form 477 data.¹⁰² Since the list was published, the Commission has publicly released Dec. 31, 2015 FCC Form 477 data.¹⁰³ The Bureau will update the preliminary list for New York to reflect the most recent publicly available Dec. 2015 FCC Form 477 data. Any census block that is included on this list and that has not already been awarded support through other phases of New York's program will be eligible to receive Connect America Phase II support in coordination with New York's program.

38. *Support Allocation.* We will make available an amount up to the total amount of support that Verizon declined in New York—\$170.4 million total or \$17.040 million per year over a 10-year support term—for authorization in coordination with New York's program.¹⁰⁴ New York has committed to allocate New York funds in areas that are eligible for Connect America support.¹⁰⁵ To ensure the efficient and effective use of this Connect America Phase II support, we will condition our authorization of support on the requirement that New York commit, at a minimum, the same dollar amount of New York support to Connect America-eligible areas as the support that will come from the Connect America budget over the 10-year period.¹⁰⁶ That is, New York will name its winning bidders and the amount of New York State support that it has awarded for each bidder in Connect America Phase II-eligible areas. The Bureau will then authorize each bidder a matching amount of Connect America support in Connect America Phase II-eligible areas, up to the reserve price established for Connect America support, assuming the winning bidder meets the eligibility requirements set forth below.

39. As a simplified example, if a bidder in the New York program bids to receive \$20,000 in New York support to serve four Connect America eligible census blocks, and that bidder is named as a winning bidder, the Bureau in turn will authorize \$20,000 in Connect America support for those four blocks, subject to the Connect America support reserve price for the four blocks. That \$20,000 in Connect America Phase II support would be provided in monthly increments over the 10-year period, i.e.,

¹⁰⁰ See *Phase II Auction Order*, 31 FCC Rcd at 5969, para. 54.

¹⁰¹ See *Phase II Auction Order*, 31 FCC Rcd at 5968, para. 51 & n.111.

¹⁰² *Phase II Auction Preliminarily Eligible Census Blocks Public Notice*, 31 FCC Rcd 8870.

¹⁰³ Federal Communications Commission, Fixed Broadband Deployment Data from FCC Form 477, <https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477> (last visited Nov. 23, 2016).

¹⁰⁴ *Model-Based Support Offers Public Notice*, 30 FCC Rcd 3905.

¹⁰⁵ Petition at 8.

¹⁰⁶ See ACA Jan. 13, 2017 *Ex Parte* Letter at 2 (proposing that states coordinating with the Commission should "match Phase II funding in two respects" including providing equal or more support than the relevant reserve price).

a monthly amount of \$166.67 for 10 years. If, for instance, the Commission's Connect America reserve price for those four blocks is \$300 per month, that would represent \$36,000 in support over the 10-year term: in this scenario, we would authorize an amount less than the reserve price (\$166.67 monthly instead of \$300 monthly) to match New York's support, and the bidder's total support amount would be \$40,000 (\$20,000 in New York support over the period of construction plus \$20,000 in Connect America support over the 10-year period). If, on the other hand, the Connect America reserve price for those four blocks is \$100 per month, that would represent \$12,000 in total support over the 10-year term: in this scenario, the Bureau would authorize \$100 in monthly Connect America support so that the bidder's total support amount is \$32,000 (\$20,000 in New York support plus \$12,000 in Connect America support).¹⁰⁷ We would not authorize the \$166.67 in Connect America monthly support in this scenario, because that would exceed the \$100 per month Connect America reserve price.

40. This approach will ensure that New York contributes, at a minimum, equally to deployment in Connect America-eligible areas, rather than diverting its budget to areas that are eligible for the New York program but that are not eligible for Connect America support. All contributors to the fund, and ultimately ratepayers, will benefit from the efficiencies that result from this federal-state partnership. To the extent that any of the support we make available here in New York is not allocated to eligible census blocks and authorized to an eligible recipient, the remaining funding may remain in the Connect America Phase II auction budget for allocation through the Connect America Phase II auction.

41. In previous phases of New York's program, New York has given an absolute preference to those applicants that commit to offer service using fiber-to-the-home or cable/hybrid fiber-coaxial (HFC), deploying DOCSIS 3.0 modems or higher.¹⁰⁸ Participants were able to commit to offering Digital Subscriber Line (DSL) or fixed wireless, but those applications were only accepted if there was "no qualifying, commercially-reasonable application" using the other technologies.¹⁰⁹ Moreover, the New York program gave a preference to 100 Mbps broadband speeds in most cases whereas some of the speed tiers the Commission has adopted are lower speeds—25/3 Mbps and 10/1 Mbps.¹¹⁰

42. To ensure that support is allocated consistent with the objectives of the Connect America Fund, we require that New York adopt a support allocation mechanism for Phase 3 that is technology-neutral and that balances the objective of maximizing the number of consumers that will be served with the value of higher speeds, higher usage allowances, and lower latency. Specifically, New York's allocation mechanism shall not give an absolute preference to any type of technology or speed. Moreover, New York shall not place any restrictions on the technologies that can be used to meet the relevant service obligations, if an applicant can sufficiently demonstrate that it is able to meet the relevant service obligations in its application. Based on the information that has been provided for previous phases of New York's program, there had been some confusion as to whether satellite providers would be able to participate in New York's program.¹¹¹ We clarify here, that as a condition of our waiver, satellite providers must be given the opportunity to compete for Connect America support that is allocated in partnership with New York's program.

¹⁰⁷ As noted above, Connect America Phase II support can only be used in areas in New York that have been deemed by the Bureau to be preliminarily eligible for the Connect America Phase II auction.

¹⁰⁸ New NY Broadband Program Guidelines at 15.

¹⁰⁹ *Id.* at 15.

¹¹⁰ *Id.* at 14-15; *Phase II Auction Order*, 31 FCC Rcd at 5957, para. 15.

¹¹¹ Compare New York Dec. 15, 2016 *Ex Parte* Letter at 1-2 (clarifying that satellite technology would qualify as a fixed wireless technology that is eligible to participate) with ViaSat Dec. 22, 2016 *Ex Parte* Letter at 1-3 (citing evidence that it claims demonstrates that New York's program "has not been open to satellite providers") (emphasis in the original).

