

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

In the Matter of  
  
Connect America Fund

WC Docket No. 10-90

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**REPLY COMMENTS OF MEDIACOM COMMUNICATIONS CORPORATION  
ON THE FURTHER NOTICE OF PROPOSED RULEMAKING  
FOR PHASE I INCREMENTAL SUPPORT OF THE CONNECT AMERICA FUND**

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Mediacom Communications Corporation (“Mediacom”), through its undersigned counsel, respectfully submits this reply to comments filed in response to the Federal Communications Commission’s (the “Commission’s”) Further Notice of Proposed Rulemaking (“FNPRM”) on modifications to the Phase I incremental support rules for the Connect America Fund (“CAF”).<sup>1</sup> Mediacom appreciates this opportunity to provide its views on the Commission’s proposals.

**INTRODUCTION AND SUMMARY**

Mediacom’s January 28, 2013 comments proposed an obvious means through which the Commission could efficiently achieve the goal of immediately expanding access the broadband services to a greater number of unserved areas: a market-based, competitively neutral bidding or “reverse auction” process open to all carriers who are willing to provide service for

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<sup>1</sup> See *Connect America Fund*, WC Docket No. 10-90, Further Notice of Proposed Rulemaking, FCC 12-138, 27 FCC Rcd 14566 (rel. Nov. 19, 2012) (“FNPRM”).

allocating incremental CAF Phase I support.<sup>2</sup> Mediacom is pleased that the record reveals widespread support for this proposal. As Mediacom and others have explained, a competitive reverse auction bidding process prevents unnecessary and wasteful spending, and encourages the most effective and efficient use of public resources to expand wireline broadband service to unserved locations.<sup>3</sup>

In the event the Commission declines to adopt this obvious choice, Mediacom urged the Commission to examine rule modifications supported by price cap local exchange carriers (“LECs”) with caution.<sup>4</sup> In particular, Mediacom asserted that there was scant evidence of the problem the Commission was seeking to cure with its new rule proposals.<sup>5</sup> This remains the case after the initial round of comments. Mediacom also asserted that any reasoned consideration of additional Phase I incremental support distributions would require careful assessment of the release of \$750 million of “frozen high-cost support” to price cap LECs for broadband deployment in 2013.<sup>6</sup> Further, Mediacom proposed that any change to Phase I funding rules should require that “unserved” locations, as initially defined, be served first and be governed by improved accountability requirements that, among other things, require funding recipients to reveal the locations to which they have built broadband using the distributed funds.<sup>7</sup>

The price cap LECs, as represented by the United States Telecom Association and the Independent Telephone & Telecommunications Alliance (“USTA/ITTA”), provide little more than rhetoric in support their relatively unrestrained demands for more money under more

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<sup>2</sup> Comments of Mediacom Communications Corporation, at 3, *In Re Connect America Fund*, WC Docket No. 10-90 (filed Jan. 28, 2013) (“Mediacom Comments”).

<sup>3</sup> *Id.* at 4-7.

<sup>4</sup> *Id.* at 12-14, 16-18.

<sup>5</sup> *Id.* at 13.

<sup>6</sup> *Id.* at 14; *Connect America Fund, et al.*, 26 FCC Rcd 17663, ¶ 150 (2011), *pets. for review pending sub nom. In re FCC 11-161, No. 11-9900* (10<sup>th</sup> Cir. filed Dec. 18, 2011) (“*Connect America Fund Order*”).

<sup>7</sup> Mediacom Comments at 16, 17-18.

lenient standards.<sup>8</sup> They fail to put forth any meaningful data in support of the proposed rule changes that seem designed (or at least resigned) to send more money to price cap LECs in ways that have no reasonable hope of best serving the goals the Commission identified for Phase I support, while having the very real possibility of missing opportunities to leverage private investments in rural broadband and the near certainty of undermining and deterring private investments in broadband infrastructure.

Finally, many of the comments support adoption of a challenge process to ensure that the National Broadband Map (“NBM”) is accurate. Mediacom agrees that a challenge procedure with reasonable safeguards will assist the Commission in ensuring that CAF distributions are properly directed to unserved areas.

#### **I. The Commission Should Adopt a Competitively Neutral Reverse Auction Bidding Process Open to All Carriers For Distribution of Incremental CAF Phase I Support**

The record contains widespread support for adoption of a competitively neutral reverse auction process to allocate incremental Phase I support.<sup>9</sup> Multiple commenters echoed Mediacom’s assertion that market-disciplined competitive bidding is the best way for the Commission to attain its stated goal of “an immediate boost to broadband deployment in areas that are unserved by any broadband provider.”<sup>10</sup> Mediacom urges the Commission to adopt a market-based, competitively neutral bidding process for allocations of any additional CAF Phase I support.

