

October 5, 2011

Chairman Julius Genachowski
Commissioner Michael Copps
Commissioner Mignon Clyburn
Commissioner Robert McDowell
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Letter, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket Nos. 09-51; CC Docket Nos. 01-92, 96-45

Dear Chairman Genachowski and Commissioners,

As the Commission moves expeditiously to complete an order reforming the High-Cost fund, the undersigned, Public Knowledge, Benton Foundation, and New America Foundation's Open Technology Initiative (together, "Public Interest Organizations"), respectfully ask it to include in its reform an interconnection obligation as a condition of support for broadband deployment as the fund transitions to the Connect America Fund ("CAF"). While all three groups have previously submitted various proposals related to interconnection as an aid to self-provisioning, the following represents the bare minimum obligation necessary to preserve the ability of remaining unserved communities to self-provision broadband access and keep open the door for competition in high-cost areas.

Specifically, Public Interest Organizations ask the Commission to include an interconnection obligation on all CAF-funded network infrastructure that mirrors a requirement from first and second round Notices of Funds Availability for Broadband Technology Opportunities Program and Broadband Initiatives Program (collectively, "BTOP and BIP NOFAs"), which states:

"...All... applicants must commit to the following ... Interconnection Obligations:

...(v) offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, at reasonable rates and terms to be negotiated with requesting parties. This includes both the ability to connect to the public Internet and physical interconnection for the exchange of traffic. ...

...An awardee may satisfy the requirement for interconnection by negotiating in good faith with all parties making bona fide requests. The awardee and requesting party may negotiate terms such as business arrangements, capacity limits, financial terms, and technical conditions for interconnection. If the awardee and requesting party cannot reach agreement, they may voluntarily

seek an interpretation by the FCC of any FCC rules implicated in the dispute. If an agreement cannot be reached within 90 days, the party requesting interconnection may notify NTIA in writing of the failure to reach satisfactory terms with the awardee. The 90-day limit is to encourage the parties to resolve differences through negotiation.”¹

Public Interest Organizations do not believe that this type of interconnection, already imposed on BTOP and BIP awardees, would deter potential recipients from applying for CAF funds.² Indeed, as other commenters have pointed out, the obligation has, for BTOP awardees alone, already led to “approximately 90 interconnection agreements with third-party providers to leverage or interconnect with [awardees’] networks,” with negotiations in the works for at least 200 more such agreements.³ Moreover, many potential CAF recipients, such as Windstream or other rural telephone providers, would already be subject to such an obligation in any area where their network buildout is predicated on BTOP or BIP funding.⁴

Public Interest Organizations do believe the requirement to offer and negotiate interconnection where technically feasible and at reasonable rates is critical to preserving the ability of communities to self-provision broadband connectivity in the highest-cost areas that may not be covered by the CAF. To the extent these communities are able to build out infrastructure to connect with a broadband network in adjacent CAF-funded areas, the Commission must ensure they have the ability to interconnect at reasonable rates and terms. This minimal obligation would also ensure that the possibility for future competition is preserved, particularly in areas where the CAF would likely fund only one broadband provider and where such funding could otherwise create a de facto monopoly for a given service area.

¹ Department of Agriculture, RUS, Broadband Initiatives Program, Department of Commerce, NTIA, Broadband Technology Opportunities Program, Notice of Funds Availability, 74 Fed. Reg. 33104, 33111 (July 9, 2009) (“BTOP/BIP First Round NOFA”); Department of Commerce, NTIA, Broadband Technology Opportunities Program, 75 Fed. Reg. 3792, 3800 (Jan. 22, 2010) (“BTOP Second Round NOFA”); Department of Agriculture, RUS, Broadband Initiatives Program, Notice of Funds Availability, 75 Fed. Reg. 3820, 3827 (Jan. 22, 2010) (“BIP Second Round NOFA”).

² Such an obligation certainly did not deter the 2,800 applicants applying for BTOP funds alone. *See* Testimony of the Honorable Lawrence E. Strickling, Assistant Secretary for Communications and Information, National Telecommunications and Information Administration, United States Department of Commerce, before the Committee on Energy and Commerce, Subcommittee on Communications and Technology, United States House of Representatives at 3 (April 1, 2011) (“Strickling Testimony”).

³ Strickling Testimony at 5. *See also* Comments of Schools, Health and Libraries (SHLB) Coalition, WC Docket 10-90 *et al* at 19 (filed Aug. 24, 2011); Reply Comments of New America Foundation’s Open Technology Initiative, Media Access Project, Access Humboldt, Rural Mobile & Broadband Alliance, and Center for Medial Justice, WC Docket 10-90 *et al* at 10 (filed Sept. 6, 2011).

⁴ Windstream is the recipient of numerous BIP grants in 13 states, with \$181.3 million in total funding. *See* “Windstream Installs Fiber for First Broadband Stimulus Project”, Windstream News Release (June 01, 2011) *available at* http://news.windstream.com/article_display.cfm?article_id=1302

Pursuant to the Commission's rules, this notice is being filed in the above-referenced dockets for inclusion in the public record.

Respectfully submitted,

/s/ Sarah J. Morris

Sarah J. Morris
Benjamin Lennett
Open Technology Initiative
New America Foundation
1899 L Street NW, 4th Floor
Washington, DC 20036

Harold Feld
John Bergmayer
Public Knowledge
1818 N Street NW, Suite 410
Washington, DC 20036

Amina Fazlullah
Benton Foundation
1250 Connecticut Avenue NW, Suite 200
Washington, DC 20036

CC: Zachary Katz, Chief Counsel and Senior Legal Advisor, Chairman Genachowski
Margaret McCarthy, Wireline Policy Advisor, Commissioner Copps
Angela Kronenberg, Wireline Legal Advisor, Commissioner Clyburn
Christine Kurth, Policy Director and Wireline Counsel, Commissioner McDowell