

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

In the Matter of)	
)	
Issues Regarding Service Obligations for Connect America Phase II and Determining who is an Unsubsidized Competitor)	WC Docket No. 10-90

**COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (“USTelecom”)¹ respectfully submits these comments in response to the Public Notice issued by the Wireline Competition Bureau (“Bureau”) on Issues Regarding Service Obligations for Connect America Phase II and Determining who is an Unsubsidized Competitor (“*Notice*”).² In the *Notice*, the Bureau seeks to further develop the record on a number of issues relating to implementation of Connect America Fund Phase II (“CAF Phase II”) support. Specifically, the Bureau seeks comment on how it will determine which census blocks are served by an unsubsidized competitor, how price cap carriers will demonstrate that they are meeting the Commission’s requirements for reasonable comparability, and what other providers will need to demonstrate to be deemed unsubsidized competitors.

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 Further Comment on Issues Regarding Service Obligations for Connect America Phase II and Determining who is an Unsubsidized Competitor*, WC Docket No. 10-90, DA 13-284 (rel. Feb. 26, 2013).

Last month, in response to an earlier Public Notice,³ USTelecom put forth a detailed proposal for a process to determine what areas are served by an unsubsidized competitor and thus would be ineligible for CAF Phase II support.⁴ This proposed process would enlist the assistance of state mapping authorities to evaluate whether broadband providers that are included on the National Broadband Map (“NBM”) should appropriately be considered “unsubsidized competitors” in particular areas. Such an additional layer of review is necessary given the generally acknowledged shortcomings in NBM data, and it could occur while the Bureau completes work on the Connect America Cost Model and thus would not delay a challenge process or the issuance of a final list of CAF Phase II-eligible census blocks.⁵

As we have noted, in developing a list of census blocks that would form the basis of a challenge process, the Bureau should use evidence of 6/1.5 Mbps (“6/1.5”) service on the NBM by an unsubsidized competitor as a proxy for the presence of 4 Mbps/1 Mbps (4/1”) from an unsubsidized provider. Since with 6/1.5 both the upstream and downstream speeds exceed the 4/1 standard, the Bureau can have greater 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 would have an opportunity in our proposed challenge process to provide evidence to the state mapping authority that they serve a census block shown as served. If the Bureau declines to adopt the process we have proposed, we generally support the Bureau’s proposal that there should be a presumption—rebuttable through a challenge

³ 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).

⁴ See Comments of United States Telecom Association, *In the Matter of 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 (filed Feb. 19, 2013).

⁵ *Id.*

process—that a cable broadband provider meets the requirements to be an unsubsidized competitor, but this presumption should not apply, of course, in areas where the cable provider is, in fact, receiving high-cost support, as shown in USAC records. We also agree that a fixed wireless provider should be required to make an affirmative showing that it meets the necessary speed, latency, capacity and price criteria to overcome the rebuttable presumption to the contrary.

Moreover, we appreciate the Bureau’s efforts to clarify the requirements for broadband service that will apply to price cap carriers that make a statewide commitment and that, if provided in an area by an unsubsidized competitor, would exclude that area from CAF Phase II eligibility. The Bureau should establish clear standards for latency, usage allowance and voice capability that are applicable equally in both contexts.

I. In the Absence of Actual 4/1 Mbps Data, an Area Should be Presumed as Unserved if it is Shown on the National Broadband Map as Lacking Broadband with Speeds of at Least 6/1.5 Mbps

Unfortunately there is no uniform national repository of data on what areas have broadband at the Commission-identified target speeds of 4/1, so a proxy based on NBM data must be used to develop a list of census blocks that would form the basis of a challenge process. The inherent risks involved in using a proxy to determine areas served by an unsubsidized broadband provider can be mitigated by adopting a fair, efficient and effective challenge process. However, given the number of census blocks and necessary time constraints, no challenge process will yield a perfectly correct list of eligible census blocks. In light of this uncertainty and the Commission’s goals of ubiquitous broadband deployment, using NBM evidence of service from an unsubsidized competitor at speeds of at least 6/1.5 as a proxy, rather than using NBM evidence of 3/Mbps downstream/768kbps upstream (“3/768”) service from an

unsubsidized competitor, provides greater assurance that consumers in high-cost rural areas will not mistakenly be left with no opportunity for the build-out of broadband facilities. Using 3/768 as a proxy for developing the list of census blocks as unserved by an unsubsidized competitor offering service that meets the broadband performance obligations for CAF Phase II potentially excludes from funding eligibility some high-cost areas that lack access to 4/1 service from either the incumbent or an unsubsidized competitor. USTelecom has consistently stated that such a result would contravene the Commission's broadband deployment goals and harm consumers.⁶ Any concerns with a carrier using CAF Phase II funds to overbuild an existing 4/1 network with its own 4/1 network can and should be addressed through the challenge process.

