

BEFORE THE
Federal Communications Commission

WASHINGTON, DC 20554

In the Matter of)
)
Wireline Competition Bureau Seeks Comment) WC Docket No. 10-90
on Areas Shown as Unserved on the National)
Broadband Map for Connect America Phase I)
Incremental Support)

To: Chief, Wireline Competition Bureau

REPLY COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

The Wireless Internet Service Providers Association (“WISPA”), pursuant to sections 1.415 and 1.419 of the Commission’s Rules, hereby replies to Comments filed in response to the December 5, 2012 Public Notice (the “*Public Notice*”) of the Wireline Competition Bureau (“Bureau”) in the above-referenced docket.¹ WISPA strongly opposes the efforts of certain commenters to turn a simple mapping verification exercise into an attempted re-draft of the Connect America Fund (“CAF”) Phase I rules, and to use the *Public Notice* as an opportunity to air stale and unsubstantiated grievances about fixed broadband coverage provided by wireless Internet service providers (“WISPs”). These arguments go well beyond the narrow scope of this proceeding and ask the Bureau to exceed its authority. Moreover, evidence in the record demonstrates that the National Broadband Map (“NBM”) understates the census blocks served by fixed broadband providers.

¹ Public Notice, *Wireline Competition Bureau Seeks Comment on Areas Shown as Unserved on the National Broadband Map for Connect America Phase I Incremental Support*, DA 12-1961 (rel. Dec. 5, 2012) (“*Public Notice*”). See also Public Notice, *Wireline Competition Bureau Updates the List of Potentially Unserved Census Blocks in Price Cap Areas and Extends the Deadline for Comment on the List*, DA 12-2001 (rel. Dec. 10, 2012).

Discussion

In the *Public Notice*, the Bureau straightforwardly sought “public input on th[e] list of census blocks”² prepared by the Bureau (the “Unserved List”) which purports to delineate those census blocks in price cap territories that are “completely or partially unserved by fixed terrestrial broadband with advertised speeds of 3 Mbps downstream and 768 kbps upstream.”³ More particularly, the Bureau requested “specific, actionable information”⁴ on potential inaccuracies in the Unserved List – *i.e.*, the erroneous inclusion of census blocks that are, in fact, served at or above the 3/768 standard, or the erroneous omission of census blocks that have no such service.⁵

Numerous parties filed Comments responsive to the *Public Notice*;⁶ however, some parties failed to supply responsive data or information, choosing instead to introduce grievances that go well beyond the limited scope of the *Public Notice*. Some commenters advocated actions outside the Bureau’s authority, while others used the *Public Notice* as an opportunity to resuscitate stale (and unsubstantiated) claims about the service metrics of WISPs.

Windstream Corporation (“Windstream”) and the United States Telecom Association (“USTA”) complained about the “mismatch” of using evidence of “access to 3/768 broadband to classify areas as ineligible for CAF Phase I support – in other words, using 3/768 as a proxy for 4/1.”⁷ These commenters proposed that, rather than relying on 3/768 data, the Bureau “should

² *Public Notice* at 1.

³ *Id.*

⁴ *Id.* at 2.

⁵ *Id.* at 1.

⁶ *See, e.g.* Comments of Cloud Alliance, LLC, WC Docket No. 10-90, filed Jan. 9, 2013; Comments of SPITwSPOTS, Inc., WC Docket No. 10-90, filed Jan. 9, 2013; Comments of Royell Communications, Inc., WC Docket No. 10-90, filed Jan. 9, 2013; Comments of Cequel Communications, LLC dba Suddenlink Communications, WC Docket No. 10-90, filed Jan. 9, 2013.

