

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

In the Matter of	)	
	)	
Technology Transitions	)	GN Docket No. 13-5
	)	
AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition	)	GN Docket No. 12-353
	)	
Connect America Fund	)	WC Docket No 10-90
	)	
Structure and Practices of the Video Relay Service Program	)	CG Docket No. 10-51
	)	
Telecommunications Relay Services And Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
Numbering Policies for Modern Communications	)	WC Docket No. 13-97

To: The Commission

**COMMENTS OF  
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”), pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, submits these Comments in response to the Further Notice of Proposed Rulemaking (“*FNPRM*”) released by the Commission on January 31, 2014 in the above-captioned proceedings.<sup>1</sup> Specifically, WISPA responds to the Commission’s request for comment on issues relating to the rural broadband experiments (the “Rural Broadband Experiment Program”) that the Commission endorses as part of its general embrace of “a diverse set of experiments and data collection initiatives . . . to evaluate how customers are affected by

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<sup>1</sup> *Technology Transitions*, Order, Report and Order and Further Notice of Proposed Rulemaking, GN Docket No. 13-5, *et al.*, FCC 14-5 (2014) (“*FNPRM*”). On February 28, 2014, the *FNPRM* was published in the Federal Register, which established a deadline of March 31, 2014 for filing Comments. *See* 79 Fed.Reg. 11327 (Feb. 28, 2014). Accordingly, these Comments are timely filed.

the historical technology transitions that are transforming our nation's voice communications services.”<sup>2</sup>

As discussed herein, WISPA enthusiastically supports the advancement of experiments that will “examine the impact of technology transitions on rural Americans,”<sup>3</sup> especially the deployment of cost-effective, robust and scalable broadband networks. To best achieve these objectives, the Commission should allocate significant funding to the Rural Broadband Experiment Program, adopt technology neutral eligibility rules that do not favor any particular category of provider and rely on criteria that recognize cost-effective broadband deployment as the most important selection factor. Applicants selected for funding should be subject to a streamlined process by which the Commission would designate eligible telecommunications carriers (“ETCs”).

### **Introduction**

WISPA is the trade association that represents the interests of wireless Internet service providers (“WISPs”) that provide IP-based fixed wireless broadband services to consumers, businesses and anchor institutions across the country. WISPs use unlicensed spectrum that lowers barriers to entry so that they can provide high-quality and affordable service in unserved, underserved and competitive areas. WISPA's members include more than 800 WISPs, equipment manufacturers, distributors and others committed to providing affordable and competitive fixed broadband services. WISPA estimates that WISPs serve more than 3,000,000 people, many of whom reside in rural, unserved and underserved areas where wired technologies like FTTH, DSL and cable Internet access services may not be available. In some of these areas, WISPs provide the only terrestrial source of fixed broadband access. In areas where other

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<sup>2</sup> *FNPRM* at ¶ 1.

<sup>3</sup> *Id.* at ¶ 6.

broadband options are available, WISPs provide a local access alternative that fosters competition in service, cost and features. Many WISPs have begun to deploy fiber for middle-mile or last-mile service, often in combination with fixed wireless technology.

As a general matter, WISPs that provide fixed broadband service are not eligible for federal Universal Service Fund (“USF”) support because they are classified as “information” service providers and not as providers of “telecommunications.” As a result, and unlike the telephone companies that have relied on taxpayer-supported federal subsidies for years, WISPs have funded construction and operation of their fixed wireless networks with private financing. This is due in large part to the cost-effective and scalable fixed wireless technology that enables WISPs to establish access points to meet the demand for service even when sought by only a few customers in a given area – a far different cost model than the subsidy model on which wireline carriers must rely in order to extend their service.

