

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

In the Matter of )  
 )  
CONNECT AMERICA FUND ) WC Docket No. 10-90  
 )

**COMMENTS OF THE  
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits its comments in response to the February 26, 2013 *Public Notice* issued by the Wireline Competition Bureau of the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.<sup>1</sup> The *Public Notice* seeks comment on issues relating to implementation of Connect America Fund (“CAF”) Phase II support, including how the Bureau will determine which census blocks are served by an unsubsidized competitor, how price cap carriers will demonstrate they are meeting the reasonable comparability standard, and what other providers will need to demonstrate to be deemed unsubsidized competitors.<sup>2</sup>

**I. INTRODUCTION AND SUMMARY**

ITTA is encouraged that the Bureau is moving forward with development of the procedures necessary to implement Phase II of the CAF program for price cap carriers. ITTA supports implementation of Phase II as expeditiously as possible and is committed to working with the Bureau to develop standards that will help ensure the CAF program meets the Commission’s goal of increased broadband deployment to consumers in high-cost areas.

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<sup>1</sup>*Wireline Competition Bureau Seeks Further Comment on Issues Regarding Service Obligations for Connect America Phase II and Determining Who Is An Unsubsidized Competitor*, WC Docket No. 10-90, DA 13-284 (rel. Feb. 26, 2013) (“*Public Notice*”).

<sup>2</sup> *Id.* at ¶ 1.

ITTA is encouraged that the Bureau now recognizes the significant shortcomings of a 3 Mbps/768 Kbps proxy for purposes of designating an area as unserved at the 4 Mbps/1Mbps level for CAF Phase II funding and supports the proposal in the *Public Notice* to instead utilize a 6 Mbps/1.5 Mbps threshold proxy. There is no need, however, for the Bureau to adjust the Phase II buildout requirements to require support recipients to provide broadband with speeds of 6 Mbps/1.5 Mbps to all supported locations.

Due to the wide variance in service offerings by fixed wireless providers (“WISPs”) and the serious doubts that have been raised regarding the accuracy of the National Broadband Map’s (“NBM’s”) portrayal of WISPs’ service availability, ITTA supports the Bureau’s proposal to decline to afford WISPs a rebuttable presumption based on how they are reflected on the NBM. In order to be designated as an unsubsidized competitor, WISPs should be required to make an affirmative showing that they meet the necessary speed, latency, capacity, and price criteria.

As a general matter, the service criteria applicable to price cap carriers that make statewide voice and broadband commitments in return for CAF Phase II support should be identical to the service criteria applicable for all other providers to be deemed unsubsidized competitors. ITTA supports a presumption that a broadband provider that offers national pricing for its broadband services is offering those services in rural and urban areas at reasonably comparable rates. ITTA supports application of the same presumption of reasonable comparability to broadband providers that offer different pricing plans in different regions of the country as well as broadband providers that operate in a single state so long as at least a portion of the providers’ customer base is urban and the providers’ rates are uniform across both rural and urban areas.

ITTA supports using the methodology contained in Chart 1 of the *Public Notice* to adopt a minimum usage allowance of 60 gigabytes/month. That level is consistent with current average data usage for various activities by American consumers. ITTA supports adoption of this usage requirement only as a criterion for determining initial eligibility for CAF funds, however, and not as an ongoing requirement for the provision of broadband service. Finally, with respect to latency, ITTA agrees with the requirement established in the *USF/ICC Transformation Order* that latency should be sufficient for real time applications, such as VoIP. The Bureau should adopt a latency number that is tied to enabling specific user applications. Once that number is established, there is no need for the Bureau to undertake testing under a load standard for any providers that offer VoIP service. Moreover, the Bureau should adopt a rebuttable presumption that wireline carriers meet the latency number regardless of whether they currently offer VoIP service.

## **II. DISCUSSION**

### **a. The Bureau Should Utilize a 6 Mbps/1.5 Mbps Speed Proxy.**

Initially, the Bureau proposed designating an area as unserved at the 4 Mbps/1 Mbps level for CAF Phase II funding purposes if it is shown on the National Broadband Map (“NBM”) as unserved by broadband with a speed of at least 3 Mbps downstream and 768 kbps upstream.<sup>3</sup> The Commission proposed the same proxy for the Phase I Incremental Support program and there maintained that 3 Mbps downstream and 768 kbps upstream is an appropriate proxy since it is “the best data currently available on the National Broadband Map for determining whether an area is served by 4 Mbps/1 Mbps” and is consistent with the approach in the *USF/ICC*

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<sup>3</sup> *Wireline Competition Bureau Seeks Comment on Procedures Relating to Areas Eligible for Funding and Election to Make a Statewide Commitment in Phase II of the Connect America Fund*, WC Docket No. 10-90, DA 12-2075, at ¶ 12 (rel. Dec. 27, 2012).

*Transformation Order*.<sup>4</sup> ITTA is encouraged that the Bureau now recognizes the significant shortcomings of a 3 Mbps/768 Kbps proxy and is proposing instead that a 6 Mbps/1.5 Mbps threshold proxy be used.

