

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of) WC Docket No. 10-90
Connect America Fund) DA 13-2472

**REPLY TO OPPOSITIONS TO
THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION
APPLICATION FOR REVIEW**

To: Marlene Dortch, Secretary, Federal Communications Commission

Pursuant to section 1.115 of the rules of the Federal Communications Commission (“Commission”), NTCA–The Rural Broadband Association, the National Exchange Carrier Association, Inc., the Eastern Rural Telecom Association, and WTA-Advocates for Rural Broadband (collectively, the “Rural Associations”) hereby submit this Reply to Oppositions¹ to the Application for Review (“AFR”) filed by the National Cable & Telecommunications Association (“Cable”)² regarding Connect America Fund (“CAF”) Phase II service obligations adopted by the Wireline Competition Bureau (“Bureau”).³ The Rural Associations herein address the comments of the Wireless Internet Service Providers Association (“WISPA”)⁴ and note that the AFR was opposed by the United States Telecom Association (“USTelecom”)⁵ and Alaska Communications Systems (“ACS”).

¹ Wireline Competition Bureau Reminds Parties of Deadlines for Filing Oppositions to and Replies Regarding the National Cable and Telecommunications Association’s Application or Review of the *Connect America Fund Phase II Service Obligations Order*, Public Notice, DA 13-2472, WC Docket No. 10-90 (rel. Dec. 24, 2013) (“*Public Notice*”).

² NCTA Application for Review, WC Docket No. 10-90 (fil. Dec. 23, 2013) (“AFR”).

³ *Connect America Fund*, WC Docket No. 10-90, Report and Order, DA 13-2115 (Oct. 31, 2013) (“*CAF Phase II Service Obligations Order*” or “*Order*”).

⁴ Comments of WISPA, WC Docket No. 10-90 (fil. Jan. 7, 2014) (“WISPA comments”).

⁵ Opposition to the Applications for Review of USTelecom, WC Docket No. 10-90 (fil. Jan. 7, 2014) (“USTelecom opposition”); Opposition to the Applications for Review of ACS, WC Docket No. 10-90 (fil. Jan. 7, 2014) (“ACS opposition”).

Like Cable, WISPA's comments incorrectly assert that the Bureau exceeded its delegated authority in adopting the *CAF Phase II Service Obligations Order*.⁶ WISPA asserts that in defining "unsubsidized competitor" the *USF/ICC Transformation Order* "did not in this context define 'broadband' ...and did not qualify the term or require the Bureau to modify this definition."⁷ In support of this argument WISPA points to the same "described above" language as Cable, from paragraph 170 of the *Transformation Order*, and asserts that the Commission "made no mention of an additional requirements" beyond the single criteria of broadband speed for *existing* providers.⁸

As the Rural Associations noted in their Opposition to the Cable AFR,⁹ however, the *Transformation Order* states that "[a]ll Americans should have access to broadband that is capable of enabling the kinds of key applications that drive our efforts to achieve universal broadband, including education (e.g., distance/online learning), health care (e.g., remote health monitoring), and person-to-person communications (e.g., VoIP or online video chat with loved ones serving overseas)."¹⁰ Subsequent paragraphs under the heading "Broadband Performance Metrics" go on to discuss the latency, capacity, and price standards that the Commission determined were part of determining whether rural consumers have access to "reasonably comparable" services at "reasonably comparable" rates.¹¹ This discussion includes a definition of "unsubsidized competitor" in paragraph 103, followed by a further expansion of that term in

⁶ WISPA, pp. 3-4.

⁷ *Id.*, p. 3.

⁸ *Id.*, p. 4.

⁹ Rural Associations' Opposition to the Cable AFR, WC Docket No. 10-90 (fil. Jan. 7, 2014).

¹⁰ *Connect America Fund*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (2011) ("*USF/ICC Transformation Order*"), ¶ 87. (Emphasis added)(internal citations omitted).