More and more, WISPs are adding interconnected VoIP to their broadband service offerings. As explained in an ex parte letter WISPA filed last year, “when properly deployed, the quality of voice service provided over fixed wireless broadband is indistinguishable from circuit-switched voice or VoIP service provided by cable and telephone companies.”<sup>4</sup>

In this proceeding, a large number of WISPs filed “expressions of interest” to participate in the Rural Broadband Experiment Program. For example, JAB Wireless, Inc., a WISP with more than 170,000 fixed wireless broadband and 20,000 VoIP subscribers, expressed interest in receiving Rural Broadband Experiment funding for census tracts in 10 states. Gateway Telecom, LLC, a WISP in West Virginia that has received state grants for broadband, indicated a willingness to serve rural areas of West Virginia with Rural Broadband Experiment Program

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<sup>4</sup> See Letter from Stephen E. Coran, Counsel to WISPA, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90 (Apr. 23, 2013) at 2.

funds. Rural Broadband Network Services, Inc. of Harrisonburg, Virginia identified a number of areas in rural Virginia that it would serve through the program, and Amplex Electric, Inc. of Northwest Ohio indicated a willingness to receive funding to serve rural areas in that state. These are just a few examples of the strong interest that fixed wireless broadband providers have in participating in the Rural Broadband Experiment Program.

## Discussion

### I. THE COMMISSION HAS AUTHORITY TO FUND THE RURAL BROADBAND EXPERIMENT PROGRAM AND TO MAKE FUNDING AVAILABLE FOR “INFORMATION” SERVICE PROVIDERS.

WISPA agrees that the Commission has the necessary authority to solicit and fund the experiments described in the *FNPRM*, and particularly those specifically related to the Rural Broadband Experiment Program.<sup>5</sup> Section 254(b)(3) of the Communications Act of 1934, as amended (the “Act”), directs the Commission to implement policies that promote access to telecommunications and information services in rural areas on comparable terms and rates as available in urban areas.<sup>6</sup> The Rural Broadband Experiment Program is clearly consistent with the advancement of such policies.

Further, Section 706(b) of the Act instructs the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing . . . regulatory methods that remove barriers to infrastructure investment.”<sup>7</sup> This statutory provision allows the Commission to exercise its authority to adopt rules that will advance broadband deployment. By providing subsidies for robust IP-based

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<sup>5</sup> See *id.* at ¶ 92, n.158

<sup>6</sup> 47 U.S.C. § 254(b)(3). For example, the Commission has repeatedly found that it has authority to treat interconnected VoIP providers as “telecommunications carriers” for certain purposes, including USF collections and administration. See, e.g., *Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order, 22 FCC Rcd 19531, 19538 (noting “four occasions” on which Title II requirements have been extended to VoIP providers); *Universal Service Contribution Methodology*, 21 FCC Rcd 7518, 7538-43 (2006).

<sup>7</sup> 47 U.S.C. § 1302(b).

broadband, the Rural Broadband Experiment Program will accelerate broadband deployment, especially in rural and/or underserved areas, and provide the Commission with important information that can be used to set and adjust broadband policy going forward.

## **II. THE COMMISSION SHOULD ESTABLISH A LARGE BUDGET TO FUND THE RURAL BROADBAND EXPERIMENT PROGRAM.**

The *FNPRM* notes that the Commission's broadband reserve account contains significant unallocated Connect America Funds of \$230 million, but nevertheless states that "[w]e do not envision using all unallocated funds in the broadband reserve for experiments in rural areas, but rather an amount that is sufficient to enable us to award funding to a limited number of projects...."<sup>8</sup> WISPA believes that limiting the amount of funding to \$50-\$100 million, as the *FNPRM* suggests,<sup>9</sup> would constitute a missed opportunity for the Commission, broadband providers and the rural public. With about 1,000 expressions of interest on file, the Commission has described the interest in the program as "astounding," noting that the proposals are

from rural telephone companies, from rural electric co-ops, from cable and wireless service providers, from schools and libraries, from research and education networks, from communities. The proposals are varied, geographically and technologically diverse, yet all have a common theme. They are expressions of a desire to deliver better, more robust Internet access service, faster speeds to communities in rural areas.<sup>10</sup>

Without question, there is clearly a need for significant funding so the Commission can obtain data and information that will inform its future policy decisions, support broadband providers that would benefit from financial support and, most importantly, extend broadband service more quickly to more rural areas. Conversely, leaving unallocated funds sitting in the Commission's

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<sup>8</sup> *FNPRM* at ¶ 204.

