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

CONSOLIDATED OPPOSITION TO AND COMMENTS ON PETITIONS FOR RECONSIDERATION

The Wireless Internet Service Providers Association ("WISPA"), pursuant to Section 1.415 of the Commission's Rules, hereby opposes and comments on certain petitions for reconsideration filed in the above-referenced proceeding.[1] The Commission should reject the proposal of the Independent Telephone & Telecommunications Alliance ("ITTA") that would allow potential Connect America Fund ("CAF") recipients to rebut conclusions depicted on the

[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) ("*Order*"). The deadline for filing oppositions to petitions for consideration is February 9, 2012. *See* "Comment Cycle Established for Oppositions and Replies to Petitions for Reconsideration of the *USF/ICC Transformation Order*," DA 12-130 (rel. Feb. 3, 2012).

National Broadband Map that specify certain geographic areas as "unserved" and thus eligible for CAF subsidies (specifically Phase I CAF funding in price cap areas). If, however, the Commission adopts ITTA's proposal notwithstanding the contrary public interest reasons and the additional administrative burdens and delays that would result, the Commission must provide broadband providers with notice and an opportunity to submit evidence that would contravene the information submitted by the CAF applicant. In addition, as urged by ViaSat, Inc. ("ViaSat")[2] and as WISPA previously recommended, the Commission should adopt a nationwide process to designate Eligible Telecommunications Carriers ("ETCs") eligible to receive CAF funding. Finally, with respect to awarding subsidies through the Remote Areas Fund ("RAF"), WISPA supports ViaSat's call to expedite the award of such funds.

Discussion

I. THE COMMISSION SHOULD RELY ON THE NATIONAL BROADBAND MAP AS THE SOURCE TO DETERMINE UNSERVED AREAS ELIGIBLE FOR CAF SUPPORT.

In this landmark proceeding, the Commission seeks to direct universal service subsidies to areas that are "unserved" by broadband. In the *Order*, the Commission decided to use the National Broadband Map (the "Map") and data collected from FCC Form 477 to identify such unserved geographic areas because "[w]e recognize that the best data available at this time to determine whether broadband is available from an unsubsidized competitor at speeds at or above the 4 Mbps/ 1 Mbps speed threshold will likely be data on broadband availability at 3 Mbps downstream and 768 kbps upstream, which is collected for the National Broadband Map and through the Commission's Form 477."[3]

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[2] *See* Petition for Reconsideration of ViaSat, Inc., WC Docket No. 10-90, *et al.*, filed Dec. 29, 2011 ("Via Sat Petition").
[3] *Order* at ¶590.

Reliance on mapping data is consistent with Congress' decision to allocate millions of dollars to develop a national map to show areas where broadband service is and is not available. The American Recovery and Reinvestment Act of 2009 ("Recovery Act")[4] and the Broadband Data Improvement Act ("BDIA")[5] required NTIA to institute a comprehensive broadband mapping and data program to determine areas where broadband was not available. The Recovery Act mandated NTIA to "develop and maintain a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State."[6] The Recovery Act authorized NTIA to expend up to $350 million pursuant to the BDIA to develop and maintain what became the National Broadband Map, which was first published on February 17, 2011 and is updated approximately every six months. NTIA awarded broadband mapping grants to help states compile data on broadband services.

Under the *Order*, an area is deemed "unserved by fixed broadband" for the purpose of CAF Phase I if the Map does not identify service to that area via asymmetric xDSL, symmetric xDSL, other copper wireline, cable modem, electric power line, or terrestrial fixed wireless.[7] To be eligible for CAF Phase I funding, a carrier will be required to certify that deployment "will occur in areas shown as unserved by fixed broadband on the National Broadband Map that is most current at that time, and that to the best of the carrier's knowledge, are unserved by fixed broadband with a minimum speed of 768 kbps downstream and 200 kbps upstream, and that, to

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[4] American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, 123 Stat. 115 (2009). Detailed information about the requirements and funding of the National Broadband Map are contained in the Notice of Funds Availability published by NTIA. *See* State Broadband Data and Development Grant Program, *Notice of Funds Availability and Solicitation of Applications*, 74 FR 32545 (July 8, 2009).
[5] Broadband Data Improvement Act, Public Law No. 110-385, 122 Stat. 4096 (2008).
[6] Recovery Act § 6001(l).
[7] *Order* at n. 231.

the best of the carrier's knowledge, are, in fact unserved by fixed broadband at those speeds."[8] The Commission stated that while "some have claimed that the National Broadband Map is not completely accurate," use of the Map along with requiring CAF applicants to certify that the area is unserved "is a reasonable and efficient means to identify areas that are, in fact, unserved, even if there might be other areas that are also unserved."[9]

