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identification of unsubsidized competitors for purposes of Connect America Fund (“CAF”) Phase II support.

As the Rural Associations noted in initial comments,³ the proposals in the Public Notice appear to inch toward a more robust process for accurately confirming the extent to which certain kinds of unsubsidized competitors operate in a given area (as compared to prior proposals). However, concerns remain that processes such as those set forth in the Public Notice will fail to capture the extent to which a competitor in fact offers a meaningful alternative in rural areas, thus undermining the statutory mandate of universal service. In that regard, the Rural Associations offered several reasonable and concrete recommendations for further steps necessary to implement an evidentiary-based process that takes more true account of the availability of both broadband *and* voice service, the prices for such services, and the quality of service.

In these reply comments, the Rural Associations address remaining items that must be part of any process for identifying purported unsubsidized competitors. The recommendations contained herein are key to ensuring that consumers in rural service areas have access to voice and broadband services that meet the service quality standards adopted in the *USF/ICC Transformation Order*,⁴ regardless of a given consumer’s service provider. The Rural

³ Comments of NTCA—the Rural Broadband Association, NECA, ERTA, and WTA, WC Docket No. 10-90 (filed Mar. 28, 2013).

⁴ *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service – Mobility Fund*, WT Docket No. 10-208, Report and

Associations propose that the Commission adopt a latency standard that is sufficient for consumers to utilize certain real-time applications via their broadband connections. In addition, any interim pricing benchmark adopted in this proceeding should only be applicable to CAF Phase II recipients. Furthermore, the speed threshold for determining the presence of purported unsubsidized competition must not relegate rural consumers to substandard broadband service. Finally, the possible designation of mobile wireless providers as unsubsidized competitors is premature and procedurally improper.

II. THE COMMISSION SHOULD ADOPT A LATENCY STANDARD THAT IS SUFFICIENT FOR CONSUMERS TO UTILIZE REAL-TIME APPLICATIONS.

As the Rural Associations noted in initial comments, in assessing whether universal service can be fulfilled in a particular area without the need for support for any one carrier, the Commission must take careful account of critical service characteristics (for voice and broadband services) – such as price,⁵ service quality, and usage thresholds.⁵ The Public Notice

Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) (*USF/ICC Transformation Order*).

⁵ Specifically, the Rural Associations continue to propose that before support for a carrier is eliminated a purported unsubsidized competitor would file, with the state commission, a petition showing through clear and convincing evidence that, at a minimum: (1) it is a state-certified carrier or eligible telecommunications carrier; (2) it can satisfy any public interest obligations required of a Universal Service Fund (USF) recipient; (3) it can deliver, as of the filing of the petition, both voice telephony service and broadband speeds of at least 4 Mbps downstream/1 Mbps upstream and with latency and usage limits that meet the Commission's broadband performance requirements for 100 percent of *both* the residential and business locations in the purportedly competitive area through the use of its own facilities in whole or in substantial part and in a manner comparable (fixed or mobile) to the relevant USF recipient (this should include the results of network performance testing, similar to that applicable to supported carriers, confirming the capability to deliver broadband service at speeds of 4/1 Mbps to all of the locations in the purportedly competitive areas); (4) it offers each of those broadband and voice services on a stand-alone basis on a month-to-month basis (*i.e.*, without contractual commitments) at rates that are reasonably comparable, as defined by the Commission, to those offered by the USF recipient; (5) it will comply with all of the same reporting, service

sought comment on one of those service characteristics – that is, whether a specific numerical latency standard should be adopted.⁶ This query stems from the Commission’s goal of ensuring that consumers in high cost areas have access to real-time applications, such as Voice over Internet Protocol (VoIP) services.⁷ Indeed, latency is an important consideration in the provision of voice services over broadband facilities.⁸ Ensuring that a purported unsubsidized competitor offers a voice service that is reasonably comparable in terms of quality to that offered by other would-be-supported carriers is necessary to the Commission’s ultimate fulfillment of its statutory universal service obligations. As the Independent Telephone & Telecommunications Alliance (“ITTA”) correctly states in comments filed in this proceeding, consumers should be able “to enjoy the same service quality benefits regardless of whether their service is being provided by a price cap carrier or a designated unsubsidized competitor.”⁹

monitoring, and other “accountability” requirements (including any net neutrality and other regulatory requirements) as the USF recipient for the area in question; and (6) it neither receives high-cost support of any kind *nor* cross-subsidizes its operations in the specific, affected study area with revenues from other areas of operation or sources. Comments of NTCA, NECA, and WTA, WC Docket No. 10-90 (filed Feb. 19, 2013), pp. 9-11. *See also*, Comments of NTCA, OPASTCO, NECA, and WTA (the Rural Associations), WC Docket No. 10-90 (filed Jan. 9, 2013); Reply Comments of the Rural Associations, WC Docket No. 10-90 (filed Jan. 24, 2013); Comments of the Rural Associations, WC Docket No. 10-90, *et al.* (filed Jan. 18, 2012), pp. 75-94.

