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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

COMMENTS OF THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

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Summary of Comments

The Wireless Internet Service Providers Association ("WISPA") is encouraged that the Commission is taking steps to eliminate the current federal high-cost universal service fund ("USF") mechanisms and to facilitate broadband deployment through other means. The Commission's NPRM highlights the many problems that have plagued high-cost USF funding, including waste, inefficiencies and misguided incentives. Due to these problems, many WISPA members now believe that the high-cost USF funding system should be dismantled altogether rather than extended into a new Connect America Fund ("CAF").

Nevertheless, if the Commission intends to carry out its plan to subsidize broadband deployment in high-cost areas through a CAF, WISPA believes that the Commission's broadband deployment goals can be achieved only if certain rules and policies are implemented. Funding must be directed to areas and consumers that lack access to broadband in an efficient and technologically neutral manner. Among other things, the Commission should:

- Adopt technology-neutral characterizations for broadband so as not to unduly favor specific technologies, services, service providers or classes of service providers;
- Adopt nationwide eligibility requirements that extend beyond the "telecommunications carrier" class (whether through new regulations or forbearance processes) to parties seeking broadband funding, including requirements with respect to broadband speeds and coverage that account for local conditions that may hinder deployment. The Commission also should adopt a waiver process for service providers whose deployments are delayed or disrupted by circumstances beyond their control;
- Cap the amount, per line, of subsidy awarded to funding recipients at $3,000;
- Consider adopting a voucher system to stimulate broadband demand, whereby consumers could use these vouchers to fund one-time payments to the broadband provider of their choice for recovery of universal service funds; and
- Establish a limited audit process to ensure compliance with recordkeeping burdens that are balanced and narrowly tailored to the overarching objectives of the CAF.

Based on a recent member survey, many WISPA members support dismantling the current high-cost USF program and replacing it with a new program that effectively, fairly and cost-effectively funds broadband deployment. However, the Commission should do so only if it incorporates the proposals set forth by WISPA in these Comments.

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COMMENTS OF THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

The Wireless Internet Service Providers Association ("WISPA") hereby provides its Comments in response to the Notice of Proposed Rulemaking ("*NPRM*") in the above-captioned proceeding. WISPA is encouraged that the Commission is taking steps to eliminate the current federal high-cost universal service fund ("USF") mechanisms and is considering how to best transition funding to subsidize broadband deployment in high-cost areas. WISPA believes that the Commission's broadband deployment goals can be achieved only if certain rules and policies are implemented to ensure that funding is directed to areas and consumers that lack access to broadband in an efficient and technologically neutral manner. A successful universal service program must discard the antiquated regulations that subsidize inefficient infrastructure and delay the construction

of new broadband facilities, especially fixed wireless broadband networks that can reach millions of unserved homes. With the appropriate structure, incentives and safeguards, new rules will facilitate broadband deployment and allow all service providers, including fixed wireless Internet service providers ("WISPs"), to compete on a level playing field.

Background

Founded in 2004, WISPA is a trade association of more than 500 WISPs, vendors, consultants and others dedicated to promoting, improving and expanding fixed wireless broadband service nationwide. WISPs serve more than two million residential and business customers and operate in every state. Most WISPs operate using the license-exempt bands (*e.g.* 900 MHz, 2.4 GHz and 5 GHz) and in the 3650-3700 MHz "licensed-lite" band to serve rural communities and other areas that would otherwise be unserved, and where few if any broadband alternatives exist. The majority of WISPs are "small businesses," as defined in the Small Business Act.

WISPs often deploy fixed wireless broadband networks in areas where construction of facilities such as DSL and cable is not, and may never be, cost-effective. Though WISPs are often the only broadband provider in rural communities, in some cases WISPs must compete with much larger operators, typically wireline telephone companies and mobile broadband companies, some of which fund their broadband construction and operation with federal universal service assistance intended to promote voice service. In the wake of these competitive inequities, in 2009, WISPA filed Comments with the Commission supporting transition of high-cost USF programs to a redesigned mechanism that explicitly funds broadband.[1] Since that time, many WISPA

[1] Comments of WISPA in GN Docket Nos. 09-47, 09-137, 09-51 at 8 (Filed Dec. 7, 2009) ("WISPA NBP PN #19 Comments").

members have come to favor such a transition only as an alternative to outright elimination of high-cost support mechanisms, both in light of the competitive inequities inherent in the existing system and because of the litany of abuses, inefficiencies and problems identified in the *NPRM*.

