Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
CONNECT AMERICA FUND	)	**WC Docket No. 10-90**
	)	

COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

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COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

The Independent Telephone & Telecommunications Alliance ("ITTA") hereby submits its comments in response to the December 10, 2012 *Revised Public Notice* issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding.[1] The *Revised Public Notice* seeks input on the updated list of census blocks in price cap areas shown as unserved on the National Broadband Map ("NBM") for Connect America Fund ("CAF") Phase I incremental support purposes.[2]

The Commission's goal in seeking comment on the proposed list of unserved census blocks – *i.e.*, to help ensure that inaccuracies that materially impact the targeting of support as the Commission intended are eliminated[3] – is laudable. Unfortunately, the process specified by the Commission will do little to nothing to achieve this goal. As described below, this process lacks the elements that are essential to ensure that CAF incremental funding is made available to price cap carriers to serve eligible locations.

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[1] *Wireline Competition Bureau Updates the List of Potentially Unserved Census Blocks in Price Cap Areas and Extends the Deadline for Comment on the List*, WC Docket No. 10-90, DA 12-2001 (rel. Dec. 10, 2012) ("*Revised Public Notice*").

[2] *Id*. at 1.

[3] *See In the Matter of Connect America Fund*, WC Docket No. 10-90, Further Notice of Proposed Rulemaking, FCC 12-138, at ¶ 13 (rel. Nov. 19, 2012) ("*FNPRM"*).

DISCUSSION

As a threshold matter, the time period allotted to carriers to review the proposed list and gather data regarding the specific census blocks or geocoded locations that are believed to be inaccurate is woefully inadequate. The *Initial Public Notice* clearly states that the Wireline Competition Bureau ("Bureau") seeks "specific, actionable information rather than general statements"[4] yet carriers are afforded barely one month (including holidays) to pull such data together. ITTA members have been doing their best to develop such information but it is highly unlikely they will be successful in meeting the Commission's deadline.

More importantly, the deadline for the submission of census block/location data is arbitrary and imprudent in light of the fact that comments on the "challenge process" proposed in the *FNPRM* will not be filed until weeks after the data submission deadline.[5] In the *FNPRM*, the Commission *proposes* to allow the Bureau to change the classification of particular areas where the evidence shows that it is more probable than not that the NBM inaccurately portrays coverage.[6] The *FNPRM* makes clear that the parameters of the challenge process have not been set and will not be determined until the Commission reviews parties' comments and issues a final order.[7] It is both arbitrary and illogical for the Commission to require the submission of detailed census block/location information before such events have occurred and the precise requirements of the challenge process have been determined.

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[4] *Wireline Competition Bureau Seeks Comment on Areas Shown as Unserved on the National Broadband Map for Connect America Phase I Incremental Support*, WC Docket No. 10-90, DA 12-1961, at 2 (rel. Dec. 5, 2012) ("*Initial Public Notice*").

[5] Comments in response to the *FNPRM* are due January 28, 2013.

[6] *FNPRM*, at ¶¶ 15-16.

[7] *Id*. at ¶ 16 ("We seek comment on whether this is a workable approach that can be implemented quickly so that a finalized list of eligible census blocks would become available shortly after adoption of the revised rules under consideration in this FNPRM.").

The current process may be adequate to serve a limited purpose however. Although the process called for in the *Initial Public Notice* and the *Revised Public Notice* cannot be relied upon to identify those locations where the NBM and its underlying data are inaccurate, it may be adequate enough to identify those circumstances where the NBM does not accurately reflect its underlying data. ITTA has reason to believe that there are situations where the NBM does not accurately reflect the data upon which it purports to rely. The timeframe allotted to carriers may be sufficient to identify those errors and bring them to the Commission's attention. ITTA submits that the Commission should utilize the process laid out in the *Initial Public Notice* and the *Revised Public Notice* only for this limited purpose.

Once comments in response to the *FNPRM* have been submitted, the Commission should expeditiously adopt and implement a challenge process that provides carriers a reasonable opportunity to identify and bring to the Commission's attention locations that are overstated or understated on the most recent version of the NBM and its underlying data where they wish to utilize CAF incremental support. ITTA will provide detailed suggestions regarding the challenge process in its comments on the *FNPRM*.

The challenge process should occur once price cap carriers have identified the particular areas where they would like to use CAF Phase 1 incremental support. This would minimize the burden on all parties – including the Bureau – by limiting challenges to the specific locations that matter, *i.e.*, where incremental support would be utilized. If carriers are forced to invoke the challenge process prematurely, *i.e.*, before they have determined where they would deploy broadband using incremental support, the industry and the Bureau will be forced to expend time and resources to make determinations that ultimately could have no impact on how and where CAF funds are utilized.

Moreover, ITTA submits it is essential for the challenge process to impose the burden of proof on the appropriate entity. The *FNPRM* proposes to use a "more probable than not" standard to govern whether the NBM accurately portrays coverage in a particular area.[8] ITTA does not oppose use of that standard but maintains that the burden of meeting that standard should reside with the entity that possesses the data necessary for the Bureau to make a reasoned decision.

For example, should a price cap carrier believe that a particular fixed wireless Internet service provider ("WISP") listed on the NBM as providing service to a particular location at advertised speeds of at least 3 Mbps downstream and 768 kbps upstream does not in reality serve that location at those speeds, the price cap carrier should be obligated only to provide the Bureau with whatever information it can gather supporting that belief. This information could take the form of consumer affidavits, service details and specifications from the WISP's website and marketing materials, objective data such as porting information that identifies competitive presence within a particular area, or could be different. Once the price cap carrier has done so, the burden should shift to the WISP – the entity in possession of the data necessary to prove or disprove the price cap carrier's challenge – to provide such data to the Bureau. If the burden is not shifted to the WISP, the price cap carrier would in effect be required to prove a negative, a standard it could not possibly meet.

CONCLUSION

For all of the foregoing reasons, the Commission should reassess its use of the process laid out in the *Initial Public Notice* and the *Revised Public Notice* and should expeditiously adopt

[8] *FNPRM*, at ¶ 16.

a challenge process that provides price cap carriers and the Commission a reasonable opportunity to provide for inaccuracies in the NBM to be corrected.

Respectfully submitted,

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