43. We conclude that this approach will prevent New York from diverting a significant portion of the budget to fund one type of technology or speed when more cost-effective, reasonably comparable options may be available. It will also make it possible for more service providers to place competitive bids, which may maximize participation and lead to more efficient outcomes.¹¹² We expect that New York will leverage its local knowledge of its consumers' needs and the abilities of its service providers to determine how to implement an allocation mechanism that will reasonably balance these objectives. As noted above, New York shall file with the Bureau and in WC Docket No. 10-90 a description of this methodology prior to commencing Phase 3. The Commission reserves the right to reevaluate its public interest findings if it determines that the methodology is not consistent with the objectives of the Connect America Fund.

44. *Reserve Prices.* For Connect America-eligible census blocks, the Bureau will not authorize more than the total reserve prices of all of the Connect America census blocks that are included in the bid.¹¹³ We have not yet set specific reserve prices for the Connect America Phase II auction, but the Commission has decided that we will use the CAM to set those reserve prices and also that we will cap the amount of support per location provided to extremely high-cost census blocks.¹¹⁴ We conclude that it serves the public interest to set reserve prices for purposes of this waiver decision that are specific to New York consistent with the decisions the Commission already made for the Connect America Phase II auction to ensure that Connect America support is used efficiently and effectively. Although we set a reserve price for the maximum Connect America support amount that we will authorize, this reserve price will not limit the amount of New York support that the state can separately award.¹¹⁵

45. Specifically, we set a reserve price for all census blocks that have average costs that are below the extremely high-cost threshold (i.e., high-cost census blocks) based on the support per-location calculated by the CAM for that census block.¹¹⁶ This will ensure that no high-cost census block will receive more Connect America Phase II support than the CAM calculates is necessary for deploying and operating a voice and broadband-capable network in that census block.

46. For census blocks with average costs that exceed the extremely high-cost threshold, we will impose a \$146.10 per-location per-month funding cap so that the reserve price will be equal to \$146.10 multiplied by the number of locations in that census block as determined by the CAM. This cap is calculated by starting with the extremely high-cost benchmark of \$198.60 and subtracting the funding benchmark of \$52.50 that we have determined is reasonable to expect as recovery from end users.¹¹⁷ This

¹¹² See, e.g., ACA Jan. 13, 2017 *Ex Parte* Letter at 2 (suggesting that a requesting state should confirm that its program meet "a series of threshold requirements" to ensure that the Phase II auction is "not undermined," including that support "be awarded by a competitive bidding mechanism, which maximizes participation by providers"); ViaSat Dec. 22, 2016 *Ex Parte* Letter at 3 (noting that satellite participation "whether alone or combined in a hybrid offering with terrestrial technologies" would "represent a significant source of competition").

¹¹³ To the extent permitted by New York's requirements, a bidder may also include census blocks that are only eligible for the New York program in its bid and bid an additional amount of support for those census blocks consistent with the New York program's rules. As noted above, Connect America support may not be used to fund these census blocks. See also Petition at 8 ("New York would not exceed the reserve price for an eligible census block in the period specified by the [Commission]").

¹¹⁴ *Phase II Auction Order*, 31 FCC Rcd at 5979, para. 90.

¹¹⁵ See *supra* para. 39.

¹¹⁶ This is consistent with how the Commission established reserve prices for the rural broadband experiments. *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8782, para. 36 (2014).

¹¹⁷ See *Model-Based Support Offers Public Notice*, 30 FCC Rcd at 3905 n.1 (noting that the extremely high-cost benchmark for the offer of model-based support was \$198.60); *Connect America et al.*, Report and Order, 29 FCC Rcd 3964, 4033-41, paras. 164-82 (2014) (setting the funding benchmark at \$52.50).

approach will ensure that Connect America Phase II support that is authorized in conjunction with the New York program is not skewed towards areas that the Commission has deemed the hardest-to-serve and the most remote.¹¹⁸ The Commission has acknowledged that these areas tend to be sparsely populated.¹¹⁹ If we were to spend all of the available Connect America support in very expensive areas where few consumers live, we would leave many others consumers unserved. In circumstances where bidders are able to make a business case to serve these extremely high-cost areas with support below what the CAM calculates is necessary, they will be able to bid for support in these areas that will not exceed the support for which all of the other eligible census blocks are eligible. To the extent bidders are unable to make a business case to serve these census blocks at capped support, the census blocks will not receive bids, and therefore will remain eligible for the Remote Areas Fund auction if they remain unserved with a reserve price at whatever the Commission determines is appropriate for the nationwide auction.

47. Moreover, we require that the total reserve price for each of the eligible census blocks be the monthly support-per-location calculated by the CAM (subject to the cap on extremely high-cost locations) for all of the locations in that census block multiplied by 72 months (i.e., six years of monthly support), which is equivalent to the number of months of support that was offered to Verizon.¹²⁰ Although recipients will have a 10-year (or 120-month) support term, we conclude that limiting the calculation of the reserve price to the support term of the Connect America Phase II offer of model-based support will reasonably calibrate the maximum amount of support that we will make available to each census block with the amount of support that would have been offered if each census block had been eligible for the Connect America Phase II offer. We note that the census blocks that are eligible for the New York program are not necessarily the same census blocks that were eligible for the Connect America Phase II offer given that costs have now been averaged at the census block-level,¹²¹ some census blocks that would have been eligible for the offer are not eligible for the Phase II auction,¹²² and some census blocks that were not eligible for the offer are eligible for the Phase II auction.¹²³ Nevertheless, we conclude that by calculating the total reserve prices based on a six-year term we will more efficiently use the up to \$170.4 million we have made available for allocation through the New York program.