Given federal objectives to promote ubiquitous broadband access and adoption, it appears that the Commission favors transitioning the current high-cost universal service programs to a new Connect America Fund ("CAF")[2]. WISPA encourages the Commission to adopt policies that correct the current misaligned build-out incentives, expand eligibility for funding that includes broadband providers who may not be "telecommunications carriers," encourage new private capital expenditures for infrastructure and direct subsidies to the smallest geographic areas with the greatest need for broadband access.[3]

Discussion

1. *If the FCC Extends USF to Broadband, It Must do so on a Technologically Neutral, Narrowly Tailored Basis*

Any program to support universal broadband service must be designed to stimulate deployment and private investment in those areas of the country where economic or geographic barriers have forestalled or frustrated broadband access and exacerbated the digital divide. The *NPRM* notes that as many as one in 13 Americans live in areas with no access to any broadband network.[4] The current USF regime has compounded the problem by basing funding on voice-centric applications and services

[2] In the *NPRM*, the Commission states that "we are not proposing to eliminate universal service support for communications services in high-cost areas of the country; rather, we are proposing to improve the efficiency and effectiveness of that support." *NPRM* at ¶15.
[3] WISPA's Comments today incorporate the results of a recent member survey regarding USF issues and in some cases reflect changes from proposals set forth in the WISPA NBP PN#19 Comments.
[4] *NPRM* at ¶5.

that fail to provide sufficient incentives for operators to transition from legacy voice networks to constructing broadband facilities. For these reasons, any efforts to provide universal service funding for broadband networks should promote access and affordability, eliminate the inefficiencies and waste that burden the current system and promote market-based solutions.

The Commission proposes a two-stage transition from the current high-cost mechanisms to a CAF that would ultimately replace support provided by the existing high-cost program.[5] Phase 1 would allocate non-recurring support through a "reverse auction" process, while Phase 2 would transition all remaining high-cost funding to the CAF. The Commission seeks comment on the scope and many details of this two-phase proposal.

WISPA agrees with the Commission's proposal "to characterize broadband without reference to any particular technology, so that current high-cost and future CAF recipients would be permitted to use any technology platform, or combination of technology platforms, that satisfies the specified metrics."[6] The current USF favors certain interests, and providers, over others. There are many service solutions for bridging the digital divide, and the Commission should not foreclose the use of some methods by arbitrarily limiting CAF funds only to specific recipients. In this respect, WISPA supports the Commission's proposal[7] to specify minimum technical standards that would then apply across all technologies. Given the ability of WISPs to construct low-cost networks to serve areas that would be high-cost to others, technological

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[5] *Id.* at ¶¶ 18-33.
[6] *Id.* at ¶104.
[7] *Id.* at ¶121. The Commission has stated that these minimum technical standards may be based on metrics such as broadband speeds, throughput, latency, jitter, packet loss or other attributes.

neutrality must be a hallmark of the new system.

2. *The FCC Should Adopt and Administer Uniform Eligibility Requirements Nationwide for Funding Recipients*

Under current standards, WISPs that provide broadband services are not entitled to USF benefits because they are not "telecommunications carriers" as defined under Section 153(49) of the Communications Act of 1934, as amended (the "Act"). To make matters worse, USF subsidies in high-cost areas have been used to fund voice providers that then cross-subsidize their broadband offering to compete with WISPs and other providers. This significant shortcoming should not be perpetuated under any new universal service program, and the Commission should take action to ensure that all broadband providers will be eligible for CAF subsidies.

To this end, the Commission should extend, or replace, the eligibility requirements for Eligible Telecommunications Carriers ("ETCs") to embrace a single, uniform standard that would apply nationwide to all providers of broadband service (as defined below), without regard to whether they are "telecommunications carriers."[8] Under current law, states generally designate ETCs within their states, though in cases where the state does not certify, the Commission makes the designation.[9] WISPA believes that, with respect to broadband networks, the current approach is overly burdensome and would result in significant inequities if applied piecemeal nationwide. Instead, WISPA believes that broadband providers should demonstrate their eligibility solely to the Commission, which would have the sole responsibility and authority to

[8] Section 254(e) of the Act, 47 U.S.C. §254(e), provides that "only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support." Section 214(e), 47 U.S.C. §214, requires ETCs to be "common carriers," but WISPA takes no position regarding whether broadband services fulfill this designation.
[9] 47 U.S.C. §214.

certify eligibility for CAF subsidies. To obtain future subsidy funding, existing ETCs would have to apply to be eligible.

