

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	

**REPLY OF THE
EASTERN RURAL TELECOM ASSOCIATION;
INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS ALLIANCE;
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.;
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES; and
WESTERN TELECOMMUNICATIONS ALLIANCE
TO OPPOSITION OF CTIA-THE WIRELESS ASSOCIATION
TO APPLICATION FOR REVIEW**

The Eastern Rural Telecom Association, the Independent Telephone and Telecommunications Alliance, the National Exchange Carrier Association (“NECA”), the National Telecommunications Cooperative Association (“NTCA”), the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), and the Western Telecommunications Alliance (“WTA”) (the “Associations”), on behalf of their rate-of-return regulated rural incumbent local exchange carrier (“RLEC”) members, hereby reply to the Opposition of CTIA-The Wireless Association (“CTIA”)¹ to the Applications for Review

¹ Opposition of CTIA to Applications for Review and Requests for Stay, WC Dockets No. 10-90 and 05-337 (filed June 1, 2012). CTIA styled its pleading as an Opposition to both applications for review and requests for stay. Although replies to oppositions to petitions for stay are not contemplated under the rules of the Federal Communications Commission (the “Commission”) – likely because such matters are presumed to be acted upon in short order given the nature of the relief requested – the arguments herein apply with equal force to the portion of CTIA’s filing addressing the stay requests and also a pleading submitted by the National Cable & Telecommunications Association (“NCTA”) addressing only the petitions for stay. Opposition of NCTA to Petitions for Stay, WC Dockets No. 10-90 and 05-337 (filed June 1, 2012).

("AFRs") submitted by NECA, NTCA, OPASTCO, WTA and several other parties on May 25, 2012.

CTIA's Opposition contains only superficial arguments and lacks any evidentiary or technical basis to justify denying the AFRs. Indeed, even as CTIA recklessly tosses about adjectives like "modest" [changes] and "excessive" [costs],² it fails to provide an iota of evidence to support its assertions regarding the impact of the new regression analysis-based caps adopted by the Wireline Competition Bureau or the nature of the costs that would be unrecoverable. Moreover, CTIA provides no technical analysis whatsoever of the caps or the underlying model. Instead, it breezes altogether past the essential details of this complex new mechanism on its way to broad and unsupported conclusions that the caps are "valid responses to significant problems" and that RLECs will not be harmed by such "minor changes."³

The Commission has emphasized time and again that its universal service fund ("USF") and intercarrier compensation ("ICC") reform process will be "data-driven" and that parties seeking to make policy arguments must base them upon robust data and carefully crafted technical arguments.⁴ CTIA's Opposition is sorely lacking in all such respects. The Commission should not and cannot take CTIA's non-substantive protests on faith, particularly in

² Opposition at 1, 3.

³ *Id.* at 3.

⁴ See, e.g., *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, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011), at ¶ 536 and Statement of Chairman Genachowski.

the face of the many detailed and data-backed issues raised in the AFR filed by NECA, NTCA, OPASTCO, and WTA.⁵

CTIA's claims that RLECs are seeking to avoid "shared sacrifices" and that challengers to the new caps are seeking "absolute perfection" in those caps are likewise contrary to fact and lacking in merit.⁶ As an initial matter, a number of the signatories to this Reply, representing nearly all RLECs, devoted significant resources to developing a consensus plan last year that called precisely for "shared sacrifice" in the form of new constraints on recovery of investment in rural broadband via the USF and the reduction of many ICC rates toward levels long sought by CTIA.⁷ Although CTIA was apparently unable or unwilling to join in that compromise, that plan demonstrated a commitment from many of the largest recipients of USF support to share in the sacrifice needed for reform. CTIA's fundamental misunderstanding of "sacrifice" and the workings of universal service support can further be seen in its claim that RLECs seek support "to recover all of their expenditures."⁸ As the Commission is well aware, even prior to reform, RLECs never were able to recover all of their expenditures from the USF in light of, among other things, a capped High-Cost Loop Support mechanism that permits recovery of only a portion of costs above a national average benchmark and a cap on reimbursable corporate operations expenses.

⁵ See Application for Review of NECA, NTCA, OPASTCO, and WTA, WC Docket Nos. 10-90 and 05-337, filed May 25, 2012, at 4-6 and Exhibit 1 (establishing randomness of formulas), 6-10 and Exhibit 2 (demonstrating volatility of formulas), 10-13 (identifying errors introduced by new variables), 14-15 and Exhibits 3 through 7 (noting severe near-term support impacts on carriers), and 15-20 and Exhibit 8 (demonstrating unpredictable nature of new caps).

⁶ Opposition at 3-4.

⁷ See Letter from Jonathan Banks, USTelecom, to Marlene H. Dortch, WC Docket No. 10-90, *et al.* (filed July 29, 2011).

⁸ Opposition at 4-5.

Moreover, the Associations have never argued that the new regression analysis-based caps should be rejected because they lack “absolute perfection.” Instead, as NECA, NTCA, OPASTCO, and WTA explained in significant detail in the AFR, the caps incorporate so many data errors and statistical shortcomings that they fall short of a standard far lower than “absolute perfection.” The caps are simply arbitrary and capricious, rushing into place a flawed system that will randomly limit some carriers’ support – drastically in some cases – without regard to whether their per-unit costs are excessive or even relatively high compared to “peers.” Thus, what the Associations seek is not “absolute perfection,” but rather a system that comports with the fundamental principle that USF support should be predictable and sufficient.⁹ The caps in their current form are neither, and nothing in CTIA’s Opposition refutes the mountain of evidence provided by NECA, NTCA, OPASTCO, and WTA in support of that conclusion.

CTIA ultimately shows its true colors in urging the Commission to avoid revisiting or rejecting the regression analysis-based caps for fear of delaying reform.¹⁰ Put another way, it matters not to CTIA how the Commission implements reform, whether the structure of reform complies with the statute, or what the impact might be on rural consumers. All that matters is that the reforms proceed quickly, regardless of what the evidence shows or what the underlying law says. NECA, NTCA, OPASTCO, and WTA provided uncontroverted and incontrovertible evidence of the legal and technical shortcomings of the regression analysis-based caps, and CTIA’s policy “wish list” provides no substantive reply to these points. The Commission should therefore proceed to grant the relief requested by NECA, NTCA, OPASTCO, and WTA in their AFR.

⁹ 47 U.S.C. § 254(b)(5).

¹⁰ Opposition at 5.

Sincerely,

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CERTIFICATE OF SERVICE

I, Barbara E. Fitzpatrick, certify that a copy of the foregoing Associations' Reply Comments were served on this 14th day of June 2012 by first-class, United States mail, postage prepaid, to the following persons:

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