48. *Public Service Obligations.* As noted above, New York has adopted minimum downstream speed requirements for the first two phases of its program that fall within the speed tiers that the Commission adopted for the Connect America Phase II auction. To the extent such speeds are required for Phase 3, we waive the requirement that New York bidders bid within the performance tiers that the Commission has adopted for the Connect America Phase II auction.¹²⁴ However, to ensure that New York consumers receive a level of service that is comparable to the service those consumers would

¹¹⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17837-39, paras. 533-38.

¹¹⁹ *Id.* at 17837, para. 533.

¹²⁰ Therefore, the most we will authorize per location for extremely high-cost census blocks—using the location counts in the CAM—is \$10,519.20 (\$146.10 times 12 times six). New York is free, however, to allocate additional support above this amount from its own program, if it so chooses.

¹²¹ *Phase II Auction Order*, 31 FCC Rcd at 5971-72, paras. 64-68.

¹²² See, e.g., *id.* at 5973, paras. 70-72 (excluding from the Phase II auction census blocks served by incumbent price cap carriers at broadband speeds of 10/1 Mbps and directing the Bureau to update coverage to exclude census blocks that have since been served by unsubsidized competitors).

¹²³ See, e.g., *December 2014 Connect America Order*, 29 FCC Rcd at 15672, paras. 74-75 (making eligible for the Phase II auction all census blocks served by subsidized wireline competitors regardless of whether they are already served by 10/1 Mbps); *April 2014 Connect America Order*, 29 FCC Rcd at 7060-61, paras. 30-33 (making extremely high-cost census blocks eligible for the Connect America Phase II auction).

¹²⁴ 47 CFR § 54.309(a)(2); Verizon Comments at 3. See also Petition at 8 (noting that carriers receiving Connect America support through the New York program would be required to meet or exceed Connect America service benchmarks).

have received through the Connect America Phase II auction, we clarify that the public service obligations that we have adopted for Connect America Phase II auction recipients will also be applicable to recipients of Connect America Phase II support that is allocated in partnership with New York.¹²⁵ The Commission has adopted such requirements to ensure that Connect America support is used to offer services that are reasonably comparable to services offered in urban areas.¹²⁶

49. First, we clarify that although New York may choose to require recipients of its program to offer higher speeds and usage allowances,¹²⁷ Connect America Phase II recipients that are allocated support through New York's program must at a minimum meet the requirements of the relevant Phase II auction performance tier based on the download speeds they have committed to deploy. Specifically, if a bidder commits to offer at least 100 Mbps download speeds, to be in full compliance with its Connect America obligations the bidder must meet the requirements of the Above-Baseline performance tier, including offering upload speeds of 20 Mbps and an unlimited monthly usage allowance.¹²⁸ If a bidder commits to offer at least 25 Mbps download speeds but less than 100 Mbps, to be in full compliance with its Connect America obligations the bidder must meet the requirements of the Baseline performance tier, including offering upload speeds of 3 Mbps and a minimum usage allowance of 150 GB per month, or a usage allowance that reflects the average usage of a majority of fixed broadband customers, using Measuring Broadband America data or a similar data source, whichever is higher.¹²⁹ We do not go a step further and require that New York require recipients to provide broadband service that "substantially exceed[s] the baseline performance requirements in Phase II."¹³⁰ Instead, we conclude it serves the public interest to permit New York to leverage its local knowledge to set download speeds consistent with the capabilities of the providers in the state and the needs of consumers, as long as those speeds remain in the range of download speeds adopted for the Connect America Phase II auction.

50. Second, we clarify that consistent with our goal of preserving and advancing voice service,¹³¹ recipients of Connect America Phase II support, like all other Connect America recipients, will be required to offer a standalone voice service in the areas where they are receiving Connect America support.¹³² Moreover, recipients of Connect America Phase II support, like all other Connect America recipients, will be required to offer voice and broadband service at latency that is suitable for real-time applications, including Voice over Internet Protocol.¹³³ Connect America recipients in New York that cannot meet the Connect America Phase II auction low latency tier must meet the high latency tier the Commission established for the Connect America Phase II auction.¹³⁴ Specifically, such providers will be

¹²⁵ 47 CFR § 54.309(a).

¹²⁶ See 47 U.S.C. § 254(b)(3).

¹²⁷ In prior phases, New York has required speeds of 100 Mbps in most areas and at least 25 Mbps in unserved areas. New NY Broadband Program Guidelines at 14-15. New York has also required its recipients to offer unlimited usage allowances and upload speeds that are "consistent with national trends." New NY Broadband Program Guidelines at 14, 16.

¹²⁸ *Phase II Auction Order*, 31 FCC Rcd at 5960, para. 26.

¹²⁹ *Id.* at 5959-60, paras 24-25.

¹³⁰ ACA Jan. 13, 2017 *Ex Parte* Letter at 2.

¹³¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17680, para. 49.

¹³² *Id.* at 17693, para. 80. New York does not appear to require recipients of its program to offer voice service.

¹³³ 47 CFR § 54.309(a); *USF/ICC Transformation Order*, 26 FCC Rcd at 17698, para. 96.

¹³⁴ *Phase II Auction Order*, 31 FCC Rcd at 5961, para. 30. For the Connect America Phase II auction, the Commission adopted a low latency tier that requires bidders to meet a minimum latency requirement that 95 percent or more of all peak period measurements of network round trip latency are at or below 100 milliseconds. *Id.* at 5960, para. 29.

required to meet a two-part standard for the latency of both their voice and broadband service: (1) the requirement that 95 percent or more of all peak period measurements of network round trip latency are at or below 750 milliseconds, and (2) with respect to voice performance, we require high latency bidders to demonstrate a score of four or higher using the Mean Opinion Score (MOS).¹³⁵

51. Third, we clarify that recipients of Connect America Phase II support will be required to certify that they offer voice and broadband service at reasonably comparable rates.¹³⁶ The Bureau releases reasonably comparable benchmarks for voice and broadband services each year based on an urban rate survey.¹³⁷ For the New York program, New York has required recipients to offer a broadband service of speeds of 25/4 Mbps at a maximum rate of \$60 per month with unlimited usage and that will be adjusted with inflation.¹³⁸ While at this time a \$60 maximum rate for broadband service is below the reasonably comparable benchmark for fixed broadband services meeting New York's requirements,¹³⁹ we will require all recipients of Connect America Phase II support that are authorized in coordination with the New York program to make the voice and broadband reasonably rate certifications required under our rules. This will ensure that these recipients will continue to offer reasonably comparable rates throughout their support term, given the lack of a required voice rate for the New York program and the theoretical possibility that New York could adopt other requirements for broadband rates that could potentially exceed the Commission's benchmarks at some future date. Recognizing that recipients may offer a variety of service plans, an ETC will be considered in compliance for Connect America purposes if it offers at least one standalone voice service plan and one service plan that provides broadband that meets the Commission's public interest obligations and reasonable comparability requirements.

