



April 2, 2019

Ex Parte

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St. SW  
Washington, D.C. 20554

**Re: WC Docket No. 10-90, *Connect America Fund***

Dear Ms. Dortch:

USTelecom writes to express its view that granting Viasat's Petition for Reconsideration to alter the voice testing methodology set forth in the Performance Metrics Order<sup>1</sup> would undermine the integrity of the Connect America Fund (CAF) program and its auction process. USTelecom and its individual member companies have emphasized over the last several years the importance of having clear obligations and rules in place before any company is asked to decide on its participation in a CAF funding opportunity.<sup>2</sup> The Performance Metrics Order was released in time for all potential participants to make distinct business decisions about whether and how to participate in the CAF Phase II Auction based upon a common set of rules. Viasat knew the rules and chose to participate. Other carriers chose not to participate because of the rules. By participating in spite of its own compliance concerns, Viasat may have effectively blocked proven providers from the opportunity to deliver the required voice and broadband services to rural America; its actions influenced auction results and could ultimately harm consumers.<sup>3</sup> The Commission cannot now change the rules all bidders relied upon to suit a single winner unless it is prepared to rerun the entire auction. Granting Viasat's Petition now would call into question the auction results and encourage gaming of the rules in future auctions.

Viasat's proposed change to the performance testing methodology would alter the core voice performance requirements for high-latency bidders<sup>4</sup> in a program where voice is the

---

<sup>1</sup> *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509 (WCB, WTB, OET 2018) ("Performance Metrics Order").

<sup>2</sup> See, e.g., Letter from Kevin G. Rupy, Vice President, Law and Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Mar. 26, 2018) ("[W]e urged the Commission to expeditiously finalize the requirements for broadband speed and latency measurement reporting and compliance under the CAF program.").

<sup>3</sup> Viasat's participation fundamentally altered the course of the auction, as it placed bids on over 90% of eligible locations and won over 25% of the locations assigned.

<sup>4</sup> USTelecom is among several other parties seeking reconsideration of the Performance Metrics order but none of the requested changes would fundamentally alter the basic performance metrics themselves, just the manner in which they are tested.

Ms. Marlene Dortch  
April 2, 2019  
Page 2

supported service. USTelecom agrees with Hughes that the high-latency performance testing framework became a “gating” issue, “fundamentally different from . . . other issues, such as the number and frequency of speed tests that a support recipient must perform.”<sup>5</sup> Viasat knew the risk of participating in the auction under the rules in place. As a winner, Viasat now has the responsibility to determine how, through technology improvements or resale arrangements, to comply with those rules or to default. If it defaults, the areas it won could be included in the next auction. All carriers who accept CAF funding take on a level of risk and uncertainty in complying with service obligations, deployment timelines, and performance standards. The Commission made the rules and the penalties as clear as possible in order to make its first significant universal service fund auction a success. It should not now undermine that success, and adversely affect future auctions, by changing the rules after the fact to benefit one participant.

Please contact me with any questions.

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

Mike Saperstein  
Vice President, Law & Policy

---

<sup>5</sup> Letter from Jennifer A. Manner, Senior Vice President, Regulatory Affairs, Hughes, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 at 3 (filed Feb. 4, 2019).