

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	
Allband Communications Cooperative	)	
Request for Waiver	)	
	)	
Big Bend Telephone Company	)	
Request for Waiver	)	

**COMMENTS OF THE  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA) hereby submits its comments in response to Public Notices seeking comment on the above-referenced requests of Allband Communications Cooperative (Allband) and Big Bend Telephone Company (Big Bend) for waiver of the Commission’s new rules governing high-cost universal service support.<sup>1</sup> In reviewing the requested waivers, NCTA encourages the Commission to maintain the overall budget for high-cost support and ensure that the requesting carriers receive no more support than is necessary to achieve the Commission’s policy objectives. The Commission should administer the waiver process in a manner that is as transparent as possible and it should coordinate as necessary with the Rural Utilities Service (RUS) to protect taxpayers from unnecessary wasteful government spending.

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<sup>1</sup> Public Notice, Wireline Competition Bureau Seeks Comment on Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules, WC Docket No. 10-90, DA 12-204 (rel. Feb. 13, 2012); Public Notice, Wireline Competition Bureau Seeks Comment on Big Bend Telephone Company, Inc. Petition for Waiver of Certain High-Cost Universal Service Rules, WC Docket No. 10-90, DA 12-203 (rel. Feb. 13, 2012).

## INTRODUCTION

The *CAF Order* laid the groundwork for transitioning an inefficient telecommunications subsidy regime into a more efficient, more equitable broadband support mechanism.<sup>2</sup> To place the program on sounder financial footing, the Commission for the first time established an annual budget for the high-cost program.<sup>3</sup> It also made decisions about how the overall level of support should be allocated among different mechanisms and it took a number of steps to constrain demand for the various support mechanisms.<sup>4</sup>

Because the reformed high-cost regime operates pursuant to general rules that apply to broad classes of companies, there necessarily is a risk that the rules might overcompensate or undercompensate individual providers. Accordingly, to address situations where a carrier believes that the support it will receive under the new rules is insufficient, the Commission established a waiver process that requires a “case-by-case review” based on “detailed information about individualized circumstances” to determine how much is actually needed to achieve the Commission’s objectives in a particular geographic area.<sup>5</sup> As explained in the *CAF Order*, the primary purpose of the waiver process is to ensure that the Commission’s reform will not have a significant negative effect on consumers.<sup>6</sup>

Allband and Big Bend have requested waivers of some of the new Commission rules on high-cost support, including the \$3000-per-line limit on support and the constraints on capital

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<sup>2</sup> *Connect America Fund, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (*CAF Order*).

<sup>3</sup> *CAF Order* at ¶ 125.

<sup>4</sup> *Id.* at ¶ 126.

<sup>5</sup> *Id.* at ¶ 539. The Commission delegated authority to the Wireline Competition Bureau and the Wireless Telecommunications Bureau to approve or deny all or part of any waiver requests. *Id.* at ¶ 544.

<sup>6</sup> *Id.* at ¶ 540 (“In particular, a carrier seeking such waiver must demonstrate that it needs additional support in order for its customers to continue receiving voice service in areas where there is no terrestrial alternative.”).

and operating expenditures that are eligible for support.<sup>7</sup> Both companies argue that these reforms will result in dramatic revenue reductions which likely will lead to defaults on existing loans and other harmful consequences.<sup>8</sup>

NCTA does not have a position – positive or negative – on the Allband and Big Bend requests at this time. Rather, because this is the first time the Commission is considering waiver requests under the new rules, we address a number of issues regarding the waiver process itself. If carried out pursuant to the recommendations contained below, the waiver process should provide an appropriate balance between ensuring the continued provision of service in areas that may require extraordinary levels of support and protecting the interests of consumers who ultimately foot the bill for federal subsidy programs.