⁶ Public Notice, ¶ 26.

⁷ *USF/ICC Transformation Order*, ¶ 96.

⁸ *See*, Public Notice, fn. 37 (citing an International Telecommunications Union standard for VoIP services).

⁹ Comments of ITTA (filed Mar. 28, 2013), p. 6.

ITTA¹⁰ and the United States Telecom Association (USTelecom)¹¹ both suggest that the Commission adopt a specific latency standard that is sufficient to ensure that consumers are able to utilize real-time applications, such as VoIP services. This approach ensures that the Commission and relevant state commissions have a specific standard by which to judge whether purported unsubsidized competitors are truly providing service that is reasonably comparable to that of the supported provider in a particular service area. Moreover, as the Commission has acknowledged, because most *terrestrially-based wireline* providers can already reliably meet a latency standard that enables the use of real-time applications,¹² the Commission can be assured that carriers receiving high-cost support are enabling their customers to take advantage of all the services and applications the Internet has to offer, VoIP services among them.

In adopting this latency standard, the Commission should clearly define the applicable standard as a network-based standard. This is to be distinguished from a standard that measures latency on an end-to-end “service” basis. It is important to keep in mind that companies operating in remote areas of the nation typically only control the performance of “last-mile” facilities – in other words, those broadband network facilities extending from their network “edge” to the customer premises. Thus, regardless of the technology used to deliver broadband services to the customer premises, even the most robust last-mile facilities, and therefore the end-users’ experiences, are dependent on the quality and availability of upstream providers of middle-mile transport to the Internet backbone (which, as the Commission is well aware, are *not* yet USF-supported services or facilities). Moreover, end-users’ experience can be affected by a

¹⁰ *Id.*, pp. 8-9.

¹¹ Comments of USTelecom (filed Mar. 28, 2013), pp. 10-11.

¹² Public Notice, ¶ 25.

number of other factors as well, such as the quality of customer premises equipment and the number of devices utilized at any given time within an individual customer location.

Adoption of a network-based latency standard would accurately portray the capabilities of broadband facilities available to consumers by a particular provider, or class of providers, enabling the Commission to more precisely judge whether a purported unsubsidized competitor can offer *voice and broadband* services that are reasonably comparable in quality to that of the supported carrier. The Commission's commitment to a "data-driven" process of universal service reform should drive it towards the most accurate data source available, which is latency data on a network-by-network basis.

Thus, as part of (and not in lieu of) the meaningful, evidence-based process described above (fn. 5, *supra*), purported unsubsidized competitors should be required to demonstrate whether their network facilities are capable of enabling consumers, throughout the service area of the supported carrier, to utilize real-time applications, such as VoIP, that are sensitive to latency. Such an affirmative showing is critical to achieving the *USF/ICC Transformation Order's* adoption of a goal to "preserve and advance universal availability of voice service."¹³ Most importantly, this affirmative showing should apply to all purported unsubsidized competitors regardless of the technology used. Moreover, as the Rural Associations noted in initial comments,¹⁴ this affirmative showing should place the burden on the would-be

¹³ *USF/ICC Transformation Order*, ¶ 49.

¹⁴ To reiterate, the onus cannot be on incumbents to challenge purported unsubsidized competitors' assertions through evidentiary submissions that attempt to disprove claims of availability and/or highlight ways in which the services offered by such would-be competitors are not in fact reasonably comparable with respect to service type (*e.g.*, voice vs. broadband), service quality (*e.g.*, speed, latency, capacity, or other limits), or price (*i.e.*, does the competitor also offer services at "reasonably comparable" rates to those available in urban areas?). The

competitive provider to demonstrate that it can in fact serve the entire service area in question with service that is reasonably comparable in price and quality, for voice and broadband services, to the supported provider.

III. ANY INTERIM PRICING BENCHMARK ADOPTED BY THE COMMISSION IN THIS PROCEEDING SHOULD ONLY BE APPLICABLE TO CAF PHASE II RECIPIENTS.

The Public Notice also sought comment on a potential “interim reasonable comparability benchmark that a competitive provider would need to meet in order to be deemed an unsubsidized competitor.”¹⁵ This benchmark is apparently intended to serve as a placeholder of sorts until the results of the urban rate survey currently being undertaken by the Bureau are compiled and released.¹⁶ Despite not having access to such data, the Bureau suggests benchmarks for both voice and broadband service.

