

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**REPLY COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION,
THE NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.
THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES, AND
THE WESTERN TELECOMMUNICATIONS ALLIANCE**

The National Telecommunications Cooperative Association (“NTCA”),¹ the National Exchange Carrier Association, Inc. (“NECA”),² the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”),³ and the Western Telecommunications Alliance (“WTA”)⁴ (collectively, the “Rural Associations”) hereby file reply comments in the above-captioned proceeding to urge substantial caution in the placement

¹ NTCA represents more than 570 rate-of-return-regulated local exchange carriers (“RLECs”), many of whom provide voice, video, and broadband Internet services to their communities; each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended.

² NECA is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally*, 47 C.F.R. §§ 69.600 *et seq.*; *MTS and WATS Market Structure*, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983).

³ OPASTCO is a national trade association representing approximately 400 RLECs which, in turn, serve approximately three million rural customers throughout the U.S.

⁴ WTA is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River.

of reliance upon the National Broadband Map as an arbiter of universal service fund (“USF”) eligibility and/or support levels.⁵

The Rural Associations’ initial comments on the instant Public Notice highlighted the well-known and commonly accepted challenges associated with mapping voice and broadband serving areas, and in then identifying the precise extent of services offered within such areas. Among other things, the Rural Associations’ comments noted that: (1) the mapping tools and data upon which the Federal Communications Commission (the “Commission”) would rely are still very much in “beta mode”;⁶ (2) a series of conceptual and reporting flaws may lead the mapping data to simultaneously *overstate* broadband coverage in some areas and *understate* it in other areas;⁷ (3) it is inappropriate and unlawful to use a map that purports to identify solely broadband availability to reduce or eliminate USF support when the only service that the USF actually supports by law is voice;⁸ (4) it is inappropriate and unlawful to use data that merely capture broadband availability to make determinations regarding USF when the stated purpose of universal service, as reformed by the Commission, is to ensure that both voice and broadband

⁵ See *Wireline Competition Bureau Updates the List of Potentially Unserved Census Blocks in Price Cap Areas and Extends the Deadline for Comment on the List*, Public Notice, DA 12-2001, WC Docket No. 10-90 (rel. Dec. 10, 2012) (“Public Notice”).

⁶ Rural Associations’ Comments, WC Docket No. 10-90 (filed Jan. 9, 2013), at 2-3.

⁷ *Id.* at 3-4.

⁸ *Id.* at 4; see also *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 a 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 Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17701 (2011), at ¶ 103 (defining an “unsubsidized competitor” as “a facilities-based provider of residential terrestrial fixed voice and broadband service that does not receive high-cost support”) (emphasis added).

services are “reasonably comparable” in price and quality;⁹ and (5) a compressed comment cycle is ultimately inadequate to address such concerns with respect to the use of flawed, dated, and incomplete data.¹⁰

The Rural Associations were not alone in expressing concern about the abbreviated and incomplete procedure by which census blocks are being identified as served or not, or the need for a more careful, objective, and granular analysis of the state of broadband deployment. The United States Telecom Association (“USTelecom”), for example, similarly noted the logical and practical incongruity associated with using a map that purports to capture broadband speeds of 3 Mbps downstream/768 kbps upstream in determining where 4/1 Mbps broadband service is available.¹¹ Indeed, USTelecom’s preliminary analysis indicated that perhaps more than one million unserved housing units are “lost” as a result of such a rough cut.¹² USTelecom highlighted too the potential for significant inaccuracy in the data underlying the National Broadband Map (and overstatement of coverage as a result) arising out of self-reporting by providers.¹³ In fact, because of such inaccuracies, both USTelecom and Windstream urge the Commission to use more objectively verifiable data – such as customer churn information and account number porting – to determine whether a competitor is truly offering service in these areas.¹⁴ Certainly, if no competitor has sought to request a port (or even interconnected for the

⁹ Rural Associations’ Comments, at 4-5.

¹⁰ *Id.* at 5.

¹¹ USTelecom Comments, WC Docket No. 10-90 (filed Jan. 9, 2013), at 3-5.

¹² *Id.* at 2.

¹³ *Id.* at 6-8.

¹⁴ *Id.* at 7; Windstream Comments, WC Docket No. 10-90 (filed Jan. 9, 2013), at 7-9.

exchange of traffic or resell local exchange service) in the recent past, it is difficult to conclude that the purported “competitor” is in fact competing for the voice *and* broadband services that the Commission seeks to promote through the USF in high-cost areas.

The Rural Associations would submit, however, that the process suggested by USTelecom and Windstream does not go far enough in determining with reasonable certainty whether a truly unsubsidized competitor exists in a given area. What USTelecom and Windstream suggest might be deemed acceptable by these entities for the limited purposes of Connect America Fund (“CAF”) Phase I to make a “quick determination” of areas eligible to receive a near-term injection of one-time funding for deployment of networks, but even the additional step recommended by USTelecom and Windstream will not enable the Commission to satisfy the statutory mandate of universal service in the long-run. Instead, a more robust, disciplined, and data-driven process is needed in assessing the purported presence of “unsubsidized competition” going forward.

