



October 31, 2013

**BY ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Re: Report and Order in WC Docket No. 10-90, *Connect America Fund*, FCC 13-73,  
(rel. May 22, 2013)

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Dear Ms. Dortch:

The Wireline Competition Bureau (Bureau) is in the midst of administering the challenge process for Connect America Fund Phase I (CAF I) and issues have arisen which may inhibit the accurate identification of census blocks in which terrestrial, fixed broadband service at speeds of at least 3 Mbps downstream and 768 kbps upstream is not provided in price cap carrier service areas. A fair, thorough and accurate challenge process is key to efficiently and effectively using CAF I monies. Excluding census blocks from CAF I eligibility based on the presence of an unsubsidized competitor that is not capable of delivering broadband service would undermine the express goals of CAF I – “to spur immediate” deployment of “robust scalable broadband.”<sup>1</sup> It would harm those living and working in rural America.

Several of the challenges received in the CAF I challenge process are unhelpful to informing the Bureau as to the true state of broadband service in the challenged census blocks. The challenge process consists of three steps – (1) CAF I recipients identify unserved and underserved census blocks, (2) parties challenge particular census blocks as already served by broadband service, and (3) price cap carriers review such challenges and respond. In order for the process to help inform the Bureau’s decision for each census block, the second and third steps must report accurate information. Price cap carriers’ ability to provide a complete record for the Bureau’s consideration in step three is heavily dependent on their ability to access, understand and respond to the information provided by challenging parties in step two.

USTelecom has identified four issues in the submitted CAF I challenges that create general barriers to developing a thorough and accurate record for the Bureau’s consideration. Those are: (1) the confidential nature of key information, (2) whether the census block at issue is

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<sup>1</sup> See *Connect America Fund*, WC Docket No. 10-90 *et al*, 26 FCC Rcd. 17663 (2011) (*USF/ICC Transformation Order*), at ¶ 21.

actually served or merely “serviceable,” (3) insufficient certifications, and (4) the lack of customer location-specific information such as addresses or bills.

*Confidential Information.* The use of confidential information should be very limited in the challenge process. If it is necessary that information be submitted on a confidential basis, such information should be available for review by price cap carriers under an appropriate protective order.

USTelecom recognizes the need for confidentiality of subscriber information, but other information submitted in the challenge process, including carrier network information, should be publicly disclosed. Challenging parties should not be permitted to erect unnecessary roadblocks to the prompt and thorough examination of evidence included in challenges. This is consistent with the Commission’s preference for public disclosure as expressed in the CAF Phase I Order.<sup>2</sup>

The Bureau should immediately adopt a streamlined protective order to allow price cap carriers and certain internal personnel to review the confidential information included in several challenges and permit price cap carriers to supplement their replies with any additional information gleaned from examination of this information. If the challenger considers the confidential information probative, it is only fair that the price cap carrier be permitted to examine it and respond. Adoption of a protective order would preserve the balance between protecting customer privacy that the Bureau adopted in its Public Notice<sup>3</sup> and ensuring the efficient and effective use of CAF I funding. The Bureau should not consider information that has been provided on a confidential basis that the challenged price cap carrier has not had an opportunity to review.

Several challengers have indicated that they possess evidence that they have not submitted to the Commission but would submit such evidence if granted confidential treatment. Challenging parties should employ the process to come forward with their best case in their initial submission. It is not in the interests of the efficient and effective administration of the challenge process to include unnecessary steps. Moreover, price cap carriers have no opportunity to examine information not yet submitted. Such phantom evidence should not be considered by the Bureau.

A similar problem is presented by challengers who present as evidence the fact that they have recently submitted data to the National Broadband Map (NBM) that indicates that they now serve the census block in question. The Commission must take this opportunity to establish firm standards regarding “more recent submissions” to the NBM or the game of leapfrogging data submissions could render the CAF unworkable. At a minimum, some form of data review and verification or a firm cutoff date must be considered.

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<sup>2</sup> See Report and Order, WC Docket No. 10-90, *Connect America Fund*, FCC 13-73, at ¶ 27 (rel. May 22, 2013).

<sup>3</sup> See Public Notice, *Wireline Competition Bureau Reminds Connect America Phase I Challenge Participants to Protect Customer Privacy in Challenge Process*, WC Docket No. 10-90, DA 13-1988 (rel. Sept. 26, 2013).

*Actually Served Versus Serviceable.* Other challenges also raise the question of whether the census block must be *served* by the challenging party or merely “serviceable.” The May 21 *Report and Order* addresses filings in the CAF I challenge process makes an explicit reference to whether an area is “served or unserved.”<sup>4</sup> Those residing in rural areas should not be denied an opportunity to have broadband facilities built out to them because a provider who has not provided service in the relevant census block now decides to make a speculative offer to provide such service without any obligation to actually do so. A “serviceable” standard also makes the job of the price cap carrier in the challenge process almost impossible – the price cap carrier would have to rebut the *possibility* that a provider could decide to offer service in a census block, not whether it was actually providing service.

*Insufficient Certifications.* A number of the challenges provide certifications, but in some instances these certifications are either not from an officer of the company, and/or are only certifying to the veracity of statements made based on information not submitted to the record. While the Commission’s rules regarding the challenge process allow for some flexibility, they clearly reject mere conclusory assertions as sufficient. The Commission stated that evidence the Bureau could consider includes “a signed certification from an officer of the provider under penalty of perjury that if offers 3 Mbps/768 kbps Internet service to customers in that particular census block.” In turn, a certification that does not meet each of these components – specifically, (1) signed, (2) by an officer of the provider, (3) under penalty of perjury, (4) states that the challenger offers 3 Mbps/768 kbps broadband Internet service, and (5) in each census block challenged – should not be acceptable evidence to support a challenge. A certification that does not include each of these components lacks the requisite corporate authority, assertion of truthfulness, or description of service to effectively support a challenge. Such certifications should be disregarded by the Bureau in evaluating a challenge. Moreover, to ensure that its reliance on the perjury standard is warranted, the Bureau should subject these challenges to statistically valid audits to ensure the strict standard has meaning and consequences if not properly applied.

*Lack of Customer Location-Specific Information.* Finally, no challenge should be seriously considered unless it includes customer location-specific information such as actual customer addresses or bills from customers who subscribe to broadband of at least 3/768. Pursuant to the May 21 *Report and Order* the Bureau may consider evidence of an appropriate officer certification that could be accompanied by current customer billing records.<sup>5</sup> The Commission also instructed that the Bureau should not consider “conclusory assertions without supporting evidence that a census block’s designation as served or unserved should be changed.”<sup>6</sup> An officer certification that merely states that the challenger is providing the requisite service in a census block without more is a conclusory statement and is thus not enough without some other documented evidence of service to withstand a challenge. Customer location-specific information is necessary for challengers to demonstrate that they provide service in each census block challenged.

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<sup>4</sup> See Report and Order, WC Docket No. 10-90, *Connect America Fund*, FCC 13-73, at ¶ 33 (rel. May 22, 2013).

<sup>5</sup> Id.

<sup>6</sup> Id.

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This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "David B. Cohen". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David B. Cohen  
Vice-President, Policy

cc: Carol Matthey  
Amy Bender  
Ryan Yates