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 REPLY TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

The Wireless Internet Service Providers Association ("WISPA"), pursuant to Section 1.429(e) of the Commission's Rules, hereby replies to the oppositions to its petition for reconsideration of the Commission's *Order* in the above-referenced proceeding.[1] First, the Commission should grant WISPA's proposed rule change that would prohibit the Commission

[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*"). WISPA filed its Petition for Partial Reconsideration ("Petition") on December 29, 2011 and filed its Opposition on February 9, 2012 ("WISPA Opposition"). The deadline for filing replies to oppositions to petitions for consideration is February 21, 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).

from providing Connect America Fund ("CAF") support to "areas subject to unsubsidized competition" where voice and broadband services are provided by different entities. Second, WISPA reiterates support for the Commission's decision to rely on the National Broadband Map ("Map") to determine areas that are unserved with fixed broadband services and thus eligible for CAF funding. Third, the Commission should adopt WISPA's proposed definition of "substantial portion" to determine unserved areas subject to frozen high-cost support and WISPA's proposed certification process.

Discussion

I. THE COMMISSION SHOULD NOT REQUIRE VOICE AND BROADBAND SERVICES TO BE PROVIDED BY THE SAME ENTITY IN AN "AREA SUBJECT TO UNSUBSIDIZED COMPETITION."

In its Petition, WISPA asked the Commission to replace the term "unsubsidized competitor" with the market-based term "area subject to unsubsidized competition" that would enable voice and broadband service in an area to be provided by more than one entity.[2] WISPA's proposal would amend Section 54.5 to state, in relevant part, 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.[3]

[2] *See* Petition at 4-8. By Erratum, the Commission has added the word "residential" to its definition of "unsubsidized competitor." *See 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*, Erratum, (rel. February 6, 2012) at 10. WISPA has no objection to including the word "residential" in its proposed modification to Section 54.5.

[3] *Id.* at 5.

Under this definition, instead of requiring both unsubsidized voice and broadband to be provided by the same entity to render a given area ineligible for support, the area could be served by multiple entities that together offer both services.

Other parties agree that the Commission should change its rules consistent with WISPA's Petition. The National Cable & Telecommunications Association states that "[n]or should it make any difference if the unsubsidized voice and broadband services are provided by a single company or multiple companies."[4] Similarly, the American Cable Association "agrees with WISPA that any area with unsupported competition provided by one or more competitors should not receive CAF support."[5] The Consumer Advocates concur that WISPA's proposed "change would better ensure that CAF support is extended to unserved areas."[6] These parties recognize the inherent unfairness of federal support being used to subsidize fixed broadband service in places where unsubsidized broadband already exists.

Incumbent local exchange carriers ("LECs") and their trade associations, uniquely, oppose WISPA and ask that the existing definition of "unsubsidized competition" be retained.[7] Not surprisingly, these parties have benefited immensely from universal service subsidies, and in some cases have cross-subsidized their supported voice services with broadband to compete directly with wireless Internet service providers ("WISPs") that are ineligible for federal USF

---

[4] Comments of the National Cable & Telecommunications Association, WC Docket 10-90, *et al.*, filed Feb. 9, 2012 ("NCTA Comments"), at 18.

[5] Opposition of the American Cable Association, WC Docket No. 10-90, *et al.*, filed Feb. 9, 2012 ("ACA Opposition"), at 6, n.10.

[6] Comments on Request for Reconsiderations by the National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel, WC Docket No. 10-90, *et al.*, filed Feb. 9, 2012 ("Consumer Advocates Comments"), at 13.

[7] *See, e.g.*, Opposition of Frontier Communications Corporation to Petitions for Reconsideration, WC Docket No. 10-90, *et al.*, filed Feb. 9, 2012 ("Frontier Opposition"), at 7-8; Opposition of the Independent Telephone & Telecommunications Alliance, WC Docket No. 10-90, *et al.*, filed Feb. 9, 2012 ("ITTA Opposition"), at 3-4; Opposition of Windstream Communications, Inc. to Petitions for Reconsideration, WC Docket No. 10-90, *et al.*, filed Feb. 9, 2012 ("Windstream Opposition"), at 9-11; Opposition of the National Exchange Carrier Association, Inc., *et al.*, to Various Petitions for Reconsideration, WC Docket No. 10-90, *et al.*, filed Feb. 9, 2012 ("Rural Associations Opposition"), at 9-10.

support. These LECs certainly have a private interest in using government subsidies to compete against unsubsidized broadband providers, but the public interest is harmed by such a tilted playing field.

