

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

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

**REPLY COMMENTS OF THE  
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (“USTelecom”)<sup>1</sup> respectfully submits these reply comments in response to the comments filed on the Public Notice (“*Notice*”)<sup>2</sup> issued by the Wireline Competition Bureau (“Bureau”) on Issues Regarding Service Obligations for Connect America Phase II and Determining who is an Unsubsidized Competitor. 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.

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<sup>1</sup> 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.

<sup>2</sup> 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).

**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**

Most commenters who address the issue of an appropriate proxy for the *USF/ICC Transformation Order's* (“*Order*”) 4 Mbps downstream and 1 Mbps upstream (“4/1”) definition of broadband,<sup>3</sup> share USTelecom’s view that using National Broadband Map (“NBM”) evidence of service from an unsubsidized competitor at speeds of at least 6 Mbps downstream and 1.5 Mbps upstream (“6/1.5”) is an appropriate proxy, rather than using NBM evidence of 3 Mbps downstream and 768 kbps upstream (“3/768”) service from an unsubsidized competitor.<sup>4</sup> Using 6/1.5 as a proxy 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. On the other hand, using 3/768 as a proxy is not consistent with the Commission’s goal of broadband expansion at the minimum 4/1 speeds established because it would exclude some high-cost areas from funding eligibility, relegating many customers to sub-standard service.<sup>5</sup>

It is puzzling as to why both the American Cable Association (“ACA”) and the National Cable & Telecommunications Association (“NCTA”) support the use of 3/768 as a proxy for 4/1<sup>6</sup> when the Bureau proposed a rebuttable presumption that cable systems meet the speed

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<sup>3</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (“*USF/ICC Transformation Order*” or “*Order*”), *pets. for review pending sub nom. In re: FCC 11-161, No. 11-9900 (10<sup>th</sup> Cir. filed Dec. 18, 2011)*, at ¶ 94.

<sup>4</sup> See Comments of Alaska Communications Systems (“ACS”) at 2, NTCA—The Rural Broadband Association, The National Exchange Carriers Association, Inc., The Eastern Rural Telecom Association, and The Western Telecommunications Alliance (“NTCA *et al.*”) at 8, The Independent Telephone & Telecommunications Alliance (“ITTA”) at 3, The California Public Utilities Commission and the People of the State of California (“CPUC”) at 2, and ViaSat, Inc. at 2.

<sup>5</sup> See Comments of ACS at 2.

<sup>6</sup> See Comments of ACA at 2 and NCTA at 6.

requirement based on the fact that cable’s widespread use of DOCSIS technology generally delivers speeds of 4/1 or better.<sup>7</sup> In areas shown on the NBM as lacking a broadband provider delivering 6/1.5 service, it would be simple for the cable provider in the area to note its provision of 4/1 by informing the Bureau of its use of DOCSIS.

NCTA also conflates use of 6/1.5 as a proxy with its use as a standard for defining broadband service.<sup>8</sup> Its use as a proxy can be easily reconciled with retention of the 4/1 standard.<sup>9</sup> USTelecom supports the use of 6/1.5 as a proxy for the 4/1 standard, not as a substitute standard. Further, contrary to ACA’s assertion, using 6/1.5 as proxy would not “result in either placing an onerous burden on cable operators or risk expending scarce government support in areas where 4/1 service is actually provided.”<sup>10</sup> Instead, it would be simple to demonstrate and would ensure that no areas would be excluded from funding eligibility that lack access to 4/1 service.

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

If the Bureau declines to adopt the detailed proposal put forth by USTelecom<sup>11</sup> to determine what areas are served by an unsubsidized competitor and thus would be ineligible for

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<sup>7</sup> See Notice at n. 18.

<sup>8</sup> See Comments of NCTA at 7 “Increasing the proxy would contravene the Commission’s requirement that CAF support not be available in areas served by unsubsidized competitors offering broadband at 4/1.”

<sup>9</sup> Although it is undetermined how many locations will ultimately be required to offer broadband at 6/1.5 speeds, using 6/1.5 as a proxy for eligibility for support furthers the Commission’s goal of expanding broadband availability at higher speeds to as many consumers as possible. See Comments of ACS at 2.

<sup>10</sup> See Comments of ACA at 3.

<sup>11</sup> 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).