USTelecom supports the use of 6/1.5 as a proxy for the 4/1 standard, not as a substitute standard, so there is no need to “create parity,” per the suggestion in the *Notice*,⁷ by requiring CAF Phase II support recipients to build out to all locations at 6/1.5. The proper standard should remain 4/1 Mbps for both the determination of areas unserved by an unsubsidized broadband provider and for the initial buildout obligation for carriers electing CAF Phase II funding.

II. The Bureau has Appropriately Determined the Presumptions Applicable to Unsubsidized Broadband Providers

If the Bureau declines to adopt the process we have proposed, we generally support the Bureau's proposal that there should be a presumption—rebuttable through a challenge process—that a cable broadband provider meets the requirements to be an unsubsidized competitor, but we

⁶ See Comments of the United States Telecom Association, the Independent Telephone & Telecommunications Alliance and the ABC Coalition in response to the *Connect America Fund*, Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 12-138 (filed Jan. 28, 2013), pp. 10-13, concerning the list of census blocks for CAF Phase I, and Comments of the United States Telecom Association, *In the Matter of 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 (filed Feb. 19, 2013), pp. 9-11.

⁷ See *Notice* at ¶ 9.

also suggest that this presumption should not apply, of course, in areas where the cable provider is, in fact, receiving high-cost support, as shown in USAC records. In areas in which a cable provider is receiving high-cost support according to USAC records, it clearly could not meet the definition of an unsubsidized competitor contained in the Commission's rules.⁸ We also agree that a fixed wireless provider should be required to make an affirmative showing that it meets the necessary speed, latency, capacity and price criteria to overcome a rebuttable presumption to the contrary.

The Bureau proposes in the *Notice* to provide a rebuttable presumption that cable broadband provides service meeting the defined speed threshold while it declines to provide that presumption to fixed wireless providers.⁹ It makes sense that, for ease of administration, and except as described above, cable should receive such a presumption while fixed wireless does not. Concern has not been expressed in the record as to the performance of cable broadband providers. The DOCSIS 2.0 technology which was released over a decade ago and other succeeding DOCSIS technologies are part of cable systems that are engineered to provide qualifying voice service and 4/1 Mbps broadband speed or better. There is no point to unnecessarily burdening cable voice and broadband providers and the Bureau by mandating cable providers make an affirmative showing that they meet the 4/1 standard.

⁸ See 47 C.F.R. § 54.5.

⁹ See *Notice* at ¶ 11 and n. 19.

However, given the documented problems with the accuracy of the NBM,¹⁰ including the very significant overstatement of cable coverage,¹¹ it is important to remember that cable broadband should receive only a presumption that is rebuttable with evidence that the cable provider is not providing service in a given area.¹² For example, it may be that in some areas the cable provider offers broadband but not a voice service, and would thus be ineligible for consideration as an unsubsidized broadband competitor. And, as the Bureau notes in the *Notice*, if there is any question as to whether the speed standard or other standards are met, the rebuttable presumption is still subject to the Commission's challenge process.¹³

On the other hand, there is a wide variance in service offerings from fixed wireless providers, and numerous questions as to whether many fixed wireless providers meet the

¹⁰ 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 Incremental Support, Connect America Fund, WC Docket No. 10-90, (January 24, 2013).

¹¹ See Comments of the Mississippi Public Service Commission, In the Matter of Connect America Fund, WC Docket No. 10-90, filed Jan. 8, 2013, which state "Upon review of the NBM of the unserved fixed broadband areas in Mississippi, it is evident that the coverage area in Mississippi is grossly misstated.... The map suggests that, in the middle of a region riddled with insufficient broadband coverage, nearly 100% coverage abruptly begins at Mississippi's borders. However, the opposite is true..." Also see Comments of the Mississippi Office of the Governor, *In the Matter of Connect America Fund*, WC Docket No. 10-90, filed Jan. 9, 2013, which state "The Governor's Office respectfully submits that this Unserved Fixed Broadband map is a gross misrepresentation of the fixed broadband coverage in Mississippi." Also see letter of Phil Bryant, Governor, to Julius Genachowski, Chairman, FCC, (filed Jan 8, 2013) re 700 MHz Interoperability which states "[w]e still have a long way to go before appropriate coverage even close to that depicted on the National Broadband Map."

