

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

Procedures Relating to Areas Eligible for)
Funding and Election to Make a Statewide) WC Docket No. 10-90
Commitment in Phase II of the Connect)
America Fund)

**COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (“USTelecom”)¹ files these comments pursuant to the Wireline Competition Bureau’s (“Bureau”) Public Notice (“*Notice*”)² seeking comment on aspects of the implementation of Phase II of the Connect America Fund (“CAF Phase II”). The Bureau proposes procedures to provide an opportunity for parties to challenge whether census blocks that are identified as eligible to receive CAF Phase II support are in fact unserved by an unsubsidized competitor. It also seeks comment on procedures relating to the election of price cap carriers to accept CAF Phase II support in exchange for making a statewide commitment.

I. Introduction

USTelecom commends the Bureau for focusing now on these issues, which are of vital importance to the success of high-cost universal service reform and the achievement of the

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² See Public Notice, Wireline Competition Bureau Seeks Comment on Procedures Relating to Areas Eligible for Funding and Election to Make a Statewide Commitment in Phase II of the Connect America Fund, WC Docket No. 10-90, DA 12-2075, (rel. Dec. 27, 2012).

Commission's broadband deployment goals.³ As the Commission has noted, more than 80 percent of Americans who lack access to fixed broadband live in areas served by price cap carriers.⁴ Proper identification of these areas and others that are unserved by unsubsidized competitors and require ongoing high-cost support is crucial to the efficient distribution of limited funding and the service of consumers.

To that end, USTelecom herein proposes procedures, including a meaningful challenge process, by which the Commission may establish a list of areas that should be eligible for CAF Phase II support. These procedures are developed with two goals in mind—ensuring the highest possible level of accuracy while striving for an expeditious resolution that allows for the speedy implementation of CAF Phase II. Moreover, given that the rules developed here will have a significant long-term impact on the state of broadband deployment in price cap areas, we are guided by the principle that these procedures should err on the side of being inclusive rather than potentially leaving unserved areas with no hope for relief in the foreseeable future. Erring on the side of inclusion does not affect the budget for CAF Phase II, which is set at \$1.8 billion per year;⁵ it merely changes where the upper and lower cost benchmarks must be placed to meet that budget.

Prior to implementing any identification and challenge procedures, however, the Commission must clarify its requirements for broadband service that, if provided in an area by an unsubsidized competitor, would exclude that area from CAF Phase II eligibility. In particular, the Commission must establish clear standards for speed, latency, usage and voice capability that

³ See *Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, para. 17 (“*USF/ICC Transformation Order*”).

⁴ See *Connect America Fund*, Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 12-138 (rel. Nov. 19, 2012) at para. 1; *USF/ICC Transformation Order* at para. 127.

⁵ See *USF/ICC Transformation Order* at para. 25.

should correspond to the service requirements imposed on CAF Phase II recipients. The Commission should exclude from CAF Phase II eligibility only those areas where an unsubsidized provider's service meets all of these quality standards simultaneously with a single service. Otherwise there is a heightened risk that many high-cost, non-Remote Areas Fund-eligible areas also would not be eligible for CAF Phase II support, leaving such areas without a single fixed terrestrial broadband provider at the appropriate level of service.

Completing action on open issues, such as those described in the *Notice*, is essential so that the Commission will be prepared to offer price cap carriers CAF Phase II support in exchange for the statewide commitment as soon as the Bureau finalizes its Connect America Cost Model.⁶ Similarly, if a price cap carrier declines that offer, the Commission should be prepared to commence the competitive bidding process immediately thereafter. Consequently, in addition to resolving the issues described in these comments, USTelecom urges the Commission to obtain further comment as necessary in order to issue CAF Phase II rules by the end of the year establishing, among other things, all of the service obligations associated with CAF Phase II support (e.g., broadband testing requirements, the percentage of locations where the recipient must offer broadband at speeds of 6 Mbps downstream/1.5 Mbps upstream), the competitive bidding process, and procedures to relieve price cap carriers of their eligible telecommunications carrier ("ETC") obligations and designations in those areas where some other provider is selected as the CAF Phase II support recipient.

⁶ See, e.g., *USF/ICC Transformation Order* at para. 156 (explaining that the Commission will offer each price cap carrier model-derived support amounts in exchange for the carrier's commitment to serve all eligible locations in its service territory in a state and if the price cap carrier declines the offer, the Commission will use a competitive bidding mechanism to award support).

