



August 13, 2012

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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,  
WC Docket No. 03-109 and WT Docket No. 10-208**

Dear Ms. Dortch:

By letter dated August 3, 2012, RCA – The Competitive Carriers Association (“RCA”) proposed that the Commission reallocate unaccepted Connect America Fund (“CAF”) Phase I funds to Phase II of the Mobility Fund so such funds could be used solely by mobile wireless carriers.<sup>1</sup> The Wireless Internet Service Providers Association (“WISPA”) opposes this proposal and instead recommends the following:

- The unaccepted funds should be allocated to the Remote Areas Fund (“RAF”), if the Commission forbears from enforcing the Eligible Telecommunications Carrier (“ETC”) requirements so that fixed wireless broadband providers can have access to funding for extremely high-cost areas;
- If the Commission does not expand eligibility for RAF funds, reduce the size of the \$4.5 billion fund by the amount of the unaccepted Phase I allocation, thereby eliminating the need to expand the contribution base to include broadband providers; or
- Make no decision with respect to the allocation of the unaccepted funds until the Commission finalizes its rules for CAF Phase II and the RAF.

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<sup>1</sup> See Letter from Steven K. Berry and Rebecca Murphy Thompson, RCA, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90, *et al.*, filed Aug. 3, 2012 (“RCA Letter”). The RCA Letter frequently uses the term “wireless,” which WISPA interprets to mean “mobile.” For clarity, this letter uses the terms “fixed” and “mobile” to distinguish between the two services.

Of the \$300 million set aside for CAF Phase I, for a variety of reasons, price cap carriers rejected \$185 million in subsidies and accepted only \$115 million to deploy fixed broadband services. Although it professes support for a “more competitively and technologically neutral approach” to USF funding decisions, RCA asks that these unused funds be available only to mobile wireless carriers.<sup>2</sup> Though WISPA agrees with RCA that price cap carriers are overcompensated and have been given preferential treatment in the Commission’s rules,<sup>3</sup> WISPA disagrees with RCA that mobile wireless carriers are underfunded and that the unaccepted funds should be transferred to the Mobility Fund. Rather, the greater need for subsidies occurs with respect to fixed broadband services in remote areas, which can be more efficiently delivered by wireless Internet service providers (“WISPs”) and other non-wireline technologies. Given the greater demand for fixed broadband services, the unavailability of traditional wireline technologies and the price cap carriers’ unwillingness or inability to extend their service to remote areas, WISPA recommends any unaccepted funds should be allocated, if at all, to the RAF, so long as the Commission permits non-ETCs to obtain funding from that program.

As a threshold matter, WISPA agrees with the Commission’s acknowledgment that *mobile* broadband and *fixed* broadband serve entirely different markets such that, for CAF Phase I purposes, it is “appropriate to distinguish fixed from mobile broadband service.”<sup>4</sup> For this reason, the Commission established two different funds – the Connect America Fund for fixed broadband and the Mobility Fund for mobile broadband, each with different performance characteristics and service obligations. As examples, CAF Phase I recipients must provide 4 Mbps/1 Mbps download/upload speeds and extend broadband to areas shown as unserved on the National Broadband Map. By contrast, Mobility Fund recipients are only required to provide 3G speeds and provide coverage according to road miles in unserved census blocks.<sup>5</sup>

The establishment of CAF is also intended to address the great demand for fixed broadband in rural, unserved and underserved areas of the country. Based on the December 2010 National Broadband Map, there were more than 18 million Americans who lacked access to terrestrial fixed broadband services.<sup>6</sup> These unserved Americans cannot receive broadband service in their homes because price cap carriers are unwilling or unable to provide such services.

CAF Phase I was intended to help address this problem by providing one-time support to price cap carriers to subsidize *fixed* broadband deployment to unserved areas. Carriers elected to reject all or a portion of that funding for a number of reasons, none of which suggest that there is a lack of demand for fixed broadband service in unserved areas. In fact, the opposite is true. Though CenturyLink rejected a portion of its allocated funding, it is asking the Commission to waive its rules so it can obtain Phase I

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<sup>2</sup> *Id.* at 4.

<sup>3</sup> *See id.*

<sup>4</sup> *See Connect America Fund*, Docket Nos. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (“*USF/ICC Transformation Order*”) at ¶ 146, n.231.

<sup>5</sup> *See id.* at ¶ 105.