ETCs have used federal USF voice-traffic subsidies to fund broadband operations in places where WISPs offer unsubsidized broadband service. While WISPs welcome competition, the ability of ETCs to use USF to pay for broadband infrastructure was not intended by the old USF regime. This proceeding is an opportunity for the Commission to right some of the wrongs that have plagued the USF program in recent years, most notably the widespread cross-subsidization that artificially skews the competitive landscape.

Three parties complain that changing the definition of "unsubsidized competitor" would somehow undermine the "carrier of last resort" ("COLR") obligations that subsidized voice providers must follow.[8] But this argument is a frivolous *non sequitur* – COLR obligations pertain to voice traffic, not broadband. Those obligations are thus appropriately tied to USF support for high-cost voice services, and have nothing to do with whether broadband service is provided in the market. Simply stated, no incumbent ETC has any obligation to provide broadband, either as a COLR or otherwise.

Allowing voice and broadband services in an area will not "strip[] away funding from incumbent providers," as ITTA claims,[9] but instead will ensure that future support is targeted to areas where it is most needed. ITTA's fear that consumers are not guaranteed access to both voice and broadband because of different service areas[10] ignores the fact that the Commission can combine multiple datasets to determine whether any given area is served by both voice and broadband.

---

[8] *See* ITTA Opposition at 3-4; Windstream Opposition at 9-10; Rural Associations Opposition at 9.
[9] ITTA Opposition at 3.
[10] *See id.*

Frontier appears to misconstrue WISPA's proposal, suggesting that standalone fixed wireless service providers want the benefits of being an ETC without the burdens.[11] In fact, many fixed wireless providers want neither the benefits nor the burdens of being ETCs – under the Commission's existing statutory interpretation, broadband providers are ineligible to be ETCs and thus cannot receive CAF support. Fixed wireless broadband providers seek only to prevent CAF support from being misused to offer competitive broadband services in areas where voice and unsubsidized broadband services are already provided by one or more entities.

As the Oppositions make clear, preserving the existing definition of "unsubsidized competitor" will perpetuate inequities in the USF system that have misdirected funds to provide incumbent LECs with a competitive edge over their unsubsidized broadband competition. The Commission can, and should, fix the rules so that the provision of voice and unsubsidized broadband in an area will render the area ineligible for CAF support, regardless of whether the voice and broadband services are provided by one company or by multiple entities.

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

At least two parties suggest that the Commission retreat from its position to rely on the National Broadband Map (the "Map") as proof that an area is either served or unserved.[12] They support ITTA's views that the Map should be a presumption that can be rebutted by information submitted by CAF applicants.

WISPA has opposed ITTA's views, and reiterates its opposition here.[13] If, however, the Commission adopts ITTA's proposal, it must allow all parties – applicants and providers – to submit information on the areas designated for CAF Phase I support. In this regard, WISPA's

[11] *See* Frontier Opposition at 8.
[12] *See* ACA Opposition at 13; Windstream Opposition at 18.
[13] *See* WISPA Opposition at 4-5.

views are consistent with those expressed by ACA and NCTA. To quote NCTA, "[a]ll interested parties, not just carriers as suggested by ITTA, should have an opportunity to demonstrate that the mapping data understates or overstates the level of service in a particular area."[14]

III. THE COMMISSION SHOULD ADOPT WISPA'S PROPOSAL TO MODIFY THE CERTIFICATION REQUIREMENTS FOR TO ENSURE THAT FROZEN HIGH-COST SUPPORT IS NOT PROVIDED TO AREAS SUBJECT TO UNSUBSIDIZED COMPETITION.

