

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

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| In the Matter of |) | |
| |) | |
| Connect America Fund |) | WC Docket No. 10-90 |
| |) | |
| Universal Service Reform – Mobility Fund |) | WC Docket No. 10-208 |
| |) | |
| ETC Annual Reports and Certifications |) | WC Docket No. 14-58 |
| |) | |
| Establishing Just and Reasonable Rates for Local Exchange Carriers |) | WC Docket No. 07-135 |
| |) | |
| Developing an Unified Intercarrier Compensation Regime |) | CC Docket No. 01-92 |

To: The Commission

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

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Summary

The Wireless Internet Service Providers Association (“WISPA”) comments on several aspects of the Further Notice of Proposed Rulemaking regarding the rules for Phase II of the Connect America Fund (“CAF”). As the trade association representing the interests of both existing providers of fixed wireless broadband and voice services and providers that may wish to participate in the competitive bidding process, WISPA seeks to ensure that CAF support is not used to subsidize areas where wireless Internet service providers (“WISPs”) already provide service and to promote fairness in the Commission’s implementation of CAF Phase II.

First and foremost, WISPA opposes any increase in the minimum fixed broadband speed to 10 Mbps downstream. The Commission’s finite CAF resources can better advance policy objectives by ensuring that all Americans have access to 4 Mbps downstream/1 Mbps upstream speeds, which are sufficient to support essential Internet access services such as sending email, searching for a job or completing homework. Price cap carriers have noted the substantial additional costs associated with building 10 Mbps networks. Further, CAF support must not be used to support overbuilding of unsubsidized broadband networks that have been privately funded and meet the Commission’s existing broadband speed standard.

Second, WISPA opposes the introduction of mobile wireless technology into the CAF Phase II process. For a variety of reasons, mobile wireless is not the “functional equivalent” of fixed wireless or wireline technologies because it does not enable the same user experience.

Third, WISPA does not oppose a minor reduction in service to unserved locations or the substitution of a small percentage of unserved locations in partially served census blocks, so long as such limited flexibility applies equally to both price cap carriers and successful competitive bidders.

Fourth, the Commission should not require unsubsidized competitors to file reports certifying to their ability and willingness to provide service going forward. The Commission should presume that service will continue rather than shifting the burden to providers that in many cases have established a track record of operating and staying in business.

Fifth, the Commission should streamline the eligible telecommunications carrier (“ETC”) designation process for successful competitive bidders after they are selected, consistent with WISPA’s previous proposal. In addition to establishing specific timelines for ETC applicants, the Commission should deem ETC applications to be automatically approved if the state does not act within a specified time period.

Sixth, the Commission should adopt its competitive bidding proposal. Key components of the Commission’s plan are multi-round bidding and package bidding.

Finally, WISPA agrees that the Commission should adopt a stand-alone broadband support program in rate-of-return areas, but only if eligibility is open to *all* broadband providers and technologies on a competitively and technologically neutral basis. This would prevent carriers from receiving support to compete with WISPs and other providers that already provide broadband or voice, but not both.

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The Wireless Internet Service Providers Association (“WISPA”), pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, hereby comments on certain of the issues presented in the *FNPRM* adopted in the above-captioned proceeding.¹ WISPA agrees with Commission proposals that would apply the same rules to both price cap carriers that elect the statewide commitment and successful competitive winning bidders, but urges the Commission to reject other proposals that would require broadband network upgrades to preclude Connect America Fund (“CAF”) support eligibility and would increase reporting burdens on existing broadband providers that do not obtain CAF support. In particular, WISPA opposes any increase in

¹ *Connect America Fund, et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, *et al.*, FCC 14-54 (rel. June 10, 2014) (“*Omnibus Order*”). A summary of the *Omnibus Order* was published in the Federal Register on July 9, 2014, which established a Comment deadline of August 8, 2014. *See* 79 Fed.Reg. 39196 (July 9, 2014). WISPA’s Comments respond to the Further Notice of Proposed Rulemaking (“*FNPRM*”) section of the *Omnibus Order*, with references to the Report and Order (“*Report and Order*”) section.

broadband speed that would convert “served” areas to “unserved” areas and thereby expose such areas to government-funded competition.

Background

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. 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 broadband options are available, WISPs provide a local access alternative that fosters competition in service, cost and features. Some 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 have not been 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 provide broadband service when only a few customers are in a given area – a far different cost model than the subsidy model on which wireline carriers rely in order to extend their service.

