

**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
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

To: The Commission

**COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

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Summary

The Wireless Internet Service Providers Association (“WISPA”) provides its Comments on certain proposals in the Further Notice of Proposed Rulemaking (“*FNPRM*”) that would, if adopted in accordance with WISPA’s recommendations, make voice and broadband service available to unserved and remote areas of the country in an effective, efficient and expeditious manner.

WISPA represents the interests of wireless Internet service providers (“WISPs”) that primarily use unlicensed spectrum to serve consumers in rural and remote areas. For the most part, WISPs cannot receive universal service support because, as providers of standalone broadband and/or interconnected VoIP, WISPs are not providers of “telecommunications” that can become “eligible telecommunications carriers” (“ETCs”) under the Commission’s current interpretations of its legal authority. Two of the Commission’s proposals would, however, enable non-ETCs to participate in the benefits of the new Connect America fund (“CAF”).

First, WISPA supports the joint proposal put forth by Public Knowledge and Benton Foundation that would require entities receiving CAF support to provide interconnection and backhaul to “self-provisioning” networks. This approach would enable unsubsidized providers to access middle mile facilities that are supported by CAF funding. WISPA recommends using the definitions and terms used in the broadband stimulus program to ensure that there are good faith negotiations for interconnection and that the terms and conditions are reasonable and non-discriminatory.

Second, WISPA supports the goals of the Remote Areas Fund (“RAF”) to provide broadband service to consumers in remote areas that have proven to be very difficult to serve with traditional terrestrial networks. To identify “remote areas,” the Commission should rely on the National Broadband Map. WISPA believes that a voucher system would be the most efficient vehicle to ensure that consumers receive direct benefits from the provision of broadband service. WISPA believes that the Commission has authority under Section 214(e)(3) of the Act to deem any broadband provider that certifies to the Commission that it would provide voice telephony service on a common carrier basis to be an “eligible telecommunications carrier” for limited purposes of the RAF. One example would be a provider of interconnected VoIP service, which in other contexts has been found to be a substitute for traditional telephone service.

WISPA also believes that performance bonds should be required to qualify CAF recipients. Performance bonds are less expensive to obtain than letters of credit, and allow third parties to evaluate the business plan that the bond would support, thus increasing the likelihood that the funding would be used only to fund viable projects.

WISPA reiterates its view that the Commission should substitute the term “unsubsidized competitor” with “area subject to unsubsidized competition” for all purposes, including CAF Phase II. WISPA’s petition for reconsideration addressed this in detail.

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To: The Commission

**COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”), pursuant to Section 1.415 of the Commission’s Rules, hereby comments on certain aspects of the Further Notice of Proposed Rulemaking (“*FNPRM*”) in the above-referenced proceeding.¹ To advance the goal of making broadband accessible to all Americans, WISPA urges the Commission to require Connect America Fund (“CAF”) recipients to interconnect with and to provide backhaul capacity to unsubsidized broadband providers desiring to “self-provision” fixed voice and broadband

¹ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; and Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011).

service to consumers in underserved areas, consistent with the joint proposal of Public Knowledge and Benton Foundation. WISPA supports the objectives of the Remote Areas Fund (“RAF”) and makes specific proposals on how the Commission can enable participation by providers that are not traditional “eligible telecommunications carriers” (“ETCs”) as well as how it can best administer the RAF to efficiently target and provide support to remote areas. Finally, consistent with the proposals in its Petition for Partial Reconsideration,² WISPA believes that areas that are or become subject to unsubsidized competition should not be eligible for CAF funding where the price cap carrier declines the state-level commitment.

Introduction

Founded in 2004, WISPA is a trade association of more than 600 wireless Internet service providers (“WISPs”), vendors and others dedicated to promoting, improving and expanding fixed wireless broadband service nationwide. WISPs serve more than 3,000,000 residential and business customers and operate in every state using towers, radios and other equipment they own or lease. Most WISPs operate using unlicensed bands (*e.g.* 900 MHz, 2.4 GHz and 5 GHz) and the 3650-3700 MHz “licensed-lite” band to serve residences, businesses and community anchor institutions primarily in rural communities and other areas that would otherwise be unserved, and where few if any terrestrial broadband alternatives exist.

Many WISPs provide only fixed wireless broadband services, however some WISPs also provide interconnected Voice over Internet Protocol (“VoIP”) services over their facilities and a few are competitive local exchange carriers that have obtained ETC status. Interconnected VoIP service can be added to a fixed wireless network through the use of a soft switch and related equipment that enables IP-based call switching and termination.

² See WISPA’s Petition for Partial Reconsideration, WC Docket No. 10-90, *et al.*, filed Dec. 29, 2011 (“WISPA Petition”), at Part I.

Under the Commission’s interpretation of Section 254 of the Communications Act of 1934, as amended (the “Act”),³ standalone “broadband” service (i.e., without voice telephony) is *not* a “telecommunications service” and such standalone broadband service has been considered ineligible for Universal Service Fund (“USF”) support.⁴ Likewise, the Commission has not classified interconnected VoIP as a “telecommunications service” for purposes of *receiving* USF support, even though Section 254(d) of the Act requires interconnected VoIP providers to *contribute* to the USF.⁵ As a result, WISPs providing fixed wireless broadband service, either as a standalone service or in combination with interconnected VoIP service, do not receive USF subsidies.⁶ By contrast, providers of “telecommunications service” (i.e., ETCs) that receive USF support leverage federal subsidies to finance broadband networks that compete with unsubsidized fixed wireless broadband networks serving the same areas. This flawed system results in inequities – it creates competitive disadvantages for many WISPs and directs subsidies to areas where fixed broadband and interconnected VoIP services are already available.⁷

³ 47 U.S.C. § 254.

⁴ See *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, WT Docket No. 07-53 (rel. Mar. 23, 2007) (finding that terrestrial wireless broadband Internet access service is an “information service,” that the transmission component of such service is “telecommunications,” but that the offering of the telecommunications transmission component as part of a functionally integrated Internet access service offering is not “telecommunications service”); *Order* at ¶80 (“As a condition of receiving support, we require ETCs to offer voice telephony as a standalone service throughout their designated service area”).

⁵ Interconnected VoIP providers also are subject to other Title II obligations, to-wit: E911 calling capabilities, customer proprietary network information protection and reporting, disability access requirements, Telecommunications Relay Services requirements and Local Number Portability obligations. See, e.g., *Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; Final Regulatory Flexibility Analysis; Numbering Resource Optimization*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 (2007), at 19538-39.