In its Petition, WISPA proposed that the Commission adopt a more exacting standard for discontinuing frozen high-cost support in areas that, over time, become subject to unsubsidized competition.[15] Rather than require CAF recipients to certify coverage to an amorphous and undefined "substantial portion" of a census block, WISPA proposed that a support recipient should be required to certify that at least 50 percent of the locations served are in census blocks shown on the National Broadband Map as unserved by unsubsidized competition.[16]

Consumer Advocates support WISPA's proposal and ask the Commission to implement this change on its own motion.[17] US Telecom, however, would prefer that the Commission retain the "substantial portion" standard, simply stating that the existing certification requirement "is adequate."[18] This approach would require the Commission to engage in unguided line-drawing that will result in uneven decisions, administrative delay and, potentially, inter-party disputes that the Commission must resolve.

US Telecom also opposes WISPA's proposal to require price cap carriers to ensure the ongoing accuracy of its certification to account for the fact that, over time, an unserved area may

---

[14] NCTA Comments at 18. *See also* ACA Opposition at 13-14.
[15] *See* Petition at 9.
[16] *See id.*
[17] *See* Consumer Advocates Comments at 14.
[18] Opposition of the United States Telecom Association, WC Docket No. 10-90, *et al.*, filed Feb. 9, 2012 ("US Telecom Opposition"), at 10.

become served.[19] US Telecom argues that "it should be irrelevant that an unsubsidized competitor subsequently began providing broadband service to more than 50 percent of these locations or that the National Broadband Map turned out to be wrong."[20] WISPA strongly believes that intervening changes to the Map should be taken into account so that CAF support can be re-directed to areas that remain unserved by unsubsidized providers or to the Remote Areas Fund. To the extent the Commission allows parties to challenge the accuracy of the Map with additional information, that process also should apply to the annual certifications that CAF recipients must file.[21]

Conclusion

For the foregoing reasons, WISPA respectfully requests that the Commission grant its Petition.

Respectfully submitted,

February 21, 2012

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

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

Stephen E. Coran
Jonathan E. Allen
Rini Coran, PC
1140 19th Street, NW, Suite 600
Washington, DC 20036
(202) 463-4310
Counsel to the Wireless Internet Service Providers Association

---

[19] *See id.*
[20] *Id.* at 10-11.
[21] Consumer Advocates supports WISPA's request that annual certifications be made available for review and comment. *See id.*

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 Reply to Oppositions To Petitions For Reconsideration" to be sent by first class mail, postage prepaid, this 21st day of February, 2012, to:

Genevieve Morelli
Micah M. Caldwell
ITTA
1101 Vermont Avenue, NW, Suite 501
Washington, DC 20005

Matthew M. Polka
President and Chief Executive Officer
American Cable Association
One Parkway Center, Suite 212
Pittsburgh, PA 15220

Ross J. Lieberman
Vice President of Government Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007

Thomas Cohen
Joshua Guyan
Kelley Drye & Warren LLP
3050 K Street, NW, Suite 400
Washington, DC 20007
Counsel to American Cable Association

Jonathan Banks
Glenn Reynolds
United States Telecom Association
607 14th Street, NW, Suite 400
Washington, DC 20005

Charles Acquard, Executive Director
NASUCA
8380 Coleville Road
Suite 101
Silver Spring, MD 20910

Stefanie A. Brand - Director, Division of Rate Counsel
Christopher J. White – Deputy Rate Counsel
New Jersey Division of Rate Counsel
P.O. Box 46005
Newark, NJ 07101

Michael D. Saperstein, Jr.
Director of Federal Regulatory Affairs
Frontier Communications Corporation
2300 N Street, NW , Suite 710
Washington, DC 20037

Malena F. Barzilai
Jennie B. Chandra
Eric N. Einhorn
Windstream Communications, Inc.
1101 17th Street, NW, Suite 802
Washington, DC 20036

Rick Chessen
Steven F. Morris
Jennifer K. McKee
National Cable & Telecommunications Association
25 Massachusetts Avenue, NW, Suite 100
Washington, DC 20001

Jeffrey E. Dupree
Vice President Government Relations
National Exchange Carriers Association
1634 Eye Street, NW, Suite 510
Washington, DC 20006

Kenn Wolin