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<sup>8</sup> See generally, Comments of the United States Telecom Association, The Independent Telephone & Telecommunications Alliance, and the ABC Coalition, *In Re Connect America Fund*, WC Docket No. 10-90 (filed Jan. 28, 2013) (“USTA / ITTA Comments”).

<sup>9</sup> E.g., American Cable Association’s Comments on the Further Notice of Proposed Rulemaking for Phase I Incremental Support of the Connect America Fund, at 15 n. 39, 18, 20, *In Re Connect America Fund*, WC Docket No. 10-90 (filed Jan. 28, 2013) (“ACA Comments”); Comments of Competitive Carriers Association, at 1, 6, *In Re Connect America Fund*, WC Docket No. 10-90 (filed Jan. 28, 2013) (“CCA Comments”); Comments of the National Cable & Telecommunications Association, at 4-6, *In Re Connect America Fund*, WC Docket No. 10-90 (filed Jan. 28, 2013) (“NCTA Comments”).

<sup>10</sup> *Connect America Fund Order*, ¶ 137.

**A. A Reverse Auction Open To Any Bidder Is the Only Rational Distribution Method**

Many commenters agree with Mediacom’s position that the Commission should not give exclusive or even preferential treatment to price cap LECs in CAF support allocation.<sup>11</sup> The results of the initial Phase I support round demonstrate that allocating support to price cap LECs alone is not the most efficient use of resources, and does not effectively further the Commission’s goals stated in the *Connect America Fund Order* to expand broadband services into as many unserved areas as possible, as quickly as possible.<sup>12</sup>

While obvious to the Commission in other contexts, several commenters lamented the Commission’s seeming intransigence in refusing to embrace fully – or in this context, in any way – a competitively neutral distribution method featuring competitive bidding.<sup>13</sup> Notwithstanding the success of the Mobility Fund auction and private competitive bidding for cell tower fiber builds throughout rural America, the Commission inexplicably proposes to tinker with a flawed and inferior model rather than adopt one that is obviously superior.

Indeed, many commenters share Mediacom’s dismay with the FNPRM’s proposal to extend CAF Phase I for another year and another \$300 million or more of wasteful distributions for which only price cap LECs are eligible. For example, the Competitive Carriers Association (“CCA”) “urges the Commission not to devote any additional funding to a

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<sup>11</sup> *E.g.*, ACA Comments at 19-20; CCA Comments at 1-2, 6; Comments of the Wireless Internet Service Providers Association, at 3-4, *In Re Connect America Fund*, WC Docket No. 10-90 (filed Jan. 28, 2013) (“WISPA Comments”); Comments of the Southeast Association of Telecommunications Officers and Advisors in Response to Further Notice of Proposed Rulemaking, at 6, *In Re Connect America Fund*, WC Docket No. 10-90, (filed Jan. 28, 2013) (“SEATOA Comments”).

<sup>12</sup> NCTA Comments at 4-6; CCA Comments at 1, 6.

<sup>13</sup> *Compare Connect America Fund Order*, ¶ 162 (“We conclude that the Connect America Fund should ultimately rely on market-based mechanisms, such as competitive bidding, to ensure the most efficient and effective use of public resources”) *with Connect America Fund Order*, ¶ 151 (“although the simplified interim mechanism is imperfect in some respects, it will allow us to begin providing additional support to price cap carriers on a more efficient basis, while spurring immediate and material broadband deployment pending implementation of CAF competitive bidding- and model-based support for price cap areas”).

mechanism that is exclusively or preferentially available to ILECs.”<sup>14</sup> The CCA agrees with Mediacom that funds should be distributed in a competitively neutral way.<sup>15</sup> Similarly, the Wireless Internet Service Providers Association (“WISPA”) notes that a number of carriers declined all or a portion of their funding allocation, and a number of those have sought waivers.<sup>16</sup> WISPA argues for limits to price cap LECs because “[t]he intended recipients have demonstrated that they cannot use the excess funds *under the rules they themselves proposed*. The solution is not to give them another bite at the apple.”<sup>17</sup> The Massachusetts Department of Telecommunications and Cable (“MDTC”) argues that “reverse auctions can be effective tools for rapid deployment of advanced services and an efficient use of limited funds.”<sup>18</sup> And, the Southeast Association of Telecommunications Officers and Advisors (“SEATOA”) argues that “**any entity**, public or private, or nonprofit, who wants to serve these unserved broadband regions should be allowed to apply for CAF funds, especially when we have now seen numerous price-cap carriers turn their backs on this no-interest federal funding.”<sup>19</sup>

Finally, Mediacom agrees with those commenters who submitted that reverse auctions are practical and can indeed be done in time to distribute a 2013 round of CAF Phase I funding. As CCA explained, the Mobility Fund went from concept to final auction in a matter of months.<sup>20</sup> Mediacom believes that any further Phase I funding should be distributed via a competitive reverse auction process open to all carriers. Such opening bidding would impose

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<sup>14</sup> CCA Comments at 1.

