

**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

**REPLY OF ALLBAND COMMUNICATIONS COOPERATIVE TO  
OPPOSITION OF THE NATIONAL CABLE & TELECOMMUNICATIONS  
ASSOCIATION TO ALLBAND’S APPLICATION FOR REVIEW**

ALLBAND COMMUNICATIONS COOPERATIVE

By its Counsel:

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Allband Communications Cooperative (Allband) files this reply to the September 11, 2012 Opposition of the National Cable and Telecommunications Association (NCTA) to Allband's August 24, 2012, Application for Review filed in these dockets.

**I. NCTA HAS NO SPECIFIC INTEREST OR BASIS FOR STANDING TO CHALLENGE ALLBAND'S APPLICATION**

NCTA is the only entity in the United States to file an opposition to Allband's Application in this case. NCTA's Opposition has failed to articulate any specific interest or basis for standing to justify challenging Allband's Application. NCTA also does not identify any company within its membership that is harmed or prejudiced in any way if Allband's Application is granted. While Allband recognizes that these dockets originated as rulemaking proceedings, the issues now before the Commission in reviewing Allband's Application for a waiver for the full period of Allband's loan obligations to the Rural Utility Service (RUS) raises major statutory, contractual, and constitutional issues. NCTA's Opposition is deficient in failing to address or respond to these issues.

**II. CONTRARY TO NCTA'S ASSERTIONS, ALLBAND DOES HAVE A VALID LEGAL BASIS FOR OBTAINING THE PRESERVATION OF ITS EXISTING UNIVERSAL SERVICE FUNDING FOR THE DURATION OF THE FEDERAL LOANS THAT WERE COMMITTED IN RELIANCE UPON SAID REVENUES.**

Without citing any judicial precedent, NCTA asserts that Allband does not have an "expectation or entitlement to any specific amount of support."<sup>1</sup> NCTA omits any discussion of the legal reality that the continued receipt of existing Universal Service Funding (USF) revenues by Allband constitutes the security necessary to support and pay the federal RUS loans referenced in Allband's Application. NCTA also fails to rebut in any way the statutory, contractual, constitutional issues, and judicial precedent discussed in Allband's Waiver Petition and August 24, 2012 Application which provides a strong legal basis to justify the continued receipt by Allband of USF revenues necessary to pay the RUS loans that were utilized to construct Allband's network and to

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<sup>1</sup> NCTA's Opposition, page 5

provide service to its customers. NCTA ignores the reality of a major unchangeable legal constant -- that Allband's pre-existing RUS loan obligations are fixed for up to 15 remaining years, and that the RUS loan payments constitute a major portion of Allband's expenses and cash-flow requirements.

Allband, as a non-profit cooperative, is the successful result of the 1996 Act providing for the Universal Service Funding needed to accomplish the purposes that Allband is now achieving. Allband justifiably relied upon the 1996 Act, the regulatory approvals of this Commission and the Michigan Public Service Commission (MPSC), and the RUS loan approvals, to construct its modern fiber optic system. These past approvals, and substantial reliance thereupon by Allband, its customers, and by RUS, cannot be retroactively changed. Constitutional Due Process principles and the Allband/RUS contractual commitments support the continued receipt of the existing USF revenue levels for the duration of the RUS loan term. NCTA argues for a retroactive rejection of the basis upon which Allband's investment was made. NCTA's assertion should therefore be rejected as being contrary to established judicial precedent as detailed by Allband in its Application.

### **III. ALLBAND'S WAIVER PETITION AND APPLICATION PROVIDES A FORTHRIGHT AND EXHAUSTIVE ANALYSIS WHILE NCTA'S OPPOSITION IS SUPPORTED BY NO RATIONALE OR ANALYSIS.**

Allband's February 3, 2012 Waiver Petition, with extensive attachments, and its August 25, 2012, Application for an extended waiver, establishes on a forthright basis persuasive grounds for the Commission to grant Allband a waiver for the duration of Allband's existing RUS loan obligations. Allband showed in its Application, *with supporting data and analysis*, that there is no feasible way in the next three years, or on a longer term basis, for Allband to (a) sufficiently reduce expenses, and/or (b) to increase penetration or revenues sufficiently to meet the Commission's \$250 per line per month cap on high-cost universal service support (\$250 cap),<sup>2</sup> even if all non-fixed expenses were eliminated and 100 percent penetration were achieved. Additionally, although Allband is eager to work with

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<sup>2</sup> Section 54.302 of the Commission's rules

RUS to modify loan terms, Allband understands that RUS has limited, if any, ability to modify such terms without Congressional approval. Allband therefore requested in its Application that the Commission extend the length of the WCB approved Waiver of the \$250 cap from three to fifteen years (through the year 2026 when the RUS loan will be repaid).

