

**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  
PETITION FOR RECONSIDERATION**

NTCH, Inc. (“NTCH”) hereby offers this brief reply to the various oppositions to NTCH’s December 29 petition for reconsideration in the above-captioned matter.<sup>1</sup>

**A. Definition of Unsubsidized Competitor**

A number of opponents objected to NTCH’s suggestion that the definition of “unsubsidized competitor” adopted by the Commission was far too restrictive. As noted by NTCH in its petition, the Commission subscribed to the perfectly sound principle that no CAF

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<sup>1</sup> Parties filing Oppositions were United States Telecom Association (“USTA”), Windstream Communications, Inc. (“Windstream”), CTIA-The Wireless Association (“CTIA”) and Frontier Communications Corp. (“Frontier”).

support should be provided to carriers in circumstances where a competitor is providing service without a subsidy.<sup>2</sup> The Commission offered very little support for its decision in this regard, perhaps because, as a policy matter, the principle is unassailable: not only should the public not have to pay to support a service provided by one carrier if another one is willing to provide it without a subsidy, but in addition the competitive scales in a market should not be drastically skewed by favoring one carrier over another. Indeed, the likelihood is that the subsidized carrier is operating less efficiently or less responsively or simply less well than the unsubsidized one (that's why it needs the subsidy), so continuation of a subsidy in these circumstances perpetuates the provision of poorer service with no commensurate benefit. Eliminating subsidies in this situation will save the public millions of dollars, sharpen competition, and discourage inefficient operations. That much is clear.

Having adopted this principle, however, the Commission promptly nullified it. It defined the category of “unsubsidized competitors” so narrowly that there will be few, if any, situations where an unsubsidized competitor will be found to exist. The definition limits the category to: “facilities-based providers of residential fixed voice and broadband services.” Most of the qualifications in the definition are unnecessary and are unexplained by the Commission. First, why does the competitor have to be “facilities-based?” The Commission offers no explanation for that limitation at all. Yet it is entirely conceivable that a wholesale service provider like Clearwire or some variation of LightSquared could procure broadband capacity from an underlying carrier and then offer voice and broadband service to an area. If that service is available, it should not matter at all that the provider is not “facilities-based.” The subsidy is just being paid needlessly.

Second, why is the definition limited to providers of “residential” service? As long as the requisite service is generally available to customers in the geographic area at issue, it should not matter whether the service is residential or not. Again, the Order offers no explanation for this limitation whatsoever.

Third, the definition is limited to “terrestrial” providers. This limitation was explained by the Commission and NTCH supports that limitation, though the Commission should probably

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<sup>2</sup> *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, re. November 18, 2011.

clarify that a LightSquared or Dish Network-type satellite provider who is using ATC to provide broadband service would be deemed “terrestrial” for these purposes.

Fourth, the definition is limited to “fixed” providers. Here the Commission does present its reasoning for narrowing the definition, but the reasoning does not hold. The Commission was concerned that, while 4G mobile providers may be able to meet specified speed requirements, “meeting minimum speed and capacity guarantees is likely to prove challenging over larger areas, particularly indoors ... and because the performance offered by mobile services varies by location, it would be very difficult and costly for a CAF recipient or the Commission to evaluate whether such a service met our performance requirements at all homes and businesses within a study area, census block, or other required area.”<sup>3</sup>

Curiously, the Commission had no doubts about whether fixed providers would be able to provide the requisite 4 Mbps/1 Mbps service levels throughout their service areas. Yet, as the Commission, the Department of Commerce and USDA discovered in the course of the BTOP and BIP programs, there is a wide disparity between advertised service and actual service on fixed systems, and even within fixed systems there are wide disparities in speeds available, depending on distance from the central office, amount of loading on the circuit, etc. In short, there is no more assurance that fixed service providers will be meeting the minimum thresholds than there is for mobile providers. And in neither case is there an easy or inexpensive way to verify compliance on a geographic area by geographic area basis. In other words, there is no difference between fixed and mobile service in this regard.

