

**Before the  
Federal Communications Commission  
Washington, DC 20554**

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

To: Chief, Wireline Competition Bureau

**CONSOLIDATED REPLY TO OPPOSITIONS TO  
PETITION FOR PARTIAL RECONSIDERATION**

The Wireless Internet Service Providers Association (“WISPA”) hereby replies to the Oppositions<sup>1</sup> to WISPA’s Petition for Partial Reconsideration (“Petition”)<sup>2</sup> of the Report and Order (“*R&O*”) that the Wireline Competition Bureau (“Bureau”) adopted in the above-captioned proceeding on May 16, 2013.<sup>3</sup>

**Discussion**

**I. THE OPPOSITIONS MISCHARACTERIZE WISPA’S PETITION.**

WISPA’s Petition asked the Bureau to defer implementing the Connect America Fund (“CAF”) Phase II limited challenge process “until the full Commission has acted on the pending petitions seeking reconsideration” of the definition of “unsubsidized competitor” – a decision that could affect the criteria the Bureau will use to resolve challenges.<sup>4</sup> WISPA stated that it “has no complaint with the Bureau relying on the rules as they stand today.”<sup>5</sup> WISPA

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<sup>1</sup> Opposition of the United States Telecom Association, WC Docket No. 10-90 (Aug. 7, 2013) (“USTelecom Opposition”); Opposition of the Independent Telephone & Telecommunications Alliance, WC Docket No. 10-90 (Aug. 7, 2013) (“ITTA Opposition”); Oppositions to Petition for Partial Reconsideration of NTCA – The Rural Broadband Association, WC Docket No. 10-90 (Aug. 7, 2013) (“NTCA Opposition”); Opposition of Alaska Communications Systems Group, Inc. to WISPA Petition for Partial Reconsideration, WC Docket No. 10-90 (Aug. 7, 2013 (“ACS Opposition”).

<sup>2</sup> WISPA Petition for Partial Reconsideration, WC Docket No. 10-90 (Jul. 3, 2013) (“Petition”).

<sup>3</sup> *In the Matter of Connect America Fund*, Report and Order, DA 13-1113 (WCB rel. May 16, 2013) (“*R&O*”).

<sup>4</sup> Petition at 4. The petitions were filed December 29, 2011 by WISPA, NTCH, Inc. and ViaSat, Inc.

<sup>5</sup> *Id.* at 3.

understands that the Bureau lacks authority to change the definition of “unsubsidized competitor” and it did not ask the Bureau to take such action.

Despite the clarity of WISPA’s position, certain parties somehow mischaracterize WISPA’s request. WISPA did not, as USTelecom, ITTA and NTCA erroneously suggest, ask the Bureau to change the definition of “unsubsidized competitor.”<sup>6</sup> Nor is the Petition “tantamount to a stay” of the *R&O*, as ACS alleges.<sup>7</sup> WISPA simply pointed out that the Bureau has the discretion to defer implementing of the challenge process, and that action by the full Commission on the pending reconsideration petitions before the challenge process is initiated would allow the challenge process to proceed in a more orderly fashion. WISPA believes that this sequence is preferable to one where challenge results would be conditioned on the outcome of the reconsideration petitions.

ACS and USTelecom also misconstrue the nature of WISPA’s request in the underlying petition to change the definition of “unsubsidized competitor” to one that would permit the voice and broadband components to be provided by separate companies. Contrary to these parties’ inferences, WISPA has not argued that the Commission should “allow the presence of a WISP to disqualify an area as eligible for CAF Phase II support.”<sup>8</sup> Additionally, WISPA has not asked the Commission to “create[e] a regime in which the presence of a fixed wireless broadband in an area can block an incumbent LEC from receiving high-cost support.”<sup>9</sup> Rather, WISPA asked the Commission to determine that the presence in the same area of both an unsubsidized broadband provider and an unsubsidized voice provider be sufficient to deem an area as “served” even if the broadband service and the telephone service are offered by different companies. Nowhere has

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<sup>6</sup> See USTelecom Opposition at 2-3; ITTA Opposition at 1; NTCA Opposition at 2.