In numerous pleadings over the past few years,¹⁵ the Rural Associations have presented detailed proposals regarding how the Commission might identify areas in which an “unsubsidized competitor” provides service if it were to choose to go down such a path. Such a carefully defined and thoughtful process is essential to ensure that the mandate of universal service is not undermined by guesswork or gamesmanship. Indeed, filings in response to the most recent Public Notice only underscore why a more robust process is essential. For example, Time Warner Cable’s list of “served” census blocks includes by its own admission blocks “where [Time Warner Cable] has at least one active billing customer (or at least one former

¹⁵ See, e.g., Rural Associations’ Reply Comments, WC Docket No. 10-90, *et al.* (filed Feb. 17, 2012), at 28-38; Rural Associations’ Comments, WC Docket No. 10-90, *et al.* (filed Jan. 18, 2012), at 75-91; Rural Associations’ Comments, WC Docket No. 10-90, *et al.* (filed April 18, 2011) at 50-56.

customer, if local personnel confirm that service could be reinitiated within 7 to 10 days) . . . and where a node potentially touches the census block”¹⁶ Put another way, it would hardly constitute a “data-driven” process if an entire rural census block – which can be quite large geographically – could be deemed ineligible for USF support simply because a provider like Time Warner Cable baldly asserts (without validation, evidentiary presentation, or certification) that it previously provided 3 Mbps/768 kbps fixed broadband to a single customer there, with no mention of the rates at which service was available or whether voice was offered as well.

The statutory mandate of universal service requires more than reliance on a flawed, dated, and incomplete mapping database that is subject to check only through unverified comments filed in an abbreviated cycle. (Notably, in first putting forward this concept, even the cable industry itself suggested that a more robust process should be triggered *at the request of a would-be competitor*.¹⁷) Thus, even if the Commission chooses to adopt an abbreviated approach for CAF Phase I funding, it should for all other purposes going forward look to the only credible and detailed process proposed to date for determination of where an “unsubsidized competitor” might operate. That process, as outlined in the prior filings of the Rural Associations, would require a would-be “unsubsidized competitor” to aver and show through clear and convincing evidence (and accompanying certification/verification) in a petition to a state commission (with a copy to the applicable consumer advocate’s office) that, at a minimum:

¹⁶ Time Warner Cable Comments, WC Docket No. 10-90 (filed Jan. 9, 2013), at 2.

¹⁷ See Petition for Rulemaking by National Cable & Telecommunications Association, RM-11584 (filed November 5, 2009), at 5 (“Under NCTA’s proposal, the Commission would establish a two-step process by which any party may request that the Commission reassess the level of support distributed to providers to a particular study area. In the first step, *the burden would be on the petitioner* to demonstrate that the area meets one of two competition-based triggers.”) (emphasis added).

- a) it is a state-certified carrier or eligible telecommunications carrier (to ensure adequate opportunity for regulatory and consumer advocate oversight);
- b) it can satisfy any public interest obligations required of a USF recipient (to ensure continuing service quality);
- c) it can deliver, as of the date 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. A fixed service can be either fixed wired or fixed terrestrial wireless. A fixed terrestrial wireless service should be defined as one that does not support roaming and requires a fixed ground station transmitting to a fixed transceiver located at the customer's premises;
- d) it offers each of those broadband and voice services on a stand-alone basis at rates that are reasonably comparable, as defined by the Commission, to those offered by the USF recipient (to ensure affordability of rates for consumers);
- e) it will comply with all of the same reporting, service monitoring, and other "accountability" requirements (including any net neutrality and other regulatory requirements) as the USF recipient for the area in question (to ensure a continuing ability for the Commission to monitor service quality and to ensure that the state and the Commission are aware to the extent that the competitor at some subsequent point no longer serves the entire market in the manner presented in the initial petition); and
- f) 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.¹⁸ Any competitor seeking to establish that it provides unsubsidized competition must be required to present evidence – in the form of *pro forma* financial statements for its operations in that area – demonstrating that the area is indeed "economic" of its own accord and can support a *stand-alone* business

¹⁸ See, ADTRAN Inc. Comments, WC Docket No. 10-90, *et al.* (filed Jan. 18, 2012), at n. 19 (noting that "subsidy" may be achieved in any number of ways, including stimulus program funding or free spectrum, and that "[e]ntry by such competitors, even if not subsidized by high-cost support, does not mean that subsidies are not needed to support broadband deployment in these areas").

plan (*i.e.*, that operations in the area are not being cross subsidized by revenues/profits from the competitive provider's other service areas or lines of business).¹⁹

Once such a petition has been filed, the USF recipient whose support would be affected by the purported presence of unsubsidized competition should then be given the opportunity to rebut or otherwise address the competitor's showing. This opportunity must include the ability to access and review, at the most granular level possible, the data filed by a competitor to ensure meaningful scrutiny and testing. Copies of all such filings should also be given to this Commission so that the state regulators, consumer advocates, interested industry stakeholders, and this Commission all have a complete record by which to judge whether support for a carrier of last resort should be modified and the consequences of that decision on consumers in the affected area.

Thus, regardless of whatever abbreviated process the Commission might choose to employ for the limited purpose of determining the rapid distribution of CAF Phase I support, it is essential – and the statutory mandate of universal service requires – that a more robust and carefully designed process based upon objective and complete data be employed in assessing the purported presence of “unsubsidized competition” going forward. It is also essential that this process identify not only the mere availability of broadband services in part of a given area, but that it identify accurately as well the extent to which voice services are available and also the rates and quality of *both* voice *and* broadband services *throughout* that area. In the end, there should be no room for or tolerance of “short-cuts” in fulfilling the statutory requirement of universal service.

¹⁹ Absent such a showing, as noted above and in numerous prior filings, the Commission runs the substantial risk of failing to identify accurately those areas that are in fact “uneconomic” to serve, thereby reducing or eliminating support where it is needed based upon the actual characteristics of those areas such as density or addressable market.

Respectfully submitted,

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