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

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

OPPOSITION OF THE UNITED STATES TELECOM ASSOCIATION TO PETITION FOR RECONSIDERATION OF THE AMERICAN CABLE ASSOCIATION AND THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

The United States Telecom Association ("USTelecom")[1] hereby respectfully submits this opposition to the Petition for Reconsideration of the American Cable Association and the National Cable & Telecommunications Association ("Petition").[2] The Wireline Competition Bureau ("Bureau") should deny the Petition and continue to move forward with the challenge process and the other elements of CAF Phase II implementation.

The American Cable Association ("ACA") and the National Cable & Telecommunications Association ("NCTA") (collectively "Petitioners") are seeking to deny the benefits of CAF Phase II funding to rural, high-cost households that incontrovertibly do not have broadband today. The Petitioners are protesting a reasonable and reasoned evidentiary requirement adopted by the Bureau pursuant to delegated authority. The requirement is that parties present evidence of current or former customers in a census block in order to challenge

[1] USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets.
[2] *See* Petition for Reconsideration of the American Cable Association and the National Cable & Telecommunications Associations (WC Docket No. 10-90) (filed July 21, 2014).

the Bureau's determination that the block is unserved for purposes of determining eligibility for CAF Phase II support.[3]

The *USF/ICC Transformation Order*[4] makes a clear delegation to the Bureau to determine if an area is *served*, stating "We conclude, on balance, that it would be appropriate to exclude any area *served* by an unsubsidized competitor that meets our initial performance requirements, and we delegate to the Wireline Competition Bureau the task of implementing the specific requirements of this rule."[5] The Bureau adopted a rather liberal interpretation of this language. It included in its definition of "served" areas those that are unserved but were served in the past, along with areas that are served at the time of the challenge.

The Petitioners find this definition inadequate for their purposes and incorrectly allege that the Bureau made "an unexplained departure from past precedent, in which the Bureau recognized that an area is served regardless of whether customers have yet purchased service."[6] The Bureau actually provides a very clear explanation of why it modified the evidentiary standard for challenges from the one applied in CAF Phase I. It gave *two* reasons for honing the standard for the CAF Phase II process. It said "For this second round of Phase I, the Bureau had no prior experience administering a challenge process. In advance of the challenge process, the Commission provided only limited guidance on the types of evidence that would be considered, as it could only make reasoned predictions about the types of evidence that might be submitted and arguments that would be raised. This absence of firm guidance, combined with the fact that Phase I support would provide one-time rather than ongoing funding, led the Bureau to interpret

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[3] *Id* at p. 1.
[4] *USF/ICC Transformation Order*, 26 FCC Rcd 17663, 17729 ¶ 170.
[5] *Id.*
[6] *See* Petition at p. 1.

much of the evidence and statements received in a manner favorable to the putative existing providers."[7]

The reasonable evidentiary standard adopted by the Bureau will help ensure that residents of rural areas are not denied the opportunity to have broadband available to them based upon the type of thin assertions made during the CAF Phase I challenge process. The experience gained during that process has informed the Bureau's implementation of the Commission's delegated task and will help ensure that the CAF Phase II challenge process is conducted effectively and efficiently.

In addition, Petitioners fail to address the fact that the standards adopted by the Commission in the USF/ICC Transformation Order regarding the exclusion of areas based on claims of broadband availability are *different* for CAF Phase I and CAF Phase II. It is entirely reasonable for the Bureau to apply different evidentiary standards where the Commission gave it different standards to implement.

Specifically, with respect to CAF Phase I eligibility, the Commission directed funding to locations "unserved by fixed broadband with a minimum speed of 768 kbps downstream and 200 kbps upstream, and that, to the best of the carrier's knowledge, are, in fact, unserved by fixed broadband at those speeds."[8] This standard is aimed at excluding *all* areas that have *any* broadband, rather than just protecting competitors from overbuilding, which evidences a stricter Commission policy aimed at directing CAF Phase I support primarily to "unserved" as opposed

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[7] *See* Public Notice, Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process (WC Docket No. 10-90), DA 14-864 (rel. June 20, 2014) at ¶ 4.

[8] *USF/ICC Transformation Order*, 26 FCC Rcd 17663, 17720 ¶ 146. The speed requirement was increased for Round 2 of CAF Phase I. In addition, the Commission clearly limited its definition in this context by defining "unserved by fixed broadband" *for the purpose of CAF Phase I* …." *Id*, at fn. 146 (emphasis added). This implies that the Commission intended that the standard could be different for CAF Phase II.

to "high-cost" areas. In addition, the CAF Phase I funding recipient has a further obligation not to use the funding where it is aware there is broadband independent of the National Broadband Map or challenge process. This also supports the concept of a stricter standard for CAF Phase I.

With respect to CAF Phase II, however, the Commission directed the Bureau to "exclude areas where an unsubsidized competitor offers broadband service that meets the broadband performance requirements …."[9] This standard plainly permits CAF Phase II funding in some areas with broadband, specifically service that doesn't meet the performance requirements or isn't offered by an unsubsidized competitor. In other words, the CAF Phase II standard is less strict, and plainly aimed more at preventing the use of CAF Phase II where comparable service is actually being provided as oppose to ensuring that no broadband service is available at all, which was the CAF Phase I standard.

The Petition of ACA and NCTA should be denied.

Respectfully submitted,

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[9] *USF/ICC Transformation Order*, 26 FCC Rcd 17663, 17729 ¶ 170.