WISPA’s concerns throughout the USF reform process have been focused on ensuring that telecommunications carriers do not receive CAF support in areas where WISPs already offer

fixed broadband service. In seeking to vigilantly protect this interest and to promote opportunities for its members to compete for broadband support, WISPA has participated in many of the proceedings following adoption of the landmark *USF/ICC Transformation Order*² to oppose requests for waiver of the CAF Phase I rules filed by price cap carriers,³ to improve the CAF Phase I and CAF Phase II challenge processes,⁴ and to enable participation by WISPs in the rural broadband experiment program⁵ and the CAF Phase II competitive bidding process.⁶

WISPA appreciates the Commission's adoption of rules that will allow rural broadband experiment selectees⁷ and CAF Phase II competitive bidding winners to obtain eligible telecommunications carrier ("ETC") status after being selected for support.⁸ Proposals in the *FNPRM*, however, present new threats to the unsubsidized, privately-funded businesses that WISPs and other existing providers have created to deliver fixed broadband services to rural

² *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*"). On December 29, 2011, WISPA filed a Petition for Reconsideration of the *USF/ICC Transformation Order* in which it asked the Commission to reconsider its definition of "unsubsidized competitor" so that CAF support would not be eligible for distribution in areas where the voice and broadband services could be provided by different entities. See WISPA Petition for Partial Reconsideration, WC Docket No. 10-90, *et al.* (filed Dec. 29, 2011) ("WISPA Recon Petition"). After almost three years, and despite resolving a number of other outstanding petitions, applications for review and requests for declaratory ruling in the *Omnibus Order*, the Commission has taken no action on WISPA's Petition and has offered no explanation for why action remains pending.

³ See WISPA Opposition to CenturyLink Petition for Waiver, WC Docket No. 10-90, *et al.* (July 12, 2012); WISPA Opposition to Windstream Election and Petition for Waiver, WC Docket No. 10-90, *et al.* (Aug. 24, 2012); WISPA Opposition to FairPoint Communications, Inc. Petition for Waiver of Sections 54.312(b)(2) and (3) of the Commission's Rules and Conditional Election of Incremental CAF Support, WC Docket No. 10-90, *et al.* (Oct. 11, 2012); WISPA Opposition to Petition for Waiver of Alaska Communications Systems, *et al.*, WC Docket No. 10-90, *et al.* (Oct. 12, 2012).

⁴ See, e.g., Letter from Stephen E. Coran, WISPA Counsel, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90 (filed July 24, 2014) (supporting joint petition for reconsideration filed by the American Cable Association and the National Cable & Telecommunications Association regarding the Wireline Competition Bureau's interpretation of the term "offer" in its order regarding CAF Phase II challenge guidelines); WISPA Petition for Partial Reconsideration, WC Docket No. 10-90 (filed July 26, 2013); WISPA Petition for Partial Reconsideration, WC Docket No. 10-90 (filed July 3, 2103); WISPA Comments, WC Docket No. 10-90 (filed Feb. 19, 2013); WISPA Comments, WC Docket No. 10-90 (filed Jan. 28, 2013); WISPA Reply Comments, WC Docket No. 10-90 (filed Mar. 4, 2013).

⁵ See WISPA Comments, GN Docket No. 13-5 (filed Mar. 31, 2014); WISPA Reply Comments, GN Docket No. 13-5 (filed Apr. 14, 2014).

⁶ See WISPA Comments, WC Docket No. 10-90 (filed Feb. 19, 2013).

⁷ See *Connect America Fund*, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, *et al.*, FCC 14-98 (rel. July 14, 2014) ("*Rural Broadband Experiments Order*").

⁸ See *Report and Order* at 14-15.

areas. WISPA's Comments recommend alternatives to the Commission's proposals that will mitigate these threats and ensure that CAF support is not, intentionally or unintentionally, used to deploy fixed broadband service in areas where it is already offered.