52. *Service Obligations.* For Connect America recipients, the Commission has adopted deployment obligations so that the Commission can track throughout the support term that support is being used for its intended purpose of offering voice and broadband service that meets the Commission's requirements. For the Connect America Phase II auction, the Commission required that recipients serve the total number of locations across all of the eligible census blocks as determined by the CAM by the end of the six years while also meeting certain interim milestones.¹⁴⁰ The Bureau has released guidance on what constitutes a location—specifically housing units as defined by the Census Bureau and businesses that are expected to demand consumer-grade broadband services, which are typically small businesses.¹⁴¹ By contrast, New York has required that each applicant propose its own program

¹³⁵ *Id.* at 5961, para. 30. Phase II recipients committing to provide a MOS of four or higher should be prepared to submit laboratory testing consistent with International Telecommunication Union recommendations P.800. See International Telecommunication Union, Telecommunication Standardization Sector, Series P: Telephone Transmission Quality, Methods for objective and subjective assessment of quality, P.800 (Aug. 1996).

¹³⁶ 47 CFR §§ 54.309(a), 54.313(a)(10), (12).

¹³⁷ See, e.g., *Wireline Competition Bureau Announces Results of 2016 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for ETCs Subject to Broadband Public Interest Obligations*, Public Notice, 31 FCC Rcd 3393 (2016) (*Reasonable Comparability Benchmarks Public Notice*).

¹³⁸ New NY Broadband Program Guidelines at 16-17.

¹³⁹ *Reasonable Comparability Benchmarks Public Notice*, 31 FCC Rcd at 3394 (setting a benchmark that ranges from \$69.14 to \$89.24 for speeds of 10/1 to 25/5 Mbps with various usage allowances). Using the Reasonable Comparability Benchmark Calculator, the reasonable comparability benchmark for a broadband service offered at 25/4 Mbps speeds with unlimited usage is currently \$89.13. See Federal Communications Commission, Reasonable Comparability Benchmark Calculator, <https://www.fcc.gov/general/reasonable-comparability-benchmark-calculator> (last visited Nov. 23, 2016).

¹⁴⁰ *Phase II Auction Order*, 31 FCC Rcd at 5964, para. 40.

¹⁴¹ *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding their Broadband Location Reporting Obligations*, Public Notice, 31 FCC Rcd 12900, 12903-04 (2016) (*HUBB Public Notice*).

milestones and that each applicant must propose to serve census blocks that have in total a minimum of 250 verified units which include housing units, commercial properties, governmental buildings, healthcare facilities, schools, libraries, educational opportunity centers, institutions of higher education, and other community institutions.¹⁴²

53. While we expect Connect America Phase II recipients will meet their New York-mandated deadlines well before the first interim milestone for Connect America Phase II auction recipients, we also retain the interim and final deadlines the Commission adopted for the Phase II auction.¹⁴³ Specifically, recipients of Connect America Phase II support that is allocated in partnership with New York will be required to offer voice and broadband service that meets the Commission's requirements to 40 percent of the requisite number of locations by the end of the third year of funding authorization, an additional 20 percent in subsequent years, with 100 percent by the end of the sixth year.¹⁴⁴ We conclude that imposing the same interim and final build-out milestones on all Connect America Phase II recipients will simplify our oversight measures and ensure that all recipients are subject to the same non-compliance measures. We note that there is no penalty for meeting these milestones prior to the applicable deadlines.

54. To the extent that New York waives or extends the Dec. 31, 2018 build-out deadline for Phase 3 of its program, it should notify the Bureau of such change. We note that recipients will be required to detail their projects' benchmarks and when they anticipate they will meet such benchmarks in their New York applications.¹⁴⁵ We will work in partnership with New York to monitor recipients' progress in meeting its New York benchmarks. Below, we also extend reporting obligations to Connect America Phase II New York recipients to ensure that we can monitor their progress in meeting the Commission's benchmarks.¹⁴⁶

55. We will also require recipients that are authorized Connect America Phase II support in coordination with the New York program to meet the same general deployment obligations as other recipients of Connect America Phase II support.¹⁴⁷ That is, recipients of Connect America Phase II support authorized in coordination with New York's program will be required to demonstrate that they offer service to the total number of locations that the CAM has determined are collectively located in the census blocks where the recipient has been authorized to receive Connect America Phase II support by New York's deadline.¹⁴⁸ Like all other Connect America Phase II recipients, such recipients will be able to take advantage of the same flexibility to deploy to at least 95 percent of the total number of locations given that the facts on the ground may differ from the number of locations identified by the CAM.¹⁴⁹

¹⁴² New NY Broadband Program Guidelines at 7, 16. New York has specified a "Verified Unit Count" for each census block that is eligible for New York's program "based on available data sources." *Id.* at 5. If a proposed service area includes all of the eligible unserved or underserved census blocks in a designated "Regional Economic Development Council" area, that service area has been deemed to have met the 250 unit minimum requirement. *Id.* at 7.

¹⁴³ *Phase II Auction Order*, 31 FCC Rcd at 5964, para. 40.

¹⁴⁴ 47 CFR § 54.310(c).

¹⁴⁵ New NY Broadband Program Guidelines at 16.

¹⁴⁶ See *infra* para. 69 (requiring Connect America Phase II recipients to report the locations to which they offer voice and broadband service meeting the Commission's requirements).