II. The Bureau Should Establish the Following Process to Determine Unserved Census Blocks

Establishing an accurate list of census blocks that should be eligible for CAF Phase II support is essential for the operation of the Connect America Cost Model, the ILEC statewide commitment process, and the auctions that potentially succeed that commitment process. Census blocks that are excluded from support because of the alleged or actual presence of an unsubsidized provider will forego universal service for five years or more. To its credit, the Bureau clearly is building on lessons learned from last year's Mobility Fund Phase I auction proceeding. In that proceeding, prospective challengers were left to guess what information Commission staff would find sufficient to conclude that a particular census block is currently served by 3G or 4G service, which should have rendered the block ineligible for Mobility Fund Phase I support.⁷ Wireless providers submitted lists of tens of thousands of served census blocks, all of which staff rejected. Staff's refusal to consider these providers' lists of served census blocks resulted in the Commission awarding millions in Mobility Fund Phase I support to areas already served by 3G or better wireless service.⁸

While the Bureau's *Notice* offers helpful guidance to would-be challengers in terms of the information necessary to demonstrate the accuracy of the Bureau's initial classification of a census block as served or unserved, the proposed challenge process itself sacrifices accuracy in

⁷ The Wireless Bureau's Public Notice merely stated that if a party disputes the served nature of a census block that the Commission initially lists as "eligible," it should identify the blocks and "provide supporting documentation." *Mobility Fund Phase I Auction Scheduled for September 27, 2012, Comment Sought on Competitive Bidding Procedures for Auction 901 and Certain Program Requirements*, AU Docket No. 12-25, Public Notice, DA 12-121, at ¶ 19 (rel. Feb. 2, 2012).

⁸ See, e.g., AT&T Comments, WC Docket No. 10-90, WT Docket No. 10-208, at 6-9 & Attachment.

favor of speed, a failing of the Mobility Fund Phase I challenge process. USTelecom proposes an alternative challenge process for the Commission's consideration that would enlist the assistance of state mapping authorities to evaluate whether a broadband provider should appropriately be considered an "unsubsidized competitor." This additional but, we believe, necessary layer of review could occur while the Commission completes work on its Connect America Cost Model and, thus, would not delay the challenge process or issuance of the final list of CAF Phase II-eligible census blocks. We describe our proposed alternative below.

Step 1

While the Bureau continues its work finalizing the Connect America Cost Model, it would invite state mapping authorities to contact all broadband providers that have previously submitted broadband data to them. The state mapping authorities would pose just a few clear and simple requests to these broadband providers: Does the broadband provider offer voice service? Does the broadband provider offer broadband service at speeds of at least 4 Mbps downstream/1 Mbps upstream in the state? Does the broadband provider offer sufficiently low latency to enable the use of real-time applications, such as VoIP? And, what is the usage allowance without overage charges that is associated with the broadband provider's service that is at least 4 Mbps down/1 Mbps up and enables the use of real-time applications? The state mapping authorities would compile broadband providers' responses.

Step 2

The Commission would finalize its CAF Phase II service requirements, which are applicable to CAF Phase II support recipients and should be used to identify "unsubsidized competitors." The Bureau also would perform an initial run of the Connect America Cost Model and identify high-cost census blocks. If the Commission has not yet decided which architecture

upon which to base the model – brownfield or greenfield – it could do two models runs using a conservatively low benchmark. The Bureau would then take the union of the two model runs to develop the list of high-cost census blocks. (This would dramatically reduce the number of blocks under consideration and greatly reduce the burdens involved in the challenge process.) Next, the state mapping authority (or the Bureau in the event that the state declines to participate) would remove from the list of model-identified *ineligible* high-cost census blocks those census blocks served by any broadband provider that does not meet the Commission’s CAF Phase II service requirements, restoring the eligibility of such census blocks for Phase II funding. The NBM would concurrently be corrected to show such census blocks as unserved by an unsubsidized broadband provider. For this screen, the state mapping authority (or the Bureau) would review the speed, latency, and usage allowance offered by responding broadband providers to determine whether the broadband provider’s service meets the Commission’s criteria. If a broadband provider chooses not to respond to the state mapping authority’s survey and subsequently challenges the “unserved” status of a particular census block, that broadband provider should have the burden of demonstrating that its service satisfies the Commission-specified criteria.