Discussion

I. THE COMMISSION SHOULD NOT INCREASE THE MINIMUM BROADBAND SPEED FOR CAF SUPPORT RECIPIENTS.

The Commission proposes to raise the minimum broadband speed from 4 Mbps to 10 Mbps downstream for recipients of high-cost support that are subject to broadband public interest obligations,⁹ and asks whether federal funds should be used to support overbuilding of existing networks.¹⁰ WISPA strongly believes that it would be premature for the Commission to change the speed standard at this time, and that it should continue to offer support to areas that lack access to 4 Mbps/1 Mbps service. As Commissioner O'Rielly aptly observed in supporting adoption of the *FNPRM*:

The one exception is that the Further Notice proposes to increase the broadband speed standard for all support recipients from the current 4 Mbps downstream to 10 Mbps downstream – *before* we've completed the task of ensuring that all consumers have access to 4 Mbps. I too want to get the most bang for our limited USF bucks and I want greater speeds for all Americans, especially rural citizens. However, raising the speed standard will come at a substantial cost and implementing it within the budget could entail significant tradeoffs for consumers.¹¹

Just as the Commission expressed skepticism over funding a competitive bidder to overbuild a price cap carrier's network,¹² it should be even more concerned about providing model-based support to carriers so they can overbuild existing broadband networks, especially those that are unsubsidized.

⁹ See *FNPRM* at 50.

¹⁰ See *id.* at 61.

¹¹ *FNPRM*, Statement of Commissioner Michael O'Rielly, at 1 (emphasis in original).

¹² See *id.* at 61.

Moreover, the Commission's limited CAF resources should not be used to fund higher speeds that can accommodate video streaming, gaming and other entertainment services, but rather should ensure that all consumers have access to basic broadband. Again, the words of Commissioner O'Rielly ring true: "the 4 Mbps standard that the Commission selected seems to be *reasonably* comparable to what is offered in urban areas. It is sufficient to enable people to send email, look for jobs, complete homework assignments, and even watch an occasional movie."¹³ Thus, while a 10 Mbps service may be nice, using limited federal resources to support upgrading and overbuilding of networks before all areas have broadband access to reasonably comparable services contravenes the objective of universal service.

Notably, price cap carriers themselves oppose an increase in the speed threshold because of the significant additional costs associated with building a more robust network. USTelecom stated that "[i]ncreasing the speed target for CAF II can very substantially increase the costs of participating in the program. . . . Network architectures in the remote, high-cost, unserved areas targeted by the fund will need substantial additional investment and re-building to meet speed targets higher than the current 4/1Mbps."¹⁴ ITTA agreed, stating that "[p]roviding 10 Mbps service to 100% of locations within five years would take substantially more funding than the model will provide under the CAF budget and will make it impossible for carriers to accept a statewide commitment to deploy broadband service through the CAF program."¹⁵

In sum, given the finite amount of support available for CAF Phase II, existing providers and potential CAF recipients agree that the better policy choice is to continue to fund more locations at 4 Mbps/1 Mbps speeds to achieve universal access instead of funding fewer

¹³ *Id.* at 2 (emphasis in original).

¹⁴ Letter from Jonathan Banks, USTelecom Senior Vice President, Law and Policy, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90 (filed Apr. 16, 2014), at 2.

¹⁵ Letter from Micah M. Caldwell, ITTA Vice President, Regulatory Affairs, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90 (filed Apr. 16, 2014) ("ITTA Letter"), at 2.

locations at 10 Mbps or funding overbuilding of unsubsidized networks. Increasing the minimum broadband speed for CAF support would exacerbate the rural digital divide, not bridge it.¹⁶

Assuming *arguendo* the Commission raises the minimum speed threshold for support recipients, the Commission should not require existing broadband providers to meet that standard in order to preclude support, in contrast to ITTA's suggestion.¹⁷ WISPs and other unsubsidized providers have, without the benefit of any federal support, constructed and deployed successful broadband networks that meet the existing 4 Mbps/1 Mbps standard. As "information" service providers that are ineligible for CAF Phase II support, they should not be required to spend additional private funds to upgrade those networks merely to preclude large price cap carriers from receiving federal funds to build faster networks. It is not difficult to foresee that large, subsidized carriers offering 10 Mbps speeds, or 20 Mbps/20 Mbps speeds,¹⁸ could put out of business smaller, unsubsidized providers offering 4 Mbps/1 Mbps service that lack the legal ability and the financial wherewithal to upgrade on a schedule dictated by the Commission and not by consumer demand.

II. MOBILE BROADBAND IS NOT "FUNCTIONALLY EQUIVALENT" TO FIXED BROADBAND AND THUS SHOULD NOT BE PERMITTED FOR CAF RECIPIENTS.

The Commission acknowledges that fixed wireless technology "is an option" for Phase II,¹⁹ and WISPA agrees that the Commission should continue to permit CAF recipients, including those selected through competitive bidding, to use fixed wireless technology to meet their public interest and deployment obligations. A properly engineered fixed wireless network

¹⁶ WISPA does not oppose retention of the 100 GB usage allowance and 100 ms latency standard for price cap carriers electing the statewide commitment and for competitive bidding winners. *See FNPRM* at 53-54.