⁶ See, e.g., “America’s Broadband Heroes: Fixed Wireless Broadband Providers,” October 2011, available at <http://www.wirelesscowboys.com/wp-content/uploads/2011/10/americas-broadband-heroes-fixed-wireless-2011.pdf>.

⁷ One example of the misapplication of federal support is occurring in Western Nebraska, where Hemingford Cooperative Telephone Company is receiving funding for broadband in an area where broadband services are already provided. For a more detailed discussion, see “\$10 million USDA FAIL!,” available at <http://www.wirelesscowboys.com/?p=217>.

In the *FNPRM*, the Commission specifically recognizes “the important role that WISPs, non-profits, and other small and non-traditional communications providers play in extending broadband in rural America.”⁸ Consistent with this statement, the Commission seeks comment on two proposals that would enable fixed wireless broadband providers and their customers to gain some of the benefits of the CAF program. First, the Commission asks whether it should require CAF recipients to make interconnection points and backhaul capacity available to other network providers so that unserved high-cost communities can deploy their own networks.⁹ Second, the Commission invites input on the structure for the RAF and criteria for participation in the program.¹⁰ WISPA endorses the objectives of both the PK/Benton proposal and the RAF program and makes specific recommendations on how they can be implemented consistent with the Act, Commission policies and the objectives of this proceeding.

Discussion

Section 254(b) of the Act requires the Commission to base policies for the preservation and advancement of universal service on several principles. One of these principles, Section 254(b)(3), states that:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications *and information services*, including interexchange services and advanced telecommunications *and information services*, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.¹¹

⁸ See *FNPRM* at ¶1030.

⁹ See *id.* at ¶¶1028-1030.

¹⁰ See *id.* at ¶¶1223-1295.

¹¹ Emphases added. See also Section 254(b)(7) of the Act, which states that the Commission shall base its policies on “[s]uch other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.”

This principle acknowledges that the Commission can promote the expansion of information services – such as the fixed wireless broadband services provided by WISPs – to rural and high-cost areas. As described below, the *FNPRM* affords the Commission with a perfect opportunity to do just that by facilitating interconnection points and backhaul capacity for fixed broadband service and by allowing for the designation of certain WISPs as ETCs for the limited purpose of obtaining indirect RAF benefits.

I. THE COMMISSION SHOULD ADOPT RULES REQUIRING CONNECT AMERICA FUND RECIPIENTS TO MAKE INTERCONNECTION POINTS AND BACKHAUL CAPACITY AVAILABLE FOR FIXED BROADBAND SERVICE IN UNSERVED HIGH-COST AREAS THAT DO NOT RECEIVE SUPPORT.

The Commission invites comment on a proposal jointly advanced by Public Knowledge and Benton Foundation (“PK/Benton”) that would require CAF recipients to make their interconnection points and backhaul capacity available so that consumers in unserved high-cost communities could access these assets and “self-provision” broadband service.¹² Requiring a CAF recipient to enable interconnection and access to backhaul on its funded network would help speed broadband deployment to areas of need. WISPA strongly endorses this proposal, and urges the Commission to adopt it.¹³

The PK/Benton proposal would require CAF recipients to provide adequate interconnection and backhaul capacity from their funded networks to “self-provisioning” networks in adjacent unserved areas. Also, in areas within a funded area where the CAF recipient does not provide adequate service, the recipient should be required to enable a self-

¹² See Comments of Public Knowledge and Benton Foundation, WC Docket No. 10-90, *et al.*, filed Aug. 24, 2011 (“PK/Benton Comments”). See also Comments of New America Foundation’s Open Technology Initiative, Media Access Project, Access Humboldt, Rural Mobile & Broadband Alliance, and Center for Media Justice, WC Docket No. 10-90, *et al.*, filed Sept. 6, 2011, at 8-14 (“NAF/OTI Comments”).

¹³ In an ex parte letter filed June 6, 2011, WISPA expressed “general support” for this proposal. Notice of Ex Parte Presentation, Letter from Stephen E. Coran to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90, *et al.*, filed June 6, 2011.

provisioned broadband network to interconnect to the recipient's network.¹⁴ Self-provisioners could include any entity that desires to provide service in the unserved area, including WISPs, local governments or others. By definition, the self-provisioner would be unsubsidized for the area – that is, it would fund construction, expansion and operation of its network without CAF support but would have the right to utilize the CAF recipient's interconnection and backhaul facilities to enable middle-mile transport to and from the Internet.

The Commission must ensure that the interconnection obligation does not become a vehicle through which CAF recipients can impose unreasonable terms, charge exorbitant rates and/or employ delaying tactics. To provide necessary parameters and to mitigate the potential for unreasonableness and delay, WISPA urges the Commission to adopt the definition and description of “interconnection” that the Department of Agriculture and the Department of Commerce used in conditioning broadband loans and grants under the Broadband Initiatives Program (“BIP”) and the Broadband Technology Opportunities Program (“BTOP”) under the American Recovery and Reinvestment Act of 2009.¹⁵ In the Notice of Funds Availability (“NOFA”), the agencies required all BIP and BTOP applicants to:

offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, on reasonable rates and conditions 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.¹⁶

The NOFA further explained that a funding recipient “may satisfy the requirement for interconnection by negotiating in good faith with all parties making a bona fide request. The

¹⁴ See PK/Benton Comments at 6-7.

¹⁵ American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115 (2009). See also NAF/OTI Comments at 9.

¹⁶ Broadband Initiatives Program; Broadband Technologies Opportunities Program; Notice of Funds Availability, 74 Fed. Reg. 130 at 33111 (2009).

awardee and the requesting party may negotiate terms such as business arrangements, capacity limits, financial terms, and technical conditions for interconnection.”¹⁷

Adopting these same conditions as Commission rules will eliminate delays inherent in negotiating over the location of a qualifying interconnection point and will establish parameters for business terms that are based on good faith, reasonableness and fairness. At the same time, these conditions would not be overly prescriptive and would afford both of the negotiating parties latitude to enter into arms’-length business transactions appropriate for their particular network architecture, geography and circumstances.