It is critical that the Commission have a “reasonable comparability” benchmark in order to judge whether universal service can be fulfilled throughout a particular rural area. Ensuring that rates for voice and broadband service in rural areas of the nation are affordable and reasonably comparable to those in urban areas is the “*raison d’être*” of the high-cost universal service program, as reformed by the Transformation Order. In light of the importance of this issue to rural consumers and the economic, health, educational, and public safety institutions upon which they rely, the most accurate and up-to-date end-user rate information should be used.

burden should be placed on providers who presumably would possess the most accurate information as to their own service offerings and availability.

¹⁵ Public Notice, ¶ 16.

¹⁶ The Bureau’s urban rate survey was released April 3, 2013. *Connect America Fund*, WC Docket No. 10-90, Order, DA 13-598 (released Apr. 3, 2013).

While the rates proposed in the Public Notice (\$37 for voice, \$60 for broadband)¹⁷ are not entirely “plucked out of thin air,” they are certain to be far less accurate and up-to-date than the results of a nationwide survey.

For example, a recent survey conducted by NTCA—the Rural Broadband Association calls into question whether the \$60 broadband service end-user rate proposed in the Public Notice is reasonable and consistent with “facts on the ground.” As the survey notes, “[t]ypical prices charged range from \$34.95 to \$44.95 for cable modem service, \$29.95 to \$49.95 per month for DSL service, \$39.95 to \$49.95 for wireless broadband service, and \$39.95 to \$59.95 for fiber service.”¹⁸ The fact that a majority of the rates reported in this survey are significantly lower than the proposed \$60 benchmark argues in favor of deferred Bureau consideration of this issue, until the results of the urban rate survey are available.

The Commission should thus await the results of the Bureau’s urban rate survey before using pricing as a determinant of the presence of qualified unsubsidized competition in rural service areas. At most, any pricing benchmark adopted in this proceeding should be used only on an interim basis for the CAF Phase II model, should be reviewed and revised as surveys are completed, and should not be viewed in any respect as precedential in the context of other

¹⁷ Public Notice, ¶¶ 17-18.

¹⁸ NTCA – the Rural Broadband Association, NTCA 2012 Broadband/Internet Availability Survey Report, released March 2013, available at http://www.ntca.org/images/stories/Documents/Press_Center/2013_Releases/2012%20ntca%20broadband%20survey%20report%20-%20final.pdf It is important to note that these prices are applicable to a wide range of broadband speeds, some of which are below the 4/1 Mbps speed threshold noted in the *Transformation Order*. However, as the survey also notes, 65 percent of the survey respondents’ customers are able to subscribe to download speeds of between 4 and 6 Mbps.

questions surrounding what constitutes reasonably comparable rates for voice and/or broadband service.

IV. COMMENTERS AGREE THAT THE SPEED THRESHOLD FOR DETERMINING THE PRESENCE OF PURPORTED UNSUBSIDIZED COMPETITION MUST NOT RELEGATE RURAL CONSUMERS TO SUBSTANDARD BROADBAND SERVICE.

Commenters agree with the Rural Associations that the use of 3 Mbps/768 Kbps as a proxy for 4/1 Mbps service should be rejected.¹⁹ In both this and previous proceedings,²⁰ commenters have consistently stated that the use of this speed proxy risks excluding certain areas from high-cost support even though consumers in those areas may currently lack access to 4/1 Mbps service today. Such a result could doom rural consumers to substandard broadband service, directly contrary to the Commission's statutory mandate to ensure that rural consumers have access to reasonably comparable advanced services. The Public Notice proposes instead to use 6 Mbps/1.5 Mbps as a proxy.

A few commenters object to the use of a 6/1.5 Mbps proxy, arguing that it would result in support being directed to carriers in areas where a competitive carrier is offering comparable broadband services without support.²¹ However, this is exactly why the challenge process

¹⁹ Comments of USTelecom, WC Docket No. 10-90 (filed Mar. 28, 2013), pp. 3-4; Comments of Alaska Communications Systems, WC Docket No. 10-90 (filed Mar. 28, 2013), p. 2.

²⁰ Comments of USTelecom, WC Docket No. 10-90 (filed Jan. 9, 2013), pp. 2-5; Comments of CenturyLink, WC Docket No. 10-90 (filed Jan. 9, 2013), pp. 9-10.

