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November 15, 2013

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Connect America Fund Phase I Challenges
WC Docket No. 10-90**

Dear Ms. Dortch:

The Wireless Internet Service Providers Association (“WISPA”), by counsel, hereby responds to certain points made by the United States Telecom Association (“USTelecom”) in its October 31, 2013 letter concerning the challenge process for Phase I of the Connect America Fund (“CAF”).¹

USTelecom claims to have identified four issues in the challenges “that create general barriers to developing a thorough and accurate record for the Bureau’s consideration.”² As explained below, WISPA believes that, in most cases, the Wireline Competition Bureau (“Bureau”) can make reasoned decisions on the challenges based on the public record. To the extent the Bureau requires additional information to render a decision, it can request that information from the parties to the challenge on a case-by-case basis. No evidence should be categorically excluded from consideration, but rather each case should be considered based on the totality of the evidence. The USTelecom Letter should not be construed as a means for a non-party to sway the Bureau’s consideration of the record in each proceeding.

Each of USTelecom’s four concerns is addressed below.

Confidential Information. Though it “recognizes the need for confidentiality of subscriber information,” USTelecom asserts that other information, “including carrier network information, should be publicly disclosed.”³ USTelecom asks the Bureau to adopt a streamlined

¹ Letter from David B. Cohen, USTelecom, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (Oct. 31, 2013) (“USTelecom Letter”). Like USTelecom, WISPA makes no comment on the resolution of any specific challenges.

² *Id.* at 1.

³ *Id.* at 2.



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protective order to enable carriers to review confidential information and to allow price cap carriers – and apparently *only* price cap carriers – to have an opportunity to supplement their responses.

WISPA favors transparency in the challenge process, but submits that a further process involving protective orders and another round of filings with the Bureau will serve only to delay the Bureau’s ability to make funding decisions. To the extent the Bureau cannot in a particular case make a decision based on the existing record or by using any other additional research it wishes to conduct, it can request the parties to provide additional information or, in rare cases, adopt a protective order limited to the particular proceeding.

USTelecom also expresses concern over information that challengers have submitted to the state mapping contractors but that is not depicted on the National Broadband Map, and asks the Commission to establish standards such as data review and verification or a firm cutoff date.⁴ WISPA opposes any process that would establish an historical cutoff date and require the Bureau to make decisions based on data that may not be current. WISPs continue to aggressively build out their systems and are making timely submissions to the bi-annual mapping data requests, and should not be forced to compete with a government-subsidized price cap carrier in areas where the WISPs offer qualifying fixed broadband service. To the extent the Bureau has questions related to updated information submitted to mapping contractors, it has already stated that “[p]arties that provide updated map information [not depicted on the most recent version of the National Broadband Map] therefore may wish to submit other evidence supplementing their showing.”⁵ The Bureau should not, after challengers have relied on this guidance, change the rules retroactively to prevent such information from being considered. The Bureau can rely on other evidence submitted by challengers, such as coverage maps, customer records and a certification, to corroborate mapping information.

Actually Served Versus Serviceable. USTelecom argues that areas that are “serviceable,” and not actually “served,” should be treated as “unserved” for purposes of the CAF Phase I challenge process.⁶ Such an interpretation would be plainly at odds with the standards the Bureau adopted in the *CAF Phase I Challenge Order*, where the Bureau explained that it may consider evidence that the existing provider “offers 3 Mbps/768 kbps Internet service to customers in that particular census block.”⁷ The Bureau also did not prohibit providers from submitting propagation maps or other information showing where their service is available from a nearby tower or access point. If an existing provider offers fixed broadband service in a particular census block, that service is available to consumers and the area should not be subsidized in Phase I. The Bureau cannot harm those providers that reasonably relied on the Bureau’s statements by retroactively adopting a stricter standard.

⁴ See *id.*

⁵ *Connect America Fund*, Report and Order, WC Docket No. 10-90 (May 22, 2013) (“*CAF Phase I Challenge Order*”) at 14, n.67.

⁶ See USTelecom Letter at 3.

⁷ *CAF Phase I Challenge Order* at 14 (emphasis added).



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Insufficient Certifications. USTelecom notes that some of the challengers' certifications may not be signed by an officer under penalty of perjury and may not certify to the availability of 3 Mbps/768 kbps service in each challenged census block.⁸ It argues that those certifications that do not satisfy these criteria "should not be acceptable evidence to support a challenge."⁹ WISPA disagrees that certifications should be rejected out of hand if they fall short of meeting certain criteria. Rather, the Bureau can consider the certification alongside other information the provider submits. For example, if the certification does not explicitly state that the provider offers 3 Mbps/768 service in a particular census block, the Bureau can and should look to other information in the record – service speeds may appear on a customer invoice. Similarly, a lack of clarity over whether the certifying person is an officer of the challenging company should not be disqualifying if other information demonstrates that 3 Mbps/768 kbps service is offered in the census block.

Lack of Customer Location-Specific Information. USTelecom contends that "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."¹⁰ WISPA appreciates that, standing alone, a certification from an officer that it provides 3 Mbps/768 kbps may not be sufficient evidence. However, WISPA reminds USTelecom and the price carriers that the Bureau suggested ways in which customer-specific information could be redacted to help protect confidential customer information.¹¹ Existing providers that relied on the guidance described in the *Public Notice* should not be penalized for following its parameters. For instance, if a provider redacted the last two digits of a customer's address, that information should still be strongly considered. Carriers cannot therefore complain that information so redacted in accordance with the *Public Notice* is insufficient.

In sum, the Bureau has provided examples of the evidence it will consider as part of the challenge process, and did not prohibit parties from offering whatever evidence that may help establish the availability of fixed broadband service in a given area. No such information should be categorically excluded from consideration. Rather, the Bureau should consider whether the record evidence in each case shows that the status of a census block on the National Broadband Map should be treated differently for CAF Phase I purposes. To the extent the record in a particular case may be unclear, the Bureau can ask for supplemental information and, in rare instances, adopt a protective order.

⁸ See USTelecom Letter at 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See *Public Notice*, "Wireline Competition Bureau Reminds Connect America Phase I Challenge Participants to Protect Customer Privacy in Challenge Process," DA 13-1988 (rel. Sept. 26, 2013) ("*Public Notice*").



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Pursuant to Section 1.1206 of the Commission's Rules, this letter is being filed electronically via the Electronic Comment Filing System in the above-captioned proceeding.

Respectfully submitted,

/s/ Stephen E. Coran

Stephen E. Coran

cc: Carol Matthey
Amy Bender
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