¹² For example, in the CAF Phase I context, Windstream has proposed that the complete absence in a census block of number porting requests that include cancellation of the customer's ILEC broadband service over a reasonable historical period provides strong evidence that the area is not served by an unsubsidized competitor with 4/1 broadband. See Comments of Windstream Corporation, WC Docket No. 10-90, at 8-9 (Jan. 9, 2012).

¹³ See *Notice* at ¶ 11.

broadband technical requirements, including speed, have been raised in the record.¹⁴ 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, not providing voice service, or only marketing to business customers. 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 questions about the ability of many WISPs to be characterized as an unsubsidized provider of voice and broadband reinforce the necessity for the gathering and verification of 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. The Bureau is correct in not granting WISPs the rebuttable presumption that speeds meet or exceed the defined speed threshold, and instead requiring an affirmative showing that a WISP meets the necessary speed, latency, capacity, voice service and pricing criteria, subject to rebuttal by other parties.

The question in the *Notice* concerning the inclusion of mobile providers in the challenge process and whether mobile providers should be able to qualify as unsubsidized competitors¹⁵ is puzzling given that the *Order* clearly defines an unsubsidized competitor as “a facilities-based provider of residential terrestrial *fixed* voice and broadband service.”¹⁶ To qualify as an

¹⁴ See Comments of USTelecom at n.16, *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, (filed Feb. 19, 2013) and letter from Melissa Newman, CenturyLink, to Marlene H. Dortch, FCC, re *USF/ICC Transformation Order, et al.*, (WC Docket 10-90) (filed April 23, 2012).

¹⁵ See *Notice* at ¶ 11.

¹⁶ See *USF/ICC Transformation Order* at ¶ 103. Emphasis added.

unsubsidized competitor and participate in a challenge process, a provider of primarily mobile service must also offer a fixed voice and broadband service separate and distinct from mobile service to fit within the *Order's* definition of fixed wireless broadband service, which defines such a service as not including a broadband service that serves end users primarily using mobile stations.¹⁷

III. Pricing Standards

With respect to the demonstration of reasonably comparable pricing for CAF Phase II support recipients, AT&T is correct that “a broadband provider that offers national pricing for its broadband service offerings is offering those services to rural and urban areas at reasonably comparable rates.”¹⁸ This is a sensible and administratively simple way for a CAF Phase II recipient to demonstrate that its rates are reasonable comparable between urban and rural areas. The same presumption should also apply to providers offering different pricing plans in different regions of the country, so long as rates are uniform within a region across both rural and urban areas. Because of the vigorous competition in the broadband services market, especially in urban areas, if more than a nominal proportion of a provider’s customer base serves urban areas, and its pricing is uniform between the urban and rural portions of its regional footprint, there is no reason to specify a level at which a provider’s rate is too high to be considered reasonable. The uniformity between the provider’s urban and rural pricing has demonstrated comparability.

¹⁷ See *USF/ICC Transformation Order* at n. 169 which states “We define a fixed voice and broadband service as one that serves end users primarily at fixed endpoints using stationary equipment, such as the modem that connects an end user’s home router, computer, or other Internet access device to the network. This term encompasses fixed wireless broadband services (including services using unlicensed spectrum). This term does not include a broadband service that serves end users primarily using mobile stations.”

¹⁸ See *Notice* at ¶ 14 referencing Comments of AT&T, WC Docket No. 10-90 et al., at 25-26 (filed Jan. 18, 2012).

In evaluating whether a provider is an unsubsidized competitor, the Commission must decide whether the provider is offering service at a price reasonably comparable to that charged in urban areas. The Commission should require a provider that seeks to make an affirmative showing that it is an unsubsidized voice and broadband provider, or a provider having a presumption that it is an unsubsidized provider but is subject to a challenge based on price, to submit information to the Commission that demonstrates that its pricing for services that meet the technical standards for speed, latency and offering of voice service specified by the Commission is reasonably comparable to that charged in urban areas.¹⁹

IV. The Bureau is Correct to Set a Uniform Minimum Usage Allowance That Would Apply Both to Price Cap Carriers and Unsubsidized Competitors

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. The Bureau should adopt the proposal in the *Notice* to have a minimum usage allowance for purposes of finalizing the locations that will receive support to be offered to price cap carriers in Phase II.²⁰ Per another proposal in the *Notice*, that usage allowance should apply both to price cap carriers that make a statewide commitment as well as to unsubsidized competitors that would preclude a census block from being funded.²¹

The approach used in Chart 1²² of the *Notice*, estimating the amount of data needed to accomplish various user activities that the Connect America Fund will advance, is a reasonable way to think about determining appropriate levels of monthly data allowances. Combined with

¹⁹ See 47 U.S.C. at 254(b)(3).