¹⁴⁷ See Petition at 8 (noting that recipients of Connect America support that is allocated in partnership with New York would be required to meet or exceed Connect America build-out requirements).

¹⁴⁸ Consistent with the Commission's requirements for recipients of Connect America funding generally, a recipient will be deemed to be offering service to a location if it is willing and able to provide qualifying voice and broadband service to a requesting customer within 10 business days.

¹⁴⁹ 47 CFR § 54.310(c)(2); *Phase II Auction Order*, 31 FCC Rcd at 5965-66, paras. 44-47.

Those recipients that serve less than 100 percent of the locations will be required to refund Connect America Phase II support based on the number of locations that remain unserved.¹⁵⁰

56. We conclude that requiring recipients of Connect America Phase II support to demonstrate they offer service to the total number of locations identified by the CAM will ensure that the support is being used consistent with the goals of Connect America. For example, whereas New York has permitted its recipients to serve community anchor institutions with its support, the Commission indicated that it was not its intention that Connect America Phase II support be skewed to communities with community anchor institutions.¹⁵¹ While we expect that Connect America Phase II recipients will serve community anchor institutions as they are deploying their networks to meet their obligations,¹⁵² community anchor institutions are specifically excluded from the location totals that Connect America Phase II recipients must serve.¹⁵³ We also find that requiring all Connect America recipients to use the support for the same types of locations as recipients in other states will greatly simplify the Commission and USAC's oversight of Connect America funds and the monitoring of the progress of the various programs.

57. *Eligibility Requirements.* Consistent with the Commission's framework for long-form review in the Connect America Phase II auction, we direct the Bureau to closely review each New York winning bidder that is awarded support from New York in Connect America Phase II eligible areas to ensure that they are financially and technically qualified to meet the Commission's requirements.¹⁵⁴ We expect that bidders will meet the eligibility requirements we establish here before they are authorized to receive Connect America support and do not expect that the bidders will have a problem meeting these requirements within a reasonable timeframe. After this review is complete, we direct the Bureau to independently authorize each winning bidder to receive Connect America support if it determines the authorization is consistent with the public interest and in compliance with the requirements adopted in this Order.¹⁵⁵

58. While New York has adopted a number of eligibility requirements that we believe are comparable and in some cases are more stringent than those the Commission has adopted for the Connect America Phase II auction, we conclude it is necessary to require entities to meet several specific federal eligibility requirements to align the eligibility requirements with those the Commission has adopted for the Connect America Phase II auction. The Commission adopted eligibility requirements for the Connect America Phase II auction to ensure that the recipients are able to meet the obligations of Connect America Phase II support so that the funds are used for their intended purpose. We believe that New York's eligibility requirements coupled with the additional requirements that we adopt here will provide the same assurance of bidders' ability to meet their obligations and will also safeguard Connect America support in the event the obligations are not met. Accordingly, although we waive the Commission's general application process for the Connect America Phase II auction to the extent described here,¹⁵⁶ bidders in

¹⁵⁰ *Phase II Auction Order*, 31 FCC Rcd at 5966, para. 45.

¹⁵¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17728, para. 167 n.269.

¹⁵² *Id.* at 17700-01, para. 102.

¹⁵³ *HUBB Public Notice*, 31 FCC Rcd at 12905.

¹⁵⁴ See New York Reply at 7 (stating that New York will "provide the Commission with any funding material submitted to the State by broadband providers prior to the award of [Connect America] funds so that the Commission can confirm that the proposal satisfies Commission requirements"). We note that the eligibility and reporting requirements that will apply to Connect America Phase II recipients are subject to approval by the Office of Management and Budget, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501-3520).

¹⁵⁵ 47 CFR § 54.310(d) ("An eligible telecommunications carrier will be advised by public notice when it is authorized to receive support. The public notice will detail how disbursements will be made.").

¹⁵⁶ 47 CFR § 54.315.

the New York program will be required to demonstrate compliance with New York's eligibility requirements and the requirements we describe below before they are authorized to receive Connect America Phase II support. To the extent New York modifies its eligibility requirements for Phase 3 of its program, we require that it notify the Bureau so that the Bureau can determine whether the revised requirements are no less stringent than eligibility requirements the Commission has adopted for the Connect America Phase II auction.

59. First, like all recipients of universal service support, we will require all New York winning bidders to obtain an ETC designation before we authorize them to begin receiving Connect America support.¹⁵⁷ Like Connect America Phase II auction winning bidders, we will permit New York winning bidders to wait until after they have been announced as winning bidders by New York to obtain their ETC designation.¹⁵⁸ The Commission gave Connect America Phase II auction recipients 180 days from a public notice announcing them as winning bidders to obtain their ETC designation.¹⁵⁹ Given the shortened build-out timeframe for the New York program and the fact that the majority of the participants in the New York program will likely fall under New York's jurisdiction and will be designated as ETCs by New York, we expect New York will act swiftly on requests for ETC designations. We also note that the forbearance we granted Connect America Phase II bidders from the section 214(e)(5) service area conformance requirement is applicable here.¹⁶⁰

60. Second, we note that New York has set certain eligibility requirements to ensure that its recipients have the requisite financial and technical qualifications and experience to meet their obligations. We find that these requirements are generally comparable to the requirements the Commission imposed on Connect America Phase II bidders, and in some cases more stringent.¹⁶¹ Accordingly, the Bureau will authorize New York winning bidders to receive Connect America Phase II support if they meet New York's eligibility requirements and they submit eligibility information that is consistent with the information required on the long-form application the Commission has adopted for the Phase II auction. The Bureau will not authorize any bidder to receive Connect America Phase II support until it is satisfied that the bidder has demonstrated eligibility that is consistent with the Commission's requirements for the Connect America Phase II auction.¹⁶²

¹⁵⁷ 47 U.S.C. § 214(e). See also Petition at 8 (noting that carriers receiving Connect America support through the New York program would be required to obtain designation as ETCs). Like all ETCs, Connect America Phase II recipients are subject to Lifeline voice and broadband obligations. 47 CFR § 54.101; *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016). Recipients of Connect America Phase II support will also have the obligation to place reasonably comparable bids on certain services through the E-rate program once this requirement has been fully implemented. See 47 CFR § 54.309(b); *Modernizing the E-rate Program for Schools and Libraries et al.*, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538 (2014).

