Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90

COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

The National Cable & Telecommunications Association (NCTA)[1] submits these comments in response to the further notice of proposed rulemaking in the above-captioned matter.[2] Rather than continuing to treat the Connect America Fund (CAF) as if it were the Incumbent Local Exchange Carrier (LEC) Fund, the Commission should focus on the actual goal of universal service support: providing service to *consumers*. In distributing CAF Phase I support in 2012, the Commission limited support to a small group of incumbent LECs and, as a result, failed to achieve its stated intent for CAF, i.e., making broadband available as efficiently and effectively as possible to locations that do not have it.[3] Rather than continuing to make the same mistake by offering additional money only to the same price cap incumbent LECs as proposed in the *CAF Phase I Further Notice*, it is time for the Commission to offer broadband support to any interested provider willing to bring broadband to unserved consumers.

---

[1] NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation's largest provider of broadband service after investing $200 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 26 million customers.

[2] *Connect America Fund*, WC Docket No. 10-90, Further Notice of Proposed Rulemaking, 27 FCC Rcd 14566 (2012) (*CAF Phase I Further Notice*).

[3] *Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17673, ¶20 (2011) (*CAF Order*).

INTRODUCTION AND SUMMARY

In its 2011 reform of the universal service high-cost support mechanism, the Commission created the CAF, which was to "make broadband available to homes, businesses, and community anchor institutions in areas that do not, or would not otherwise, have broadband" by "rely[ing] on incentive-based, market-driven policies, including competitive bidding, to distribute universal service funds as efficiently and effectively as possible."[4] To do this, the Commission plans to use "a combination of a forward-looking broadband cost model and competitive bidding to efficiently support deployment of networks providing both voice and broadband."[5] While the Commission develops the cost model that will be the basis of this support (known as CAF Phase II), the Commission adopted a "simplified, interim approach" for CAF Phase I, which includes incremental support that is meant to bring broadband to areas that are completely unserved by any broadband provider.[6]

Under CAF Phase I, price cap regulated incumbent LECs received the full amount of universal service high-cost support they had received in 2011 (frozen high-cost support). In addition to this existing level of support, price cap incumbent LECs were eligible to receive an extra $300 million in 2012 (incremental CAF Phase I support).[7] The $300 million was allocated among the price cap incumbent LECs and each of them was given an opportunity to accept all or a portion of their allocation.[8] For each $775 in incremental CAF Phase I support accepted, the

---

[4] *Id.*

[5] *Id.* at 17673, ¶23.

[6] *Id.*, at 17715, 17717, ¶¶134, 137. The Commission stated that the CAF "will ultimately replace all existing high-cost support mechanisms." *Id.* At the current time, however, CAF Phase I and CAF Phase II apply only in areas served by price cap incumbent LECs. Rate-of-return incumbent LECs continue to receive high-cost support under the prior support mechanisms. *Id.* at 17712, 17738, ¶¶127, 194.

[7] *Id.* at 17712-13, ¶128.

[8] *Id.* at 17717, ¶138.

incumbent LEC is obligated to provide broadband at speeds of 4Mbps downstream and 1 Mbps upstream and with sufficient latency and usage limits to one unserved location.[9] Consequently, there are three fundamental requirements any incumbent LEC must meet to receive incremental CAF Phase I support: (1) provide 4/1 Mbps broadband, (2) to unserved locations, (3) at $775 per location.[10]

There are only thirteen total price cap incumbent LEC holding companies and three of them were not allocated any of the $300 million incremental CAF Phase I support in 2012.[11] Of the ten companies allocated incremental CAF Phase I support, only seven companies accepted some portion of their allocations.[12] As a result, only $115 million of the total $300 million incremental CAF Phase I support, or 38 percent of the funding, was accepted by these seven companies.[13]

The Commission now seeks comment on what to do with the $185 million in unclaimed incremental CAF Phase I support from 2012, and on whether to extend CAF Phase I support while it continues its efforts to adopt the cost model needed to implement CAF Phase II.[14] The Commission seeks comment on whether to provide incumbent price cap LECs with another $300

---

[9] *Id.* at 17720-22, ¶¶146-47.