The Commission has authority to establish conditions to receiving support under its statutory public interest standard and various other provisions of the Act.¹⁸ To implement the support condition requiring interconnection and backhaul, the Commission should require all applicants for CAF support to certify in their applications that they are aware of and will comply with these requirements, just as BTOP and BIP applicants were required to do. To enforce the recipient’s compliance, a party could seek an interpretation of its rules from the Commission if good faith negotiations do not lead to a successful conclusion within 30 days. The Commission should delegate interpretations to the Wireline Competition Bureau, which would have a limited period – say, 60 days – to provide the requested ruling. WISPA anticipates that the recipient and the self-provisioning broadband provider would be able to resolve any differences through negotiation in the vast majority of cases and will not have to resort to the Commission’s processes. However, it is necessary to have the certainty of a Commission process to avoid unnecessary delays, to ensure that the parties proceed in good faith and to incent the parties to privately resolve disputes.

¹⁷ *Id.*

¹⁸ See PK/Benton Comments at 11 (citing Sections 151, 154(I), 201-205, 214, 220, 254 and 303(r) of the Act).

II. THE COMMISSION SHOULD ADOPT RULES TO ENSURE THAT SUPPORT PROVIDED UNDER THE REMOTE AREAS FUND IS AVAILABLE TO NON-ETCs AND IS ADMINISTERED EFFICIENTLY.

In the *Order*, the Commission established the RAF with an annual budget of at least \$100 million to support broadband access to those Americans – estimated at less than one percent of the population – living in remote areas where the cost of deploying traditional terrestrial broadband networks is extremely high.¹⁹ In the *FNPRM*, the Commission states that the CAF “can help fulfill our universal service goals in those areas by taking advantage of services such as next-generation broadband satellite service or wireless internet service provider (WISP) service, which may already be deployed (or may be deployable with modest upfront investments) but may be priced in a way that makes service unaffordable for many consumers.”²⁰ The Commission seeks comment on the recipient qualifications, structure, implementation and other aspects of the RAF program.

Definition of Remote Area

Prior to finalizing the forward-looking cost model, the Commission proposes to define “remote area” as census blocks in price cap territories that are identified in the National Broadband Map as having no subsidized or unsubsidized wireline or terrestrial broadband service available.²¹ This definition requires little or no interpretation and is an adequate proxy for determining remote areas. Because the National Broadband Map will be updated semi-annually, the Commission can ensure that, over time and with a minimum of administrative overhead, RAF support is not provided to areas that become served. Given WISPA’s opposition to a means test and its support for a voucher program for directing support to RAF-funded areas,

¹⁹ See *FNPRM* at ¶1223.

²⁰ *Id.* at ¶1224.

²¹ See *id.* at ¶1230.

WISPA urges the Commission to look to the National Broadband Map to identify “remote areas” in lieu of a more complicated forward-looking cost model.

Program Structure

The Commission suggests three methods for structuring the RAF: (a) a “portable consumer subsidy” under which ETCs would receive support only when they actually provide service to an eligible customer; (b) a competitive bidding process, and (c) a competitive evaluation process.²² The Commission also asks for comment on other alternatives.²³

WISPA construes the “portable consumer subsidy” to be akin to a “voucher” program.²⁴ In its Comments preceding adoption of the *Order*, WISPA proposed that the Commission adopt a voucher system for universal service, stating that:

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.²⁵

WISPA agrees with the Commission that vouchers should be limited to first-time broadband customers and that support should be limited to one connection per residence/household.²⁶

Prospective customers in remote areas would be required to submit vouchers by a date certain.

This plan has several benefits. First, by administering the process for consumers to apply for a voucher, the Commission would be able to ensure that the customer resides in a defined remote area and would be receiving a direct financial benefit. Second, like the “portable

²² See *id.* at ¶1225.

²³ See *id.* at ¶1226.

²⁴ Paragraph 1276 of the *FNPRM* distinguishes the auction alternatives from “our voucher proposal,” and footnote 2327 states that the Commission’s second auction proposal “is significantly different from our voucher approach.”

²⁵ WISPA Comments, WC Docket No. 10-90, *et al.*, filed Apr. 18, 2011 (“WISPA Comments”), at 9.

²⁶ See *FNPRM* at ¶1256.

consumer subsidy” the Commission proposes, the voucher would result in a one-time payment, and thus would have few ongoing administrative requirements. Third, voucher programs have been effectively administered before, both with respect to the DTV voucher program²⁷ and the BIP Satellite program administered by RUS.²⁸

WISPA opposes use of a means test to determine a consumer’s qualifications to participate in the RAF voucher program.²⁹ For WISPs, the difficulty in serving consumers in remote areas is the availability and cost of middle mile capacity stemming from, among other things, lack of price competition and lack of infrastructure.³⁰ Once a WISP obtains access to middle mile facilities, it can usually deliver broadband services to a remote area customer at a “reasonably comparable” rate. The customer’s means have little to do with whether the area receives broadband service or not. WISPA recommends that, for terrestrial RAF broadband providers,³¹ the amount of the voucher should be a defined amount that would cover a portion of the broadband provider’s middle mile access costs. This amount could be a function of the difference between the middle mile costs in a competitive area (or some base amount that serves as a proxy for such amount) and the estimated average of additional costs associated with obtaining middle mile facilities to serve each remote area customer. In areas where the same middle mile facilities would be used to serve more than one remote area customer, the amount of

²⁷ The Department of Commerce’s National Telecommunications and Information Administration (NTIA) administered the “TV Converter Box Coupon Program” in accordance with the Digital Television Transition and Public Safety Act of 2005. *See* <http://www.ntia.doc.gov/legacy/dtvcoupon/index.html> (visited Jan. 10, 2012).

²⁸ *See*

<http://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAction=GetSatRules&NavKey=loan@22#satcompanies> (visited Jan. 17, 2012).

²⁹ *See FNPRM* at ¶1261.

³⁰ WISPA has written extensively about its members’ lack of access to affordable middle mile facilities in rural areas. *See, e.g.*, WISPA’s Comments regarding the National Broadband Plan, Public Notice #11, GN Docket Nos. 09-47 and 09-137 and GN Docket No. 09-51, filed Nov. 4, 2009. Adoption of the PK/Benton “self-provisioning” proposal, as discussed in Part I *supra*, would facilitate unsubsidized middle mile access.

³¹ WISPA appreciates that this proposal may not be appropriate for satellite-delivered broadband. Thus, any rules the Commission adopts should account for differences in technology.

the voucher would be determined on a *pro rata* basis once the prospective customers in the remote area submit their voucher applications.