¹⁵⁸ 47 CFR § 54.310(e); *April 2014 Connect America Order*, 29 FCC Rcd at 7064-65, para. 43.

¹⁵⁹ 47 CFR § 54.315(b)(5); *Phase II Auction Order*, 31 FCC Rcd at 6002, para. 149.

¹⁶⁰ 47 U.S.C. § 214(e)(5) ("In the case of an area served by a rural telephone company, 'service area' means such company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board . . . establish a different definition of service area for such company."); *Phase II Auction Order*, 31 FCC Rcd at 6006-09, paras. 159-68 (granting forbearance from this process for Connect America Phase II bidders).

¹⁶¹ For example, we find that New York's requirement that the applicant must operate at least one wired or wireless network business with at least 500 customers is comparable to the Phase II auction requirement that a bidder must have operated a voice, broadband, and/or electric distribution or transmission network for at least two years. Moreover, New York's requirement that an applicant submit three years of audited financial statements, tax returns, and bond ratings if applicable is more stringent than the eligibility requirements for the Phase II auction. See 47 CFR § 54.315; New NY Broadband Program Guidelines at 17-19.

¹⁶² See 47 CFR § 54.315.

61. New York does not use a two-step application process and instead requires its bidders file extensive documentation including information on their financial status, how they intend to fund their projects, and the technology they intend to use to meet their obligations.¹⁶³ We find that it would not serve the public interest to require New York bidders to submit short-form applications to the Commission so that the Commission can prequalify bidders.¹⁶⁴ Such an approach would delay New York's process.¹⁶⁵ Instead, we conclude the Commission will have a sufficient opportunity to raise any concerns with New York once the Bureau has reviewed bidders' New York applications and before winning bidders are announced.

62. Once New York has announced its winning bidders, those winning bidders will have 10 business days to submit a long-form application to the Commission that is consistent with the requirements the Commission has adopted for the Connect America Phase II auction.¹⁶⁶ This application must include certain ownership information,¹⁶⁷ a description of how the required construction will be funded,¹⁶⁸ a description of the technology and system design the applicant intends to use to deliver voice and broadband service accompanied by a network diagram certified by a professional engineer,¹⁶⁹ and certain certifications. These certifications include 1) a certification that the winning bidder is financially and technically qualified to meet the public interest obligations in each area for which it seeks support, 2) a certification that the applicant will meet the relevant public interest obligations, including the requirement it will offer service at rates that are equal or lower to the Commission's reasonable comparability benchmarks for fixed wireline services offered in urban areas, 3) a certification that the applicant will have available funds for all project costs that exceed the amount of Connect America support authorized by the Commission to be received for the first two years of its support term and that the applicant will comply with all program requirements, and 4) a certification that the party submitting the certifications is authorized to do so on behalf of the applicant.¹⁷⁰

63. New York's requirement that bidders submit three years of audited financials is more rigorous than the requirement that certain Connect America Phase II auction bidders submit one year of audited financials.¹⁷¹ Nevertheless, New York does provide an exception to the audited financial requirement for carriers that 1) submit a statement as to why such audited financial statements do not exist, 2) acknowledge that participation in the New York program will require the submission of audited financial statements, and 3) provide sufficient unaudited financial statements.¹⁷² Given the Commission's emphasis on the importance of having the opportunity to review financials that have been independently

¹⁶³ See New York, Program Questions: New NY Broadband Program Phase 2, https://nysbroadband.ny.gov/sites/default/files/documents/new-ny-broadband/New-NY-Broadband-Program-Phase-2-Questions_8-3.pdf (last visited Jan. 23, 2017).

¹⁶⁴ See 47 CFR § 54.315(a).

¹⁶⁵ As noted above, the Commission would be required to obtain approval from the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501-3520) before it could require bidders to submit short-form applications.

¹⁶⁶ 47 CFR § 54.315(b).

¹⁶⁷ 47 CFR § 54.315(b)(2)(i) (citing 47 CFR § 1.2112).

¹⁶⁸ 47 CFR § 54.315(b)(2)(vi). This description must include financial projections that demonstrate the applicant can cover the necessary debt service payments over the life of the loan, if any. *Id.*

¹⁶⁹ 47 CFR § 54.315(b)(2)(iv). The professional engineer must certify that the network is capable of delivering, to at least 95 percent of the required number of locations, voice and broadband service that meets the requisite performance requirements. *Id.*

¹⁷⁰ 47 CFR § 54.315(b)(2)(ii), (iii), (v), (vii).

¹⁷¹ See 47 CFR § 54.315(a)(7); New NY Broadband Program Guidelines at 17-18.

¹⁷² New NY Broadband Program Guidelines at 17-18.

audited before Connect America support is authorized,¹⁷³ we will require any bidder that intends to receive Connect America support and that takes advantage of New York's exception to the three years audited statements requirement to submit audited financials from the prior fiscal year no later than 180 days after the public notice identifying them as a winning bidder and before we will authorize them to receive Connect America support. Entities that do not ultimately produce audited financial statements will be subject to a base forfeiture of \$50,000. This is consistent with the approach the Commission adopted for the Connect America Phase II auction.¹⁷⁴

64. New York has also required its bidders to obtain a letter of credit in the amount of \$100,000 as a deposit that is submitted with their application and that must remain open until they enter into a security and grant disbursement agreement upon being named winning bidders.¹⁷⁵ While we conclude this arrangement offers sufficient protection against defaults during the application process and prior to authorization, we find that this arrangement does not offer sufficient protection of the Connect America Phase II funds after authorization. We note that the Commission will not be a party to the grant disbursement agreement and security agreement that the recipient enters into with New York and that these agreements protect only New York funds. For the Connect America Phase II auction, the Commission concluded that Connect America Phase II recipients must maintain an irrevocable stand-by letter of credit from a bank that meets specific eligibility requirements until the recipient has certified it has met its final build-out milestone and that build out has been verified.¹⁷⁶ The value of the letter of credit must cover all of the support that has been disbursed and will be disbursed in the coming year.¹⁷⁷ We conclude that for the same reasons expressed in the *Phase II Auction Order* and to ensure equal treatment of all Connect America Phase II competitive bidding recipients, such safeguards should be implemented here.¹⁷⁸

