

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

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

**CONNECT AMERICA FUND PHASE I ROUND 2 CHALLENGE REBUTTAL OF  
FRONTIER COMMUNICATIONS CORPORATION**

**I. FRONTIER IS COMMITTED TO DEPLOYING BROADBAND IN  
UNSERVED AREAS**

Frontier Communications Corporation (“Frontier”) has a demonstrated commitment to deploying broadband in rural America. As part of its acquisition of Verizon properties in 2010, Frontier voluntarily committed to improving broadband penetration in those rural areas from 62% to 85% over three years.<sup>1</sup> Further, Frontier accepted nearly \$72M in funding to deploy broadband to nearly 93,000 additional locations as part of the first round of Connect America Fund (“CAF”) Phase I—by far the largest acceptance of any of the price cap carriers.<sup>2</sup> On August 20, 2013, Frontier submitted its application for \$71,852,575 to serve 118,984 locations through the second round of CAF Phase I, furthering its commitment to broadband in rural America.<sup>3</sup>

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<sup>1</sup> See *in re*: Application of Verizon Communications Inc. and Frontier Communications Corporation for Consent to Transfer Control of Domestic Section 214 Authority, *Memorandum Opinion and Order*, 25 FCC Rcd. 5972 (2010).

<sup>2</sup> Letter from Michael Golob, Senior Vice President Engineering and Technology, Frontier, to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 05-337, 10-90 (Jul. 24, 2012).

<sup>3</sup> Letter from Michael Golob, Senior Vice President Engineering and Technology, Frontier, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 10-90 (Aug. 20, 2013).

Of the locations for which Frontier applied for funding in round two of CAF Phase I, 11,687 were designated as “challenge” locations, which are located in census blocks that Frontier believes are erroneously represented as “served” on the National Broadband Map.<sup>4</sup> Pursuant to the *May 2013 CAF Order*, interested parties had thirty days to respond to the list of census blocks in which Frontier proposed to deploy for Round 2 of CAF Phase I.<sup>5</sup> In response to Frontier’s submission of proposed census blocks Frontier received some limited rebuttals to the challenges it submitted. Numerous interested parties also submitted challenges to the status of the National Broadband Map itself, claiming that many census blocks depicted as “unserved” on the June 2012 version of the National Broadband Map were actually “served” and therefore ineligible for CAF Phase I Round 2 funding as proposed by Frontier.

Frontier responds herein to provide rebuttals to the arguments made in some, but not all, of the “challenge” responses it received. While Frontier does not concede any of the “challenged” census blocks—either those made in response to Frontier’s own challenges or those made to challenge the veracity of the June 2012 National Broadband Map—Frontier lacks information to make informed rebuttals in a number of circumstances. USTelecom recently filed a letter with the Commission identifying “four issues in the submitted CAF I challenges that create general barriers to developing a thorough and accurate record for the Bureau’s consideration.”<sup>6</sup> Specifically, those are “(1) the confidential nature of key information; (2) whether the census block at issue is actually served or merely ‘serviceable’; (3) insufficient certifications; and (4) the

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<sup>4</sup> *Id.* at 2. See also *in re: Connect America Fund*, W.C. Dkt. No. 10-90, *Report and Order*, 28 FCC Rcd. 7766, ¶¶28-33 (rel. May 22, 2013) (describing the “challenge process.”) (“*May 2013 CAF Order*”).

<sup>5</sup> *May 2013 CAF Order* at ¶32.

<sup>6</sup> Letter from David B. Cohen, Vice-President Policy, USTelecom to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 10-90 (Oct. 31, 2013) (“USTelecom Letter”).

lack of customer location-specific information such as addresses or bills.”<sup>7</sup> Frontier has experienced the same issues with challenges submitted by interested parties, which in many cases, prevents Frontier from making a vigorous rebuttal. Accordingly, Frontier joins USTelecom in its calls to correct the challenge process.<sup>8</sup>

Regardless of the outcome of the challenge process, it is now clear that the majority of census blocks for which Frontier sought funding were not implicated in the challenge process. Given that the Commission’s goal for this round of CAF Phase I is to “leverage private investment in rural American and accelerate the availability of broadband to consumers who lack access,” the Commission should immediately release the funds associated with the census blocks for which no challenges have been filed.<sup>9</sup> Moving immediately to make funding available for broadband deployment in undisputed areas would allow Frontier to begin deploying broadband to unserved Americans while the outcome of the challenged census blocks is pending before the Commission. Further, such an action would be consistent with the Commission’s announcement to fund the uncontested CAF Phase I elections in Alaska, Hawaii and Puerto Rico.<sup>10</sup> Accordingly, Frontier urges the Commission to release uncontested funds immediately.