Provider Qualifications

WISPs are perhaps best positioned to provide broadband service to remote areas. In many areas of the country, WISPs are the only fixed broadband provider and thus the sole source of fixed broadband access. According to information derived from the National Broadband Map, WISPs are the exclusive providers of fixed broadband in 74 percent of the land area of Texas, 58 percent of the land area of Nebraska and 38 percent of the land area of Illinois.³² Very few of these areas receive federal subsidies but have rather been self-funded by WISPs.

The remaining remote areas where RAF support will be targeted could benefit from service provided by WISPs under the voucher system explained above. However, because standalone fixed broadband providers and interconnected VoIP providers have not been accorded ETC status, the Commission's proposal would foreclose such WISPs from providing service to remote areas where they could do so efficiently and effectively. As stated in the WISPA Comments, "[w]hether 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...."³³

As a consequence of the difficulty and demonstrable inability of traditional terrestrial networks to serve remote areas, the Commission asks whether it should forbear from enforcing eligibility requirements to enable non-ETCs to obtain RAF support.³⁴ WISPA previously

³² Attached hereto as Exhibit 1 are maps of these three states showing the areas served only by fixed wireless providers, unserved areas, underserved areas and areas served by other terrestrial fixed broadband technologies. These maps are derived from the National Broadband Map. An explanation of the maps and a table also are included in Exhibit 1.

³³ WISPA Comments at 6.

³⁴ See *FNPRM* at ¶1235.

advocated that the Commission should extend, or replace, the eligibility requirements for 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.”³⁵

The Commission should rely on existing precedent to deem providers of interconnected VoIP service to be “telecommunications carriers” for the limited purpose of administering universal service under Part 54 of the Commission’s rules. As WISPA has made clear, the playing field is far from level where interconnected VoIP providers, as providers of “voice telephony services,” are required to contribute to USF but are prohibited from receiving federal subsidies. The Commission itself has acknowledged that “interconnected VoIP services are increasingly being used as a substitute for traditional telephone service,”³⁶ and on several occasions, the Commission has found that it has ancillary authority to treat interconnected VoIP providers as “telecommunications carriers” for limited purposes.³⁷ The Act provides that the “Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.”³⁸ In the past, the Commission has used this “ancillary authority” to support piecemeal extension of Title II regulations to interconnected VoIP.³⁹ Similarly, here the Commission should adopt rules to allow broadband providers that agree to provide “voice telephony service” but that are not otherwise ETCs eligible to receive direct RAF support.

³⁵ 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.” WISPA takes no position regarding whether broadband services fulfill this designation.

³⁶ *Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; Final Regulatory Flexibility Analysis; Numbering Resource Optimization*, 22 FCC Rcd 19531 (2007), at ¶28.

³⁷ See *supra* n. 5.

³⁸ 47 U.S.C. §154(j)

³⁹ In *Comcast v. FCC*, the U.S. Court of Appeals for the D.C. Circuit stated that the Commission may exercise its “ancillary” authority only if the Commission demonstrates that its action is “reasonably ancillary to the effective performance of its statutorily mandated responsibilities.” *Comcast v. FCC*, 600 F.3d 642, 644 (D.C. Cir. 2010).

In the context of the RAF, which targets remote unserved areas, the Commission should rely upon Section 214(e)(3), which governs the designation of ETCs for any “unserved community or any portion thereof that requests [services that are supported by Federal universal service support mechanisms].”⁴⁰ The CAF has extended these supported services to include broadband. Accordingly, any broadband provider that certifies to the Commission that it would provide interconnected VoIP or other voice telephony service on a common carrier basis to customers in unserved communities should be deemed an “eligible telecommunications carrier” for limited purposes of the RAF.⁴¹ The unserved communities would be identified by the criteria the Commission adopts in this proceeding. The “request” would be in the form of the voucher that the unserved consumer requests, subject to Commission verification. The submission of this voucher also would represent the request for service that triggers the Section 214(e)(3) designation. In short, Section 214(e)(3) can be used to direct subsidies to areas of great need that would otherwise be without broadband service if a WISP were required to become an ETC by first becoming a local exchange carrier.

To the extent the principles espoused in Sections 254(b)(3) and (b)(7) do not empower the Commission to enable non-ETCs to participate in the RAF through the voucher process or whatever other process the Commission may adopt, the Commission should forbear from enforcing those requirements that are construed to enable only “telecommunications” carriers to obtain RAF benefits. Congress has charged the Commission to “make available, so far as

⁴⁰ *Id.*

⁴¹ This subsection provides: “If no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254 (c) of this title to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services or an area served by a common carrier to which paragraph (6) applies, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof. Any carrier or carriers ordered to provide such service under this paragraph shall meet the requirements of paragraph (1) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.”

possible, to all the people of the United States . . . a rapid, efficient, Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges”⁴² In addition, the Commission has a statutory mandate to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”⁴³ The Act states that the Commission:

shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, *regulatory forbearance*, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.⁴⁴

WISPA is aware that several parties have advanced theories in support of the Commission’s authority to provide universal service support for broadband Internet services that are classified as information services. For example:

- *Section 254*. In a recent proceeding, AT&T argued that the Commission has direct authority under Section 254 to provide universal service support for broadband Internet service if the service is classified as an information service, as it is now.⁴⁵ For example, Section 254 provides that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the nation,” and other sections of the statutory text refer to “advanced telecommunications and information services,” an “evolving level of telecommunications services.”
- *Section 254 Authority for “Educational Purposes.”* The National Cable and Telecommunications Association has argued that Section 254(h)(2) of the Act⁴⁶ would give the Commission authority to direct support for residential broadband

⁴² 47 U.S.C. §151.

⁴³ See 47 U.S.C. §157 (note).

⁴⁴ *Id.* (emphasis added).

⁴⁵ See, e.g., *Framework for Broadband Internet Service*, Notice of Inquiry, GN Docket No. 10-127 at ¶¶32-35; Letter from Gary L. Phillips, General Attorney & Associate General Counsel, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 09-51, 09-47, 09-137, WC Docket Nos. 05-337, 03-109, attachment at 2 (Jan. 29, 2010).