65. Accordingly, before the Bureau authorizes New York winning bidders to receive Connect America Phase II support and not later than the deadline set by the Bureau, they must submit an irrevocable stand-by letter of credit and a letter of credit opinion letter that meets the requirements in the *Phase II Auction Order*.¹⁷⁹ The letter of credit must be at least equal to the first year of authorized support. Before the winning bidder can receive its next year's Connect America support, it must modify, renew, or obtain a new letter of credit to ensure it is valued at a minimum at the total amount of support that has already been disbursed plus the amount of support that is going to be provided in the next year. The recipient will be required to maintain an open and renewed letter of credit until it has certified that its build out is complete and USAC has verified the build out.

66. *Payments.* Once the Bureau has authorized a winning bidder to receive Connect America Phase II support, USAC will disburse the total support amount in equal monthly installments over a support term of 10 years.

67. We note that New York has required that applicants commit to offer service meeting New York's requirements for five years after they complete their project build out.¹⁸⁰ Similarly, we require

¹⁷³ *Id.* at 5983, para. 101 ("The need to ensure that every Phase II auction recipient is in good financial health is critical" and "the additional cost of obtaining audited financial statements is outweighed by the importance of assuring the financial health of Phase II auction recipients.").

¹⁷⁴ *Phase II Auction Order*, 31 FCC Rcd at 5983-95, paras. 102, 104-105.

¹⁷⁵ New NY Broadband Program Guidelines at 20.

¹⁷⁶ 47 CFR § 54.315(c); *Phase II Auction Order*, 31 FCC Rcd at 5989-99, paras. 119-40.

¹⁷⁷ *Id.* at 5997, para. 135.

¹⁷⁸ *Phase II Auction Order*, 31 FCC Rcd at 5989-99, paras. 119-40.

¹⁷⁹ See 47 CFR § 54.315(c); *Phase II Auction Order*, 31 FCC Rcd at 5989-99, 6045-49, paras. 119-40, Appx. B.

¹⁸⁰ New NY Broadband Program Guidelines at 16.

that Connect America recipients certify that they are offering voice and broadband service that meets the requirements established by the Commission for the entire 10-year Connect America Phase II support term.¹⁸¹ We also note that despite the restrictions New York has placed on the use of funding provided by the state,¹⁸² recipients of Connect America support are permitted to use their Connect America support “for the provision, maintenance, and upgrading of facilities and services for which the support is intended,” which includes operating expenses, as all high-cost recipients are permitted to do.¹⁸³ However, nothing we adopt here as prerequisites to being authorized to receive Connect America support precludes New York from disbursing its state support to selected bidders on its own terms.

68. *Oversight.* We conclude that it will serve the public interest to require recipients of Connect America Phase II support that is authorized in coordination with New York’s broadband program to meet the same reporting obligations and non-compliance measures the Commission adopted for Connect America Phase II auction recipients.¹⁸⁴ The obligations will enhance our ability to monitor the use of Connect America support and ensure that it is being used for its intended purposes.

69. First, such recipients will be required to file on a recurring basis and by no later than the last business day of the second calendar month following each support year the number of locations and locational information where they are offering service meeting the requisite public interest obligations and identify the technology they are using to serve those locations.¹⁸⁵ Additionally, they will be required to demonstrate that they have met their build-out deadlines by submitting by the last business day of the second calendar month following the deadline a certification that they were offering broadband meeting the requisite public interest obligations to the required number of locations.¹⁸⁶ To the extent they do not meet their build-out deadline, the recipients will be subject to the potential support reductions and recovery actions pursuant to section 54.320 of the Commission’s rules.¹⁸⁷ Similarly, in the event the recipient is unable to repay the Commission for any compliance gap by the required period of time after the build-out deadline, the Commission will initiate a draw on the letter of credit as described for Connect America Phase II auction recipients.¹⁸⁸

70. Second, like all ETCs receiving Connect America support, such recipients will be required to submit annual reports pursuant to section 54.313 of the Commission’s rules.¹⁸⁹ They will be required to submit the same information required of Connect America Phase II auction recipients.¹⁹⁰

¹⁸¹ 47 CFR § 54.313(e)(2)(iii).

¹⁸² New NY Broadband Program Guidelines at Appx. C (listing eligible and ineligible expenses, including listing operating costs as ineligible).

¹⁸³ See 47 CFR §§ 54.7, 54.314 (requiring a certification that support was used for its intended purpose).

¹⁸⁴ See Petition at 8 (noting that carriers receiving Connect America support through the New York program would be required to meet the Commission’s Connect America reporting requirements); USTelecom Reply at 3 (noting the Connect America Phase II reporting requirements and certifications and stating that “[w]e assume a similar level of oversight would attach to any Federal [universal service] funding distributed by other than the Commission”).

¹⁸⁵ 47 CFR § 54.316(a)(4). The support year starts on the anniversary date of authorization and ends 12 months from that date. For example, if an ETC is authorized to begin receiving Connect America Phase II support on Sept. 1, 2017, its first support year would end Aug. 31, 2018, and its first location list would be due Oct. 31, 2018.

¹⁸⁶ 47 CFR § 54.316(b)(4).

¹⁸⁷ 47 CFR § 54.320(d). Subsections (a)-(c) of 54.320 also apply to all Connect America recipients. 47 CFR § 54.320(a)-(c).

¹⁸⁸ *Phase II Auction Order*, 31 FCC Rcd at 6017-18, paras. 190-94.

¹⁸⁹ 47 CFR § 54.313.

¹⁹⁰ 47 CFR § 54.313(a) & (e)(2). Note that for the certification in section 54.313(e)(2)(iii), the recipients shall certify starting the July 1 after meeting their buildout deadline, that the Connect America Phase II-funded network
(continued....)