To the extent that current law prevents the Commission from including broadband services within the ETC category,[10] the Commission should forbear from imposing the requirement that future USF recipients be designated as ETCs and adopt a new slate of eligibility criteria that extends to all broadband providers. Irrespective of whether it is expressly permissible under the Act or whether the Commission exercises its forbearance authority, the Commission should include all broadband service providers, whether fixed or mobile, wired or wireless, that demonstrate in their applications the ability to provide broadband services to designated areas. In including all broadband providers, the Commission will greatly increase the pool of entities eligible for funding under a policy designed to efficiently expedite broadband deployment; namely that all broadband providers, no matter how classified, should be afforded an equal opportunity to apply for CAF funding, with no preferences for technologies, services providers or classes of service providers. Whether an entity is an ETC has little bearing on whether it should be eligible to provide broadband services, which is not deemed to be a "telecommunications service" under prevailing law. Expanding CAF eligibility would be manifestly consistent with the public's interest in expanding broadband and reducing subsidization costs.

In the *NPRM*, the Commission asks "whether the broadband service obligation should be defined as a minimum of 4 megabits per second (Mbps) downstream and 1

[10] The *NPRM* identifies several issues regarding the Commission's authority to extend USF relief to broadband networks or to expand the pool of ETCs to include parties who are not common carriers. *See, e.g., NPRM* at ¶¶60-74. WISPA takes no position at this time on the Commission's statutory authority to adopt these standards or on the appropriate classification of "broadband Internet access services" or of "interconnected VoIP" for the purposes of this proceeding, or whether such classifications should continue to apply in an IP-based environment.

Mbps upstream, or whether we should use other metrics."[11] In 2009, WISPA supported the definition of broadband used by the Rural Utilities Service at that time: "providing two-way data transmission with advertised speeds of at least 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to end users."[12] In light of technical advances in the interim, and the increasing demand for broadband capacity from bandwidth-intensive applications, WISPA supports adopting a definition of "broadband" that accounts for the particular difficulties of providing service in rural areas, such as terrain and geographic issues, as well as the sharply limited access to affordable backhaul.

In addition, given the capacity and build-out challenges for middle-mile services in rural America and the limited options for affordable backhaul, WISPA supports an additional eligibility requirement for any companies that seek CAF funds to build middle-mile facilities. Recipients of funding for middle-mile facilities must be required to adhere to Open Internet conditions similar to those imposed on recipients of broadband stimulus funds and must allow all providers of last-mile facilities to connect to such middle-mile facilities on fair, reasonable and non-discriminatory terms. This requirement would promote competition for last-mile service to the public, once initial service is launched.

WISPA takes no position on specific coverage requirements that the Commission may adopt for geographic areas or the timelines for required deployments, other than to state that the Commission should adopt rules consistent with the goals of expediting

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[11] *NPRM* at ¶¶24, 109.

[12] *See* Notice of Funds Availability, 74 Fed.Reg. 33103 (July 9, 2009) ("*Round 1 NOFA*") at 33108. WISPA previously advocated harmonization of definitions across the federal agencies. *See, e.g.*, WISPA Comments, GN Docket 09-40, filed Apr. 13, 2009.

broadband deployments in rural areas. In addition, the Commission should consider providing some avenue for relief from coverage or deployment requirements in certain narrow instances.[13] For example, a waiver process may be warranted for circumstances where a broadband service provider suffers extreme financial hardship over a given period, or where the area to be served has an exceptionally low population density or where the provider falls below a small-business size threshold.

3. Support Within a Single Census Block Should Be Capped

In the *NPRM*, the Commission proposes an annual $3,000-per-line cap on total support for all companies operating in the continental United States.[14] Costs in excess of this cap would not be reimbursed through universal service mechanisms. WISPA has previously supported a cap on subsidies in any given census block and would accept any per-household or similar type of cap "that avoids bizarre geographic re-distributions of money."[15] Adoption of a cap would help ensure that taxpayers' funds are being used efficiently and prevent reimbursement for wasteful expenditures and questionable accounting methods.

