

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Connect America Fund

WC Docket No. 10-90

REPLY COMMENTS OF THE USA COALITION

The Universal Service for America Coalition (“USA Coalition”), by its attorneys, respectfully replies to comments submitted in response to the Federal Communications Commission’s (“FCC” or “Commission”) Further Notice of Proposed Rulemaking regarding the allocation of unclaimed Connect America Fund (“CAF”) Phase I support.¹ The USA Coalition joins those who call upon the FCC to reconsider its ill-advised proposal to double-down on an incremental support mechanism that: (i) is an unabashed departure from the FCC’s long-held competitive and technology neutral principles; and (ii) has demonstrably failed in its goal of promoting broadband deployment.

Rather than racing headlong down a path that was charted well before the shortcomings of the CAF Phase I program became apparent, the FCC should pause to consider its options. Specifically, instead of permitting those who declined CAF Phase I support another bite at the apple, the Commission should instead make the declined CAF Phase I funding broadly available to any eligible telecommunications carrier willing to provide service in unserved areas. The FCC should provide this support without regard for ILEC boundaries, underlying technology, or other artificial caps or constructs that impede broadband deployment.

I. COMMENTERS AGREE THAT THE FNPRM’S ONGOING PREFERENCE FOR PRICE CAP ILECS IS INHERENTLY NON-NEUTRAL

Commenting parties share a common concern that the basic structure of the incremental support program – available only to price cap ILECs – was, and remains, an unnecessary

¹ *Connect America Fund*, Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 12-138 (rel. Nov. 19, 2012) (“*FNPRM*”).

departure from the Commission’s long-held principles of competitive and technological neutrality.² The *FNPRM*’s proposals represent a continuation of this misguided policy; an act of “bending over backwards” to remain consistent with the FCC’s initial decision to grant preferential treatment to price cap ILECs.³ Yet, despite the occasional half-hearted argument to the contrary,⁴ these acts of regulatory gymnastics cannot be squared with the FCC’s long-standing policy, and consistent judicial interpretation, that all USF support mechanisms *must* be both competitively and technologically neutral.⁵

As argued by ViaSat, and echoed by others in their comments, “a properly designed CAF program would advance the principle of competitive neutrality that was central to the Commission’s universal service policy for decades prior to the *USF/ICC Transformation Order*.”⁶ As pointed out by many commenters, the solution to this ongoing regulatory infirmity is to expand eligibility for the unclaimed (as well as future) incremental support funds so that they are available without preference to provider technology or competitive status.⁷ Redirecting this support is not only good policy, but it is also the only option truly available to the FCC consistent with the mandates of the Act.

Expanding funding eligibility to a broader set of providers would enable the Commission to steer clear of well-founded statutory objections and, importantly, would restore the possibility that these funds will be used for their originally intended purpose: to efficiently expand

² Competitive Carriers Association (“CCA”) Comments at 1; Mediacom Communications (“Mediacom”) Comments at 2; U.S. Cellular Comments at 17; ViaSat Comments at 1. *Accord* Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776 ¶ 47 (1997) (USF rules should “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another.”).

³ CCA Comments at 5.

⁴ *See* US Telecom Comments at 2, fn. 4. *Cf.* ViaSat Comments at 8.

⁵ US Cellular Comments at 28.

⁶ ViaSat Comments at 7.

⁷ US Cellular Comments at 29; CCA Comments at 6; Mediacom Comments at 2; ViaSat Comments at 9.

broadband coverage into unserved areas, while simultaneously promoting competition.⁸ Thus, the USA Coalition joins those who call upon the FCC to reverse course on the *FNPRM*'s proposal to limit this funding solely to ILECs and to instead make the support broadly available to all willing to deploy broadband into unserved areas.⁹ Doing so in this instance would also be a welcome first step towards rectifying the artificial competitive distinctions that were made between wireline and wireless services in the *USF/ICC Transformation Order* and remedying the inadequate support made available to wireless carriers under Phase I of the Mobility Fund, 100% of which is now committed to wireless broadband deployment projects around the country.¹⁰

II. THE RECORD SHOWS THAT THE CAF PHASE I MECHANISM FAILED TO DELIVER ITS PROMISED RESULTS

As the USA Coalition argued prior to the release of the *FNPRM* and reiterates here, “the tepid interest in the CAF highlights the need to repurpose the \$185 million in CAF Phase I support declined by the price cap ILECs.”¹¹ Numerous other parties noted the radically different demand for funding under CAF Phase I and the Mobility Fund Phase I, with many commenters pointing to facts that demonstrate the lackluster interest in the price cap incremental support program when compared to the FCC’s experience with the Mobility Fund. To quote ViaSat, “the results speak for themselves.”¹²

The disappointing results of the CAF Phase I cannot be ignored. CAF Phase I eligible carriers accepted less than 40 percent – only \$115 million of the available \$300 million

⁸ US Cellular Comments at 29; ViaSat Comments at 7.

⁹ CCA Comments at 3; US Cellular Comments at 16.