¹⁷ *See ITTA Letter* at 2.

¹⁸ *See FNPRM* at 56.

¹⁹ *See id.* at 55.

can support the speed, usage capacity, latency and performance functions of traditional wired networks, including interconnected VoIP,²⁰ and can be deployed cost-efficiently. WISPs typically provide fixed wireless service at a cost that is lower than DSL and cable. In some areas, fixed wireless broadband technology may be the only terrestrial technology platform that can deliver fixed broadband services economically. Many WISPs have established networks in sparsely populated areas that would otherwise be unserved by wireline technologies such as DSL and cable. In other areas, WISPs compete with wired services, including some subsidized telephony services.

By contrast, mobile wireless technology is not the “functional equivalent” of fixed technology for end users,²¹ and should not be acceptable for CAF Phase II. As the Commission observes, “mobile service can have a far greater variation in service quality as compared to fixed services, with service quality changing based on location within a tower’s footprint, but also even whether the service is being used indoors rather than outdoors.”²² Mobile broadband is expensive to build, does not deliver the same quality of service as fixed broadband and is several time more expensive for end users when factoring in mobile broadband data caps. And while mobile wireless may be useful for Twitter, email and light web browsing, it simply cannot meet the full-featured broadband needs of consumers who need to look for a job, upload a resume or edit documents. Thus, even if mobile wireless can meet the CAF public interest requirements, mobile technology does not enable the same user experience that fixed networks permit. Further, the Commission has established a separate Mobility Fund to subsidize mobile services, so there are already funding mechanisms in place for mobile technology.

²⁰ See *Connect America Fund*, Report and Order, 28 FCC Rcd 7211, 7214 n. 16 (WCB 2013).

²¹ See *FNPRM* at 56.

²² *Id.*

To the extent the Commission adopts incentives for faster deployment, the same rules should apply to both price cap carriers electing the statewide commitment as well as CAF Phase II competitive winning bidders.²³ WISPA notes that the Commission will accelerate payout of rural broadband experiment program funds to ETCs that exceed the deployment benchmarks,²⁴ and believes that a similar schedule could be applied to CAF Phase II recipients.

III. THE COMMISSION SHOULD AFFORD PHASE II RECIPIENTS LIMITED FLEXIBILITY TO MEET THEIR DEPLOYMENT OBLIGATIONS.

The Commission asks for comment on two proposals that would give price cap carriers and competitive bidding winners greater flexibility to satisfy their deployment obligations.²⁵ First, while WISPA supports deployment to 100 percent of all locations in funded areas, it does not oppose a minor reduction to 95 percent so long as any shortfall is accompanied by a reduction in support levels that corresponds to the reduced number of locations. Second, WISPA does not oppose the substitution of unserved locations in partially served census blocks for those in census blocks identified for funding so long as 95 percent of the census blocks are in funded service areas. WISPA believes that funding recipients should be afforded some limited level of flexibility so long as the rules apply in identical fashion to both price cap carriers and successful competitive bidders.

IV. THE COMMISSION SHOULD NOT ADOPT A CERTIFICATION REQUIREMENT FOR EXISTING UNSUBSIDIZED COMPETITORS.

The Commission seeks comment on whether to exclude from Phase II support areas for which the existing provider certifies “that it is able and willing to continue providing terrestrial fixed residential voice and broadband services meeting the Commission’s requirements for a

²³ *See id.* at 57.

²⁴ *Rural Broadband Experiments Order* at 26.

²⁵ *See FNPRM* at 58.

specified period of time, such as five years.”²⁶ WISPA disagrees with the imposition of such a requirement. The Commission should not presume that a subsidized (or unsubsidized) provider will exit the market once support is phased out, but rather should presume that service will continue. Successful Phase II bidders are likely to be WISPs and cable companies that have constructed and operated broadband and voice networks without federal subsidies, and creating a negative presumption contravenes this history. Further, whether a current provider is “able and willing” to continue to provide service may often depend on issues well beyond the control of the provider, such as access to additional spectrum for fixed wireless, equipment availability and access to capital. Moreover, subjecting unsubsidized providers, many of which are small businesses, to additional regulatory obligations would create unnecessary burdens.