**II. THE COMMISSION SHOULD DENY THE FOLLOWING CHALLENGES AS DEFICIENT AND ENABLE BROADBAND DEPLOYMENT IN UNSERVED AREAS**

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<sup>7</sup> *Id.* at 1.

<sup>8</sup> *See generally, id.*

<sup>9</sup> May 2013 *CAF Order* at ¶ 2.

<sup>10</sup> Over \$32 Million of Connect America Funding Authorized to Connect Unserved Homes and Businesses in Alaska, Hawaii, and Puerto Rico, *Public Notice*, WC Dkt. No. 10-90, DA 13-2103 (rel. Oct. 31, 2013).

## **Armstrong Utilities**

Frontier cannot adequately rebut Armstrong Utilities’ challenge<sup>11</sup> because all of the pertinent information is redacted. Frontier, for example, believes that in several contested census blocks Armstrong does indeed have fiber passing through, but that this fiber is not used to serve locations in those census blocks—it is purely for transit purposes.<sup>12</sup> Due to the redacted nature of the filing Frontier cannot make any determinations about the feasibility of the homes purportedly passed in those census blocks. Accordingly the Commission should heed USTelecom’s call to “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.”<sup>13</sup> Without this further inspection Frontier cannot further assess the veracity of Armstrong’s claims, which in turn frustrates the challenge process.

## **Comcast**

Comcast Corporation (“Comcast”) makes a sweeping, and unsupported, declaration that 2,217 census blocks included in price cap carriers’ CAF elections are ineligible for funding because Comcast serves those areas.<sup>14</sup> Of those census blocks, Comcast states that 1040 are new to Comcast’s service territory since the June 2012 data submission. Frontier’s analysis shows that 472 of the census blocks that Comcast challenges as incorrectly represented on the National Broadband Map are part of Frontier’s funding application.

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<sup>11</sup> Armstrong Utilities Challenge, WC Dkt. No. 10-90 (Sep. 27, 2013).

<sup>12</sup> The specific census blocks applicable in this example are 541050301011002, 541050301011032, 541050301011044, 541050301011161 and 541050301011164.

<sup>13</sup> USTelecom Letter at 2.

<sup>14</sup> Comcast Corporation Challenge, WC Dkt. No. 10-90 (Sep. 27, 2013).

As proof that Comcast is serving these territories, Comcast relies on a certification layered onto another certification, though neither one meets the Commission's standards. In the *May 2013 CAF Order* the Commission stated that it would "not consider conclusory assertions without supporting evidence that a census block's designation as served or unserved should be changed."<sup>15</sup> The Commission stated that "the Bureau may consider such evidence as a signed certification from an officer of that provider under penalty of perjury that it offers 3 Mbps/768 kbps Internet service to customers in that particular census block."<sup>16</sup> Comcast fails to produce an adequate certification and provides no additional information beyond conclusory statements.

In Comcast's case, an Executive Director for Comcast certified that their outside vendor's broadband mapping materials are prepared under his direction and that the vendor's analysis was true to the best of his knowledge. As an initial matter, it is unclear as to whether Michael Ruger, Executive Director, Government Affairs, who signed the Certification, is actually an officer of Comcast. If indeed Mr. Ruger is not then Comcast's certification fails prong one of the Commission's test of "a signed certification from an officer." Second, the Ruger certification does not state that Comcast offers service in the census blocks at issue. Indeed, even the vendor's own certification carefully avoids stating that Comcast actually "offers service" in these census blocks, therefore failing to meet the Commission's otherwise straightforward second prong. Comcast presented no additional information "demonstrating that the block is in fact served by fixed Internet access with speeds of 3 Mbps/768 kbps or higher."<sup>17</sup>

The Commission adopted a "more likely than not" test for determining whether a census block should be treated differently than the National Broadband Map's representation. While the

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<sup>15</sup> *May 2013 CAF Order* at ¶33.

<sup>16</sup> *Id.* (emphasis added).

<sup>17</sup> *Id.* at ¶ 32.

Commission allowed that an officer certification may be one form of evidence, the Commission also stated that “[s]uch a certification could be accompanied by current customer billing records.”<sup>18</sup> Comcast did not take this step. Nor did it take any other steps to support its claims that the census blocks it lists should be excluded from funding. Comcast is the largest challenger in this process yet provided far less evidence than most of the other challengers and even failed to comply with the bare minimum officer certification standard. Accordingly, the Commission should reject Comcast’s challenge.

