

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Connect America Fund) **WC Docket No. 10-90**
)
)

**COMMENTS OF
ITTA – THE VOICE OF AMERICA’S BROADBAND PROVIDERS**

ITTA – The Voice of America’s Broadband Providers (ITTA) hereby submits these comments in response to the Wireline Competition Bureau’s (Bureau) Public Notice seeking comment on procedures to identify and resolve location discrepancies in eligible census blocks within Connect America Fund Phase II (CAF Phase II) auction winning bid areas.¹

ITTA appreciates the Commission having heeded industry’s “on the ground” observations that there frequently are disparities between the number of model-predicted deployable locations and actual deployable locations, and having clarified in the Phase II auction context that it would accommodate this reality by adjusting an auction winner’s deployment obligations, where necessary, commensurate with the shortfall in actual locations.² ITTA urges the Bureau to guide its implementation of procedures to identify and resolve location discrepancies in accordance with two fundamental principles. First, it should adopt an approach grounded in flexibility. As discussed below, two examples of how the Bureau should apply a flexible approach involve its definition of an actual location, as well as the methods auction

¹*Wireline Competition Bureau Seeks Comment on Procedures to Identify and Resolve Location Discrepancies in Eligible Census Blocks Within Winning Bid Areas*, Public Notice, DA 18-929 (WCB Sept. 10, 2018) (*Public Notice*).

² See *Connect America Fund et al.*, Order on Reconsideration, 33 FCC Rcd 1380, 1389-90, paras. 23-25 (2018) (*Phase II Auction Reconsideration Order*) (citing, *inter alia*, Letter from Michael J. Jacobs, Vice President, Regulatory Affairs, ITTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed Jan. 19, 2018)).

support recipients seeking to resolve location discrepancies (participants) may use to identify the geocoordinates and addresses of actual locations. Second, the Bureau must continue to abide by technological neutrality,³ so that its implementation of these procedures fosters parity of treatment of auction support recipients.

The *Public Notice* seeks comment on how the Bureau should define an actual location for purposes of resolving location discrepancies relative to the number of deployable locations specified by the Connect America Cost Model (CAM).⁴ Specifically, while noting that, “[i]n general, CAF support recipients cannot report unfinished residential or business locations or ongoing or future real estate developments as served locations in satisfaction of build-out requirements,”⁵ it acknowledges that auction deployment obligations cover a 10-year support term,⁶ and therefore seeks comment on whether “prospective developments that have a reasonable certainty of coming into existence within the support term” should be counted as actual locations.⁷ ITTA believes that they should.

While ITTA can respect the Commission desiring to exercise caution in ensuring that scarce federal universal service funds are actually devoted to buildout to real housing units or small businesses served with mass market services,⁸ the national broadband policy goal is

³ Cf., e.g., *Connect America Fund; ETC Annual Reports and Certifications; Rural Broadband Experiments*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5956, para. 14 (2016) (establishing technology-neutral standards for the Phase II auction).

⁴ See *Public Notice* at 4, para. 8.

⁵ *Id.* at 5, para. 9.

⁶ In addition, subject to certain deployment milestones, auction support recipients have six years to complete construction and commercially offer service meeting the relevant public interest obligations. See *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1388, para. 21.

⁷ *Public Notice* at 5, para. 9.

⁸ See *id.* at 4, para. 8; *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1390, para. 27.

universal broadband access by all Americans, in all regions of the nation.⁹ In the absence of prospective developments counting, within both the six-year Phase II auction buildout term and the 10-year support term efforts to achieve this goal will quickly become obsolete, especially where unfinished residential or business locations are at the edge of participants' service areas and the business case does not exist to extend service to these locations absent universal service support. In such cases, by the end of the support term, by which time construction has completed on these developments, the net diminution in unserved locations would be undermined by the addition of new unserved locations that would have been served pursuant to a broader concept of actual locations. Such a result would be particularly perverse given that the whole purpose and context of this proposed slight expansion of the definition of actual locations is to ensure that auction support recipients have a sufficient number of locations available to fulfill their deployment obligations where they would not otherwise. Against the backdrop of the *Public Notice*'s proposed safeguards to ensure that participants have taken into account all model-determined funded locations,¹⁰ and that prospective developments have a "reasonable certainty of coming into existence within the support term,"¹¹ not counting residential or business locations that are unfinished at the beginning of the support term but later completed will only serve to perpetuate rural Americans lacking access to broadband, in contravention of national broadband policy goals and the public interest.¹²

⁹ See 47 U.S.C. §§ 254(b)(2), 1302(b); American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, § (6001)(k)(2)(D), 123 Stat. 115, 516 (2009).

¹⁰ See, e.g., *Public Notice* at 8, para. 20 (proposing that participants certify, under penalty of perjury, the truth and accuracy of their location data and that the participant has engaged in due diligence).

