State of California **Public Utilities Commission**
San Francisco

M E M O R A N D U M

Date : **August 21, 2014**

To : **The Commission**
(Meeting of August 28, 2014)

From : **Sindy Yun, Public Utilities Counsel IV**
Legal Division

Roxanne Scott, Program and Project Supervisor
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Subject: **Filing of Comments in Response to the FCC's Further Notice of Proposed Rulemaking on Incentives to Leverage Non-Federal Funding to Support Broadband Internet Deployment under CAF Phase II.**

RECOMMENDATION: The Commission should file comments in the Federal Communications Commission's (FCC) *Further Notice of Proposed Rulemaking* (*FNPRM)* seeking comment on incentives to leverage non-Federal funding to support broadband Internet deployment in unserved high cost areas of the nation under the Connect America Fund (CAF) high cost support program.[1] The Commission should urge the FCC to award a bidding credit under CAF Phase II to any applicant for projects in a state that is a net donor to the federal Universal Service Fund (USF). Applicants for CAF Phase II funding for projects in net donor states should also be given priority over applicants for CAF funding in other states, and over bidders with a non-Federal funding source. Comments are due on September 2, 2014.

BACKGROUND: In the November 2011 *USF/ICC Transformation Order*[2], the FCC established the Connect America Fund (CAF) to provide federal universal service subsidies to preserve and advance voice and robust broadband services, both fixed and mobile, in high-cost areas of the nation that the marketplace would not otherwise serve.

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[1] *Further Notice of Proposed Rulemaking*, In the Matter of Connect America Fund and ETC Annual Reports and Certifications (WC Docket No. 10-90, WC Docket No. 14-58), rel. July 14, 2014. (FNPRM).

[2] (*USF/ICC Transformation Order*).

For areas served by federal price cap companies[3], the FCC instituted immediate reforms to streamline and redirect legacy high cost universal service payments to accelerate fixed broadband deployment in unserved areas (CAF Phase I) The FCC also adopted a longer-term approach (CAF Phase II) that will direct funds for five years to those price cap areas that are unserved by fixed broadband through the operation of market forces, using a mechanism that combines use of a forward-looking broadband cost model and competitive bidding.[4] The FCC established an annual CAF funding target of no more than $1.8 billion available annually for voice and fixed broadband deployment in price cap territories.[5]

Under Phase I, implemented in 2012, price cap carriers were offered limited CAF support to immediately begin deploying voice and broadband in some of the unserved high cost areas in their territories. Frontier was the only California price cap carrier to accept funds under Phase I for deployment in California.

In this *FNPRM*, the FCC is focused on CAF Phase II which it hopes to implement in early 2015. The FCC will first offer Phase II support to price cap carriers. If a price cap carrier accepts the CAF support it must make a statewide commitment to deploy voice and broadband service in all the unserved areas within its service area in the State for at least five years.

"A price cap carrier electing Phase II model-based support is required to provide broadband service at actual speeds of at least 4 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol (VoIP), and usage capacity, and at rates, that all are reasonably comparable to similar offerings in urban areas. In addition, a price cap carrier electing Phase II model-based support is required to provide broadband service with both downstream actual speeds of at least 6 Mbps, and upstream speeds of at least 1.5 Mbps to a specified number of locations, as determined by the FCC's Wireline Competition Bureau."[6]

In the *USF/ICC Transformation Order*, the FCC concluded that it would use a competitive bidding mechanism for CAF Phase II to award support in price cap territories in those areas where price cap carriers decline to make a state-level commitment in exchange for model-based support. Price cap carriers that do not accept state-level funding may participate in the competitive bidding process. Support awarded through the competitive bidding process shall be provided for ten years.

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[3] Federal price cap carriers in California are AT&T California, Verizon California, Citizens/Frontier, and SureWest.

[4] More than 83 percent of the approximately 18 million Americans who lack access to fixed broadband live in price cap study areas. *USF.ICC Transformation Order* at ¶127.

[5] *Id.,* at ¶126.

[6] 47 C.F.R.§ 54.309. The FCC is considering increasing the speed requirement to 10 Mbps downstream.