²¹ Comments of the National Cable & Telecommunications Association, WC Docket No. 10-90, (filed Mar. 28, 2013), p. 7; Comments of the Wireless Internet Service Providers Association, WC Docket No. 10-90, (filed Mar. 28, 2013), p. 6.

proposed by the Rural Associations²² should be adopted, as it provides a “fair shake” to both purported unsubsidized competitors and consumers alike. More specifically, a robust and evidence-based challenge process would enable a purported unsubsidized competitor to demonstrate that the use of the 6/1.5 Mbps proxy understates the presence of unsubsidized competition, and that the competitive provider does in fact offer 4/1 Mbps broadband service throughout the area in question. It would also, most importantly, protect consumers from the harms associated with “false positives” that could be triggered by the use of the 3 Mbps /768 Kbps standard. That is because it would enable the Commission to be certain, based on a meaningful data-driven process that, regardless of whether offered by an incumbent or a competitive carrier, consumers throughout a particular rural area will have access to broadband that meets all of the performance metrics adopted by the *USF/ICC Transformation Order*. Faithful allegiance to the principles of universal service requires such a fact-based process that is focused on rural consumers, rather than what might happen to be the most expedient method of approximating service coverage, quality, characteristics, or rates through a “just check-the-map” approach.

V. THE PUBLIC NOTICE SOLICITATION OF COMMENT ON WHETHER MOBILE WIRELESS PROVIDERS SHOULD BE CONSIDERED UNSUBSIDIZED COMPETITORS IS PREMATURE.

The Public Notice seeks comment on whether the Commission should enable mobile wireless providers to participate in the challenge process and therefore potentially qualify as unsubsidized competitors,²³ and a couple of commenters indicate their support.²⁴ However, the

²² See, *supra*, fn. 5.

²³ Public Notice, ¶ 11.

Public Notice solicitation of input on this issue by the Bureau is premature and procedurally improper in light of the absence of a Commission level decision to revisit its definition of an “unsubsidized competitor” as a “facilities-based provider of residential terrestrial *fixed* voice and broadband service.”²⁵

In the *USF/ICC Transformation Order*, the Commission balanced its concerns about potentially disqualifying certain service providers that could possibly meet its service requirements with the very real limitations that it recognized with respect to mobile wireless services.²⁶ This recognition seems to acknowledge the fact that reducing support to a fixed incumbent provider on the basis of the purported presence of an unsubsidized mobile wireless provider could leave consumers without access to broadband service that meets all of the Commission’s speed, latency, and capacity requirements throughout a rural service area. The Commission concluded its analysis of this issue by stating that “[a]s mobile and satellite services

²⁴ Comments of AT&T, WC Docket No. 10-90 (filed Mar. 28, 2013), pp. 3-4, Comments of CTIA, WC Docket No. 10-90 (filed Mar. 28, 2013), pp. 2-10.

²⁵ *USF/ICC Transformation Order*, ¶103 (emphasis added). 47 C.F.R. § 54.5.

²⁶ *USF/ICC Transformation Order*, ¶104. (stating that “while 4G mobile broadband services may meet our speed requirements in many locations, meeting minimum speed and capacity guarantees is likely to prove challenging over larger areas, particularly indoors.”). Earlier in the *Transformation Order*, the Commission discussed monthly usage limits offered by various wireline broadband providers, in the range of a 150 GB to 250 GB limit. It went on to state that “[w]ithout endorsing or approving of these or other usage limits, we provide guidance by noting that a usage limit significantly below these current offerings (e.g., a 10 GB monthly data limit) would not be reasonably comparable to residential terrestrial fixed broadband in urban areas. A 250 GB monthly data limit for CAF-funded fixed broadband offerings would likely be adequate at this time because 250 GB appears to be reasonably comparable to major current urban broadband offerings.” *Id.* Any consideration of whether mobile wireless providers would potentially qualify as unsubsidized competitors should include this capacity analysis as part of a Commission level rulemaking process.

develop over time, we will revisit the definition of ‘unsubsidized competitor’ as warranted.”²⁷ Therefore, a reversal of this determination, without a reasoned and properly noticed rulemaking process, and in the absence of evidence to suggest that circumstances have drastically changed, is premature and unwarranted and should thus be rejected for consideration in the instant proceeding.

VI. CONCLUSION

As part of any process for identifying purported unsubsidized competitors, the Commission should:

- adopt a latency standard that is sufficient for consumers to utilize certain real-time applications via their broadband connections;
- utilize any interim pricing benchmark adopted in this proceeding only for CAF Phase II recipients;
- avoid relegating rural consumers to substandard broadband service with an inferior speed threshold for determining the presence of purported unsubsidized competition; and
- only consider the possible designation of mobile wireless providers as unsubsidized competitors through a reasoned and properly noticed rulemaking process.

²⁷ *Id.*

Respectfully submitted,

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