<sup>6</sup> *Id.* at ¶ 4, ¶ 127. The Commission reports that 83 percent of these unserved Americans reside in price cap areas, which apparently justified the exclusion of other entities from CAF Phase I.

support to deploy fixed broadband service to areas where WISPs already provide broadband service.<sup>7</sup> Windstream asserted that the \$775 per-location subsidy was insufficient, and is requesting waiver so it can use \$59 million of its allocation to build approximately 1,700 miles of fiber to provide second-mile transport that would serve about 17,000 fixed locations.<sup>8</sup> According to a press report, AT&T declined its Phase I funding because of concerns about the uncertainty over future changes to service obligations and Verizon turned down funding citing “prior deployment and additional plans for private investment.”<sup>9</sup>

These reasons do not demonstrate a lack of demand for fixed broadband service, or an increase in demand for mobile wireless broadband service. To the contrary, demand for fixed broadband service may be greater, especially in extremely high-cost areas. While WISPA strongly opposes the use of CAF funds to subsidize fixed broadband service in areas that are already served,<sup>10</sup> WISPA recommends that unaccepted Phase I funds should be directed to the RAF, *if WISPs and other non-ETCs are eligible for such funding*. In response to the Commission’s suggestion,<sup>11</sup> WISPA has asked the Commission to forbear from enforcing its eligibility requirements for purposes of the RAF.<sup>12</sup> WISPs can provide fixed wireless service at a cost that is lower than DSL and cable, and in some areas may be the only terrestrial technology platform that will deliver fixed wireless broadband services to these areas economically. The Commission established a minimum of \$100 million for the RAF,<sup>13</sup> so it has the flexibility to increase funding for that program.

If the Commission does not adopt a mechanism for WISPs and other non-ETCs to be eligible for RAF support, the Commission should instead reduce the size of the \$4.5 billion CAF fund by the amount of the unaccepted Phase I allocation (\$185 million). In so doing, the Commission would reduce the total amount of contributions into the fund by the same amount, an outcome it contemplated in the *USF/ICC Transformation Order*.<sup>14</sup> This would, in turn, eliminate the need for the Commission to adopt its proposal to expand the contribution base to include broadband providers.<sup>15</sup> WISPA has strongly opposed the Commission’s proposal to require contributions from broadband providers

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<sup>7</sup> See *Public Notice*, “Wireline Competition Bureau Seeks Comment on CenturyLink Petition for Waiver of Certain High-Cost Universal Service Rules,” DA 12-1007, rel. June 27, 2012. WISPA and 23 other parties opposed CenturyLink’s waiver request.

<sup>8</sup> See *Public Notice*, “Wireline Competition Bureau Seeks Comment on Windstream Communications Petition for Waiver of Certain High-Cost Universal Service Rules,” DA 12-1181, rel. July 25, 2012.

<sup>9</sup> *Communications Daily*, “Big Telcos Cite Prior Plans, ‘Uncertainty’ About Future Obligations, in Rejecting FCC Broadband Support,” July 26, 2012.

<sup>10</sup> See WISPA’s Petition for Reconsideration, Docket Nos. 10-90, *et al.*, filed Dec. 29, 2011 (recommending change in definition of “unsubsidized competitor” so that voice and broadband services can be provided by more than one entity in area).

<sup>11</sup> See *USF/ICC Transformation Order* at ¶ 1235.

<sup>12</sup> See WISPA’s Comments, Docket Nos. 10-90, *et al.*, filed Jan. 18, 2012.

<sup>13</sup> See *USF/ICC Transformation Order* at ¶ 1223.

<sup>14</sup> See *id.* at ¶ 138, n.221 (“savings could be used to reduce the contribution burden”).

<sup>15</sup> See *Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, Docket Nos. 06-122 & 09-51, FCC 12-46 (rel. Apr. 30, 2012) (“*FNPRM*”).

that are ineligible to receive CAF subsidies,<sup>16</sup> and the reduction in the contribution amount is another reason why the Commission's proposal should not be adopted.

Alternatively, the Commission can elect to make no decision at this time on how to allocate the unaccepted funds. The availability of additional CAF funds could be factored into the CAF Phase II or RAF rules, and may affect cost models or be useful in defining "remote areas." In the *USF/ICC Transformation Order*, the Commission suggested that incremental support that is declined by price cap carriers "may be used in other ways to advance our broadband objectives pursuant to our statutory authority."<sup>17</sup> The Commission should adopt a Public Notice inviting public comment on how it can best use the \$185 million in unaccepted subsidies, consistent with its legal authority and the public interest.

Although RCA continues to question the Commission's decision to segregate USF into separate fixed and mobile funds, RCA's primary concern appears to be its belief that there is not enough funding set aside for mobile wireless carriers. But there is even less fixed broadband funding for extremely high-cost remote areas, and WISPs are ready, willing and able to participate in that program. To the extent any portion of the \$300 million in funding for Phase I of the Mobility Fund is not paid out, RCA and its members should be free to seek re-allocation of those funds in Phase II of the Mobility Fund.

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/ Elizabeth Bowles, President*

*/s/ Richard D. Harnish, Executive Director*

cc: Julie Veach  
Carol Matthey  
Patrick Halley  
Joseph Cavender  
Amy Bender

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<sup>16</sup> See WISPA's Comments, Docket Nos. 06-122 & 09-51, filed July 9, 2012; WISPA's Reply Comments, Docket Nos. 06-122 & 09-51, filed Aug. 6, 2012.

<sup>17</sup> *USF/ICC Transformation Order* at ¶ 138.