

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

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

**REPLY COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA) submits these reply comments in response to the public notice in the above-captioned matter.¹ As set out in our initial comments, NCTA supports the Wireline Competition Bureau’s proposals to establish a process for identifying unserved census blocks based upon data from the National Broadband Map and challenges to that information by providers. The Bureau should reject calls by incumbent local exchange carrier (LEC) commenters to impose significant burdens on unsubsidized competitors in this process and similarly reject calls to minimize the data and accountability required of incumbent LEC recipients of Connect America Fund Phase II funding.

I. IDENTIFYING UNSERVED AREAS

The Bureau should adopt its proposal to use the National Broadband Map as the starting point for determining unserved areas that will be eligible to receive Connect America Fund

¹ *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, Public Notice, DA 12-2075 (Wireline Comp. Bur., Dec. 27, 2012) (*Public Notice*).

(CAF) Phase II support. The Bureau should reject NTCA's call to scrap the map entirely.²

Although the National Broadband Map may not be perfect, it is a reasonable starting point for the Bureau to use in determining areas that are served by a facilities-based unsubsidized broadband provider, as the Commission required.³

The Bureau should also reject USTelecom's proposal to require the state entities responsible for collecting broadband data for the National Broadband Map, over which the Commission has no jurisdiction, to incur additional costs to individually contact and verify the information of every provider listed on that map.⁴ The state mapping entities' efforts to collect and submit data for the National Broadband Map are paid for with American Recovery and Reinvestment Act (Stimulus Act) grant funding awarded by NTIA pursuant to its State Broadband Initiative program.⁵ USTelecom's proposal would impose additional costs and expenses on state mapping entities beyond those covered in the contracts associated with their NTIA State Broadband Initiative grants. USTelecom does not explain how these additional state mapping entity costs would be funded. Not only does the Commission have no jurisdiction to require the state mapping entities to incur these costs and no funding to pay for them, USTelecom's proposal would needlessly inject additional delay into the CAF Phase II process. As the Bureau has proposed, the National Broadband Map is a sufficient proxy and the challenge process is a reasonable safeguard to ensure the accuracy of the areas eligible for CAF Phase II funding.

² NTCA Comments at 3-8.

³ *Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17701, 17729, ¶¶103, 170 (2011) (*CAF Order*).

⁴ USTelecom Comments at 5-7.

⁵ Broadband USA, State Broadband Initiative, <http://www2.ntia.doc.gov/SBDD> (last visited Feb. 26, 2013).

As NCTA and other commenters agree, the Bureau should adopt its proposal to maintain the use of reported speeds of 3 Mbps downstream and 768 kbps upstream as a proxy for identifying areas served by 4 Mbps downstream and 1 Mbps upstream broadband.⁶ The Bureau should reject the calls of incumbent LEC commenters to increase the proxy to a higher reported speed tier of 6/1.5 Mbps.⁷ Doing so would contravene the Commission's requirement that CAF support not be available in areas served by unsubsidized competitors offering broadband at 4/1 Mbps.⁸ Use of the higher speed tier proxy would enable support to go to areas where an unsubsidized provider is offering broadband of at least 4/1 Mbps but not 6/1.5 Mbps. Because there currently is no reported speed tier for 4/1 Mbps, such a provider would report at the next lowest reportable level, 3 Mbps/768 kbps. Therefore, the Bureau should continue to use 3 Mbps/768 kbps as the proxy for 4/1 Mbps.

Alaska Communications Systems (ACS) asks the Bureau to change the Commission's definition of "unsubsidized competitor" so that ACS can receive CAF support to provide broadband to areas that are already receiving broadband from providers that receive Stimulus Act funding.⁹ ACS provides no justification for why limited CAF dollars should be spent in such an inefficient way, and in a manner that would not bring broadband to any unserved customers. The Bureau should reject ACS's self-serving proposal.

II. CHALLENGE PROCESS

NCTA continues to support the Bureau's proposal to adopt a challenge process that does not impose overly burdensome requirements on unsubsidized providers to ensure that their

⁶ NCTA Comments at 2; *see also* ACA Comments at 4; WISPA Comments at 3-4.

⁷ ACS Comments at 9-10; USTelecom Comments at 10-11.

⁸ *CAF Order*, 26 FCC Rcd at 17729, ¶170.