⁷ Comments of Windstream Corporation, WC Docket No. 10-90, filed Jan. 9, 2013, at 4 (“Windstream Comments”); *see also* Comments of United States Telecom Association, WC Docket No. 10-90, filed Jan. 9, 2013, at 5.

use the next [National Broadband Map] speed tier – 6 Mbps downstream and 1.5 Mbps upstream – as a proxy for 4/1 service.”⁸ The *Public Notice*, however, does not present the proper forum for addressing these issues – it simply sought “updates and corrections to the National Broadband Map”⁹ in the form of specific additions or subtractions from the list of census blocks that receive 3/768 service. Complaints about the appropriateness of the NBM and the 3/768 benchmarks for determining CAF Phase I funding eligibility go well beyond the limited purpose and narrow scope of the *Public Notice*. Furthermore, the modification these and other commenters propose – “raising the proxy to 6 Mbps downstream and 1500 upstream”¹⁰ – falls outside the Bureau’s authority, would require proper notice-and-comment procedures and cannot be implemented without full Commission approval. In sum, this Bureau proceeding is not the place to seek fundamental changes to the Phase I rules.

CenturyLink emphatically argued for adoption of “a standardized dispute-resolution process”¹¹ for “challenging inaccurate coverage claims.”¹² Again, CenturyLink’s proposal exceeds the limited scope of the *Public Notice*. WISPA notes that the currently pending Further Notice of Proposed Rulemaking (“*FNPRM*”) in the same docket¹³ proposes a limited challenge process. CenturyLink should express its opinions concerning whether the Commission should adopt a challenge process in that proceeding, not in this limited proceeding in which the Bureau requested specific information about the Unserved List.

(discussing the “harm to rural consumers that would result from using 3/768 as a proxy for 4/1”) (“USTA Comments”).

⁸ Windstream Comments at 4; *see also* USTA Comments at 5 (stating that “the Commission should use 6/1.5 instead as a proxy for 4/1 until 4/1 data is available”).

⁹ *Public Notice* at 1.

¹⁰ Comments of CenturyLink at 10.

¹¹ *Id.* at 7.

¹² *Id.* at 9.

¹³ *In the Matter of Connect America Fund*, Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 12-138 (rel. Nov. 19, 2012). Comments in response to the *FNPRM* are due January 28, 2013.

Despite the *Public Notice*'s appeal for specific information about the Unserved List, Windstream and USTA supplied no such information, but rather presented a self-serving proposal for expanding the list of unserved census blocks. Citing “data”¹⁴ and “aggregate records”¹⁵ – but supplying neither – Windstream and USTA assert that, in areas where a Local Exchange Carrier (“LEC”) “has received no requests over a reasonable historical period from customers for telephone number ports that are accompanied by cancellation of the customers’ broadband service from the ILEC,”¹⁶ this suffices for “reasonable evidence that there actually is no competitor providing 3/768 or better service in the census blocks within that area”¹⁷ thereby “creat[ing] a presumption that the area is eligible for CAF Phase I support.”¹⁸ Besides being entirely outside the scope of the *Public Notice*, this proposal is rife with flaws.

A lack of telephone number portability requests in no way equates with a lack of broadband service. In this era of nearly ubiquitous cell-phone service, many LEC customers who cancel their landline service do so because they are satisfied with cell-phone only service, and/or because they find the pricing for landline service to be too high.¹⁹ Windstream and USTA also fail to account for customers who cancel their LEC-provided broadband service (presumably opting for service provided by a non-LEC entity), but retain (and thus do not attempt to port) the landline that is “associated”²⁰ with or that may have initially

¹⁴ Windstream Comments at 7.

¹⁵ USTA Comments at 7.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Windstream Comments at 8.

¹⁹ See, e.g., Mike Snyder, *More People Ditching Home Phone for Mobile*, USA Today (Apr. 21, 2011), available at <http://usatoday30.usatoday.com/tech/news/2011-04-20-cellphone-study.htm> (“Cellphones are becoming the only home phones in an increasing number of U.S. households, a trend intensified by challenging economic conditions”).

²⁰ Windstream Comments at 8.