⁴⁶ This section gives the Commission authority “to enhance...access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers and libraries.” 47 U.S.C. §254(h)(2).

services to households “where it is reasonably likely that such service would be used for educational purposes.”⁴⁷

- *Authority under Section 706.* PK has grounded Commission authority in Section 706(b), which provides that if the Commission finds advanced telecommunications capability is not being deployed in a reasonable and timely fashion, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.⁴⁸

To the extent that any or all of these approaches support regulatory forbearance to achieve the objectives set forth in these Comments, WISPA requests that the Commission adopt such forbearance.

III. THE COMMISSION SHOULD REQUIRE SUPPORT RECIPIENTS TO PROVIDE PERFORMANCE BONDS.

In the *FNPRM*, the Commission seeks comment on various upfront financial assurances and proposed enforcement sanctions, which are designed to assure compliance with the public interest obligations attached to CAF funding.⁴⁹ WISPA supports a combination of both sets of measures, as described below.

First, the Commission proposes requiring support recipients to post financial security as a condition of receiving high-cost and CAF support. Such a measure would promote accountability and provide reasonable incentives for award recipients to use CAF funds responsibly. Although WISPA agrees that a financial guarantee is a reasonable tool for assuring that USF funds disbursed to CAF recipients can be returned in the event of default, it disagrees with the Commission’s suggestion that CAF recipients obtain an irrevocable standby letter of credit (LOC) and believes that a performance bond would better balance the applicant’s cost and the Commission’s risk.

⁴⁷ See Letter from Kyle McSlarrow, President & CEO, National Cable & Telecommunications Association, to Julius Genachowski, Chairman, FCC, GN Docket Nos. 09-51, 09-191, WC Docket No. 07-52 (March 1, 2010).

⁴⁸ See PK/Benton Comments at 11-14.

⁴⁹ See *FNPRM* at ¶1103.

The Commission supports its preference for requiring an LOC by stating that, while the performance bond “would have the advantage of providing a source of funds to complete build out in the unserved area in the case of a recipient's default ... we must first be concerned with protecting the integrity of the USF funds disbursed to the recipient” so that such support can be reassigned.⁵⁰ In WISPA’s view, however, the LOC-only approach could result in the abandonment of facilities construction in the event of a recipient’s default, no matter what stage of construction was in place at the time of default. These areas were determined to lack unsubsidized competition prior to the award of the support, and the lack of a performance bond could strand these investments. Instead of requiring an LOC, WISPA supports requiring recipients to provide a performance bond. A performance bond can be less expensive for the proposed recipient to acquire, and there is value in allowing third parties to evaluate the business plan that the bond would support, thus increasing the likelihood that the funding would be used only to fund viable projects. The Commission has long required satellite licensees to obtain performance bonds that decline as the licensee meets certain construction benchmarks,⁵¹ and the potential for forfeiture of significant funds has provided the appropriate incentives for the provider to complete construction. As the Commission determined in the satellite context, replacement of financial qualification rules with a bond requirement protected against speculation and provided licensees with incentives to reach their milestones, which resulted in a reduction of the bond amounts. Similarly, here the Commission should adopt the performance bond requirement as a means to provide the proper incentives for recipients to complete their build-out commitments. For these reasons, WISPA requests that the Commission require a performance bond as a condition of receipt of CAF funding.

⁵⁰ *Order* at ¶446.

⁵¹ *See* 47 C.F.R. § 25.165 (requiring licensee to post a bond within 30 days of grant of all satellite licenses issued after September 20, 2004 other than DBS licenses, DARS licenses and replacement satellite licenses.)

In addition to requiring a performance bond, WISPA agrees that the Commission also should impose significant penalties on a CAF recipient that fails to meet public interest obligations.⁵²

IV. DISTRIBUTION OF CONNECT AMERICA FUND SUPPORT IN PRICE CAP AREAS SHOULD CONSIDER THE PRESENCE OF UNSUBSIDIZED COMPETITION, NOT MERELY AN UNSUBSIDIZED COMPETITOR.

In the *FNPRM*, the Commission observes that “each incumbent price cap carrier will be asked to undertake a state-level commitment to provide affordable broadband to all high-cost locations in its service territory in that state, excluding locations served by an unsubsidized competitor, for a model-determined efficient amount of support.”⁵³ For those areas where the incumbent declines to make such a commitment, the Commission proposes to use a competitive bidding mechanism “to distribute support in a way that maximizes the extent of robust, scalable broadband service and minimizes total cost.”⁵⁴ The *FNPRM* requests comment on proposals for this process.

Under CAF Phase I, recipients accepting a state-level commitment will be required to fulfill certain broadband service requirements, including interim build-out requirements, in exchange for receiving CAF funding over a five-year period. Competitive bidding would be used for distributing subsidies after this period ends. In addition, with respect to CAF Phase II, the Commission proposes to conduct competitive bidding to “award support using the same areas identified by the CAF Phase II model as eligible for support.”⁵⁵ Areas would be excluded where, “as of a specified future date as close as possible to the completion of the model and to be determined by the Wireline Competition Bureau, an unsubsidized competitor offers affordable

⁵² See *FNPRM* at ¶1110.

⁵³ *Id.* at ¶1189.

⁵⁴ *Id.*

⁵⁵ *Id.* at ¶1191.

broadband that meets the initial public interest obligations that we establish in this *Order* for CAF Phase I.”⁵⁶

In WISPA’s view, the criteria for excluding areas from CAF Phase II support should be revised to reflect areas subject to unsubsidized competition. Otherwise, as stated in the WISPA Petition, CAF support could be provided where the area itself is subject to unsubsidized voice and broadband service, but those services are provided by different companies.⁵⁷ WISPA asked the Commission to modify the term “unsubsidized competitor” to state that CAF support will not be extended to any “*area subject to unsubsidized competition.*”⁵⁸ Section 54.5 thus should read as follows:

Area subject to unsubsidized competition. An “area subject to unsubsidized competition” consists of a census block in which there is at least one facilities-based provider of terrestrial fixed voice and at least one facilities-based provider of terrestrial fixed broadband service that do not receive high-cost support. For purposes of this definition, these voice and broadband services need not be provided by the same entity.”

Supporting areas with CAF funds would be inappropriate where unsubsidized services already exist but just happen to be provided by different providers (e.g., in areas with one broadband provider and one voice provider). Without a change in the definition of “unsubsidized competitor” to the one proposed by WISPA, the Commission would understate the presence of unsubsidized competition in local areas and thus direct CAF funding to more areas than are warranted. Accordingly, WISPA requests that the Commission adopt the definition “unsubsidized competition” set forth herein and in its Petition.