<sup>15</sup> *Id.* at 1, 6.

<sup>16</sup> WISPA Comments at 2 (WISPA argues that the additional support should be transferred to the Remote Area Funds instead of provided to price cap LECs). Mediacom disagrees with this WISPA proposal.

<sup>17</sup> WISPA Comments at 3-4 (emphasis in original).

<sup>18</sup> Comments of the Massachusetts Department of Telecommunications and Cable, *In Re Connect America Fund*, WC Docket No. 10-90, at 4 (filed Jan. 28, 2013) (“MTDC Comments”).

<sup>19</sup> SEATOA Comments at 6 (emphasis in original).

<sup>20</sup> NCTA Comments at 5; *see also* CCA Comments at 4, *citing Mobility Fund Phase I Auction Closes, Winning Bidders Announced for Auction 901*, Public Notice 27 FCC Rcd 12031, ¶ 1 (Oct. 3, 2012).

market efficiencies on the allocation of support and further the Commission's goals to quickly deploy broadband in areas where consumers have no access.<sup>21</sup>

**B. If The Commission Declines To Adopt A Competitively Neutral Reverse Auction Process, It Should Return The Unused CAF Phase I Funds**

The FNPRM asks whether incremental CAF Phase I support should be transferred to the CAF Phase II.<sup>22</sup> Many commenters favor this approach if the Commission declines to adopt a competitively neutral bidding process to allocate incremental Phase I support.<sup>23</sup> While this position has some merit because Phase II includes at least the possibility of competitive bidding after price cap LECs' right of first refusal, the stronger policy choice is for the Commission to return the unclaimed funds that were designated for the limited interim purpose identified for Phase I funding, thereby reducing contribution requirements which in large part are passed through to consumers.<sup>24</sup>

**II. Price Cap LECs Provide No Rationale For Modifying CAF Phase I Support Rules**

The record reveals ample support for the cautious approach to rule modification advocated by Mediacom in its opening comments. While Mediacom urges the Commission to consider practical changes designed to bring broadband to unserved consumers,<sup>25</sup> the comments of USTA/ITTA appear more focused on maximizing receipt of CAF subsidies.

For example, USTA and ITTA argue that the Commission should allocate incremental CAF Phase I support on a "per mile" basis as an alternative to the \$775 per location

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<sup>21</sup> The USTA/ITTA argues that price cap LECs are "uniquely positioned" to deploy in their service area. USTA/ITTA Comments at 3. Even if this were true (which it is not), price cap LECs would then be able to take advantage of this to lower the subsidy required for locations in their service area by submitting lower bid amounts.

<sup>22</sup> FNPRM, ¶ 41.

<sup>23</sup> ACA Comments, at 19-20; CCA Comments, at 6; Comments of the Massachusetts Broadband Institute, at 2, *In Re Connect America Fund*, WC Docket No. 10-90 (filed Jan. 28, 2013) ("MBI Comments").

<sup>24</sup> Mediacom Comments at 15-16; NCTA Comments at 6.

<sup>25</sup> *See, e.g.*, Mediacom Comments at 16.

subsidy.<sup>26</sup> Under the USTA / ITTA scheme, a carrier could opt to forego the \$775 amount and instead receive a specified amount of support per mile of fiber deployed, and build second-mile fiber running from a carrier's central office to, or at least toward, an unserved area, even if the second-mile fiber traverses areas served by an unsubsidized competitor and even to areas already received CAF Phase I support.<sup>27</sup>

Mediacom was joined by multiple commenters in explaining that there are numerous problems with the USTA / ITTA proposal. First, the fiber mile funding approach would result in a windfall to the designated carrier at the expense of the fund and unsubsidized competitors.<sup>28</sup> Notably, the price cap LECs failed to provide any data regarding cost variances on fiber builds.<sup>29</sup> Moreover, they simply ignore the Commission's request for comment on matching support requirements.<sup>30</sup>

Second, second-mile subsidies would allow price cap LECs to use CAF support to compete with unsubsidized competitors in areas that are already served.<sup>31</sup> USTA and ITTA appear to acknowledge this when they state that carriers would not be able to satisfy "a requirement to connect to a minimum number of unserved locations per mile" for second mile fiber support, and could at best certify that the second mile fiber support is merely used on routes "intended to maximize benefits to unserved locations."<sup>32</sup> The Commission should reject such vague commitments and demand greater transparency and accountability. Moreover, the

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<sup>26</sup> USTA/ITTA Comments at 21-22, n.50, 24.