### **Mediacom**

In its challenge Mediacom provides a declaration of Thomas Larson that the census blocks listed in their challenge contain “serviceable” homes above the speed threshold.<sup>19</sup> As with the Comcast declaration, it is unclear as to whether Mr. Larson is an officer of the company as the Commission had specified. If Mr. Larson is not an officer then the Mediacom challenge should fail on its face. Beyond that, as USTelecom has noted, the Commission, when defining the CAF I challenge process, “makes an explicit reference to whether an area is ‘served or unserved,’” which is different than the “serviceable” language that Mediacom has employed.<sup>20</sup> Further, USTelecom aptly states that “[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.”<sup>21</sup> This statement is particularly true in the case of Mediacom’s challenge of Frontier’s locations.

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<sup>18</sup> *Id.* at ¶ 33.

<sup>19</sup> Mediacom Communications Corporation Challenge, WC Dkt. No. 10-90 (Sep. 27, 2013).

<sup>20</sup> USTelecom Letter at 3.

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

Mediacom lists by census block the “Number of Serviceable Homes Passed” in that census block. For 71 percent of Mediacom’s challenged census blocks affecting Frontier, Mediacom claims that two or less homes are “serviceable.” For 52 percent of those challenged census blocks, Mediacom claims that only one home per census block is “serviceable”. It is nearly impossible for Frontier to rebut whether Mediacom could *potentially* serve a single home in a census block. The Commission must adhere to a “served or unserved” standard instead of the potentially infinite category of “serviceable” locations. If Mediacom were to succeed in its challenge based upon use of the arbitrary “serviceable” standard to only one home per census block, then it would foreclose entirely the possibility of bringing broadband to an unserved census block without Mediacom ever having provided service to a single customer, frustrating the Commission’s goal of ubiquitous broadband deployment. Because of the deficiencies in Mediacom’s challenge it should be dismissed.

### **San Juan Cable**

San Juan Cable filed a challenge to Frontier’s deployment in Bellingham and Anacortes.<sup>22</sup> In the challenge San Juan admits that the areas it was serving were shown as unserved on the National Broadband Map as San Juan has not participated in the mapping exercise. In the case of Frontier, San Juan’s challenge comes far too late. Frontier is building to the referenced area as part of CAF Phase I Round 1, which was based on the then current version of the National Broadband Map (though we note that the Map itself would have shown it has unserved even this year) without a challenge process. As Frontier is not applying for Round 2 funding in these areas this challenge should be dismissed.

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<sup>22</sup>San Juan Cable Challenge, WC Dkt. No. 10-90 (Sep. 23, 2013).

## **Time Warner Cable**

Similar to Comcast, Time Warner has employed two layers of certifications in its challenge—a Time Warner employee’s certification of the work of a third party vendor.<sup>23</sup> Time Warner’s own certification comes from Ms. Julie P. Laine, Group Vice President and Chief Counsel, Regulatory, though Time Warner does not specify whether she is an officer of the company. If Ms. Laine is not an officer of the company then Time Warner’s challenge should fail automatically as they have not provided any other evidence beyond its unsubstantiated statements that it has additional evidence available upon request. Further, Time Warner admits that for 211 of the service blocks it does not and has not served any customers, merely that these locations could be serviceable based on unproven network modeling. Once again, the “serviceable” standard is too vague to serve the purpose of preventing Americans in those locations from receiving broadband. Also, while Frontier was not able to conduct a comprehensive test to determine Time Warner’s presence in the census blocks it is challenging, it is worth noting that in nine of Time Warner Cable’s challenged census blocks that Frontier tested,<sup>24</sup> Frontier’s independent drive tests did not show any presence of Time Warner Cable infrastructure. Because Time Warner has merely made the service addresses in those census blocks “available upon request” Frontier cannot go further in adequately investigating Time Warner’s claims. Accordingly Time Warner Cable has not met the Commission’s “more probable than not” standard necessary to exclude these areas from receiving broadband.

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<sup>23</sup> Time Warner Cable Challenge, WC Dkt. No. 10-90 (Sep. 27, 2013).

<sup>24</sup> The specific census blocks are: 360179705002011, 360179705002013, 360179705002014, 360179705002018, 360179705002021, 360179705002022, 360179705002036, 360179705002037, 360179705002038, 360179705002043.

### **III. CONCLUSION**

For the reasons stated above, the Commission should (1) adopt the revisions to the challenge process proposed by USTelecom; and (2) deny the challenges described in this document.

Respectfully submitted,

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/s/

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