<sup>9</sup> *See id.*

<sup>10</sup> *See* Jonathan Chambers, Chief, Office of Strategic Planning and Policy Analysis, "Notes from the Sandbox: The Rural Broadband Experiment," Official FCC Blog (Mar. 11, 2014), *available at* <http://www.fcc.gov/blog/notes-sandbox-rural-broadband-experiment> ("FCC Blog"). Even after the March 7, 2014 deadline, the Commission is continuing to receive expressions of interest.

bank account serves little purpose at this time. WISPA strongly encourages the Commission to allocate the full balance of the reserve account to support rural broadband experiments.

### **III. THE COMMISSION SHOULD NOT RESTRICT ELIGIBILITY FOR THE RURAL BROADBAND EXPERIMENT PROGRAM.**

The Rural Broadband Experiment Program is the first CAF-based program that holds promise for access and opportunity to *all* broadband service providers – not just to wireline carriers that might be coaxed into expanding their wireline service. Until now, all CAF-funded programs have provided price cap carriers preferential access to billions of dollars of funding. While WISPA is sympathetic to NTCA’s frustration that rate-of-return carriers were restricted from participation in earlier CAF programs,<sup>11</sup> WISPA does not believe that the Rural Broadband Experiment Program should continue the trend of “playing favorites” when allocating CAF-based support. Instead, for both price cap and rate-of-return areas, the program should be open and available to *all* interested providers and entities on an equal and technology-neutral basis.

As evidenced by the Commission’s recent public statements, there has been strong interest in the program from representatives of numerous technology sectors: communities, cable operators, utilities, WISPs and others.<sup>12</sup> The Commission would be acting contrary to this broad-based interest if it were to foreclose participation in the Rural Broadband Experiment Program at the outset by any class of provider or type of entity, or to provide anything but a completely level playing field for all potential applicants. Instead of eliminating potential applicants at the starting gate, the Commission should use its selection criteria to consider and determine the best applications for program funding.

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<sup>11</sup> See *FNPRM* at ¶ 207.

<sup>12</sup> See FCC Blog.

#### **IV. THE SELECTION CRITERIA AND APPLICATION REQUIREMENTS PROPOSED IN THE *FNPRM* ARE LARGELY APPROPRIATE.**

The *FNPRM* seeks comment on potential criteria for use in selecting proposals for Rural Broadband Experiment Program funding.<sup>13</sup> WISPA generally supports the use of these criteria for fixed wireless broadband proposals.

First, WISPA agrees that “cost effectiveness should be the primary criteria in evaluating which applications to select.”<sup>14</sup> In shifting its focus away from simply subsidizing wireline carriers, the Commission should use the opportunity presented by the Rural Broadband Experiment Program to reward those fixed wireless applicants that seek the least amount of funding per unserved rural location. The Commission also should fund experiments of all sizes, including those that can be funded for less than \$1 million. In emphasizing cost-effectiveness for fixed wireless applications and funding a large sample of project sizes, the Commission will obtain valuable data about technology platforms and business models that it can use to inform its policies going forward.

Consideration of cost-effectiveness should include the applicant’s proposed funding mechanism. WISPA believes that one-time support should generally be preferred over recurring support, and that shorter term recurring support should be preferred over longer term (e.g., 10-year) support. The Commission also should ensure that its funds are used to support active customers, not just broadband deployment. A “homes served” approach will focus resources on service to a customer and not just to “homes passed” that might never receive service from the funded provider.

