

‘unsubsidized competitor.’”² The Commission defined an “unsubsidized competitor” as “a facilities-based provider of residential fixed voice and broadband service that does not receive high-cost support.”³ In that same order the Commission eliminated existing high-cost support to competitive eligible telecommunications carriers over a five-year phase-down period, with most such support ending by July 1, 2016.⁴

In the *CAF Phase II Service Obligations Order*, the Bureau recognized that, because CAF Phase II support will be awarded for a five-year term, it is possible that a competitive provider might be receiving support in an area at the start of the five-year period, but would have its support eliminated during that time frame. This would mean that the competitive provider would “not meet the literal terms of the definition” of an “unsubsidized competitor” when CAF Phase II support begins, but would become an “unsubsidized provider” at some point over the next five years. In that case, the CAF Phase II recipient would be in violation of the requirement that CAF Phase II funding not be used in areas served by an unsubsidized competitor. To address this, the Bureau found that competitive providers could challenge the presumption that they are not “unsubsidized competitors” if their support is scheduled to end. Specifically, the Bureau stated, “This will provide an opportunity for the Commission to consider whether to waive application of the ‘unsubsidized’ element of the unsubsidized competitor definition in

² *Connect America Fund, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17701, ¶ 103 (2011) (*CAF Order*).

³ 47 C.F.R. § 54.5.

⁴ *CAF Order*, 26 FCC Rcd at 17832, ¶ 519. The Commission delayed the start of the phase-down for two years for competitive eligible telecommunications carriers serving remote parts of Alaska and for a tribally-owned competitive eligible telecommunications carrier. *Id.* at 17835-37, ¶¶ 529-531.

situations that would result in Phase II support being used to overbuild an existing broadband-capable network.”⁵

DISCUSSION

In its application for review, ACS provides no persuasive reason for reversing the Bureau’s decision. ACS first argues that whether a competitive provider is “unsubsidized” can only be determined at a single point in time, and, specifically, prior to the start of CAF Phase II funding.⁶ This completely ignores the fact that, based on the Commission’s own rules, certain subsidized providers will become unsubsidized over a defined period of time. When that happens, the Commission’s rules also preclude CAF Phase II support from being used in those areas. The Bureau’s decision to allow the Commission to review whether it is appropriate and necessary to provide CAF support to these areas is completely reasonable and should be upheld.

ACS next tries to argue that, because market forces alone may not have been sufficient to allow a competitive provider initially to enter an area, the Commission should continue to provide CAF support to the incumbent LEC, regardless of whether the competitive provider is able to continue providing service in the area absent support.⁷ This makes no sense. Past universal service support may have been necessary to allow a competitive provider to cover the costs of building facilities in a high-cost area, but that is not relevant to whether support should be given to an incumbent LEC to compete with that provider on an ongoing basis. If the competitive provider will be able to serve customers in an area without support, there is no basis to provide support to the incumbent LEC in that area.

⁵ *CAF Phase II Service Obligations Order*, DA 13-2115, ¶ 41.

⁶ ACS Application for Review at 6.

⁷ *Id.* at 7-9.

ACS's remaining argument boils down to the fact that it is an incumbent LEC and therefore it should receive universal service support.⁸ Absent from its argument is any recognition of the fact that universal service support is meant to benefit *consumers*, not incumbent LECs. Where consumers are able to receive service from a competitive provider that will not be receiving universal service support, there is no need for the Commission to waste valuable CAF money by giving it to the incumbent LEC to serve the same consumers. Instead, that support should be repurposed, as the Commission intended, to areas where there services could not be provided to consumers absent universal service support.

CONCLUSION

For the reasons explained in this opposition, the Commission should deny ACS's application for review and affirm the Bureau's decision to allow competitive eligible telecommunications carriers the ability to challenge the definition of "unsubsidized provider" in areas where they will no longer receive high-cost support.

Respectfully submitted,

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⁸ *Id.* at 10-14.

CERTIFICATE OF SERVICE

I, Gretchen M. Lohmann, certify that on this 11th day of December, 2013, true and correct copies of the foregoing Opposition of the National Cable & Telecommunications Association were served by first class mail, postage prepaid, to the following parties to the proceeding:

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