The significant shortcomings of a 3 Mbps/768 kbps proxy dictate adoption of the higher 6 Mbps/1.5 Mbps proxy proposed in the *Public Notice*, along with a carrier certification process.<sup>5</sup> However, since the 4 Mbps/1 Mbps standard for determining unsubsidized competition will remain in effect and 6 Mbps/1.5 Mbps will merely serve as the proxy for the 4/1 threshold, there is no need for the Bureau to adjust the Phase II buildout requirements to require support recipients to provide broadband with speeds of 6 Mbps/1.5 Mbps to all supported locations.<sup>6</sup> In fact, creating a blanket 6 Mbps/1.5 Mbps requirement across an entire supported area would short-circuit the transition the Commission has in mind and require CAF Phase II support recipients to completely redesign pieces of their network architecture, particularly due to technical challenges associated with the new upload speeds.

It is not at all reasonable to compare the use of a proxy for the purpose of determining eligibility with the service obligation that would apply to a funding recipient. In the first instance – determining eligibility – the people living in any given census block are denied the benefits of CAF Phase II support if just *one* household is served at the specified speed tier. This counsels for adopting as high a proxy as possible to avoid denying potentially millions of households broadband at the Commission-established 4/1 standard. Conversely, the service obligation will apply to *all* households in any given census block, which counsels against a

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<sup>4</sup> *In the Matter of Connect America Fund*, Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 12-138, at n. 17 (rel. Nov. 19, 2012) (“*FNPRM*”).

<sup>5</sup> The process would require price cap carriers to certify that CAF support would not be used for locations that are not currently engineered for 4 Mbps/1 Mbps service.

<sup>6</sup> See *Public Notice*, at ¶ 9.

higher service obligation. If the Bureau were to require 6/1.5 service to all locations within a census block, the number of households that could gain access to the Commission-established level of broadband would be sharply reduced. The CAF Phase II program is on a defined budget for price cap carriers of \$1.8B/year and guaranteed, where right-of-first-refusal is accepted, for only five years. What seems like a modest speed increase could actually require significantly more support. This is not a decision the Bureau should make and, indeed, because it would alter the Commission's determination in the *USF/ICC Transformation Order*, it is likely one the Bureau cannot make.

**b. Fixed Wireless Providers Should Be Required to Make an Affirmative Showing That They Meet the Applicable Service Criteria.**

The *Public Notice* proposes to exclude from support any census block that is served by a cable broadband provider that provides service meeting the defined speed threshold, with that rebuttable presumption subject to challenge in a challenge process.<sup>7</sup> The *Public Notice* does not propose to afford the same rebuttable presumption to fixed wireless providers.<sup>8</sup> In order to be designated as an unsubsidized competitor, WISPs would be required to make an affirmative showing that they meet the necessary speed, latency, capacity, and price criteria.<sup>9</sup> ITTA heartily endorses the proposed treatment of WISPs.<sup>10</sup>

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<sup>7</sup> *Public Notice*, at ¶ 11.

<sup>8</sup> *Id.*

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

<sup>10</sup> The Bureau should not include mobile wireless providers as potential unsubsidized competitors. The Mobility Fund is designed to supplement, not compete with, the Connect America Fund. See *FNPRM*, at ¶ 110 (“This dedicated support for mobile service supplements the other competitive bidding mechanisms under the Connect America Fund.”).

It is well documented that the self-reporting by WISPs that underlies the National Broadband Map has led to the significant overstatement of service availability in many areas.<sup>11</sup> For example, although the NBM represents that large segments of rural America are served by a WISP with 3 Mbps downstream/768 Kbps upstream service, such representations often are based on WISPs' general marketing claims and have not been independently verified. As has been widely reported, there are a number of issues that widely and routinely affect WISPs' ability to provide broadband service at acceptable levels.<sup>12</sup> The "wide variance in service offerings" by WISPs<sup>13</sup> and the serious doubts that have been raised regarding the accuracy of the NBM's portrayal of WISPs' service availability fully justify the requirement that WISPs provide affirmative evidence before being designated unsubsidized competitors.

**c. The Bureau Should Adopt Reasonable and Nondiscriminatory Pricing, Usage and Latency Standards.**

As a general matter, it is important that the service criteria applicable to price cap carriers that make statewide voice and broadband service commitments in exchange for CAF Phase II support be identical to the service criteria applicable for other providers to be deemed unsubsidized competitors. That parity would ensure that CAF funds are dispersed fairly and efficiently and that consumers are 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.

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<sup>11</sup> See CenturyLink Petition for Waiver, WC Docket Nos. 10-90, *et al.*, at 5-11 (filed June 26, 2012) (*CenturyLink Waiver Petition*).

<sup>12</sup> WISPs often experience (1) service degradation due to third party interference from devices such as cordless phones and garage door openers; (2) difficulties in maintaining sustained speeds at the 4 Mbps/1 Mbps level required of CAF recipients; lack of capacity to support significant increases in traffic; (4) and line-of-sight requirements that prevent customers from obtaining broadband service. See USTelecom/ITTA Comments, at 16.