CAF Phase II support, USTelecom generally supports 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.<sup>12</sup> NCTA seeks to go much further by proposing to severely limit the ability of challengers to rebut the determination that cable qualifies as an unsubsidized broadband competitor in a particular area.<sup>13</sup> Adoption of NCTA’s proposal to permit challenges only if there is a question as to the existence of cable broadband in a particular census block, but not with respect to other qualities of the service, would deny some consumers access to broadband meeting the Commission’s definition of broadband service.<sup>14</sup> While most cable providers have adopted DOCSIS technology and provide 4/1 or better service, this is not universally true. According to NCTA’s own industry statistics, 18% of cable customers do not receive service through a DOCSIS 3 technology platform, and almost 19% of cable customers are not served by a digital system.<sup>15</sup> NCTA acknowledges that “In some cases, because of the well documented challenges of deployment in rural areas, a broadband provider may offer service that meets some but not all of the Bureau’s proposed requirements...”<sup>16</sup> The related reasons for defining standards for broadband are to clarify the requirements that will apply to price cap carriers that make a statewide commitment and to exclude an area from CAF

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<sup>12</sup> Per the comments of USTelecom at 5 and ACS at 10, this presumption should not apply in areas in which a cable provider is receiving high-cost support according to USAC records, as it clearly could not meet the definition of an unsubsidized competitor contained in the Commission’s rules (see 47 C.F.R. §54.5).

<sup>13</sup> See Comments of NCTA at 1.

<sup>14</sup> If the mere presence of cable competitors were permitted to deny incumbents support then the criteria that determine the value of broadband – speed, latency, and capacity – would essentially be gutted as standard, relieving cable competitors from compliance and leaving consumers with the benefits intended by the *Order*.

<sup>15</sup> See NCTA Industry Data, <http://www.ncta.com/industry-data> (last visited April 9, 2012).

<sup>16</sup> See Comments of NCTA at 2.

Phase II eligibility where such service is provided by an unsubsidized competitor. Excluding all areas served by cable providers from meeting such standards defeats the purpose of establishing such standards. In carrying out its delegated authority to implement the specific requirements of excluding from eligibility for CAF Phase II support any area served by an unsubsidized competitor, the Bureau is correct that “[t]o constitute an unsubsidized competitor, a provider would need to show *all* three performance metrics are met – speed, latency, *and* capacity.”<sup>17</sup>

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.

Several commenters validate the Bureau’s reason for not extending the same presumption to WISPs as to cable -- “the wide variance in service offerings”<sup>18</sup> of fixed wireless providers.<sup>19</sup> While protesting this proposal as “discriminatory,” WISPA offers no factual information rebutting the Bureau’s rational basis for the treating fixed wireless providers differently. The CPUC notes that in its experience, validating the service area of fixed wireless providers is

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<sup>17</sup> See Notice at ¶ 5. USTelecom also reminds the Bureau that the offering of voice service, while not a performance metric, is required as well to qualify as an unsubsidized broadband competitor.

<sup>18</sup> See Notice at ¶ 11.

<sup>19</sup> See Comments of USTelecom at 7, ITTA at 2, CPUC at 6, ACS at 10 and ADTRAN at 18.

difficult because there is limited FCC 477 data filed for fixed wireless service.<sup>20</sup> CPUC goes on to say that because fixed wireless providers do not provide data addressing the degradation of service quality with increased distance from their towers in the data they provide to the CPUC, better validation should be performed if a fixed wireless provider's service would impact CAF eligibility.<sup>21</sup> ADTRAN also agrees, noting that "because capacity constraints, propagation characteristics, latency issues (certainly in the case of Geostationary satellites) and other limits make it problematical for wireless to offer service that would allow consumers to reap all the benefits of 'broadband.'"<sup>22</sup> ACS notes that "WISP networks tend to be technically constrained by line-of-sight requirements and third-party interference, as well as speed and capacity limits that would not satisfy CAF Phase II standards at a price that meets the Commission's affordability and reasonable comparability standards."<sup>23</sup>

CTIA attempts to shoehorn mobile wireless service into consideration as unsubsidized voice and broadband service by making a technological neutrality argument – but it mislabels mobility as a technology instead of a characteristic of a service and distorts the clear language of the *Order*. The Commission did not violate the principle of technological neutrality when it excluded mobile service from consideration as an unsubsidized broadband competitor. CTIA asserts that mobile providers should be permitted to qualify as unsubsidized competitors, but such an outcome would be contrary to the clear language of the *Order* and the Commission's express intent that broadband service be provided to the "[m]ore than 83 percent of the

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<sup>20</sup> See Comments of CPUC at 6. The level of service provided by WISPs is unknown. Placing the burden on WISPs to prove that their offering provides voice, meets the performance metrics, and is reasonably comparable in price, is appropriate and necessary.

<sup>21</sup> *Id.*

<sup>22</sup> See Comments of ADTRAN at 18.

<sup>23</sup> See Comments of ACS at 11.

approximately 18 million Americans who lack access to fixed broadband [who] live in price cap study areas.”<sup>24</sup> Paragraph 103 and accompanying footnote 169 of the *Order* explicitly state that a provider must offer fixed voice and broadband services over its own facilities to qualify as an unsubsidized competitor. The Commission specifically excluded providers of mobile services from the definition of unsubsidized competitors because for such services, "meeting minimum speed and capacity guarantees is likely to prove challenging over larger areas, particularly indoors," and because it would be difficult and costly for the Commission to evaluate whether such a service meets its performance requirements.<sup>25</sup> Further, paragraph 103 and accompanying footnote 169 of the *Order* are very clear that mobile services are not included as an unsubsidized competitor for all CAF funding, not just the CAF Phase II funding alleged by CTIA. The Bureau does not have authority to override the Commission's clear ruling.