⁹ ACS Comments at 10.

service areas are not overbuilt with CAF support. In complete contrast to this approach, NTCA submits a one-sided proposal in which unsubsidized competitors (i.e., those that do not receive CAF support) are required to submit incredibly burdensome or irrelevant information to satisfy criteria not required by the Commission before an incumbent LEC would lose support in an area.¹⁰ In this through-the-looking-glass proposal, NTCA states that “in lieu of putting the burden of proof on the USF or CAF recipient,” unsubsidized competitors would have to certify and prove that they comply with requirements imposed on USF or CAF recipients, *even though they do not receive and are not seeking any such funding.*¹¹ Clearly the Bureau should not adopt such a backwards approach – incumbent LECs’ receipt of universal service high-cost support should not be “deemed granted” but should instead be given out efficiently only in areas where there is a demonstration that it is needed.

The Bureau similarly should reject ACS’s proposal to allow incumbent LECs an open-ended process to submit challenges at any time to areas identified on the National Broadband Map as served by unsubsidized providers, in contrast to challenges to unserved areas, which ACS would require to be completed before price cap incumbent LECs exercise their right of first refusal to receive statewide CAF Phase II support.¹² The Bureau should not adopt such an asymmetric challenge process. If it were to do so, it would make more sense to allow

¹⁰ NTCA Comments at 9-11.

¹¹ *Id.* NTCA notes that “the cable industry itself first suggested” a system where an unsubsidized competitor would have the burden of identifying served areas. *Id.* at 9. What NTCA fails to note is that the cable industry made that suggestion more than three years ago, before the Commission fundamentally changed the high-cost program, including adopting the requirement that universal service high-cost support not be used in areas served by an unsubsidized competitor. National Cable & Telecommunications Association Petition for Rulemaking, WC Docket No. 05-337, GN Docket No. 09-51, RM-11584 (Nov. 5, 2009); *CAF Order* 26 FCC Rcd at 17767-68, ¶¶281-84. Given this change, the burden of demonstrating that support will be used consistent with program requirements, i.e., in areas not served by unsubsidized competitors, should fall on the entity seeking support.

¹² ACS Comments at 11-12

unsubsidized providers to submit updates to areas where they have expanded broadband and eliminate support on a rolling basis.

III. INCUMBENT LEC CAF PHASE II COMMITMENTS

As NCTA and ACA noted, to ensure that the Commission can adequately and accurately monitor that CAF support is being used appropriately and the benefits of broadband are being timely deployed to unserved consumers, when an incumbent LEC accepts a statewide commitment it should be required to identify the unserved locations within its service area where it intends to use CAF support to deploy broadband and the timeframe for doing so.¹³ This information should be made publicly available on the Commission's website in a universal service dashboard so that the public can monitor how its money is being spent, unserved consumers can determine when they can expect to receive service, and competitive providers are aware of locations where government subsidies will be funding deployment so they can plan accordingly.

The Bureau should also reject ACS's request to "revisit the merits" of the Commission's requirement that incumbent LECs accepting their right of first refusal for CAF Phase II support must do so for all of their service areas within a state.¹⁴ This requirement was adopted by the Commission and cannot be reversed by the Bureau in response to the instant public notice. ACS did not seek reconsideration of this requirement within the timeframe established in the Commission's rules.¹⁵ Furthermore, the Commission relied upon the incumbent LEC's statewide commitment as justification for deviating from the principle of competitive neutrality

¹³ NCTA Comments at 4-5; ACA Comments at 10-11.

¹⁴ *CAF Order*, 26 FCC Rcd at 17729, ¶171; ACS Comments at 15-17.

¹⁵ The *CAF Order* was published in the Federal Register on November 29, 2011, therefore petitions for reconsideration were due by December 29, 2011. 47 C.F.R. §§ 1.429(d), 1.4(b)(1); *Connect America Fund*, 76 Fed. Reg. 73830 (Nov. 29, 2011).

in making CAF Phase II support initially available only to incumbent LECs.¹⁶ If ACS does not wish to comply with the statewide commitment requirement, then it is free to participate in the reverse auction process that will be open to all eligible providers. But ACS should not be given preferential incumbent LEC treatment for CAF Phase II support without accepting the corresponding obligations.

CONCLUSION

The Bureau should adopt its proposal to use the National Broadband Map as the starting point to determine areas that are served by an unsubsidized provider and therefore ineligible for CAF Phase II funding, and it should continue to use reported speeds of 3 Mbps/768 kbps as a proxy for determining providers that offer 4/1 Mbps broadband service. The Bureau should also adopt a challenge process to update the National Broadband Map data that does not unduly burden unsubsidized providers. Finally, the Bureau should require CAF recipients to submit information about their use of the funds and should make this information publicly available.

Respectfully submitted,

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¹⁶ *CAF Order*, 26 FCC Rcd at 17731-32, ¶177.