Step 3

The Bureau would post a list of model-identified and state mapping authority-verified (or Bureau-verified) high-cost *unserved* census blocks on its website and publicize the availability of that information to voice and broadband providers. Challengers would have 30 days to post evidence to the Bureau’s website that they serve a census block shown as unserved (or vice versa) and other parties would have 15 days to rebut the challengers’ assertions. In the event of a

dispute, the Bureau would request state mapping authorities to provide a recommendation 30 days thereafter.

Step 4

The Bureau (working with the state mapping authority) would then compile a final list of unserved census blocks and would offer price cap carriers CAF Phase II support amounts to serve these census blocks for a period of five years.

III. Improvements to the Process Proposed in the *Notice*

USTelecom supports the process detailed above but, if the Commission declines to engage state mapping authorities at the outset to verify broadband providers' claims of service, we also suggest improvements to the process proposed in the *Notice*. The proposals relating to notification of challenges⁹ as well as using the classification of the particular census block on the National Broadband Map (NBM) at the time the challenge is resolved as a default¹⁰ are problematic.

The *Notice* proposes to require price cap carriers and unsubsidized providers to serve copies of their challenges on any entity shown as serving the block on the NBM. The NBM does not contain reliable contact information for such entities, however, which means such a service requirement could be administratively burdensome and potentially unreliable. A more efficient communication process would be for the Bureau to create a website containing the CB data (eligible and ineligible) and allow providers to directly input challenge or response information in an open and transparent fashion. The website should be publically available for all to view but the Bureau could require providers to "register" for a PIN that incorporates a certification in order to input data. This method would ensure proper and timely delivery to providers asserting

⁹ See *Notice* at para. 16.

¹⁰ *Id* at para. 18.

the provision of unsubsidized voice and broadband service. It would avoid any logistical issues about the mode of delivery of notification to such providers and any concerns that a provider may not be notified in a timely way or notified at all. It would be beneficial to such providers as it would enable them to see all the challenges in one place.

The Commission has proposed a reasonable standard for the Bureau to decide the status of a census block -- whether it is more likely than not that a census block is inaccurately classified as served or unserved. The Bureau should make this decision in consultation and with the recommendation of the appropriate state mapping authority. However, in the event that both the challenger and the opponent provide credible evidence regarding the status of a particular block, the NBM should not be used as the default determination. Merely because the initial determination as to the status of the census block is reflected in the NBM does not add any weight or credibility to that determination. In fact, if both providers have provided credible, but conflicting, evidence that the status of the CB should be modified, it would seem to confirm that the NBM is clearly wrong. Corrections to the status of areas for the CAF Phase I mechanism involved tens of thousands of census blocks.¹¹ Moreover, the NBM may not reflect the latest available information. Rather than use the NBM as the default, the Bureau should consult the state mapping authority when conflicting information has been submitted as it is in the best position to make the determination. It is most knowledgeable about providers and the geography

¹¹ See letter of Mary McManus, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, re Areas Shown as Unserved on The National Broadband Map for Connect America Phase I Incremental Support, Connect America Fund, WC Docket No. 10-90, (January 24, 2013).

and topography of the state, and can best evaluate the credibility of the parties' evidence and weight such evidence appropriately.¹²

IV. The Commission Must Establish Technical Standards for Broadband Service Prior to Implementing the Phase II Challenge Process

As discussed above, a clear definition of eligible broadband service, especially including discrete standards for speed, latency, capacity and voice capability, needs to be set prior to the initiation of the eligibility determination process. It is impossible to determine whether voice and broadband are being provided by one or more unsubsidized providers without such a definition.

A. Voice Service

The Order specifies that for a census block to be shown as served by an unsubsidized broadband provider, that entity must be offering both broadband service meeting certain standards as well as voice service. In the context of its discussion of the appropriate latency standard, which is couched in terms of the ability to enable real-time applications such as VoIP, the *Notice* suggests potential types of probative evidence that the broadband provider is actually offering voice service to customers in the relevant area. That evidence includes documentation such as a printout of a website showing voice service availability at a particular address in the census block accompanied by an officer certification, or a sworn declaration from one or more customers within the census block that they subscribe to voice from that provider.