<sup>27</sup> *Id.* at 21-22, 24, 25.

<sup>28</sup> *E.g.*, Mediacom Comments at 11; ACA Comments at 13-14.

<sup>29</sup> *See* FNPRM, ¶ 27.

<sup>30</sup> *See* FNPRM, ¶ 27.

<sup>31</sup> *E.g.*, Mediacom Comments at 12; ACA Comments at 18-19.

<sup>32</sup> USTA/ITTA Comments at 23, 24.

Commission should flatly prohibit the use of subsidies in any area served by an unsubsidized competitor.<sup>33</sup>

Third, USTA and ITTA ignore the impact of the potential for frozen legacy support. As Mediacom and ACA noted, price cap LECs will be required to use their frozen legacy support “for building operating broadband-capable networks” beginning this year.<sup>34</sup> Given the fact that \$750 million is mandated to be spent by price cap LECs, any modification of the CAF Phase I program rules must ensure that allocated support for an unserved area is not duplicative.<sup>35</sup>

### **III. The Commission Should Adopt a National Broadband Map Challenge Process**

Mediacom agrees with those commenters that support adoption of a challenge process to ensure that the NBM is accurate.<sup>36</sup> As ACA and NCTA suggest, the Commission should permit any carrier to challenge the designation of any census block – whether designated as served or unserved – upon a showing of sufficient evidence to support the carrier’s claim.<sup>37</sup>

The price cap LECs generally endorse a challenge process, but with a few self-serving tweaks which must be rejected.<sup>38</sup> First, as discussed in Mediacom’s initial comments on the FNPRM, the Commission should consider expanding the eligible areas in limited instances to include those without 4/1 Mbps service so long as areas without 768/200 kbps service are first served,<sup>39</sup> but it would be inappropriate to use 6/1.5 Mbps areas as a proxy, as suggested by the

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<sup>33</sup> Mediacom Comments at 12.

<sup>34</sup> Mediacom Comments at 14-15; ACA Comments at 9, citing *Connect America Fund Order*, ¶ 149.

<sup>35</sup> E.g., Mediacom Comments at 15; ACA Comments at 9, 23.

<sup>36</sup> NCTA Comments at 9.

<sup>37</sup> ACA Comments at 6 n. 19, see also *ACA’s Reply Comments of the American Cable Association on Public Notices DA 12-1961 and DA 12-2001, Updating and Correcting the List of Unserved Areas on the National Broadband Map for Connect America Phase I Incremental Support*, WC Docket No. 10-90 (filed Jan. 24, 2013); NCTA Comments at 9.

<sup>38</sup> USTA/ITTA Comments at 15-21.

<sup>39</sup> Mediacom Comments at 16.

price cap LECs.<sup>40</sup> Second, to ensure greater accountability, price cap LECs should provide the Commission with a list of the specific unserved locations - and not just census blocks - where they intend to use support to deploy broadband *prior to* receiving support. Third, as part of the challenge process, the Bureau should vet the evidence filed by the challenging party to ensure it is sufficiently probative, *prior to* seeking information from a provider claiming that an area has a served or unserved status different from that shown on the NBM. This would avoid prematurely shifting burdens of proof to respondents. The Commission also should provide respondents with adequate time to collect information necessary for rebuttal. As the present round of NBM challenges reveals, the process of reviewing designations and responding to challenges takes weeks, not days. Finally, Mediacom agrees with ACA's proposal that the NBM should be presumed accurate unless the challenging party provides sufficient evidence that is un rebutted by a competitive provider.<sup>41</sup>

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<sup>40</sup> USTA/ITTA Comments at 20.

<sup>41</sup> *ACA's Reply Comments of the American Cable Association on Public Notices DA 12-1961 and DA 12-2001, Updating and Correcting the List of Unserved Areas on the National Broadband Map for Connect America Phase I Incremental Support*, at 5, WC Docket No. 10-90 (filed Jan. 24, 2013).

**CONCLUSION**

For all of the forgoing reasons, Mediacom respectfully requests that the Commission proceed in a manner consistent with the reply comments set forth herein.

Respectfully submitted,

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