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March 15, 2012

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Written Ex Parte Presentation
WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45 and WC Docket No. 03-109

Dear Ms. Dortch:

The Wireless Internet Service Providers Association ("WISPA") hereby responds to the ex parte communication (the "Telco Ex Parte Letter") jointly submitted on March 6, 2012 by the Independent Telephone & Telecommunications Alliance ("ITTA"), CenturyLink, Frontier Communications Corp. and Windstream Communications, Inc. (collectively, the "Telcos") proposing changes to the Connect America Fund ("CAF") Phase I incremental support program.[1]

WISPA has participated in this proceeding by filing a petition for reconsideration of the *Order* and by filing Comments and Reply Comments in response to the *FNPRM*.[2] In those proceedings, and contrary to views expressed by ITTA, WISPA supported the Commission's decision to use the National Broadband Map ("Map") as the dispositive source for determining whether a census block is served with fixed broadband service for purposes of determining whether CAF Phase I support should be provided to that area. Other parties agreed with WISPA.[3] By contrast, ITTA asked the Commission to allow

[1] *See* letter from Genevieve Morelli, Jeffrey S. Lanning, Kenneth Mason and Eric Einhorn to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 10-90, *et al.*, dated March 6, 2012.
[2] *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*" or "*FNPRM*").
[3] *See* Comments of the National Cable & Telecommunications Association, WC Docket 10-90, *et al.*, filed Feb. 9, 2012, at 18; Opposition of the American Cable Association, WC Docket No. 10-90, *et al.*, filed Feb. 9, 2012, at 13-14.

CAF recipients to submit information that shows that the Map is inaccurate. WISPA stated that if the Commission accepts information from CAF Phase I recipients concerning whether a particular area is unserved in contravention to the Map, it must also allow existing service providers to comment on and rebut the recipient's submission.[4]

In the Telco Ex Parte Letter, ITTA, joined by the three local exchange companies, propose details to their proposal with respect to census blocks that are partially served by fixed broadband providers.

Census Blocks Clearly Identified as Partially Served on the Map

In those cases where the Map accurately indicates that a census block is partially served and therefore ineligible for CAF Phase I support, the Telcos propose that the census block would be eligible for support where the CAF recipient's officer provides written certification that it intends to use CAF support to deploy broadband only to unserved locations within that census block. The certification would be provided at the time the CAF recipient provides notice of the amount of support it wishes to accept.

Consistent with its proposal regarding frozen high-cost support,[5] WISPA proposes a very simple solution – a census block would be treated as unserved, and thus eligible for CAF funding, if the CAF recipient certifies that at least 50 percent of the locations are unserved by unsubsidized competition. The certification should be made by the recipient's chief executive officer and include a statement that the CAF Phase I recipient will use its subsidy only to deploy broadband to the unserved locations. This certification process is more rigid that the one proposed by the Telcos because it obligates the chief executive officer to certify and specifically forbids the company from providing service to served areas. Any false certification would subject the CAF recipient to severe regulatory and criminal sanctions.

WISPA's proposal also would reasonably limit the areas where certification would be required because only those census blocks that are more than 50 percent unserved would be subject to a certification. The Commission could then limit its administrative resources to resolving only those cases with a majority of unserved locations.

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[4] *See* WISPA's Opposition to Petitions for Reconsideration, WC Docket No. 10-90, *et al.*, filed Feb. 9, 2012, at 4-5.

[5] *See* WISPA's Petition for Partial Reconsideration, WC Docket No. 10-90, *et al.*, filed Dec. 29, 2011, at 9; WISPA's Consolidated Reply to Oppositions to Petition for Reconsideration, WC Docket No. 10-90, *et al.*, filed Feb. 21, 2012, at 6. *See also* 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, at 14.

Other Partially Served Census Blocks

In cases where the Map shows fixed broadband coverage to a census block, the Telcos argue that CAF Phase I recipients should have the opportunity to present evidence that the Map is inaccurate because it overstates the amount of fixed broadband coverage. The Telcos propose that recipients be permitted to provide written certification that, to its best knowledge, the Map is inaccurate and there are unserved locations within the census block. If the certification is supported by "consumer declarations or other supporting evidence," the CAF Phase I recipient's showing could not be rebutted.[6] If, however, no such supporting information is submitted, the existing fixed broadband provider would have 30 days to provide a certification that it is "capable of providing service at requisite speeds to all locations in the entire relevant area,"[7] with the certification supported by one or more consumer declarations stating that the consumer has obtained, or is obtaining, such broadband service from the existing provider.

WISPA opposes the Telcos' self-serving proposal. First, there may be many reasons why the Map (or a state broadband map) may be inaccurate, including the failure of existing broadband providers to accurately report the areas they serve. This may be unintentional, but certainly incumbents – like the Telcos – would have an incentive to under-report coverage in order to obtain subsidies for areas alleged to be unserved. The Telcos, or any incumbent broadband provider, should not be permitted to report inaccurate data to NTIA's state mapping contractors and then be rewarded with subsidies to cover areas deemed by the Map to be "unserved" but which are actually served.

Second, the process invites delay and abuse, and subjects the Commission to line-drawing. The Telcos make no effort to define what would constitute "other supporting evidence" that would be acceptable, leaving that interpretation to the Commission without any opportunity for such information to be rebutted. Questions abound. What if a consumer declaration is not made under penalty of perjury? How could it be determined if the consumer's declaration had been written by the CAF recipient? Would a propagation study be acceptable "other evidence," and if so, would there be a common predictive coverage model with a common set of assumptions? Allowing a CAF recipient to file a certification claiming that a competitor company does not serve a particular area of a census block would no doubt lead to difficult questions of proof and would result in legal challenges that would delay funding and tie up the Commission's scarce administrative resources.

For any party that believes the Map is inaccurate – whether broadband provider or CAF recipient – the better alternative is for that party to communicate with NTIA or the state mapping contractor to fix the alleged inaccuracy. The mapping program is an iterative process that is constantly evolving as broadband extends into more areas and mapping techniques create more coverage granularity. The Map is updated regularly to

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[6] Telco Ex Parte Letter at 3.
[7] *Id.* at 4.

become more and more accurate. Further, the mapping contractors are impartial, with no stake in the outcome of a funding decision or subsidy rule – they take the data provided to them and make decisions on where to draw lines without regard to the CAF implications of their work. The Telcos should work with the mapping contractors to help address any inaccuracies, not burden the CAF Phase I process with post-mapping procedures that are one-sided in favor of the CAF recipient, or which invite challenge and dispute that will delay provision of funding to unserved areas.

WISPA shares the Telcos' view that CAF Phase I support funds should be provided only for unserved areas, and appreciates that the Map is not perfect. However, the Telcos' proposals would address only the *output* of the problem instead of the *inputs* – the data provided to the disinterested and impartial state mapping contractors to create the Map. Efforts should be made to address problems at the source, without subjecting the Commission and its regulatees to disputes and administrative processes that rely entirely on the claims of interested parties.

Pursuant to Section 1.1206 of the Commission's Rules, this notice is being filed via ECFS in the above-referenced proceedings. Please direct any questions regarding this notice to the undersigned.

Respectfully submitted,

/s/ Stephen E. Coran
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