B. Broadband Speed

The *Order* mandates that price cap ETCs choosing to accept a state-level commitment must provide broadband service that is reasonably comparable to terrestrial fixed broadband

¹² USTelecom's proposal includes an affirmative submission of evidence with regard to providers purporting to serve areas. Adoption of that proposal would avoid the need to have a default determination, such as that proposed in para. 15 of the *Notice*.

service in urban America, and defines that in terms of actual speeds of at least 4 Mbps downstream and 1 Mbps upstream. Further clarity is required as to what it means “to offer broadband at actual speeds of at least 4 Mbps downstream and 1 Mbps upstream....”¹³ Must carriers be able to provide such speed to anyone in the service area, all at the same time? Or is there a reasonable standard for the percentage of customers who will be able to access that level of service at a particular time?

As in the Notices concerning the list of census blocks for CAF Phase I,¹⁴ the *Notice* proposes to use 3 Mbps downstream and 768 Kbps upstream as a proxy for developing the initial list of census blocks as unserved by an unsubsidized competitor offering service that meets the broadband performance obligations for Phase II because that information is readily available from other data sources.¹⁵ Using 3/768 as a proxy for the 4/1 standard in the Order potentially excludes from funding eligibility some high-cost areas that lack access to 4/1 service from either the incumbent or an unsubsidized competitor. Such a result would contravene the Commission’s broadband deployment goals and harm consumers.¹⁶

¹³ See *Order* at para. 160.

¹⁴ See 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, Public Notice, DA 12-1961 (rel. Dec. 5, 2012); 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, Public Notice, DA 12-2001 (rel. Dec. 10, 2012).

¹⁵ See *Notice* at para. 9.

¹⁶ That concern is further exacerbated by the inclusion of WISPs in the data. The sustained speeds WISPs offer, particularly during busy times, tend to be slower than those offered by ILECs, and certainly slower than the 4 Mbps downstream standard required of future recipients of federal funding. Nevertheless, large portions of rural America are shown as served by 3/768 broadband on the NBM because a WISP is claiming to provide service based on generic coverage maps, disregarding that it may be providing inadequate service or only marketing to business customers. WISPs also have service quality issues, including unpredictable degradation from third-party interference from common devices such as cordless phones, garage door openers and microwave ovens when WISPs use unlicensed spectrum. The Commission itself

Given these concerns, the Commission should use evidence of 6/1.5 Mbps service on the National Broadband Map from an unsubsidized provider instead as a proxy for the presence of 4/1 service from an unsubsidized provider until 4/1 data is available. Since with 6/1.5 both the upstream and downstream speeds exceed the 4/1 standard, the Commission can have more assurance that such areas actually are served by an unsubsidized provider. To the extent that use of this proxy understates the presence of unsubsidized providers, such providers have an opportunity built into this process to provide evidence to the state mapping authority that they serve a census block shown as unserved.

C. Latency

USTelecom endorses the latency standard proposed in the Notice – latency that is sufficiently low to enable real-time applications such as VoIP. However, to avoid any confusion, the Bureau should specify a discrete number for that standard.

Once the Bureau selects that number, the *Notice's* suggestions for evidence to be documented by the provider are appropriate. Those include documentation that a provider is actually offering voice service to customers in the relevant area, such as a printout of a website showing voice service availability at a particular address in the census block accompanied by an officer certification, or a sworn declaration from one or more customers within the census block that they subscribe to voice over the facilities of that provider.

views terrestrial broadband service provided over unlicensed spectrum as not equivalent to other terrestrial technologies, calling it an “alternative technology platform.” *See Order* at para. 533. Preventing an ETC from electing to accept Phase II support in these areas is contrary to the Commission’s goal to extend robust broadband to unserved areas as stated in the *USF/ICC Transformation Order*. The many serious questions about the ability of many WISPs to meet the requirements for certification as an unsubsidized provider of voice and broadband reinforce the necessity for such states to gather and verify information from such providers to ensure that customers are not denied adequate voice and broadband service because of the misclassification of a provider as able to offer such service.

D. Usage Allowance

The *Notice* provides examples of potential types of probative evidence regarding minimum usage but overlooks the fact that the Wireline Competition Bureau and Wireless Telecommunications Bureau have not yet met their delegated task of adopting “minimum usage allowance” requirements for recipients of Phase II support.¹⁷ It is crucial that such requirements be adopted prior to designation of census blocks as served or unserved by an unsubsidized broadband provider. For an area to be “served,” customers must have access to service, including data usage, which is perceived as reasonably comparable to customer data usage in urban areas. Thus the Commission must determine a minimum acceptable data usage level. USTelecom recommends that the Commission develop a methodology for setting this usage level based on the most current third-party source surveys of typical or average data usage by American consumers.