¹¹ *Id.*, ¶¶ 90-108

the next paragraph that emphasizes the importance of broadband performance characteristics beyond speed, referencing latency, and capacity minimums.¹²

This discussion is followed later by paragraph 170, which states that “[i]n determining areas eligible for support, we will also exclude, areas where an unsubsidized competitor offers broadband service that meets the broadband performance requirements described above.”¹³ As an initial matter, it makes little sense for the Commission to have referred to performance requirements (plural) in the first sentence of paragraph 170, which discusses “unsubsidized competitors,” had its intention been to require these carriers to meet *only* the broadband “speed” standard.

Most importantly, as the above discussion indicates, the Commission emphasized, *throughout* this portion of the *Transformation Order*, the importance of service quality standards beyond broadband speed metrics, and did so with a clear indication that its goal – consistent with the very statute it sought to implement – was to ensure that *all* Americans have access to “reasonably comparable” voice and broadband service. This discussion took place alongside the Commission’s determination that areas served by an unsubsidized competitor were not in need of CAF Phase II support. In short, WISPA’s assertions effectively seeks to render a nullity the full discussion by the Commission leading up to paragraph 170. Contrary to WISPA’s improper reading, the only logical conclusion that can be reached by the Commission’s full discussion is that the Commission intended to make certain that all consumers have access to “reasonably comparable” voice and broadband service meeting speed, latency, capacity, and price standards, *whether that be provided by a carrier receiving CAF support, or an “unsubsidized competitor” providing such “reasonably comparable” service without support.*

¹² *Id.*, ¶¶ 103-104.

¹³ *Id.*, ¶ 170.

In addition, the WISPA comments, like the Cable AFR, have serious, negative public policy implications. As USTelecom states:

adopting NCTA's [and WISPA's] argument potentially could result in significant disparities in the speed and quality of broadband services available in different areas. In those areas supported by CAF Phase II funds, broadband services would meet or exceed the performance requirements established by the Bureau. However, under [the NCTA/WISPA] approach, any area in which an unsubsidized competitor offered broadband services would not be subject to the same performance requirements, would not be eligible for CAF Phase II funding and, thus, *might never be served at the same speeds or service levels as those areas supported by CAF Phase II.*¹⁴

In other words, by trying to avoid application of the Bureau's metrics adopted in the *CAF Phase II Service Obligations Order* to any determination of whether CAF Phase II support should be directed to a particular high-cost rural area, WISPA and Cable would relegate certain rural consumers to a lower level of service, entirely at odds with the very purpose of the Universal Service Fund and the directive contained in Section 254 of the Communications Act.¹⁵

Finally, WISPA also misses the mark when it asserts that "the Bureau has essentially created the same standard for those wishing to prevent competing with a subsidized carrier as for those seeking such funding."¹⁶ The Rural Associations addressed this argument in some detail in their Opposition to the Cable AFR, and it need not be repeated in full here. Suffice it to say, the *CAF Phase II Service Obligations Order* is, in part, a method by which the Commission can "determine whether adequate broadband services already are available in that area or whether additional funding is needed to promote additional broadband deployment."¹⁷ It is *also* a method

¹⁴ USTelecom opposition, p. 4. (emphasis added).

¹⁵ As ACS states, the Cable framework (supported by WISPA), "would have the Commission make CAF Phase II support unavailable in any area where any competitor offers broadband of any description at any price." ACS Opposition, p. 1.

¹⁶ WISPA comments, pp. 4-5.

¹⁷ USTelecom opposition, p. 6.

by which an unsubsidized competitor can, in the words of the Bureau, “exclude an area from [CAF] Phase II support.”¹⁸ Of course, the “unsubsidized competitor is free to continue to offer (or not offer) broadband services at whatever service levels it chooses.... [b]ut the unsubsidized broadband competitor itself is not required to provide broadband services at those levels.”¹⁹

For the reasons stated herein, the Commission should reject the arguments made in the Cable AFR and the WISPA comments.

Respectfully submitted,

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¹⁸ *CAF Phase II Service Obligations Order*, ¶ 40

¹⁹ USTelecom opposition, p. 6.

SERVICE LIST

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CERTIFICATE OF SERVICE

I, Brian J. Ford certify that on this, the 17th day of January, 2014, copies of the foregoing NTCA, NECA, ERTA, and WTA (Rural Associations') Reply to Oppositions to the National Cable & Telecommunications Association Application for Review were served by first class mail, postage prepaid, or via email, to the following parties to the proceeding:

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