[10] 47 C.F.R. § 54.312(b)(2).

[11] *Wireline Competition Bureau Announces Support Amounts for Connect America Fund Phase One Incremental Support*, WC Docket Nos. 10-90, 05-337, Public Notice, 27 FCC Rcd 4203, 4206, ¶9 (Wireline Comp. Bur. 2012).

[12] AT&T, Verizon, and Virgin Islands Telephone Company did not accept any CAF Phase I support. Letter from Robert W. Quinn, Jr., Senior Vice President Federal Regulatory and Chief Privacy Office, AT&T Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 05-337 (July 24, 2012); Letter from Kathleen Grillo, Senior Vice President Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90 and 05-337 (July 24, 2012); Letter from Seth Davis, Virgin Islands Telephone Corp. d/b/a Innovative Telephone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90 and 05-337 (July 24, 2012).

[13] *FCC Kicks Off "Connect America Fund" with Major Announcement*, FCC News Release, at 1 (July 25, 2012).

[14] *CAF Phase I Further Notice*, 27 FCC Rcd at 14567, ¶3.

million tranche of incremental CAF Phase I support, as well as the $185 million from 2012, but with significantly relaxed requirements regarding the use of the money.[15] Alternatively, the Commission asks whether it should roll the $185 million in 2012 incremental CAF Phase I support over to CAF Phase II when it is implemented, or whether it should be used to reduce the amount contributors pay into the Universal Service Fund.[16]

The Commission fails to seek comment on the correct answer, which is to make incremental CAF Phase I support available to *other providers* on the same terms offered to price cap LECs. This would help to achieve the goal of CAF Phase I – bringing broadband to consumers who do not have even a 768/200 kbps speed service – while also ensuring that funds are used efficiently and that support is disbursed in a competitively and technologically neutral manner. Failing that, however, it would be better for the Commission to roll the 2012 funding into the future CAF Phase II mechanism, where providers other than the incumbent LECs have at least a theoretical opportunity to receive support, or to use it to reduce the contribution burden on consumers.

I. THE COMMISSION SHOULD MAKE CAF PHASE I SUPPORT AVAILABLE TO OTHER PROVIDERS

As discussed above, "CAF Phase I incremental support is designed to provide an immediate boost to broadband deployment in areas that are unserved by any broadband provider."[17] Before abandoning this laudable goal and diverting support away from consumers that lack even a basic level of broadband service, the Commission should offer incremental CAF Phase I support to providers other than the incumbent LECs. To do this, the Commission should

[15] *Id.* at 14568-69, ¶9.

[16] *Id.* at 14576-77, ¶¶41-44.

[17] *CAF Order*, 26 FCC Rcd at 17717, ¶137.

allow any provider willing and able to meet the requirements of receiving incremental CAF Phase I support to bid on the areas and number of unserved locations to which they will provide broadband.[18]

The Commission already has a template for such a competitive bidding mechanism. In 2012 the Commission disbursed Mobility Fund Phase I support through a competitive bidding process open to all eligible providers. In contrast to 2012 incremental CAF Phase I support, of which only 38 percent of the available $300 million was claimed by incumbent LECs, virtually all of the $300 million in Mobility Fund Phase I support was claimed by providers and will be used to deploy mobile voice and broadband service to unserved areas.[19]

Furthermore, the Mobility Fund Phase I auction occurred quickly – the auction rules were established and published in May 2012 and the auction took place only four months later, in September 2012.[20] Given that the Mobility Fund Phase I auction could be used as a model, 2013 incremental CAF Phase I could be auctioned at least as quickly, if not sooner.