⁵⁶ *Order* at ¶¶168-170.

⁵⁷ *See* WISPA Petition at Part I.

⁵⁸ *See id.*

Conclusion

WISPA respectfully requests that the Commission adopt the proposals described in these Comments.

Respectfully submitted,

January 18, 2012

**WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION**

By: */s/ Elizabeth Bowles, President*
/s/ Jack Unger, Chair of FCC Committee

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Exhibit 1

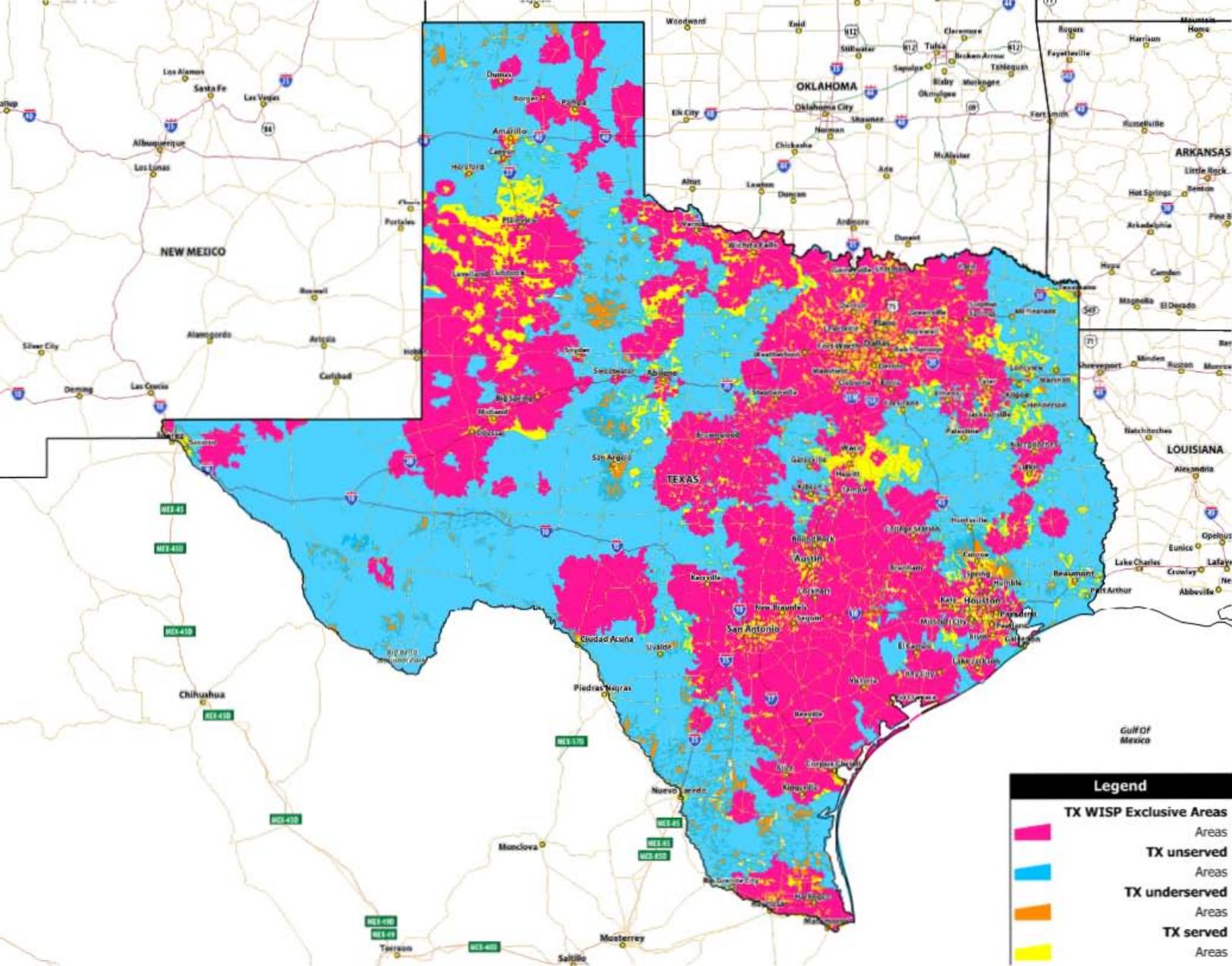
About the Maps and Data Table

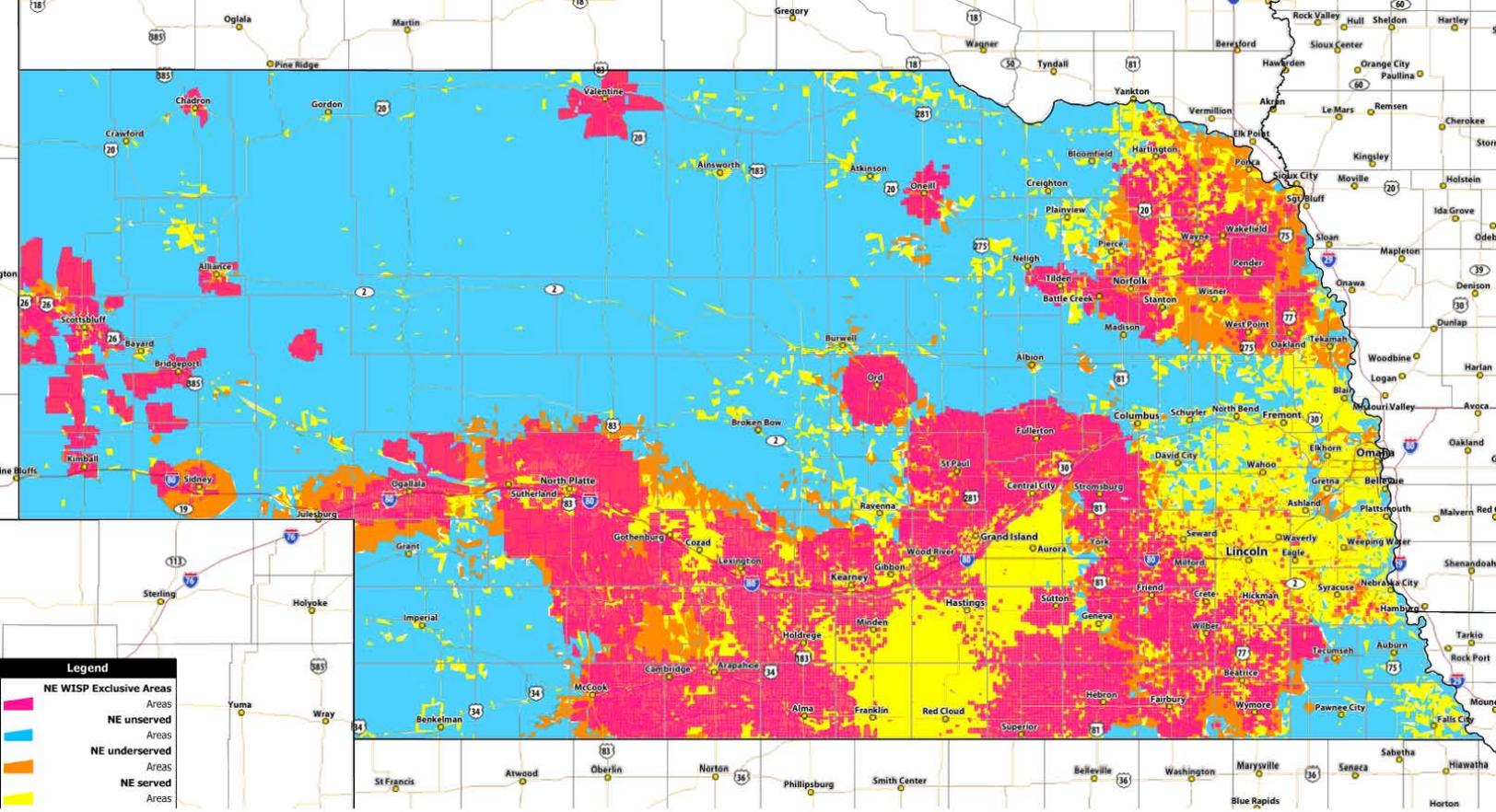
The attached maps were created by Brian Webster Consulting (www.Broadband-Mapping.com) on behalf of the Wireless Internet Service Providers Association (WISPA). The data is compiled from the raw data provided by each state to the NTIA