In addition, WISPA questions the need for, on a going-forward basis, direct support for a broadband provider's operating expenses. As WISPA has previously articulated, "broadband subsidies should be primarily or exclusively for capital infrastructure expenditures, because once the Commission opens up the spigot for operating expenses, it becomes difficult if not impossible to protect the legitimate interests of subscribers in non-high-cost areas."[16] Recipients should not be permitted to

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[13] *NPRM* at ¶ 154.
[14] *See, e.g., id.* at ¶ 158.
[15] WISPA NBP PN #19 Comments at 12.
[16] *Id.* at 9.

misdirect funds away from legitimate expansion of broadband services under whatever rules the Commission adopts.

4. *The FCC Should Consider a Voucher-Based System to Promote Broadband Access*

In the current USF system, some carriers bill their end-user customers directly to help the carrier recover its USF contributions. These charges usually appear as a line item in the customer's phone bill and are subject to certain Commission requirements. WISPA believes that the Commission should consider, in lieu of the existing carrier pass-through system, implementing a voucher system to benefit consumers and reduce some of the administrative burdens of USF. Under such a system, end users in areas that do not currently have broadband service could apply for a voucher to cover the cost of installation of broadband service in those areas. The vouchers could then be submitted to a qualified broadband provider at the time of installation of broadband service. It would be the responsibility of the broadband provider to turn in those vouchers for reimbursement from the broadband subsidy program. This would ensure that subsidies are a one-time expense at the time that service is delivered to the customer and would help reduce the overall costs of the program. Similar models have been successfully implemented before. During the transition to digital television, the National Telecommunications and Information Administration was charged with overseeing a TV Converter Box Coupon program whereby U.S. households could request up to two coupons, worth $40 each, to be used toward the purchase of up to two digital-to-analog converter boxes to allow them to view DTV signals on their home televisions.[17] WISPA

[17] *See* DTV Converter Box Coupon Program, (http://www.ntia.doc.gov/dtvcoupon/index.html, visited 4/18/2011).

suspects that the majority of carriers under the current system pass through these USF charges to their customers and that in those cases, a voucher system may help reduce the administrative costs to redistribute USF funds and reduce opportunities for waste and fraud.

5. *CAF Support Should Be Subject to a Limited Audit Process and Remedies for Noncompliance*

In the *NPRM*, the Commission states that it intends "to require all recipients of CAF funding to comply with audits and record retention requirements," and proposes that the Universal Service Administrative Company should "recover funds through its normal processes in instances where an audit or investigation finds that a recipient has failed to comply with certain CAF program rules and requirements."[18] WISPA believes that compliance audits are necessary but that the recordkeeping burdens should be balanced and narrowly tailored to the overarching objectives of the fund. Here, WISPA reiterates, with certain minor changes, its recommendations from its WBP #19 Comments:

- All broadband providers receiving CAF funding must file Form 477 as required by Commission rules. Though broadband providers are required to submit this form annually, there is no active enforcement for failure to file. Recipients of broadband funding should face termination of subsidies if they fail to file Form 477.

- Form 477 should be expanded to require annual submission of financial documentation for CAF recipients, in addition to the subscribership information already required by the form, however the required financial information should relate only to the recipients' CAF activities. Commission staff should review the information to ensure that there is no fraud, waste or abuse under appropriate guidelines. Reports should be filed annually, not quarterly, to minimize burdens on subsidy recipients.

- The Commission should have authority to conduct audits of a CAF recipient's CAF-related finances to determine whether funds are being spent on eligible costs

[18] *NPRM* at ¶¶368, 153.

and to conduct field inspections to verify the accuracy of subscriber numbers.[19]

WISPA believes that these measures, if adopted with an eye toward preventing excessive compliance burdens, will help produce the intended result of spurring broadband deployment and reducing the waste, fraud, inefficiency and abuse that has plagued the existing USF program.

Conclusion

WISPA supports the complete dismantling of the current high-cost USF program and replacing it with a new broadband funding program that provides the structure, incentives and safeguards to facilitate competition and to advance deployment of broadband service. For years, USF regulations have invited fraud, waste and abuse, thereby perpetuating inefficient network construction and hindering broadband deployment. Accordingly, to support broadband access, WISPA supports redirection of federal USF subsidies to an expanded class of eligible broadband network providers. To support broadband adoption, WISPA asks the Commission to consider a voucher program that would promote the expansion of broadband access. The Commission's technical standards, eligibility requirements and audit and enforcement mechanisms must provide a balanced, effective means for promoting these goals. To truly promote broadband availability, WISPA urges adoption of the recommendations described in the foregoing Comments.

[19] WISPA NBP PN #19 Comments at 14.

Respectfully submitted,

THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

April 18, 2011

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