### **III. Latency Should be Defined as 100 Milliseconds One-Way Between the Customer Premises to the Provider’s Transit or Peering Point**

USTelecom endorses the latency standard required by the *Order* – latency that is sufficiently low to enable real-time applications such as VoIP.<sup>26</sup> The standard should be 100ms one-way between the customer premises to the provider’s transit or peering point.<sup>27</sup> AT&T correctly states that “Just as the Bureau proposed a rebuttable presumption that cable providers meet certain performance metrics, it should presume that all wireline broadband providers meet

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<sup>24</sup> See *Order* at ¶ 127.

<sup>25</sup> *Id* at ¶ 124.

<sup>26</sup> Latency is also critical for other important services that ride over broadband facilities, such as medical and educational services, particularly in areas of the country where the only access to these services may be remotely over the Internet.

<sup>27</sup> USTelecom recognizes that the appropriate latency standard may need to vary for Alaska, taking into account the long transmission facilities there, which include transport over point-to-point microwave, satellite, and undersea cable facilities. See comments of ACS at 7.

the latency standard.”<sup>28</sup> Contrary to the comments of ViaSat, setting a latency standard that may exclude certain technologies such as satellite broadband does not violate the Commission’s policy of technological neutrality.<sup>29</sup> By referencing the ability to use real-time applications such as VoIP, the Commission tied the definition of broadband service to user needs and experiences, not specific technologies.

#### **IV. The Bureau Should Specific 60 Gigabytes Per Month as the Minimum Usage Allowance**

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 CAF Phase II.<sup>30</sup> The 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. WISPA, ViaSat and CTIA assert that the usage allowance should be low – 20 GB or less – based on median usage.<sup>31</sup> The purpose of including a usage allowance requirement would be contravened by having a requirement that excludes half of the users, the result of adopting a standard based on median usage. ViaSat’s contention that median usage levels would ensure “reasonable comparability” is absurd.<sup>32</sup> How can a service in a high-cost rural area be reasonable comparable to that of an urban area when half the potential customers cannot access it? WISPA notes that its members report that their customers today consume an average of about

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<sup>28</sup> See Comments of AT&T at 7.

<sup>29</sup> See Comments of ViaSat at 9.

<sup>30</sup> See *Notice* at ¶ 20.

<sup>31</sup> See Comments of WISPA at 7, ViaSat at 6, and CTIA at 10.

<sup>32</sup> See Comments of ViaSat at 6.

40GB per month, but WISPA recommends adopting 20GB per month as the minimum standard.<sup>33</sup> It seems odd that WISPA would determine that an appropriate minimum usage allowance would be half of the average usage of its own members' customers.

Contrary to the assertion of CTIA, it is also perfectly appropriate to determine the minimum usage standard for fixed broadband service based on data from fixed broadband services.<sup>34</sup> Determination of reasonable comparable service to define standards for fixed broadband should be based on fixed broadband data. Inclusion of mobile data, when mobile broadband service providers are not eligible for designation as unsubsidized broadband providers or for CAF Phase II support, would harm consumers by lowering the minimum usage allowance based on irrelevant data from an ineligible service.

## **V. Pricing**

USTelecom continues to support AT&T contention that “a broadband provider that offers national pricing for its broadband service offerings is offering those services to rural and urban areas at reasonable comparable rates.”<sup>35</sup> ViaSat is wrong when it contends that prices for broadband service should be compared to those of other providers for similar services in urban areas.<sup>36</sup> The Act’s reasonable comparability mandate<sup>37</sup> is not a price-fixing regime for communications service providers. It specifically references reasonable comparability of prices between rural and urban areas. The market-based pricing found in urban areas is the result of

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<sup>33</sup> See Comments of WISPA at 7.

<sup>34</sup> See Comments of CTIA at 10.

<sup>35</sup> See Notice at ¶ 14 referencing Comments of AT&T, WC Docket No. 10-90 *et al.*, at 25-26 (filed Jan. 18, 2012) and AT&T comments at 9-10.

<sup>36</sup> See Comments of ViaSat at 5.

<sup>37</sup> 47 U.S.C. § 254 (b)(3).

vigorous broadband competition. Rural consumers are well served when their rates are reasonably comparable to those offered by the provider in urban areas.

**VI. Conclusion**

The Bureau should promptly move forward with the implementation of CAF Phase II. An important step in that implementation is the clarification of 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 adopt the standards recommended by USTelecom to ensure the most efficient and effective use of scarce CAF Phase II funding.

Respectfully submitted,

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April 12, 2013