¹¹ *Id.* at 5, para. 9.

¹² ITTA observes that the *Public Notice* proposes a narrow window for filing actual location data at the very end of the one-year period following closure of the Phase II auction, in order to "ensure that a participant's data reflects the most recent facts on the ground and that the participant does not omit new or prospective building developments coming into being toward

(continued...)

With respect to the challenge process relative to ascertaining actual locations, the *Public Notice* proposes that within 60 days of the deadline for filing actual location data, the Bureau would announce *prima facie* cases for adjustment of deployment obligations, relevant stakeholders would then have 90 days to rebut the propriety of adjustments, and participants, in turn, would have 15 days to reply. The *Public Notice* seeks comment on whether these proposed timeframes “adequately serve [the Commission’s] goal of providing a meaningful opportunity for challenge,” while concluding the process in a reasonable timeframe.¹³ ITTA generally endorses this timeline, but urges the Bureau to extend the reply period to 30 days in order to fulfill the goal of a meaningful opportunity to participate in the challenge process.

Although participants would have had a year to compile their data that constitutes the foundation for presenting a case for adjustment, the very nature of the challenge process involves a relevant stakeholder refuting the data, which it has 90 days to do. To the extent that such rebuttal sends the participant “back to the drawing board” in assessing the challenged data, 15 days pales in comparison to the 90 that its putative opponent had to present its case. Providing 30 days for a reply acknowledges the presumably more narrow set of challenged data to which the participant is replying as compared to the set the relevant stakeholder had to evaluate, but also recognizes that the participant very likely would need to send personnel to the disputed sites,

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the end of the one-year time frame for compiling and submitting such evidence.” *Id.* at 8, para. 20. What’s good for the goose is good for the gander. Just as the Bureau understandably seeks a comprehensive and up-to-date accounting of location data at the time of filing the data, bolstered by “reasonable certainty” that other planned developments will come to fruition, it should also appreciate the value of a comprehensive and up-to-date accounting of actual locations at any time during the buildout term. In fact, insofar as the *Public Notice*’s emphasis that participants’ obligation to correct incomplete location data extends until summation of the 10-year funding term, *see id.* at para. 21, militates towards incomplete projects with a reasonable certainty of subsequent completion eventually counting and requiring reporting by participants, ITTA submits that such obligation further compels the Bureau to count unfinished developments with a reasonable certainty of completion as actual locations from the get-go.

¹³ *Id.* at para. 22.

compile analysis results, and have a reasonable opportunity to draft a compelling argument in reply. Depending on how many locations are challenged, 15 days simply may not afford participants a fair opportunity to present their best cases. The extra 15 days would give participants a fairer opportunity to prepare a well-considered reply while having a *de minimis* effect on conclusion of the process and commencement of deployment obligations.

Finally, the *Public Notice* seeks comment on whether to require that participants use a particular method to identify the geocoordinates of actual locations, or permit participants to choose their method(s) and correct for inaccuracies.¹⁴ ITTA supports the latter option. For one thing, it is consistent with the principle of flexibility that ITTA espouses, above, should guide the Bureau's implementation of procedures to identify and resolve location discrepancies. In addition, in the context of the option of providing participants a choice, the *Public Notice* references three generally accepted methods of geolocation on which the Universal Service Administrative Company (USAC) has provided guidance to help carriers geolocate service addresses for purposes of submissions of deployment information to the High Cost Universal Service Broadband (HUBB) online location reporting portal.¹⁵ Insofar as the Bureau proposes that participants report their actual locations data in the HUBB,¹⁶ it would make eminent sense for the actual locations inputs to rely on the same data sources as are used for submissions to the HUBB for other purposes.¹⁷ Both in order to retain full funding amounts secured in the auction and in light of the certifications the Bureau proposes to require of the truth and accuracy of

¹⁴ *See id.* at 5, para. 11.

¹⁵ *See id.* at 5-6.

¹⁶ *See id.* at 7, para. 17.

¹⁷ *See, e.g., id.* (noting that the HUBB provides certain data validations and facilitates timely correction of data submission errors, and the Bureau and USAC have released specific guidance for the reporting of served locations, "which may be adapted to the reporting of actual location data for purposes of this review process").

participants' location data,¹⁸ participants have myriad incentives to ensure they are not undercounting actual locations, regardless of which geolocation method(s) they employ.

For the foregoing reasons, the Bureau should include within the breadth of actual locations prospective developments that have a reasonable certainty of coming into existence within the support term, extend the challenge process reply period to 30 days, and permit participants to choose their method(s) of geolocating service addresses. These measures would be consistent with the principles of flexibility and parity that should guide the Bureau in its implementation in this proceeding of procedures to identify and resolve location discrepancies.

Respectfully submitted,

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October 29, 2018

¹⁸ *See id.* at 8, paras. 20-21.