Third, like all ETCs, the recipients will be required to have the New York Public Service Commission certify on their behalf by October 1st of each year that the high-cost support “was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”¹⁹¹

71. Finally, we note that to the extent any additional requirements are adopted for Connect America Phase II auction recipients, we reserve the right to impose those requirements on entities that are authorized to receive Connect America Phase II support in coordination with the New York broadband program.

IV. ORDERING CLAUSES

72. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 160, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 503, 1302, and sections 1.1 and 1.3 of the Commission’s rules, 47 CFR §§ 1.1, 1.3 that the petition for waiver, filed by New York State on Oct. 12, 2016, IS GRANTED, subject to the conditions described herein.

73. IT IS FURTHER ORDERED that, pursuant to section 1.103(a) of the Commission’s rules, 47 CFR § 1.103(a) this Order SHALL BE EFFECTIVE upon release, except for paragraphs 62-65 and 69-70 involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the Federal Register of Office of Management and Budget approval.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary
Federal Communications Commission

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that the Connect America Phase II recipient operated in the prior year meets the relevant performance requirements. 47 CFR § 54.313(e)(2)(iii).

¹⁹¹ 47 CFR § 54.314. Alternatively, if the ETC is designated by the Commission, it will be required to make this certification directly to the Commission. *Id.*

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58.

One of the most significant lessons I've learned during my time at the Federal Communications Commission is that there is a digital divide in this country—between those who have access to cutting-edge communications services and those who do not. As I stated in my first public remarks as Chairman, I believe one of the FCC's top priorities going forward should be to close that divide. I am committed to doing what I can to ensure that all Americans benefit from the bounty of the digital age.

Today, the FCC begins to deliver on that commitment. In the first week of the newly-constituted Commission, and in our first vote, we adopt measures to aid the deployment of broadband infrastructure to unserved areas of rural New York. Specifically, by granting New York State's petition for a waiver of the Connect America Phase II auction program rules, we take common-sense, fiscally responsible steps to coordinate funding between the federal Universal Service Fund and the state's New NY Broadband Program, which aims to "ensur[e that] all New Yorkers have access to high-speed internet." By helping to provide Internet access to tens of thousands of locations in rural New York, we take the first of many steps toward bringing digital opportunity to all Americans.

Essential to this result was close, bipartisan collaboration among many officials at the state and federal level. In particular, I am grateful to New York Governor Andrew Cuomo, Senator Charles Schumer, and Representative Chris Collins for working with me to ensure this federal-state partnership progressed from promise to paper. And I especially appreciate the hard work of the Commission's staff—specifically, Kris Monteith, Carol Matthey, Ryan Palmer, Alex Minard, Heidi Lankau, and Dana Zelman—and the New York State Broadband Program Office for working together to ensure a brighter future for rural New York.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART AND DISSENTING IN PART**

Re: Connect America Fund, WC Docket No. 10-90; ETC Annual Reports and Certifications, WC Docket No. 14-58

Over the past several years, the Commission has worked hard to reform the federal universal service high-cost program to ensure that funding for broadband deployment is spent as efficiently as possible and is targeted to unserved areas that are most in need of support. I have certainly dedicated a significant portion of my time to the subject and we still have much work to finish, including the Connect America Fund (CAF) Phase II, Mobility Fund Phase II, and the Remote Areas Fund. This must be done expeditiously, meaning substantial progress must be made this year. Thankfully, our orders during my time here have laid a solid foundation for completing these programs in a manner that maximizes broadband coverage across the Nation within our budget.

I commend New York and any other state willing to initiate its own program to spur broadband deployment in its jurisdiction. Yet, I am disappointed that the price of working with the state on this waiver request was to compromise on some of the sound policy decisions the FCC has achieved to date. While some see this as a block grant-like proposal, which I generally support in many contexts, this waiver request shouldn't be interpreted as such. These are federal USF dollars taken from ratepayers nationwide. They are not New York State funds, and we have the burden of deciding how best to allocate these scarce dollars, as well as the right to demand that they be spent wisely. We also shouldn't have been held captive by artificial deadlines that had a negative impact on the overall discussions.

The Commission expects that granting this petition will bring broadband to consumers sooner than the timetable for CAF Phase II. If achieved, that is a benefit, to be sure. In addition, I am pleased that New York will now adjust its program to ensure that all companies can compete for funding at the same time and in a technology-neutral manner, although I still have worries that the preferences will unfairly tilt against non-fiber providers. To be clear, I will carefully examine it to ensure that there are no restrictions or preferences that would unreasonably favor or disfavor any particular technology. I also take seriously the idea that the Commission reserves the right to review New York's filing, and I commend Chairman Pai for his willingness to commit to pull the plug on this whole effort if it is not consistent with our universal service objectives. For these reasons, I am able to approve in part.

At the same time, I am concerned that the funding will not be used as efficiently as possible. It should not be lost on everyone that New York is one of the states that diverts 9-1-1 fees collected to other non-related purposes, as is noted in the Commission's recent report on the subject.¹⁹² We should have received assurances that New York would cease this disgraceful practice. It certainly is one of the reasons that I have reservations about the representations made by the State.

¹⁹² Eighth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges for the Period January 1, 2015 To December 31, 2015, DA-17-61 (rel. Dec. 30, 2016), http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0113/DA-17-61A2.pdf.

Substantively, without the assurances of a multi-round reverse auction or scarcity to drive down bids, our funding could be used in combination with New York's funding to overpay for deployment in some areas, perhaps well over our reserve price, leaving other areas without service. That means the Commission could be left with more areas that we need to include in our Remote Areas Fund. Moreover, it is highly likely that carving New York out of the CAF II reverse auction means that some funding that might otherwise have flowed to high-cost portions of other states will be used for less efficient purposes in New York. It also undermines some of the competitive pressure we expected to achieve by conducting a nationwide reverse auction. Therefore, I must dissent in part.

I hope to be proven wrong about my concerns on this item, but only time will tell.