Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Wireline Competition Bureau, Wireless	)	WC Docket No. 10-90
Telecommunications Bureau, and the Office	)	
Of Engineering and Technology Seek Comment	)	
On Proposed Methodology for Connect America	)	
High-Cost Universal Service Support Recipients	)	
To Measure and Report Speed and Latency	)	
Performance to Fixed Locations	)	

To: The Wireline Competition Bureau, Wireless Telecommunications Bureau, and the Office of Engineering and Technology

COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

The Wireless Internet Service Providers Association ("WISPA") hereby submits these comments in response to the October 16, 2014 Public Notice of the Wireline Competition Bureau, the Wireless Telecommunications Bureau, and the Office of Engineering and Technology in the above-referenced docket (the "*Public Notice*").[1] The *Public Notice* seeks input on how best to verify, through testing and reporting, the speed and latency obligations of eligible telecommunications carriers ("ETCs") that receive Connect America Fund ("CAF") high-cost support and ETCs that receive rural broadband experiment funding to deploy fixed broadband networks.[2] The *Public Notice* also seeks comment on the audit process that would apply to CAF recipients to assure compliance with the speed and latency performance metrics.

[1] *Public Notice, Wireline Competition Bureau, Wireless Telecommunications Bureau, and the Office of Engineering and Technology Seek Comment on Proposed Methodology for Connect America High-Cost Universal Service Support Recipients to Measure and Report Speed and Latency Performance to Fixed Locations*, DA 14-1499 (*rel.* Oct. 16, 2014) ("*Public Notice*").
[2] *See id.* at 1 n.1.

Background

WISPA is the trade association that represents the interests of wireless Internet service providers ("WISPs") that provide IP-based fixed wireless broadband services to consumers, businesses and anchor institutions across the country. WISPA's members include more than 800 WISPs, equipment manufacturers, distributors and others committed to providing affordable and competitive fixed broadband services. WISPs use unlicensed spectrum that lowers barriers to entry so that they can provide high-quality and affordable service in unserved, underserved and competitive areas. WISPA members were provisionally selected for rural broadband experiment funding and members may participate in the CAF Phase II competitive bidding process.

The vast majority of WISPA's members are "small entities" under the Small Business Act and the U.S. Small Business Association's applicable size standards. Accordingly, WISPA strives to encourage a regulatory approach that consistently recognizes the needs and concerns of small businesses nationwide. Specifically, regarding the *Public Notice*, WISPA encourages the Commission to avoid imposing "one-size-fits-all," onerous testing and reporting obligations on small broadband providers. Indeed, the Commission is obligated by the Regulatory Flexibility Act to consider less burdensome obligations that will minimize the impact of these proposed regulations on small entities.[3]

Discussion

I. THE COMMISSION SHOULD EXEMPT SMALL BROADBAND PROVIDERS FROM ANY ADDITIONAL BURDENS AND COSTS.

Although many of the proposals in the *Public Notice* seem to have been written primarily with large broadband providers in mind, the Commission asks whether and to what extent it

[3] *See* 5 U.S.C. § 603(c).

should exempt certain ETCs from speed and latency measurement requirements.[4] Given the tremendous variation in types and sizes of broadband providers, WISPA encourages the Commission to "give providers the flexibility to measure their broadband service in a manner that makes sense for that provider's particular broadband network, while still giving the Commission the assurance that its high-cost dollars are being used appropriately."[5]

To this end, WISPA urges the Commission to exempt small broadband providers from any speed and latency measurement requirements that impose additional costs and burdens on them. Where compliance costs and burdens particularly affect small businesses, as they would here, an agency must explore "significant alternatives to the proposed rule…which minimize any significant impact of the proposed rule on small entities."[6] Such alternatives can include "the establishment of differing compliance or reporting requirements…that take into account the resources available to small entities…[and] exemption from coverage from the rule, or any part thereof, for small entities."[7] Affording different treatment to small entities, and adopting rules that differ from general rules that apply to larger companies, has become common practice for the Commission. Examples include exemptions, and other features designed to reduce administrative burdens for small businesses, in the context of the Commission's EEO requirements, cable system filings, and implementations of the CALM Act and the Twenty-first Century Communications and Video Accessibility Act.[8] The Commission should take a common sense approach here and not attempt to impose a "one-size-fits-all" verification solution on all broadband providers, regardless of size, location, and/or technologies employed. It should

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[4] *See Public Notice* at 6.
[5] Comments of AT&T, WC Docket No. 10-90 (Jan. 18, 2012) at 19.
[6] 5 U.S.C. § 603(c).
[7] *Id.*
[8] *See* Comments of the Wireless Internet Service Providers Association, GN Docket No. 14-28 (July 16, 2014), at 9-12.

carefully consider "differing compliance or reporting requirements," including exemptions, for providers that qualify as small entities.

Forcing small, rural fixed wireless providers (like many WISPs) to follow exactly the same measurement and reporting procedures, and "to expend substantial resources to create and maintain the back-office system necessary to collect and provide to the Commission the speed and latency data requested,"[9] would be inequitable and needlessly burdensome. Any rules that are adopted must recognize that "measuring broadband network performance in geographically large, sparsely-populated territories, often over difficult terrain, is a significant undertaking – particularly for small companies with limited personnel and financial resources,"[10] which requires a different regulatory approach from that imposed on large price-cap carriers in far more urbanized areas.

Imposing onerous testing and record-keeping requirements on small broadband providers also will chill participation in Phase II competitive bidding. Some small providers may refuse to participate in the competitive bidding process if they foresee significant additional costs that outweigh the potential financial benefit. This will in turn reduce participation in competitive bidding, making the process less competitive and potentially making the support level higher – or worse, some areas may remain outside of the CAF support process and further delay the provision of fixed broadband services. This result would be contrary to the objectives of the CAF program and Congressional policies intended to encourage deployment of broadband services to all Americans in a reasonable and timely manner.[11]

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[9] Initial Comments of the National Exchange Carrier Association, *et al.*, WC Docket No. 10-90 (Jan. 18, 2012) at 35.
[10] *Id*. at 34.
[11] *See* 47 U.S.C. § 1302(a).

At a minimum, the Commission should not require participating providers to cover the costs of testing and monitoring speed and latency. Rather, those costs should be borne by USAC in connection with its oversight of the CAF.[12] As the Commission suggests, the only costs for providers – especially small businesses – should be to verify the services of those customers that are using whiteboxes or other equipment as part of the measurement process.[13]

II. THE COMMISSION SHOULD CONDUCT AUDITS ONLY "FOR CAUSE."

The *Public Notice* seeks input on establishing an audit process for ensuring that CAF funding recipients are meeting the required performance metrics.[14] Providers should only be subjected to audits if there is a true "for cause" event. Mere secretarial or administrative errors, such as late-filed reports or certifications, should not automatically trigger an audit. The Commission should preserve its scarce resources for situations where failures are egregious, and have resulted in numerous, credible complaints or a track record of non-compliance. Even in such situations, the Commission's approach should be cooperative, and not adversarial, with a goal of verifying and encouraging compliance, not penalizing providers.

[12] *See Public Notice* at 6-7.
[13] *See id.* at 7.
[14] *See id.* at 7-8.

Conclusion

The Commission should exempt small broadband providers from any measurement requirements that will increase costs and burdens. Doing so will encourage more robust participation by small entities in the upcoming CAF Phase II competitive bidding process.

Respectfully submitted,

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

December 22, 2014 By: *\/s/ Chuck Hogg, President*
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