**I. THE OVERALL BUDGET FOR THE HIGH-COST PROGRAM SHOULD BE MAINTAINED EVEN IF WAIVERS ARE GRANTED**

In the *CAF Order*, the Commission established an overall budget of \$4.5 billion for the high-cost program and allocated that amount to various mechanisms.<sup>9</sup> It also established a review process that will be triggered if demand for support exceeds this budget for four consecutive quarters. Specifically, the Wireline Competition Bureau is required to develop options and provide the Commission with recommendations and a specific action plan for bringing expenditures under budget.<sup>10</sup>

The Commission should make clear that the overall \$4.5 billion budget, and the automatic steps that are triggered if demand for support exceeds the budget, will continue to

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<sup>7</sup> Petition of Allband Communications Cooperative for Waiver of Part 54.302 and the Framework to Limit Reimbursable Capital and Operating Costs at 4-6, WC Docket No. 10-90 (filed Feb. 3, 2012) (Allband Petition); Petition for Waiver of Big Bend Telephone Company, Inc. at 1-2, WC Docket No. 10-90 (filed Feb. 6, 2012) (Big Bend Petition).

<sup>8</sup> Allband Petition at 3-4; Big Bend Petition at 2.

<sup>9</sup> *CAF Order* at ¶¶ 125-26.

<sup>10</sup> *Id.* at ¶ 563.

apply even if it grants one or more waivers of the new high-cost support rules. Such an approach is the best way for the Commission to protect the interests of all the consumers that fund the high-cost program, while at the same time ensuring that customers in areas needing extraordinary support levels are not harmed by the Commission's reforms to the high-cost support regime. To the extent the Commission grants one or more waivers that contribute to pushing the program over the \$4.5 billion budget, the Commission will need to take appropriate steps to reduce demand from other segments of the program.

## **II. ALL OPTIONS SHOULD BE CONSIDERED IN ADDRESSING WAIVER REQUESTS, NOT JUST INCREASING THE AMOUNT OF HIGH-COST SUPPORT**

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In reviewing waiver requests, the fundamental financial question is whether the level of support prescribed by the Commission's new rules is sufficient to prevent harm to consumers, and if not, how much additional support is needed. In conducting this inquiry, the Commission should not assume that all other costs and revenues will remain as is and that the only way to address a carrier's concerns is by increasing high-cost support levels. Rather, the Commission should take a more holistic approach and consider whether there are additional steps that can be taken that would ameliorate a carrier's financial situation without the need for additional subsidies.

For example, before the Commission grants additional support, it must ensure that the carrier is recovering a reasonable portion of its costs from its voice and broadband customers. As the Commission explained in the *CAF Order*, the ultimate purpose of Section 254 is to ensure reasonably comparable rates in urban and rural areas, not to preserve artificially low rates in rural America.<sup>11</sup> Particularly in the context of a waiver seeking millions of dollars above and beyond

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<sup>11</sup> *CAF Order* at ¶ 235 (“We do not believe that Congress intended to create a regime in which universal service subsidizes artificially low local rates in rural areas when it adopted the reasonably comparable principle in

what the rules already provide for, customers in the supported area should be expected to pay at least as much as customers in other parts of the country for voice and broadband services.<sup>12</sup>

The Commission also should consider whether there are any cost savings or efficiency gains that might be possible based on the evidence presented. For example, the Commission should analyze whether expenses are within the range of what would be anticipated given the size and location of the companies. While in general NCTA does not believe that the Commission should be involved in the operational issues of private companies, a carrier that relies on federal subsidies and seeks special treatment to receive additional subsidies beyond those provided for in the Commission's rules should be subject to a greater level of government oversight of its business.

In addition, the Commission should consider potential changes in what is often one of the largest expenses on a rural carrier's books – RUS loan payments. As NCTA has noted previously, there is a significant relationship between RUS loans and federal high-cost support.<sup>13</sup> As economist Jeffrey Eisenach concluded in a 2011 report, “RUS subsidies amplify the inefficient incentives inherent in the USF program, effectively creating a vicious cycle in which firms borrow money from the RUS to make inefficient investments, receive higher USF

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section 254(b); rather, it is clear from the overall context and structure of the statute that its purpose is to ensure that rates in rural areas will not be significantly *higher* than in urban areas.”) (emphasis in original).

<sup>12</sup> *Id.* at ¶ 238 (limiting support to carriers whose retail rates do not meet a rate floor equal to the national average of local rates and state fees). As the Commission explained in the *CAF Order*, Lifeline funding is available to the extent rates at this level would raise affordability concerns. *Id.* at ¶ 244.