National Broadband Map program. This is public domain data, and no other outside sources were used to determine coverage information.

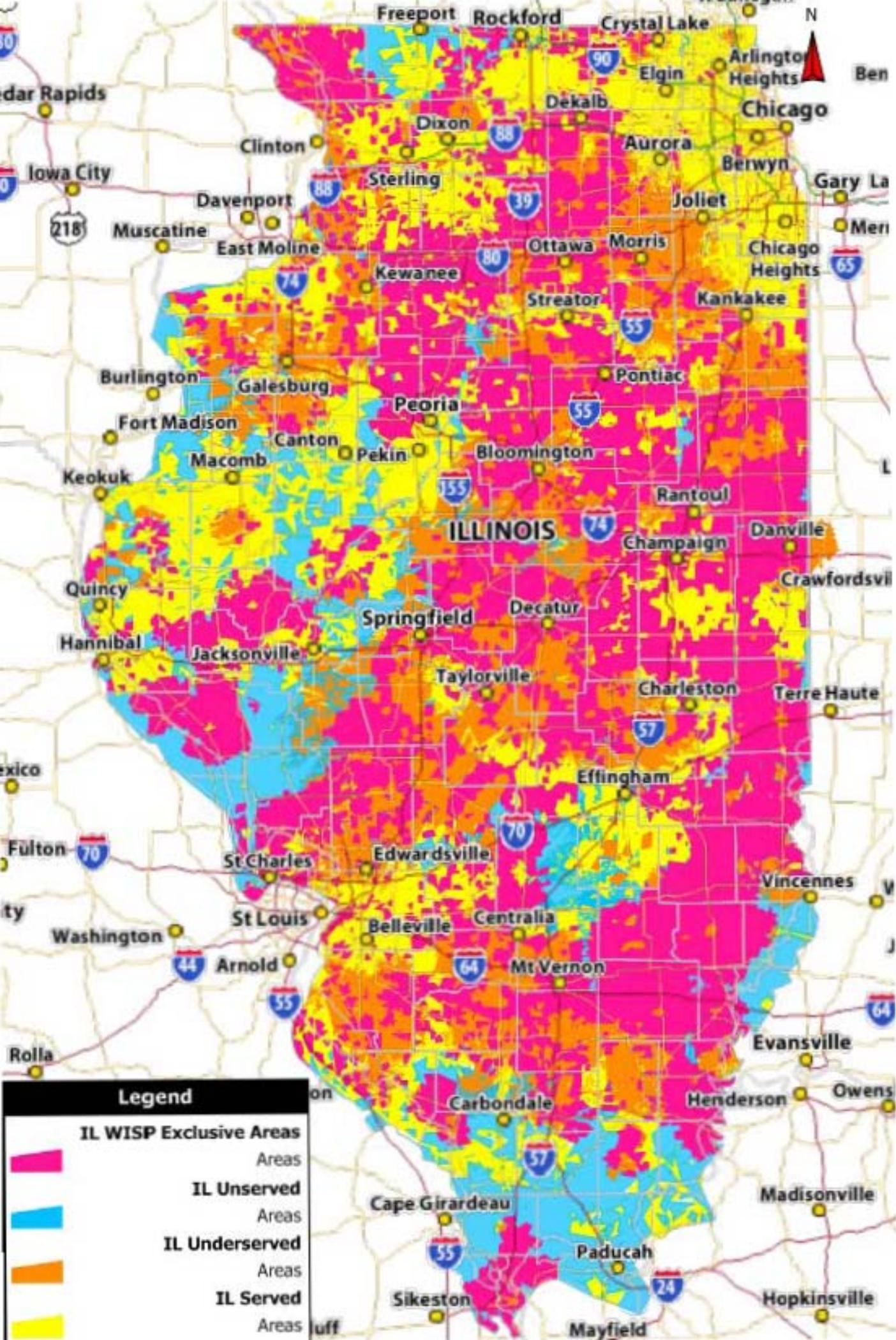
The maps show the availability of terrestrial fixed broadband in the states of Texas, Nebraska and Illinois. The pink areas show the service areas where fixed licensed and unlicensed wireless broadband are reported to be EXCLUSIVELY available (i.e., no other fixed broadband sources are available). The yellow and orange areas show service areas that are reported to be either (a) served, or (b) underserved by fixed broadband technologies other than fixed wireless services. The blue areas are considered to be unserved by any fixed terrestrial source (i.e., mobile wireless and satellite are not included).