<sup>7</sup> ACS Opposition at 3 n.7.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> USTelecom Opposition at 4. See also *id.* at 5 (referring to “the alleged presence of a fixed wireless provider’s broadband service (without accompanying voice service) to block a carrier from receiving support in a given area”).

WISPA asserted that the presence of *only* an unsubsidized broadband competitor should be enough to disqualify an area from support eligibility. The Oppositions' attempts to re-frame WISPA's position are unavailing.

## II. A "CLEAR AND CONVINCING PROOF" STANDARD WILL BETTER SERVE THE PUBLIC INTEREST.

In its Petition, WISPA asked the Bureau to replace its "more likely than not" evidentiary standard for resolving Phase II challenges with a "clear and convincing proof" standard to "ensure that accurate information on the [National Broadband Map] and in the Form 477 is not mistakenly and erroneously 'corrected.'"<sup>10</sup> While WISPA agrees with USTelecom that "[e]stablishing an accurate list of census blocks that should be eligible for CAF Phase II support is essential," it finds illogical USTelecom's statement that a "heightened evidentiary standard would result in a greater level of inaccuracy."<sup>11</sup> In USTelecom's view, the National Broadband Map is "an initial screen,"<sup>12</sup> not the rebuttable presumption the Bureau adopted.<sup>13</sup> ITTA contends that the "more likely than not" standard "ensures that the CAF Phase II challenge process is not unnecessarily burdensome, presents spurious challenges, and maintains administrative efficiency for all parties"<sup>14</sup> – but it fails to address why these objectives would not be better realized through a higher evidentiary standard that would dissuade the filing of weak challenges that unnecessarily consumes administrative resources. Moreover, ITTA argues that the National Broadband Map "significantly overstates service availability by wireless Internet service providers ("WISPs") and others,"<sup>15</sup> but this statement cites a strongly opposed pending

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<sup>10</sup> Petition at 5.

<sup>11</sup> USTelecom Opposition at 6, 7.

<sup>12</sup> *Id.* at 7.

<sup>13</sup> *See R&O* ¶ 8.

<sup>14</sup> ITTA Opposition at 3.

<sup>15</sup> *Id.* at 3-4. NTCA suggests that there "is much on the record demonstrating that the mapping tools and data upon which this process would rely are unreliable." NTCA Opposition at 4. USTelecom asserts that the "National

waiver request filed by CenturyLink and ignores voluminous contrary evidence in the record.<sup>16</sup> ITTA also claims that the “Bureau acknowledged such concerns in the *Report and Order*.”<sup>17</sup> In fact, the *R&O* contains no such expression of concern about the accuracy of the National Broadband Map because the Bureau, unlike ITTA, has refused to prejudice the outcome of any challenge proceedings. By contrast, the Bureau appreciates that the initial list of census blocks may be underinclusive or overinclusive.<sup>18</sup>

ITTA accuses WISPA of being “self-servingly focused on keeping the number of challenges low.”<sup>19</sup> WISPA’s interests are not “self-serving,” but rather would benefit all incumbent “unsubsidized carriers” that face the prospect of competing with a subsidized carrier, price cap carriers seeking support, and Bureau staff which must quickly and efficiently review challenges. In fact, WISPs are likely to benefit from the challenge process because, under the Commission’s current definition, only those WISPs that also offer voice services are “unsubsidized competitors.” By definition, this would appear to preclude from consideration the large number of WISPs that do not offer voice services. In this regard, ACS once again misconstrues WISPA’s position in wrongly suggesting that WISPs that do not offer voice services could “disqualify an area as eligible for CAF Phase II support.”<sup>20</sup>

Opponents assert that the evidentiary standard should not be changed because, as it exists today, carriers must “prove a negative” – that a carrier must prove that an area depicted on the

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Broadband Map shows that some fixed wireless providers overstated their service areas.” USTelecom Opposition at 6. Neither NTCA nor USTelecom provides examples to support their opinions, which are more appropriately resolved on a case-by-case basis through a fairly administered challenge process.