Allband in its Application, also showed *with supporting data and analysis*, that although the benchmark rule does not initially place a cap on Allband, the benchmarking rule will significantly reduce and cap Allband's support funding over time. Allband therefore requested that the Commission grant Allband's request for a waiver of the benchmark (regression caps) rule.

#### **IV. NCTA'S OPPOSITION TO ALLBAND'S APPLICATION IS BASED UPON UNSUPPORTED AND ERRONEOUS ARGUMENTS.**

NCTA's Opposition to Allband's Application asserts unsupported and erroneous reasons for the Commission to reject Allband's Application. NCTA asserts that Allband: (1) seeks to "...insulate itself from the need to justify receipt of extra universal service high-cost support for the next 15 years..."<sup>3</sup>; (2) will have "...no additional review or justification required ... during that 15 year period..."<sup>4</sup>; and (3) will not commit to work with the Bureau to "...reign in excessive universal service support..." and "...instead insists that it should have no obligation to do so for the next 15 years..."<sup>5</sup>

These assertions are wholly unsupported and erroneous. Allband made no such statements in its Application. To the contrary, Allband has *demonstrated* in its Waiver filing and Application *that it will provide* to the Bureau and Commission *any and all data and analysis* required to

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<sup>3</sup> NCTA Opposition, page 1; In fact, in addition to Allband's demonstrated willingness to work with and provide data requested by the Bureau, Allband is subject to requirements of the Commission's Part 32, 36, 64 and 54 rules and USAC audits to justify its requirements for and level of universal service support.

<sup>4</sup> Id., page 2.

<sup>5</sup> Id., page 3.

justify its *required (not extra or excessive)* level of universal service support. Allband stated in its Application that rather than filing repetitive and costly waivers, “The better alternative is for WCB and Allband to work together to enhance services, reduce costs where possible, expand Allband’s markets and revenues, and reduce Allband’s reliance on USF support over time.”<sup>6</sup> Allband has thus always asserted and demonstrated that it is willing to work with the Bureau and to provide all information required by the Bureau.

NCTA’s other assertion in its Opposition is sheer speculation that there may be “...an influx of residential or business customers...” or “...other providers may enter the market...”<sup>7</sup> In view of the factual data and analysis (including penetration analysis) provided in Allband’s Application, NCTA’s unsupported speculations about what might happen should be ignored consistent with the Commission’s data driven decision analysis. With the grant of the extended waiver, the Bureau, with Allband’s full cooperation, retains its undiminished ability to monitor factual data and circumstances that may affect Allband’s requirements for Universal Service Support. NCTA’s speculative and erroneous assertions provide no basis for rejection of Allband’s Application.

**V. ALLBAND’S REQUEST FOR WAIVER OF THE BENCHMARK (REGRESSION) RULE IS NEITHER PREMATURE NOR MOOT.**

On an inconsistent basis, NCTA suggests that Allband’s request for waiver of the benchmarking (e.g., regression) Rule is either moot or premature. However, it is not legally moot, because, as Allband has demonstrated in its Application, Allband will be subject to and will be adversely affected by the benchmarking rule in the relatively near future. Notably, NCTA wholly ignores the discussion in Allband’s Application of the exception to the mootness doctrine. Allband’s

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<sup>6</sup> Allband Application, page 4.

<sup>7</sup> NCTA Opposition, page 3.

challenge to the rule also is not premature for the same reason. NCTA's assertions are inconsistent and unexplained. How can Allband's claim be both moot and premature?

**VI. CONCLUSION AND RELIEF**

NCTA's Opposition presents erroneous and unsupported assertions. Allband requests the Commission to reject NCTA's assertions in their entirety, and to grant Allband's August 25, 2012 Application in these dockets.

Respectfully submitted,

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