V. THE COMMISSION SHOULD STREAMLINE ITS ETC DESIGNATION PROCESS.

WISPA applauds the Commission’s decision to allow entities to become ETCs after their selection for CAF Phase II funding²⁷ or for rural broadband experiment funding.²⁸ By not requiring ETC status to be obtained prior to selection, states can avoid processing ETC applications for unsuccessful applicants, thereby preserving administrative resources. Further, as the Commission points out, filing for ETC designation prior to the competitive bidding would potentially reveal a bidder’s strategy.²⁹

In the *FNPRM*, the Commission asks questions about the implementation of its decision.³⁰ In an *ex parte* letter submitted April 15, 2014, WISPA presented a specific post-selection application process that would impose specific time periods for seeking and approving

²⁶ *See id.* at 61.

²⁷ *See Report and Order* at 14-15.

²⁸ *See Rural Broadband Experiments Order* at 10.

²⁹ *See Report and Order* at 15.

³⁰ *See FNPRM* at 62-63.

successful bidders as ETCs.³¹ Within 30 days of being selected for funding, a provider would be required to apply for ETC designation; the State (or the Commission) would have 60 days to review the application, or if the State takes no action within 60 days the application would be deemed granted.³² This approach, especially the establishment of a “shot clock” for approval, would promote the interests of the Commission and successful bidders by injecting additional certainty into the process and enabling the faster distribution of support.

WISPA also reiterates its proposal to limit ETC designations to the specific CAF program and to sunset the ETC designation after the funding term has expired and all build-out and public interest obligations have been fulfilled.³³ Although Section 214 of the Communications Act of 1934, as amended, may require a voice provider to obtain authorization to discontinue service, there is no need to maintain other obligations once the recipient has successfully satisfied conditions for the program and Commission oversight of compliance has concluded.

VI. THE COMMISSION SHOULD ADOPT ITS COMPETITIVE BIDDING PROPOSAL.

WISPA generally supports the Commission’s competitive bidding proposal.³⁴ Specifically, setting the reserve price at the model amount would ensure that a winning bidder would not receive more than the amount established by the Commission in its cost analysis. Package bidding should be permitted so that bidders can cover areas that correspond to their business model and coverage area. For fixed wireless companies, package bidding would enable them to seek funding for coverage area that correlates to the propagation characteristics of the

³¹ See Letter from Stephen E. Coran, WISPA counsel, to Marlene Dortch, FCC Secretary, WC Docket No. 10-90 (Apr. 15, 2014).

³² *Id.* at 2-3. See also *FNPRM* at 64, n.372. WISPA does not oppose a shorter shot clock.

³³ See *id.* at 63.

³⁴ See *id.* at 74-75.

specific spectrum bands from specific locations. WISPA also agrees that a multi-round auction will provide bidders with information about other bids and allow them to adjust their bids, reevaluate their deployment objectives and modify their bidding strategies.

VII. ANY STAND-ALONE BROADBAND FUNDING MECHANISM SHOULD BE AVAILABLE TO ANY PROVIDER THAT IS OR BECOMES AN ETC.

The Commission proposes to adopt a stand-alone broadband funding program for rate-of-return carriers.³⁵ WISPA suggests that if the Commission establishes a “broadband only” support program, *any* broadband provider should be eligible on a competitively and technologically neutral basis, not just rate-of-return carriers. As both WISPA and NCTA have stated, the current definition of “unsubsidized competitor” can lead to inefficient results where broadband is ostensibly considered *not* supported in areas where both an unsubsidized voice provider and a separate unsubsidized broadband provider already provide their respective voice or broadband service but the Commission nevertheless considers the area as “unserved.”³⁶ To address this inequity – at least in rate-of-return areas where CAF has not been implemented – the Commission should fund broadband in areas where a carrier offers only voice. Given the lower cost structure for fixed wireless technology and their presence in rural areas where rate-of-return carriers tend to operate, it can be expected that WISPs would take advantage of a stand-alone broadband fund.

Conclusion

WISPA looks forward to a smooth and successful CAF Phase II election and competitive bidding process. Its primary objective is to protect broadband providers’ existing private investments by ensuring they are not subject to new speed standards that could enable subsidized

³⁵ *See id.* at 87.

³⁶ *See* WISPA Recon Petition; Comments of the National Cable & Telecommunications Association, WC Docket No. 10-90 (filed June 17, 2013), at 4.

carriers to compete with them by receiving subsidies to overbuild areas that today meet the Commission's standards. WISPA's other proposals are intended to create fair and technology-neutral rules that will encourage its members' participation in the competitive bidding process. The Commission should adopt WISPA's recommendations as described above.

Respectfully submitted,

**WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION**

August 8, 2014

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