<sup>13</sup> *Public Notice*, at ¶ 11.

With regard to the questions posed in the *Public Notice* on how to determine reasonably comparable pricing,<sup>14</sup> ITTA supports a presumption that a broadband provider that offers national pricing for its broadband services is offering those services in rural and urban areas at reasonably comparable rates. Moreover, ITTA supports application of the same presumption of reasonable comparability to broadband providers that offer different pricing plans in different regions of the country as well as broadband providers that operate in a single state so long as at least a portion of the providers' customer base is urban and the providers' rates are uniform across both rural and urban areas. This approach would appropriately rely on the competitiveness of the broadband market (especially in urban areas) to set prices at reasonable levels and would be both efficient and easy to administer. For the same reason, if a portion of a broadband provider's customer base is urban, there is no need for the Commission to set a level at which a provider's rate is too high to be considered reasonable.<sup>15</sup> The competitiveness of the market will ensure that the provider's rates are reasonable.

Further, the Commission proposes to set a minimum usage requirement and the *Public Notice* requests input on a minimum usage allowance that would apply both to price cap carriers that make a statewide commitment as well as to unsubsidized competitors.<sup>16</sup> The *Notice* suggests that estimating the amount of data needed to accomplish various user activities is one approach to setting a minimum usage allowance, and includes Chart 1 that suggests what activities are possible under varying data allowances.<sup>17</sup>

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<sup>14</sup> *Public Notice*, at ¶¶ 14-15.

<sup>15</sup> *Public Notice*, at ¶¶ 16-18.

<sup>16</sup> *Public Notice*, at ¶ 19.

<sup>17</sup> *Public Notice*, at ¶ 21.

ITTA supports the approach incorporated in Chart 1. Identifying the amount of data needed to accomplish various activities the CAF is designed to foster in the areas of education, health, employment, ecommerce, and civic engagement is an appropriate way to determine the appropriate level of monthly data allowances. Using this methodology, ITTA supports adoption of a minimum usage allowance of 60 gigabytes/month. That level is consistent with current average data usage for various activities by American consumers. ITTA supports adoption of this usage requirement only as a criterion for determining initial eligibility for CAF funds, however, and not as an ongoing requirement for the provision of broadband service. The ongoing obligation should be determined through the same type of comparability analysis described above for pricing. Moreover, the usage allowance should not be required to increase in future years.<sup>18</sup> The competitiveness of the broadband services market can be relied upon to set the appropriate level of minimum usage allowances on a going-forward basis.

With respect to latency, ITTA agrees with the requirement established in the *USF/ICC Transformation Order* that latency should be sufficient for real time applications, such as VoIP. The Commission's most recent *Measuring Broadband America Report* notes that "[w]ith regard to latency, the International Telecommunications Union (ITU) has suggested that one-way latency of less than 150 ms may affect some applications. . . ."<sup>19</sup> The Commission also notes that "advanced cloud applications, such as group video calling, connected education/medicine,

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<sup>18</sup> See *Public Notice*, at ¶ 24.

<sup>19</sup> OFFICE OF ENGINEERING AND TECHNOLOGY AND CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU, FED. COMM'NS COMM'N, 2013 MEASURING BROADBAND AMERICA FEBRUARY REPORT, at n. 30 (2013).

and HD video conferencing require latency less than 100 ms”<sup>20</sup> which the Commission states is what most terrestrial wireline technologies can “reliably provide.”<sup>21</sup>

ITTA supports establishment by the Bureau of a specific latency number that meets the *USF/ICC Transformation Order’s* standard. However, the Bureau’s proposal of 60 ms is not tied to the minimum performance of any advanced applications. Given the many factors that affect latency, including distance in high-cost areas, the Bureau should adopt a latency number that is tied to enabling specific user applications, as it did for the usage allowance discussed above. Once that number is established, there is no need for the Bureau to undertake testing under a load standard for any providers that offer VoIP service. Moreover, the Bureau should adopt a rebuttable presumption that wireline carriers meet the latency number regardless of whether they currently offer VoIP service since the Commission’s own evidence of wireline performance verifies that wireline technologies meet the latency standard contained in the *USF/ICC Transformation Order*.

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<sup>20</sup> *Public Notice*, at n. 42.

<sup>21</sup> *Public Notice*, at ¶ 25.

### III. CONCLUSION

For all of the foregoing reasons, the Commission should expeditiously adopt the suggestions regarding administration of the CAF Phase II program discussed herein.

Respectfully submitted,

By: /s/ Genevieve Morelli

Genevieve Morelli  
Micah M. Caldwell  
ITTA  
1101 Vermont Ave., NW, Suite 501  
Washington, D.C. 20005  
(202) 898-1520  
[gmorelli@itta.us](mailto:gmorelli@itta.us)  
[mcaldwell@itta.us](mailto:mcaldwell@itta.us)

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