Notwithstanding the amount of resources, time and effort that have created, for the first time, a national map showing the availability of broadband throughout the country, ITTA challenges the Commission's decision to rely on the Map to determine census blocks where fixed broadband services are and are not available.[10] ITTA asserts that "it has determined that in some cases the [Map] overstates fixed broadband coverage, particularly in areas served by fixed wireless providers."[11] ITTA alleges that "the NBM is not infallible and, consequently, its use should be limited to evidence, but not proof, that an area is served and therefore ineligible for CAF Phase I support."[12] To address this potential flaw, ITTA asks the Commission to treat Map determinations of unserved areas as a rebuttable presumption that any CAF applicant could challenge through some undefined administrative process.

For several reasons, the Commission should not open the door to the one-sided, indefinite and contentious process ITTA proposes, and it therefore should be rejected. *First*, by Congressional mandate, the federal government has expended significant taxpayer revenues to implement a nationwide mapping program for precisely the reason the Commission decided to rely on it for CAF purposes – to determine unserved areas where government support should be

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[8] *Id.* at ¶590.
[9] *Id.* at n.231.
[10] *See* Petition for Reconsideration of the Independent Telephone & Telecommunications Alliance, WC Docket No. 10-90, *et al.*, filed Dec. 29, 2011 ("ITTA Petition"), at 3.
[11] ITTA Petition at 3. *See also* Petition for Reconsideration of NTCH, Inc., WC Docket No. 10-90, *et al.*, filed Dec. 29, 2011, at 5 ("NTCH Petition") (stating without support that "no comprehensive or accurate national broadband map exists").
[12] ITTA Petition at 3.

focused. Reducing the Map to just another tool, as ITTA suggests, would essentially discredit the Map and the efforts of those who helped to create it and the taxpayers who funded it and the will of Congress. *Second*, the Map is accessible to all consumers, broadband providers and CAF applicants as a common denominator of broadband availability. Governmental agencies rely on the Map data for multiple purposes, such as for directing broadband grant programs at the state and local levels. It is updated every six months based on providers' FCC Form 477 filings and is administered by the NTIA, the Commission and US states, territories and the District of Columbia. Applicant-submitted evidence can always be subject to bias, differing propagation models or other factors that would potentially raise more questions than they would answer. *Third*, while the Map may in some limited instances be imperfect, it could just as easily understate, as overstate, the presence of fixed broadband service in an "unserved" area. ITTA's proposal is a one-way street that does not account for any errors that understate fixed broadband coverage. *Fourth*, any process that would allow the accuracy of the Map to be challenged would increase broadband providers' costs and, contrary to ITTA's assertion,[13] create delays in funding decisions while Commission staff studies the veracity of affidavits or the validity of propagation studies submitted by CAF applicants and issues a decision. For the foregoing reasons, WISPA agrees with the Commission that the use of the Map, combined with the certification requirement, is a reasonable means to achieve the goals of identifying unserved areas for CAF Phase I. ITTA's proposal should be rejected.

If the Commission nevertheless entertains ITTA's proposal and adopts a challenge process, such a process must afford the broadband provider in the given census block an opportunity to dispute the applicant's new evidence. Accordingly, if a CAF applicant is allowed to rebut the presumption of the accuracy of the Map with respect to a given area, the applicant

[13] *See id.* at 6.

must be required to serve copies of its new evidence to all broadband providers in that geographic area. These providers would be given an opportunity to respond, and Commission staff would be required to make a determination on the merits, prior to the award of CAF funding for the subsequent funding period.[14] While the notion of a challenge process, as proposed by ITTA, is laborious, dilatory and suboptimal, if the Commission adopts some form of the ITTA proposal, it also must adopt safeguards for other providers to prove that they offer service in the area that the applicant claims is unserved. It would be unfair and contrary to the public interest to allow only the applicant to contest the Map without permitting fixed broadband providers to have the opportunity to review and dispute the applicant's claim that a census block is unserved.[15]

In sum, the National Broadband Map remains the best source for accurate reporting, accessibility and depiction of areas served and unserved by fixed broadband. ITTA presents no legitimate reason why the Commission should adopt a costly, laborious and one-sided alternative process.