Making support available to providers other than incumbent LECs is particularly important in areas where the incumbent LEC has declined all incremental CAF Phase I funding. Among the price cap incumbent LECs that declined to accept this support in 2012 were AT&T and Verizon, the two incumbent LECs with the largest numbers of consumers located in their

---

[18] Although the Commission requires providers to be designated as eligible telecommunications carriers (ETCs) prior to bidding for support, "funding recipients may use any wireline, wireless, terrestrial, or satellite technology, or combination of technologies, to deliver service that satisfies the requirement." *Id.* at 17674, 17696, ¶¶25, 91. The Commission should make clear that ETCs may partner with other providers to bring broadband to unserved consumers.

[19] *Mobility Fund Phase I Auction Closes, Winning Bidders Announced for Auction 901*, Public Notice, 27 FCC Rcd 12031, 12032, ¶1 (Wireless Telecom. Bur. 2012) (announcing winning bids for $299,998,632 in Mobility Fund Phase I support).

[20] *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket No. 12-25, Public Notice, 27 FCC Rcd 4725 (Wireless Telecom. and Wireline Comp. Bureaus 2012).

service territories. Within the territories served by these companies there are many consumers that do not have even 768/200 kbps broadband service today.[21] Incremental CAF Phase I support was designed specifically to bring broadband service to these consumers, yet the proposals in the *CAF Phase I Further Notice* are all but certain to leave these consumers without service. Rather than giving up on reaching at least some of these unserved consumers, the Commission should allow non-incumbent LECs an opportunity to serve them with incremental CAF Phase I support.

II. THE COMMISSION SHOULD NOT PROVIDE ADDITIONAL INCREMENTAL CAF PHASE I SUPPORT TO INCUMBENT LECS

If the Commission chooses not to continue providing incremental CAF Phase I support for its originally intended purpose, i.e., to bring broadband to wholly unserved consumers, then this form of support should be eliminated and the Commission should use the $185 million left over from 2012 CAF Phase I to reduce the contribution factor or to be disbursed as part of CAF Phase II. The Commission should not adopt any of the proposals in the *CAF Phase I Further Notice* that would create a new incumbent LEC-only support mechanism for underserved areas or to build second mile facilities.

The proposal in the *CAF Phase I Further Notice* to redirect money from areas where the incumbent LEC does not accept it and give it to other incumbent LECs is particularly egregious and should be a non-starter.[22] Universal service support is meant to benefit *consumers*, not incumbent LECs. If consumers in a certain area lack basic broadband, then the Commission should design a support distribution mechanism that has a better chance of providing those

---

[21] *See, e.g.*, Gerry Smith, *Many Rural AT&T Customers Still Lack High-Speed Internet Despite Merger Promise*, Huffington Post.com (Nov. 18, 2012) http://www.huffingtonpost.com/2012/11/18/rural-att-customers-merger-lnternet_n_1914508.html.

[22] *CAF Phase I Further Notice*, 27 FCC Rcd at 14575-76, ¶38.

consumers with service. The Commission should not abandon these consumers because they happen to live in an area served by an incumbent LEC that chooses not to accept funding, and then compound this mistake by redistributing that support to incumbent LECs in other areas. For example, if AT&T is not interested in accepting support in exchange for providing broadband to unserved customers, giving that money to Windstream will do absolutely nothing to help those customers. Instead, as described in the previous section, the way to help those unserved customers would be to allow other providers, including cable operators, wireless providers and satellite companies, the opportunity to receive support for serving those areas.

The Commission should not allow incremental CAF Phase I support to be used in "underserved" areas. Specifically, the Commission seeks comment on providing incumbent LECs with incremental CAF Phase I support to serve locations that may have broadband, but at speeds slower than 4/1 Mbps.[23] As the Commission noted, these are the locations that will receive funding through CAF Phase II.[24] In CAF Phase II, however, the Commission adopted a "state-level commitment" requirement for incumbent LECs, requiring them to serve all eligible census blocks within their service areas in a state to receive support.[25] As its rationale for adopting this incumbent LEC state-level commitment the Commission stated:

> Requiring carriers to accept or decline a commitment for all eligible locations in their service territory in a state should reduce the chances that eligible locations that may be less economically attractive to serve, even with CAF support, get bypassed, and increase the chance such areas get served along with eligible locations that are more economically attractive.[26]

---

[23] *Id.* at 14569, ¶11.