²⁰ See *Notice* at ¶ 20.

²¹ *Id* at ¶ 19.

²² *Id* at ¶ 21.

third-party data, the approach used in Chart 1 will allow the Bureau to make an informed choice among several usage levels.

Based on this methodology, USTelecom recommends that the Commission set the minimum usage allowance at 60 gigabytes per month. This is consistent with the Sandvine survey showing monthly median and mean usage²³ and permits a sufficient amount of activities identified in the Chart I²⁴ as critical uses relating to education, health, employment, e-commerce, and civic engagement. Setting the monthly usage level at 60GB is almost four times the median usage level. This should allow the vast proportion of users to be accommodated within the standard during the five-year term of CAF Phase II support.

In determining whether a census block is served by an unsubsidized competitor, the Commission should evaluate providers' usage allowances in conjunction with their pricing. In particular, the Commission should find that a provider is an unsubsidized competitor only if that provider is able to demonstrate that it offers the specified minimum usage allowance at a price that is reasonably comparable to the urban price.

V. The Bureau Should Establish a Specific Numerical Latency Standard

USTelecom endorses the latency standard required by the *USF/ICC Transformation Order* – latency that is sufficiently low to enable real-time applications such as VoIP. To avoid any confusion, the Bureau should specify a discrete number for that standard. The standard should be 100ms between the customer premises to the provider's transit or peering

²³ See Sandvine Global Internet Phenomena Snapshot: 2H 2012, North America, Fixed Access, revised Nov. 6, 2012, at p. 3. The chart entitled "Monthly Consumption" details monthly median and mean usage. Downstream and upstream monthly median usage is 16.8 GB and mean usage is 51.3GB.
http://www.sandvine.com/downloads/documents/Phenomena_2H_2012/Sandvine_Global_Internet_Phenomena_Snapshot_2H_2012_NA_Fixed.pdf, last visited March 27, 2013.

²⁴ See Notice at ¶ 21.

interconnection point, at least in cases where there is a transit or peering interconnection point located in the same state as the customer premises being measured. Cisco's Cloud Readiness Tool²⁵ referenced in the *Notice*²⁶ states that latency between 100ms and 159ms supports broadband functionality significantly beyond mere real-time VoIP.²⁷ Wireline providers should receive a rebuttable presumption that they meet the latency requirement, whether or not they currently offer a VoIP product. There is nothing in the record indicating any concern that wireline broadband providers cannot meet the latency standard required in the *USF/ICC Transformation Order*.

VI. Conclusion

The Bureau should adopt the standards recommended by USTelecom to ensure the most efficient use of scarce CAF Phase II funding. A speed proxy of 6/1.5 combined with a vigorous challenge process provides greater assurance to consumers that they will have the opportunity to obtain service from a provider offering service meeting the Commission's 4/1 requirement. Latency of 100ms meets and exceeds the Commission's standard that the broadband network enables real-time applications such as voice. Of course, voice must be offered as well. A minimum usage allowance of 60 gigabytes per month permits a sufficient amount of the activities identified by the Bureau as critical uses relating to education, health, employment, e-commerce and civic engagement.

²⁵ See http://www.cisco.com/en/US/netsol/ns1208/networking_solutions_sub_sub_solution.html, last visited March 27, 2013.

²⁶ See *Notice* at n. 42.

²⁷ *Id* at 1. The Cisco Cloud Readiness Tool indicates that 100ms – 159ms supports basic to intermediate cloud applications, including single and multi-player gaming, text communications, HD video streaming, web browsing, web and video conferencing, VoIP, ERP/CRM, online shopping and multimedia interactive social networking.

With respect to the demonstration of reasonably comparable pricing for CAF Phase II support recipients, uniformity of pricing between a provider's urban and rural pricing demonstrates comparability. To evaluate whether a provider is an unsubsidized competitor, in situations where a showing is necessary the unsubsidized provider should submit information to the Commission that demonstrates that its pricing for services that meet the technical standards for speed, latency and offering of voice services specified by the Commission is reasonably comparable.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



By: _____

David Cohen
Jonathan Banks

Its Attorneys

607 14th Street, NW, Suite 400
Washington, D.C. 20005
202-326-7300

March 28, 2013