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<sup>13</sup> See *FNPRM* at ¶ 212.

<sup>14</sup> *Id.* at ¶ 213.

Second, the *FNPRM* asks whether applications should be compared according to “the extent to which the applicant proposes to build robust, scalable networks.”<sup>15</sup> Aside from cost-effectiveness, this criterion should be the most important factor the Commission considers. All applicants for fixed wireless broadband experiments should demonstrate an ability to meet a 4 Mbps downstream/1 Mbps upstream minimum speed benchmark, and additional credit should be given to applicants that propose higher speeds and to those that propose service to community anchor institutions.

Third, the Commission should consider “the extent to which applicants propose innovative strategies to leverage non-Federal governmental sources of funding.”<sup>16</sup> However, applicants proposing to provide matching funds of private capital should be preferred over those that rely on state or other governmental funding.

The *FNPRM* also lists potential information that “may be useful to include in the formal proposals for rural broadband experiments.”<sup>17</sup> In general, WISPA finds the list to be appropriate, but cautions the Commission against attempting to design a “one size fits all” approach. Proposals are likely to be extremely varied, and attempting to mandate an entirely standardized application for proposals may impede some applicants or discourage them from applying. WISPA encourages the Commission to make the application process for the Rural Broadband Experiment Program as simple and inviting as possible.

**V. ANY CHALLENGE PROCESS FOR THE RURAL BROADBAND EXPERIMENT PROGRAM SHOULD MIRROR THE CHALLENGE PROCESS FOR OTHER CAF PROGRAMS.**

WISPA agrees with the Commission’s conclusion that “challenges to the eligibility of areas proposed for experiments [should be] entertained after the project has otherwise been

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<sup>15</sup> *Id.* at ¶ 214.

<sup>16</sup> *Id.* at ¶ 215.

<sup>17</sup> *Id.* at ¶ 218.

tentatively selected for funding.”<sup>18</sup> To entertain challenges before selection of projects to be included in the Rural Broadband Experiment Program would be disruptive and difficult to administer. Further, WISPA believes that any challenge process adopted and utilized for the Rural Broadband Experiment Program should be *identical* to the challenge process implemented for CAF Phase II to determine which census blocks are eligible for the offer of model-based support. To implement different challenge processes for different CAF-related programs would be entirely inefficient and potentially confusing for all parties involved. The Commission should not hold program applicants to a different set of rules and standards than those that apply to price cap carriers in CAF Phase I and Phase II.

#### **VI. WISPA SUPPORTS A STREAMLINED ETC PROCESS ADMINISTERED BY THE COMMISSION.**

The Commission concluded that a Rural Broadband Experiment Program applicant selected for funding be an ETC, or become an ETC within 90 days after selection.<sup>19</sup> The Commission asks commenters to “refresh the record” on ETC designation issues, specifically the process by which applicants can achieve ETC designation.<sup>20</sup> WISPA believes that the Commission should exercise jurisdiction specifically to designate ETCs for the program in order to create a single, streamlined process for the distribution of program funding. State processes could drag on past the 90 days envisioned by the Commission. Also, for applications that include census tracts in more than one state, an applicant would need to obtain ETC designation in all states, a process that could become expensive and time-consuming. A nationwide process administered by the Commission will promote timely, efficient and uniform processing of ETC

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<sup>18</sup> *Id.* at ¶ 208.

<sup>19</sup> *See id.* at ¶ 118.

<sup>20</sup> *See id.* at ¶ 222.

applications, and will therefore expedite the use of Commission funding for rural broadband deployment.

### **Conclusion**

The Commission has a distinct opportunity to promote a Rural Broadband Experiment Program that is robust and that affords equal opportunities for all interested and qualified applicants. WISPA supports the Commission's initiative and encourages the Commission to maximize the potential of the Rural Broadband Experiment Program by taking the steps described above.

Respectfully submitted,

### **WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

March 31, 2014

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