<sup>16</sup> ACS also cites its own waiver request, using its own definition of “unsubsidized competitor” in suggesting that WISPs “do not advertise in a manner that makes clear that their ‘broadband’ services are capable of delivering required speeds, and they have reported service areas that do not appear to reflect the number of customers they actually serve.” ACS Opposition at 7, citing ACS Petition for Waiver. The Bureau has not acted on ACS’s waiver request, nor has it determined that consideration of advertised speeds or the number of customers is relevant to whether the provider is an “unsubsidized competitor.”

<sup>17</sup> *Id.* at 4.

<sup>18</sup> See *R&O* ¶ 12.

<sup>19</sup> ITTA Opposition at 5.

<sup>20</sup> ACS Opposition at 7.

National Broadband Map as “served” is “unserved.”<sup>21</sup> This argument ignores the facts that the National Broadband Map is now in its sixth iteration, is based on data that is repeatedly collected and analyzed, and is the subject of verification by state mapping contractors. Further, “proving a negative” would be required regardless of the applicable evidentiary standard.

The question here is one of degree – does the Bureau want to be responsible for close calls that may result in support flowing to areas already served by “unsubsidized competitors,” or does it want the comfort of knowing with greater certainty that CAF Phase II support will be optimized for use in areas where it is clear that no broadband service exists today and where there are no “unsubsidized competitors?” WISPA believes that the Bureau can best discharge its obligations, reduce administrative burdens and spend less time making support decisions if it adopts a “clear and convincing proof” evidentiary standard for CAF Phase II challenges.<sup>22</sup>

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<sup>21</sup> See ITTA Opposition at 4; NTCA Opposition at 4.

<sup>22</sup> WISPA believes that convoluted challenge process NTCA proposed should be disregarded. See NTCA Opposition at 5-6. First, NTCA did not seek reconsideration of the *R&O*, so its proposal is untimely. Second, the proposed process would extend only to state-certified carriers and ETCs and by its terms would exclude altogether WISPs that provide interconnected voice and are not ETCs. Third, NTCA attempts to introduce criteria that the Commission has not passed on, and it would appear that the Bureau would lack authority to adopt.

## Conclusion

For the fair and efficient administration of the CAF Phase II challenge process, the Commission should act on the pending petitions for reconsideration that seek modification of the definition of “unsubsidized competitor” before the Bureau initiates the challenge process. For these same reasons, the Bureau should raise the evidentiary standard for challenges to “clear and convincing proof.”

Respectfully submitted,

August 19, 2013

**WIRELESS INTERNET SERVICE  
PROVIDERS ASSOCIATION**

By: */s/ Chuck Hogg, President*  
*/s/ Alex Phillips, FCC Committee Chair*  
*/s/ Jack Unger, Technical Consultant*

Stephen E. Coran  
Lerman Senter PLLC  
2000 K Street, NW, Suite 600  
Washington, D.C. 20006-1809  
(202) 416-6744  
*Counsel to the Wireless Internet Service Providers Association*

## CERTIFICATE OF SERVICE

I, Kenneth Wolin, a paralegal with the law firm of Lerman Senter PLLC, hereby certify that on this 19<sup>th</sup> day of August, 2013, I served a true copy of the foregoing Consolidated Reply to Oppositions to Petition for Partial Reconsideration by USPS First Class Mail, addressed to the following:

David Cohen  
Jonathan Banks  
United States Telecom Association  
607 14<sup>th</sup> Street, NW  
Suite 400  
Washington, DC 20005

Michael Romano  
Jill Canfield  
NTCA – The Rural Broadband  
Association  
4121 Wilson Boulevard  
Suite 1000  
Arlington, VA 22203

Karen Brinkmann  
Robin Tuttle  
Karen Brinkmann PLLC  
555 Eleventh Street, NW  
Mail Station 07  
Washington, DC 20004-1304

Genevieve Morelli  
Micah M. Caldwell  
Independent Telephone &  
Telecommunications Alliance  
1101 Vermont Avenue, NW  
Suite 501  
Washington, DC 20005

Leonard Steinberg  
Richard R. Cameron  
Alaska Communications Systems Group, Inc.  
600 Telephone Avenue  
Anchorage, AK 99503

/s/ Kenneth Wolin  
Kenneth Wolin