[24] *Id.* at 14568, ¶9.

[25] *CAF Order*, 26 FCC Rcd at 17729, ¶171.

[26] *Id.* at 17730, ¶173.

Given this, the Commission should not now create a new interim funding mechanism (CAF Phase 1 ½) that will allow price cap incumbent LECs to serve only the most economically attractive locations with speeds below 4/1 Mbps on an exclusive basis. Doing so would harm consumers and thwart the purpose of the state-level commitment in CAF Phase II, because if price cap incumbent LECs receive support now to serve the least costly locations, they are less likely to be willing to serve the remaining consumers in higher cost locations in CAF Phase II. Providing these incumbent LECs with exclusive funding to serve locations with speeds below 4/1 Mbps will also decrease the number of locations that will be available for competitive providers to offer service in a more efficient and cost-effective manner in CAF Phase II. This is precisely the outcome the Commission sought to avoid in adopting the incumbent LEC state level commitment in the *CAF Order*.[27]

The Commission should also decline to provide incumbent LECs with thousands of dollars per unserved location without giving other providers any opportunity to serve those customers at a lower level of support. In the *CAF Phase I Further Notice* the Commission seeks comment on Windstream's proposal to build fiber with universal service support of $35,784 per mile and an estimated ten unserved locations per mile.[28] This equates to nearly $3600 per unserved location, rather than the more fiscally responsible $775 per unserved location chosen by the Commission as the amount of support available in incremental CAF Phase I support. Furthermore, Windstream's proposal would allow incumbent LECs to receive universal service support to deploy second mile fiber facilities that could serve areas that are already served by an unsubsidized competitor. The Commission should reject this proposal as inconsistent with its

---

[27] *Id.* (declining to adopt incumbent LEC proposals that "would allow the incumbent to cherry pick the most attractive areas within its service territory, leaving the least desirable areas for a competitive process").

[28] *CAF Phase I Further Notice*, 27 FCC Rcd at 14571, ¶¶19-20.

universal service reform principles, which condition "all broadband buildout obligations for fixed broadband . . . on not spending the funds to serve customers in areas already served by an 'unsubsidized competitor.'"[29]

The Commission should also reject proposals to adjust incumbent LEC support levels based on the existing high-cost support cost model.[30] Such an approach would be burdensome and complex for the Commission to administer, in contrast with the quick and simple approach the Commission originally adopted for incremental CAF Phase I support. Rather than adopting such a difficult process based on the existing flawed cost model, the Commission should focus its efforts on creating the new up-to-date cost model that will allow support to be disbursed under CAF Phase II.

Finally, the Commission should adopt its proposal to enact a challenge process to allow providers to update information found on the National Broadband Map. This is especially important given the lag in time between the submission of data and the publication and use of the map. In that timeframe providers may have deployed broadband to additional areas, so the Commission should take steps to ensure that these areas are appropriately accounted for and that support is not disbursed in these areas. The Commission should ensure, however, that entities attempting to claim that the National Broadband Map overstates broadband availability provide sufficient evidence to support such a claim. Vague accusations without concrete proof should not be entertained.

---

[29] *CAF Order*, 26 FCC Rcd at 17701, ¶103.

[30] *CAF Phase I Further Notice*, 27 FCC Rcd at 14573-74, ¶¶29-34.

CONCLUSION

As discussed above, the Commission should retain the goal of incremental CAF Phase I support and allow non-incumbent LECs an opportunity to use this support to bring broadband service to consumers that lack even the most basic service today. Such an approach would serve the public interest as well as being competitively neutral and fiscally responsible. If the Commission does not make the support available on a competitively neutral basis, it should not create yet another exclusive incumbent LEC funding source, but should roll remaining 2012 incremental CAF Phase I support into the CAF Phase II support mechanism or use it to reduce the contribution factor.

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris
Jennifer K. McKee
National Cable & Telecommunications Association
25 Massachusetts Avenue, NW – Suite 100
Washington, DC 20001-1431

January 28, 2013