<sup>13</sup> Reply Comments of the National Cable & Telecommunications Association, WC Docket No. 10-90 (filed Feb. 17, 2012) at 4; Comments of the National Cable & Telecommunications Association, *Rural Broadband Access Loans and Loan Guarantees; Interim Rules*, RUS -06-Agency-0052 (filed May 13, 2011).

payments in return, and use the higher USF payments to justify still more loans for still more inefficient investments.”<sup>14</sup>

In hindsight, much of the current challenge facing many RUS borrowers is a result of the lack of coordination between the RUS and the Commission. RUS loaned billions of dollars to rural telephone companies based on its expectation that high-cost support would continue (and grow) indefinitely, but it never received any commitment from the Commission that would justify such an expectation. To the contrary, the Commission had been considering universal service reform for years (and intercarrier compensation reform for over a decade), but RUS continued making loans during that entire period, including over \$400 million in new loans *after* the *CAF Order* was adopted, but before it was released and the details made public.<sup>15</sup>

Going forward, it will be critical for the two agencies to work together in order to address troubled loans in a manner that protects taxpayers. Assuming a carrier can demonstrate that consumers will be harmed unless changes are made, the two agencies will need to determine whether it makes sense to increase subsidies, rework loan terms, or some combination of the two. This must be a coordinated effort to ensure that the two agencies do not give a carrier any more funding than necessary to achieve the Commission’s goals.

In making these decisions, the Commission must consider the competitive situation in the relevant area. As the Commission explained in the *CAF Order*, “[p]roviding universal service support in areas of the country where another voice and broadband provider is offering high-quality service without government assistance is an inefficient use of limited universal service

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<sup>14</sup> Jeffrey A. Eisenach THE RURAL UTILITIES SERVICE SHOULD REASSESS ITS RELIANCE ON UNIVERSAL SERVICE HIGH-COST SUPPORT TO LEVERAGE BROADBAND LOANS at i (September 2011) at <http://www.ncta.com/PublicationType/ExpertStudy/Analysis-of-RUS-and-USF-Reform.aspx>.

<sup>15</sup> Press Release, *Agriculture Secretary Vilsack Announces Funding to Expand and Improve Broadband Services in Rural Areas* (Nov. 14, 2011), at [http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/11/0485.xml&navid=NEWS\\_RELEASE&navtype=RT&parentnav=LATEST\\_RELEASES&edeployment\\_action=retrievecontent](http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/11/0485.xml&navid=NEWS_RELEASE&navtype=RT&parentnav=LATEST_RELEASES&edeployment_action=retrievecontent).

funds.”<sup>16</sup> Thus, all else being equal, the greater the level of competition in the area served by a carrier seeking a waiver, the less additional support it is likely to need to meet the Commission’s goals.

### **III. THE WAIVER PROCESS SHOULD BE COMPLETELY TRANSPARENT**

A critical goal of the reforms adopted in the *CAF Order* was to improve the accountability and transparency of the high-cost support program. The waiver process should not be an exception to this general principle. As the Commission made clear in the *CAF Order*, when companies seek an extraordinary level of government support to continue operating their businesses, the public is entitled to an equally extraordinary level of disclosure regarding the operations that they are being asked to fund and the process by which the government reviews those requests.<sup>17</sup>

In this regard, while NCTA does not support or oppose either of the waiver petitions, we note that there appears to be a significant difference in transparency between the two requests. On the one hand, Allband appears to have provided all of the information required by the Commission in the *CAF Order* without any need to redact any of the information. Conversely, Big Bend’s application contains significant redactions. In the context of a request for millions of dollars in subsidies beyond the level provided for under the Commission’s rules, the secretive nature of the Big Bend request is more than a little troubling.

### **CONCLUSION**

The waiver process is an integral element of the universal service regime established by the Commission in the *CAF Order*. NCTA encourages the Commission to follow the

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<sup>16</sup> *CAF Order* at ¶ 281.

<sup>17</sup> *Id.* at ¶ 602 (“NASUCA rightly observed that recipients of high-cost and/or CAF support receive extensive public funding, and therefore the public has a legitimate interest in being able to verify the efficient use of those funds.”).

recommendations contained in these comments to ensure that the interests of consumers who pay for the high-cost program are appropriately protected during the waiver review process.

Respectfully submitted,

**/s/ Rick Chessen**

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