II. WISPA SUPPORTS CALLS FOR A NATIONAL STANDARD FOR "ELIGIBLE TELECOMMUNICATIONS CARRIER."

ViaNet argues against the "procedural bias inherent in the ETC designation" process by arguing that the Commission should designate satellite broadband providers as "nationwide" ETCs on the federal level.[16] The company argues that the ETC process unduly favors incumbent

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[14] The Commission should adopt a high standard, such as the *WAIT Radio* waiver standard, if it elects to entertain alternative submissions from CAF applicants.

[15] WISPA has proposed that "entities that provide unsubsidized competition in the subject area should have an opportunity to review and comment on the support recipient's annual certification." WISPA Petition for Partial Reconsideration, WC Docket No. 10-90, *et al.*, filed Dec. 29, 2011 ("WISPA Petition"), at 9. In the Petition, WISPA asks the Commission to replace the term "unsubsidized competitor" with a market-based term of "area subject to unsubsidized competition" – one that does not presume that broadband and voice services should be provided by the same entity. WISPA takes no position on NTCH's call for a revised definition of "unsubsidized competitor" to include mobility. *See* NTCH Petition at 3, 13.

[16] ViaSat Petition at 7.

providers (most of whom are already ETCs) at the expense of newer technologies. While WISPA takes no position on the status of satellite carriers with respect to ETCs, ViaNet's position echoes WISPA's call for a nationwide ETC standard. In its earlier Comments in this proceeding, WISPA requested that the Commission:

> 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." Under current law, states generally designate ETCs within their states, though in cases where the state does not certify, the Commission makes the designation. WISPA believes that, with respect to broadband networks, the current approach is overly burdensome and would result in significant inequities if applied piecemeal nationwide.[17]

WISPA reiterates that call here in furtherance of competitive neutrality and toward the goal of accelerating the deployment of broadband to rural Americans. WISPA supports the adoption of a nationwide eligibility standard that would allow providers of fixed broadband, irrespective of technology,[18] to qualify as an ETC subject to minimum performance requirements.

III. WISPA AGREES THAT THE COMMISSION SHOULD NOT DELAY FUNDING FOR "REMOTE AREAS."

ViaSat questions the Commission's decision to delay until "2013 at the earliest" support to "remote areas" while simultaneously providing "additional funding to price cap ILECs serving comparatively well-off areas almost immediately, beginning in early 2012."[19] WISPA agrees with ViaSat that the Commission should make every effort to expedite funding to remote areas – areas that, in WISPA's view, are the ones most in need of support.

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[17] WISPA Petition at 5.

[18] Townes Telecommunications request that the Commission clarify that unlicensed spectrum may be used to provide supported mobility fund services. *See* Petition for Reconsideration of Townes Telecommunications, Inc., WC Docket No. 10-90, *et al.*, filed Dec. 29, 2011, at 3. WISPs often use such spectrum to provide service on a fixed, unlicensed basis to rural and underserved areas.

[19] ViaSat Petition at 19.

As WISPA recently noted:

> 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. Very few of these areas receive federal subsidies but have rather been self-funded by WISPs.[20]

Despite the dramatic broadband needs in such areas, deferring institution of the Remote Areas Fund would preclude any funding for at least one year, depending on how the rules are implemented. WISPA notes that adoption of its voucher proposal would further help accelerate the process.[21] A voucher program could be implemented more quickly than the alternatives under consideration – rather than waiting for the Commission to implement a protracted, multi-step rulemaking process, consumers could instead apply for vouchers to cover installation costs and broadband providers could turn in their customers' vouchers for reimbursement by the government. For these reasons, WISPA agrees with ViaSat that the Commission should reconsider these delays and should make every effort to expedite the availability of Remote Areas funding.

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[20] Comments of the Wireless Internet Service Providers Association, WC Docket No. 10-90, *et al.*, filed Jan. 18 2012, at 11 (footnote omitted).

[21] WISPA proposed that "[u]nder 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." WISPA Comments, WC Docket No. 10-90, *et al.*, filed Apr. 18, 2011 ("WISPA Comments"), at 9.

Conclusion

WISPA respectfully requests that the Commission adopt the proposals described herein.

Respectfully submitted,

February 9, 2012

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

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CERTIFICATE OF SERVICE

I, Kenn Wolin, a paralegal at the law firm of Rini Coran, PC, hereby certify that I have caused copies of the foregoing "Consolidated Opposition To and Comments On Petitions For Reconsideration" to be sent by first class mail, postage prepaid, this 9th day of February, 2012, to:

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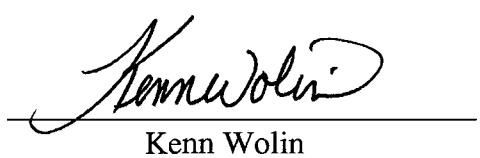

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