¹⁰ CCA Comments at 4; US Cellular Comments at 29. *Accord* USA Coalition Reply Comments, WC Docket No. 10-90 (filed Jan. 7, 2013) (“USA Coalition Mobility Fund Phase II Reply Comments”).

¹¹ Letter from Todd D. Daubert, Counsel for the USA Coalition to Chairman Genachowski, WC Docket No. 10-90 *et al.* (Nov. 15, 2012) (“USA Coalition CAF Letter”).

¹² ViaSat Comments at 2.

designated – of the high-cost support made available to them under CAF Phase I.¹³ Six carriers, including many of the largest in the country, declined all or a substantial portion of CAF Phase I funding allotted to them.¹⁴ AT&T declined all of the nearly \$50 million in support available to it; CenturyLink declined \$54 million of approximately \$90 million; FairPoint Communications declined more than half of the \$5 million available to it; Virgin Islands Telephone declined all the support it was eligible to receive; Verizon likewise declined all of the \$19.7 million available to it; and Windstream declined \$59.7 out of the \$60.4 million available.¹⁵ ACS initially accepted its allotted \$4 million but has since explained that it would not be able to use all of its funding under the current rules.¹⁶ Just days ago, Consolidated Communications notified the FCC of its decision to return all of the CAF Phase I incremental support it had received to date.¹⁷

As described in detail by the American Cable Association, the carriers eligible for CAF Phase I incremental funding “have provided myriad reasons for rejecting support,”¹⁸ putting to rest the claim that the solution to the program’s woes is to simply provide more money to eligible carriers, with fewer attached requirements, in the hopes that the eligible carriers will reconsider their lack of enthusiasm for the support.

In “stark contrast” to the tepid interest in the incremental support program, the FCC’s experience with the Mobility Fund demonstrates that carriers are willing to compete for support

¹³ *FNRPM* at ¶ 2; *accord* ViaSat Comments at 5.

¹⁴ CCA Comments at 3.

¹⁵ *Id.*

¹⁶ *See* Letter from Richard R. Cameron, ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 (Aug. 28, 2012).

¹⁷ *See* Letter from Russell Blau, Counsel to Consolidated Communications, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 (Jan. 31, 2013).

¹⁸ American Cable Association Comments at i. *See, e.g.*, Windstream Election and Petition for Waiver, WC Docket No. 10-90 (July 24, 2012); CenturyLink Petition for Waiver, WC Docket No. 10-90 (filed June 26, 2012); FairPoint Communications, Inc. Petition for Waiver WC Docket 10-90 (filed Sept. 10, 2012) Petition for Waiver of the Commission’s Rules of ACS Companies. WC Docket No. 10-90 (filed Sept. 26, 2012).

in order to bring broadband service to currently unserved areas. In fact, unlike the CAF Phase I program, the Mobility Fund was *oversubscribed*, with approximately one hundred valid bids declined.¹⁹ Indeed, as the USA Coalition and others have pointed out in their prior comments, the Mobility Fund – either Phase I or Phase II – remains under-funded.²⁰ And while there are numerous shortcomings to the Mobility Fund that must be addressed (not the least of which is the creation of entrenched wireless monopolies in rural markets), it has thus far proven to be far more effective at distributing support than the CAF Phase I mechanism. Fortunately, as pointed out by US Cellular, “the business choices made by incumbent price cap carriers regarding CAF Phase I support have presented the Commission with an opportunity: It can begin to correct its flawed budget decisions by enabling mobile broadband providers to utilize unclaimed Phase I support to bring mobile broadband to consumers in unserved areas.”²¹ The Commission should not allow this opportunity to pass by blindly adhering to policies that failed to produce their intended results.

The USA Coalition therefore encourages the Commission to examine its experiences over the last eighteen months in light of its broadband deployment objectives and make the rational decision to make available the incremental CAF Phase I funding to any eligible telecommunications carrier willing to provide service in unserved areas. The FCC should provide this support without regard for ILEC boundaries, underlying provider technology, funding caps, or other artificial constructs that would arbitrarily limit the amount of funding available to eligible providers. In this manner, the FCC would encourage the efficient deployment of broadband services to those customers who live in unserved areas, while

¹⁹ See Auction 901 Results.

²⁰ USA Coalition Mobility Fund Phase II Reply Comments at 1-2

²¹ US Cellular Comments at 30.

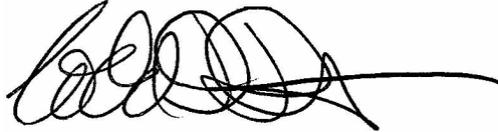
remaining faithful to the Commission's long-standing commitment to competitive and technological neutrality.

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CONCLUSION

The USA Coalition urges the Commission to redirect the incremental support earmarked for price cap ILECs towards competitively and technologically neutral mechanisms that have proven results and better fulfill the Commission's broadband deployment objectives.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Todd D. Daubert", with a long horizontal flourish extending to the right.

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