The state mapping agencies in most cases collected the WISP tower data and ran their own internal RF propagation studies. WISPs do serve other areas within these states but are not shown on the maps where they are competing with cable, DSL, Broadband over Power Lines (BPL) and fiber-to-the-home.

As an important note, satellite and mobile wireless carriers were not considered for service as part of this study because they do not provide the full equivalent of terrestrial fixed broadband functionality. The household counts are based on 2008 occupied household information.







Legend

IL WISP Exclusive Areas

Areas

IL Unserved

Areas

IL Underserved

Areas

IL Served

Areas

State	Occupied Households Passed by WISP's 2008	Total Occupied Households 2008	% Households passed by WISPs only	Land Area in Sq. Mi. Uniquely passed by WISP's	Total Land Area	% land area uniquely covered by WISPs	Households Per Square Mile Statewide	Households Per Square Mile of WISP Only Served Blocks
AK	12,443	237,034	5.25%	5,414.40	674,341.40	0.80%	0.35	2.30
AL	21,724	1,938,130	1.12%	2,080.63	52,448.99	3.97%	36.95	10.44
AR	69,319	2,942,753	2.36%	10,407.21	53,183.97	19.57%	55.33	6.66
AZ	98,382	2,336,959	4.21%	19,092.32	114,024.60	16.74%	20.50	5.15
CA	178,743	12,764,753	1.40%	16,646.70	163,824.03	10.16%	77.92	10.74
CO	95,698	1,959,789	4.88%	37,257.29	104,007.40	35.82%	18.84	2.57
CT	no exclusive WISP areas							
DC	no exclusive WISP areas							
DE	585	343,554	0.17%	30.63	2,487.39	1.23%	138.12	19.10
FL	27,755	7,628,143	0.36%	845.13	65,849.95	1.28%	115.84	32.84
GA	37,934	3,652,043	1.04%	3,970.59	59,472.47	6.68%	61.41	9.55
HI	7,688	436,273	1.76%	99.72	10,961.50	0.91%	39.80	77.10
IA	49,196	1,247,553	3.94%	11,500.03	56,185.49	20.47%	22.20	4.28
ID	51,646	562,067	9.19%	16,888.70	82,751.00	20.41%	6.79	3.06
IL	137,330	4,851,822	2.83%	21,062.00	55,593.00	37.89%	87.27	6.52
IN	61,140	2,543,090	2.40%	5,505.05	35,870.00	15.35%	70.90	11.11
KS	56,666	1,118,858	5.06%	22,620.42	82,219.29	27.51%	13.61	2.51
KY	34,817	1,762,321	1.98%	2,614.05	40,389.70	6.47%	43.63	13.32
LA	19,357	1,792,856	1.08%	1,687.78	51,890.27	3.25%	34.55	11.47
MA	2,489	2,615,877	0.10%	214.98	7,838.00	2.74%	333.74	11.58
MD	5,529	2,202,016	0.25%	281.60	12,397.20	2.27%	177.62	19.63
ME	37,903	555,653	6.82%	7,965.90	35,302.23	22.56%	15.74	4.76
MI	173,834	4,009,186	4.34%	14,513.30	56,809.00	25.55%	70.57	11.98
MN	51,163	2,096,616	2.44%	11,220.77	86,716.58	12.94%	24.18	4.56
MO	22,689	2,387,051	0.95%	3,207.36	69,655.31	4.60%	34.27	7.07
MS	3,131	1,165,764	0.27%	661.65	48,458.26	1.37%	24.06	4.73
MT	21,916	394,719	5.55%	15,567.07	146,643.14	10.62%	2.69	1.41
NC	33,572	3,756,683	0.89%	1,915.01	53,816.48	3.56%	69.81	17.53
ND	17,969	275,615	6.52%	17,241.54	70,500.64	24.46%	3.91	1.04

NE	77,845	730,577	10.66%	45,227.25	77,243.02	58.55%	9.46	1.72
NH	4,407	523,124	0.84%	742.69	9,332.02	7.96%	56.06	5.93
NJ	-	3,284,958	0.00%	2.78	8,711.76	0.03%	377.07	0.00
NM	33,620	764,708	4.40%	36,505.18	121,614.00	30.02%	6.29	0.92
NV	73,000	994,992	7.34%	8,221.09	110,460.69	7.44%	9.01	8.88
NY	7,783	7,336,803	0.11%	836.50	54,459.66	1.54%	134.72	9.30
OH	151,893	11,870,733	1.28%	11,925.10	40,953.00	29.12%	289.86	12.74
OK	73,705	1,477,008	4.99%	13,152.37	69,896.26	18.82%	21.13	5.60
OR	142,760	1,516,658	9.41%	31,321.17	96,003.00	32.63%	15.80	4.56
PA	23,957	5,062,337	0.47%	1,943.61	45,996.09	4.23%	110.06	12.33
RI	no exclusive WISP areas							
SC	15,393	1,825,000	0.84%	1,038.21	32,017.90	3.24%	57.00	14.83
SD	8,463	317,343	2.67%	4,044.34	76,953.85	5.26%	4.12	2.09
TN	32,432	2,556,644	1.27%	2,504.68	42,137.60	5.94%	60.67	12.95
TX	2,094,479	8,924,973	23.47%	199,899.00	268,808.00	74.36%	33.20	10.48
UT	22,052	857,504	2.57%	11,655.91	84,821.29	13.74%	10.11	1.89
VA	19,726	3,093,328	0.64%	1,042.12	42,752.78	2.44%	72.35	18.93
VT	9,313	253,271	3.68%	1,224.83	9,594.84	12.77%	26.40	7.60
WA	50,225	2,581,680	1.95%	14,585.00	71,098.86	20.51%	36.31	3.44
WI	55,711	2,291,855	2.43%	5,729.51	65,355.27	8.77%	35.07	9.72
WV	18,206	757,767	2.40%	1,292.63	24,211.61	5.34%	31.30	14.08
WY	10,517	215,923	4.87%	12,458.45	97,105.00	12.83%	2.22	0.84