

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 ) WC Docket Nos. 10-90, 14-93  
Connect America Fund )

**OPPOSITION OF THE UNITED STATES TELECOM ASSOCIATION  
TO PETITIONS FOR LIMITED WAIVER  
OF THE CAF PHASE II EVIDENTIARY REQUIREMENT  
BY ALLEN’S TV CABLE SERVICE, INC., BRIGHT HOUSE NETWORKS, LLC,  
CEQUEL COMMUNICATIONS, LLC, CHARTER COMMUNICATIONS, COX  
COMMUNICATIONS, INC., WAVE DIVISION HOLDINGS, LLC, VYVE  
BROADBAND A, LLC AND ANY SIMILIARLY SITUATED REQUESTS**

The United States Telecom Association (“USTelecom”)<sup>1</sup> hereby respectfully submits this opposition to Petitions for Limited Waiver and requests for waiver contained in challenges (collectively “Petitions”) filed separately by Allen’s TV Cable Service Inc. (“Allen TV”), Bright House Networks, LLC (Bright House”), Cequel Communications, LLC (“Cequel”), Charter Communications (“Charter”), Cox Communications, Inc. (“Cox”), Wave Division Holdings, LLC (“Wave”) and Vyve Broadband A, LLC (“Vyve”)<sup>2</sup> (collectively, “Petitioners”). The Petitions seek waivers of the Wireline Competition Bureau’s decisions regarding the evidentiary standards for resolving challenges in Connect America Fund, Phase II (“CAF II”). The Federal Communications Commission (“Commission”) should deny the Petitions and continue to move

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<sup>1</sup> 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.

<sup>2</sup> See Petition for Limited Waiver of CAF Phase II Evidentiary Requirement separately filed by Bright House Networks, LLC, Cequel Communications, LLC, Charter Communications, Wave Division Holdings, LLC, and Vyve Broadband A, LLC, (WC Docket Nos. 10-90, 14-93) (filed August 14, 2014).

forward with the challenge process under its adopted evidentiary standard and complete implementation of CAF Phase II.

Armstrong Utilities Inc. has also indicated that it filed a waiver,<sup>3</sup> but USTelecom has been unable to find the Armstrong waiver on ECFS. In addition, USTelecom and its members are continuing their review of the challenges and it is reasonable to expect that additional requests for waivers of the CAF II evidentiary rules may be uncovered during this review. If Armstrong and any other providers did file such waivers advancing arguments similar to those included in the Petitions, USTelecom also opposes those waiver requests.

**I. The Petitions Merely Rehash Issues Already Considered by the Commission and Therefore Should be Rejected on Procedural Grounds as Untimely-Filed Petitions for Reconsideration**

The Petitioners make substantive arguments about the proper evidentiary standard for determining CAF Phase II challenges that have already been considered and rejected by the Commission. They do not raise any issues not already considered by the Commission and do not note unique situations for which there would be good cause to waive the adopted evidentiary standard as contrary to the public interest. They merely improperly seek reconsideration of the decision of the Wireline Competition Bureau (“Bureau”) as to the appropriate evidentiary standard for CAF Phase II challenges.

In their waiver requests covering hundreds of census blocks,<sup>4</sup> Bright House, Cequel, Wave and Vyve state that they have plant in the census blocks they seek to challenge and assert

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<sup>3</sup> See page 2 of letter dated August 14, 2014, from K.C. Halm, Counsel for Armstrong Utilities, Inc., transmitting Armstrong Utilities, Inc. Challenge to Connect America Fund Phase II Census Block Designations as Unserved (WC Docket No. 14-93) (DA 14-942) “Armstrong has separately filed a request that the Commission waive its rules and accept the evidence supporting Armstrong Form 505-2 as evidence that these blocks are served.”

<sup>4</sup>Bright House Networks requests a waiver for 32 census blocks, Cequel Communications requests a waiver for 651 census blocks, Charter requests a waiver for 106 census blocks, Vyve

that “Good cause exists to waive the Bureau’s evidentiary requirement because the problems previously articulated by the Commission ... will be an unfortunate reality...”<sup>5</sup> The Commission dealt with those problems by adopting a reasoned and reasonable evidentiary requirement that properly balances the risk of consumers being denied the benefits of broadband with the exclusion of “any area served by an unsubsidized competitor that meets our initial performance requirements.”<sup>6</sup> Mere repetition of the phrase “good cause” does not make an untimely filed petition for reconsideration a properly supported petition for waiver.<sup>7</sup>

## **II. The Evidentiary Standard was Carefully Considered and Fulfills the Commission’s CAF Phase II Goals**

The USF/ICC Transformation Order<sup>8</sup> made 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.”<sup>9</sup> The Bureau adopted a rather liberal interpretation of this language. It included in its definition of “served” areas those that are currently unserved but were served in the past, along with areas that are served at the time of the challenge.

The Petitioners are seeking to deny the benefits of CAF Phase II funding to rural, high-cost households that incontrovertibly do not have broadband today. It strains credulity that there

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requests a waiver for 645 census blocks, Cox requests a waiver for 516 census blocks, and Wave requests a waiver for 230 census blocks.

<sup>5</sup> See Bright House Petition at 3, Cequel Petition at 3, Vyve Petition at 3 and Wave Petition at 3.

<sup>6</sup> *USF/ICC Transformation Order*, 26, FCC Rcd 17663, 17729 ¶ 170.

<sup>7</sup> The Phase II Challenge Process Guidance Public Notice was released by the Wireline Competition Bureau on June 20, 2014 (*see*, Public Notice, Connect America Fund, DA 14-864). Under the Commission’s rules, Petitions for Reconsideration were due on July 21, 2014 (*see*, 47 C.F.R. Section 1.429(d)). The Bureau has already ruled on the petitions (*see*, *Order*, Connect America Fund, DA-14-1169, rel. Aug. 11, 2014)).

<sup>8</sup> *USF/ICC Transformation Order*, 26, FCC Rcd 17663, 17729 ¶ 170.

<sup>9</sup> *Id.*

are broadband facilities available but *zero current or former* customers in the over two thousand census blocks for which the Petitioners seek waivers of the evidentiary requirement.

Not only is the adopted evidentiary standard reasonable on its face, it is the result of experience gained by the Commission during the CAF Phase I challenge process. CAF Phase II may be the best opportunity for rural Americans to benefit from the availability of broadband service for a very long time. They should not be denied that opportunity based on the type of thin assertions made during the CAF I challenge process, the standard to which the Petitioners apparently wish to return.

### **III. Conclusion**

The requests for waiver of the Petitioners should be denied on both procedural and substantive grounds.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



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