Nor is there any reason why the minimum speeds for fixed and mobile providers needs to be the same. The Commission set relatively low (too low in our opinion) speed thresholds for good, reliable 4G mobile service providers under the Phase I program: 768 kbps/200 kbps at cell edges. *Id* at Para. 105. But if this service level is deemed adequate for most mobile purposes, the same speed level could and should apply to determine whether a bona fide competitor is in the market.

There is also no reason why an incumbent should be deemed to be lacking an unsubsidized competitor if voice and fixed services are being provided by two different entities.

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<sup>3</sup> *Report and Order* at Para. 104.

It would be quite common in any given area to have a wireless carrier providing voice service that overlaps the incumbent, while another provider offers broadband service either wirelessly or by cable. In that situation, which was envisioned by the petition of the Wireless Internet Service Providers Association, consumers and businesses in the area would have access to both unsubsidized voice and unsubsidized broadband, albeit from different providers. That being the case, there is no reason why a subsidy should continue to be supplied to a carrier who happens to provide either of these services.

In summary, the Commission can better achieve its stated goal of eliminating unnecessary subsidies and significantly reducing the burden on the American people, by adopting a much more realistic definition of “unsubsidized competition” rather than “unsubsidized competitors.” The rule would provide:

No CAF funds shall be available where voice service and broadband service are offered by one or more unsubsidized competitors. The services may be offered by different competing providers but both services must be available. Qualifying competitive broadband service must be at least 4 Mbps up /1 Mbps down for fixed services and 768 kbps down/200 kbps down for mobile services. Qualifying competitive services must also provide the same latency and usage levels prescribed for Price Cap Phase I and Mobility Phase I providers. Qualifying competing providers may certify that they provide the requisite service levels in their areas, subject to audits and/or spot checking by the Commission of their declared service levels.

#### **B. Use of AWS-3 Spectrum in Lieu of Mobility Fund Auctions**

NTCH offered in its petition an alternative approach to expediting and ensuring the provision of mobile broadband services in currently underserved portions of the United States. The approach involves requiring AWS-3 licensees to provide broadband mobile in the areas of the country designated as underserved in the Commission’s Phase I Mobility map. The advantage of this plan is that it eliminates the need for either the Phase I or Phase II funding process altogether. Parties wishing to own AWS spectrum – and the record of the AWS-3 proceedings suggest that there are plenty – will be more than willing to meet the requirements applicable to Mobility Phase I and II recipients. Instead of *paying* subsidized entities \$5.3 billion dollars over 10 years, as well as incurring enormous administrative and transactional costs in administering the Mobility Funding process, the Commission would be *receiving* money from parties who would voluntarily undertake the burdens associated with serving the underserved

areas. While there might be a small haircut on the prices obtained in the auction for these areas due to the need to meet the specified service thresholds in the specified timeframes, we believe the haircut would be minimal and in any case would be nowhere close to the \$5.3 billion saved by dropping the Mobility Funding program.

NTCH recognizes that the parameters of AWS-3 are still in flux, as CTIA points out, but if the AWS-3 band is expected to be ready for auction no later than the second half of 2013, the six to nine month delay would again be well worth the savings to the public. It should be noted that the post-auction application review called for by the current Mobility Fund process is cumbersome and involves a lengthy and detailed presentation by the winning applicant and detailed review by the Commission of lines of credit, etc. That process would be unnecessary if serving these areas were simply made a condition of AWS-3 licenseeship. So the expedition in the licensing process would also bridge the delay in getting this spectrum out for service.

### **C. Conclusion**

For the reasons set forth above, the Commission should reconsider and revise the rules addressed herein.

Respectfully submitted,

NTCH, Inc.

By: \_\_\_\_\_/s/\_\_\_\_\_  
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Feb. 21, 2012

## CERTIFICATE OF SERVICE

I, Glenn Ishihara hereby state that true copies of the foregoing CONSOLIDATED REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION sent U.S. mail, postage prepaid, this 21<sup>st</sup> day of February, 2012, to the following:

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