“accompanied”²¹ the broadband service. For example, some WISPs have customers that have opted for WISP-provided broadband, but have retained LEC-provided landlines.²²

Windstream, USTA, and the Independent Telephone & Telecommunications Alliance (“ITTA”) also inexplicably, and unjustifiably, used their Comments to single out WISP-provided broadband service and ask that WISPs, alone, be subjected to heightened verification standards. These attacks are as stale as they are unwarranted,²³ and again, extend far beyond the scope of the *Public Notice*. Windstream and USTA insist that WISP-provided broadband coverage must be “independently verified”²⁴ because, in their opinion, “WISPs often have capacity caps and service quality issues.”²⁵ The “verification” that these parties demand is already provided by those individual state mapping processes that have decided to do so; moreover, if the challenge process proposed in the *FNPRM* is formally adopted, these parties will be free to challenge the coverage claimed by WISPs or any other broadband providers. Data caps, even if imposed, in no way equate to a lack of broadband service. As for alleged “service quality issues,” USTA provides no evidence or statistics of any kind, just speculation and innuendo. Regardless, the *Public Notice* did not invite a debate of the merits of different types of broadband access. ITTA, despite correctly recognizing that the appropriate forum for commenting on a “challenge process” is the pending *FNPRM*, attempted to flip the burden of proof in suggesting that “the price cap carrier should be obligated only to provide the Bureau with whatever information it can gather supporting [its] belief” that a WISP – and only a WISP, not any other technology platform

²¹ USTA Comments at 7.

²² Many WISPs do not offer voice service.

²³ See CenturyLink Petition for Waiver, WC Docket Nos. 10-90, *et al.*, filed June 26, 2012, at 5-6. WISPA has strongly opposed CenturyLink’s petition for waiver as well as those filed by Windstream, FairPoint Communications and Alaska Communications Systems.

²⁴ USTA Comments at 7; see also Windstream Comments at 3 n.7.

²⁵ USTA Comments at 7.

– is not, in fact, providing claimed service.²⁶ Again, the *Public Notice* is not an invitation to comment on the evidentiary standard to be employed in the challenge process, or to express opinions about the alleged superiority of one type of broadband service over another.

In the end, certain commenters are left proclaiming, in the most general terms, that the NBM overstates current broadband coverage in the United States.²⁷ Yet they offer little or nothing in response to the *Public Notice*'s plea for “specific, actionable information.”²⁸ By contrast, a number of commenters, including WISPs and cable providers, provided precise information in accordance with the Bureau's instructions demonstrating that, in some instances, the map *understates* the extent of broadband coverage.²⁹ In the face of specific information showing understated coverage in the manner requested by the Bureau, the Bureau must discount the generic and nonresponsive claims and policy arguments of the price cap carriers and their trade associations.

²⁶ Comments of Independent Telephone & Telecommunications Alliance, WC Docket No. 10-90, filed Jan. 9, 2013, at 4 (“ITTA Comments”).

²⁷ See, e.g., USTA Comments (“The most recent version of the NBM . . . contains obvious errors that have the effect of vastly overstating broadband coverage by unsubsidized providers.”); ITTA Comments at 3 (“ITTA has reason to believe that there are situations where the NBM does not accurately reflect the data upon which it purports to rely.”).

²⁸ *Public Notice* at 2.

²⁹ See, e.g., Comments of Myakka Communications, Inc., WC Docket No. 10-90, filed Jan. 9, 2013 (evidence that NBM understates coverage provided by WISP); Letter from Comcast Corporation, WC Docket No. 10-90, filed Jan. 9, 2013 (evidence that NBM understates coverage of large cable company); Comments of Cimarron Telephone Company, L.L.C., Cross Telephone Company, L.L.C., and The Pottawatomie Telephone Co., L.L.C., WC Docket No. 10-90, filed Jan. 9, 2013 (evidence that NBM understates coverage provided by independent telephone companies); Comments of Panhandle Telephone Cooperative, Inc., WC Docket No. 10-90, filed Jan. 9, 2013 (evidence that NBM understates coverage provided by telephone cooperative).

Conclusion

Price cap carriers commenting in this proceeding are united in their desire to have the Bureau exceed the scope of its authority by proposing rule changes and challenge procedures in the context of a limited mapping verification process. Moreover, the so-called data they submit fails to comply with the Bureau's request and illustrates the flawed nature of advancing an information collection process before the full Commission has authorized the use of the information or established any standard for evaluating that information.

Respectfully submitted,

January 24, 2013

**WIRELESS INTERNET SERVICE
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