From a consumer perspective, the minimum acceptable data usage level is only meaningful if it is available without overage charges for data usage up to that minimum acceptable level. This should be specified in the data usage requirement.

V. Price Cap Carriers Must Have Sufficient Time for Election to Make a Statewide Commitment

After the Bureau publishes the revised list of census blocks and a revised list of support amounts associated with each eligible area that will be offered to price cap carriers, the period for such carriers to elect the statewide commitment should be no less than 120 days. The *Notice* acknowledges the complexity of the decisions individual carriers will need to make.¹⁸ Some carriers will have to simultaneously make those decisions in dozens of states. Allowing 120 days

¹⁷ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17698, para. 99.

¹⁸ *Id.* at para. 23.

for price cap carriers to make this important decision properly balances the goal of promptly moving forward with broadband deployment with the need for carriers to make thoughtful decisions.

The Public Notice asks whether price cap carriers should be required to provide geocoded latitude and longitude data for specific locations where they intend to provide service meeting the 6 Mbps downstream/1.5 Mbps upstream requirement and whether it should be required at the time the statewide commitment is accepted. USTelecom is not aware of any requirement, or need, for this level of detailed location information for Phase II no matter when it is filed. Unlike the CAF Phase I Incremental Support program, Phase II is not a location-specific mechanism. The rules associated with Phase II require only that a recipient of CAF Phase II support certify that it has met *percentage* of supported locations served with 6/1.5 *five* years after implementation.(see 54.313 (e)(2)). The Bureau has no basis for requiring granular data at the outset, when the Commission rules require only a certification at the end of the program’s five-year term.

The Public Notice also asks whether carriers should be required to submit at the time of acceptance a preliminary plan for which locations will be used to meet the 85 percent build out milestone. As a threshold matter, it is not clear whether this “preliminary plan” is intended to be the “five-year service quality improvement plan” referred to in the Rules.¹⁹ Assuming that it is, then 1) once again the Bureau has no basis for requiring location-specific information, and 2) there is no reason to require this submission concurrent with the statewide election. Requiring simultaneous submission at the time of the statewide commitment election of plans to meet the third-year 85 percent build out milestone is not necessary and will detract from the necessary

¹⁹ See 47 C.F.R. 54.313 (a)(1).

analysis needed for that important election. Without sufficient time and the ability to fully focus on the election decision, carriers may find it easier to choose the default position of not applying for Phase II support. This would be a result contrary to the intent of the Commission, which developed the Phase II process, including the opportunity for price cap carriers to make a statewide election to accept or reject support, because of its conclusion that dedicating funding to price cap territories is warranted to meet the Commission's universal service mandate to unserved consumers residing in such areas.²⁰

VI. Conclusion

Proper identification of areas served by price cap carrier that are unserved by unsubsidized competitors and require ongoing high-cost support is crucial to the efficient distribution of limited funding and the service of consumers. Adoption of a meaningful challenge process is an important part of fulfilling that objective. Such a process should have two goals – ensuring the highest possible level of accuracy while striving for an expeditious resolution that allows for the speedy implementation of CAF Phase II. The Bureau should err on the side of being inclusive rather than potentially leaving unserved areas with hope for relief in the future as erring on the side of inclusion does not affect the budget for CAF Phase II which is set at \$1.8 billion per year.

Prior to implementing any identification and challenge procedures, however, the Commission must clarify its requirements for broadband service that, if provided in an area by an unsubsidized competitor, would exclude that area from CAF Phase II eligibility. In particular, the Commission must establish clear standards for speed, latency, usage and voice capability that should correspond to the service requirements imposed on CAF Phase II recipients. The

²⁰ See USF/ICC Transformation Order at 159.

Commission should exclude from CAF Phase II eligibility only those areas where an unsubsidized provider's service meets all of these quality standards simultaneously with a single service.

In addition to resolving the issues described in these comments, USTelecom urges the Commission to obtain further comment as necessary in order to issue CAF Phase II rules by the end of the year establishing, among other things, all of the service obligations associated with CAF Phase II support (e.g., broadband testing requirements, the percentage of locations where the recipient must offer broadband at speeds of 6 Mbps downstream/1.5 Mbps upstream), the competitive bidding process, and procedures to relieve price cap carriers of their ETC obligations and designations in those areas where some other provider is selected as the CAF Phase II support recipient.

Respectfully submitted,

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