DISCUSSION: In this FNPRM, the FCC seeks comment on operation of the competitive bidding process. The FCC desires to work cooperatively with other governmental entities to advance shared broadband Internet infrastructure deployment objectives. It is "particularly interested in how States, localities, Tribal governments, and other non-federal governmental bodies can provide assistance, through matching funds, in-kind contributions or other regulatory approvals and permits, to improve the business case for deployment of next generation networks."[7] Thus, the FCC seeks comments on ways to create incentives for state and other governmental entities to contribute funding to support the extension of broadband-capable networks in high cost unserved areas. Specifically, the FCC is asking whether it should provide a bidding credit during the CAF Phase II competitive bidding process to bidders that can show they also have non-federal funding support for the project on which they are bidding.[8]

For purposes of awarding such a bidding credit, the FCC proposes to consider "all forms of non-Federal assistance, including but not limited to support from a state universal service fund, state broadband authority, other state institutions that provide funding for communications infrastructure development, appropriated funds, regional and local governmental authorities, or Tribal government funding."[9] The FCC also asks if matching funds must be in the form of a grant or if it also should provide a credit for a bidder securing a loan from a state or other non-Federal governmental authority.[10]

To illustrate its proposal, the FCC notes that it:

> "could provide a 10 percent bidding credit in situations where an applicant has obtained a commitment from a non-Federal government entity to match Federal dollars on a four-to-one basis, and a 5 percent bidding credit an applicant has obtained a commitment to match Federal dollars on an eight-to-one basis." [11]

Thus, if a bidder seeking $20 million in CAF support demonstrates the availability of $5 million of state funding, it would get a 10 percent bidding credit, which effectively lowers its bid to $18 million for purposes of comparison to other bids. If a bidder is seeking $20 million in CAF support and demonstrates the availability of $2.5 million in

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[7] *FNPRM* at ¶ 98.

[8] *Id*.

[9] *Id*. at ¶ 99.

[10] *Id.* at ¶100.

[11] *Id,* at ¶ 98.

state funding, it would get a 5 percent bidding credit, which would lower its effective bid to $19 million for purposes of comparison to other bids.[12]

As an alternative, the FCC asks if it should award a bidding credit to any applicant in a state that is a net donor to the federal Universal Service Fund (USF), as suggested in previous CPUC comments.[13] The FCC notes that "[t]his would be simple to administer and would provide one means of creating greater equity between states in terms of their respective net draws from the fund. If we were to adopt such an approach, we propose to utilize the most recent Universal Service Monitoring Report to determine which states are net donors."[14]

RECOMMENDATION: Staff recommends that the Commission file comments strongly supporting the award of bidding credits to applicants in States that are net donors to the Universal Service Fund. The most recent Monitoring Report on Universal Service released by the Federal-State Joint Board on Universal Service in December 2013 estimates that California contributed $963,027,000 to the federal USF in 2012, while California service providers received payments totaling only $582,478,000.[15]

California is not only a net donor to the federal universal service fund, but telephone subscribers in California also contribute millions each year to fund the six state universal service support programs.[16]

Staff does not oppose the idea of giving bidding credits to entities in the CAF Phase II bidding process that can demonstrate that they will also receive funding from a non-federal source. However, staff recommends the Commission urge the FCC to give priority to bidders for projects in net donor states – especially if the donor state itself, like California, provides generous state universal service funding for the provision of voice and broadband in the state. Bids for projects in net donor states should have priority over both bids for projects in non-donor states and bids with non-federal funding. The bidding credit for a net donor state should be commensurate with the state's percentage contribution to the total USF.

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[12] *Id*., at p. 33, footnote 167.

[13] *Id*., at ¶ 101. In comments filed on March 28, 2014 in this proceeding, the CPUC urged the FCC to take into account the proportion of a State's contributions to the USF when scoring the Rural Broadband Experiments, noting that California is a net contributor to the USF.

[14] *Id.*

[15] Table 1.13 of December 2013 Monitoring Report, available at: http://transition.fcc.gov/wcb/iatd/monitor.html.

[16] The CPUC has budgeted over $520 million in FY14-15 for these programs.