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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: ***Connect America Fund***
WT Docket No. 10-90
Notice of Oral Ex Parte Communication

Dear Ms. Dortch:

On December 6, 2018, Claude Aiken, President & CEO of the Wireless Internet Service Providers Association (“WISPA”), and undersigned counsel to WISPA met separately with Preston Wise, Legal Advisor to Chairman Ajit Pai and with Arielle Roth, Legal Advisor to Commissioner Michael O’Rielly, to discuss the Commission’s conclusion in the *Draft Report and Order*¹ that it should offer Alternative Connect America Cost Model II (A-CAM II) support to rate-of-return carriers in areas that are already served by unsubsidized providers offering broadband service below 25/3 Mbps speeds.

In lieu of adopting that requirement,² the WISPA representatives asked that the *Draft Report & Order* lower the speed threshold for unsubsidized competitors to 10/1 Mbps, or seek further comment on the appropriate speed threshold in the Further Notice of Proposed Rulemaking. In any event, the Commission should rely on the most recent version of Form 477 in determining the broadband speeds offered by unsubsidized competitors in defining areas eligible for A-CAM II support, and should consider adopting an interim reporting or challenge process to allow incumbent providers to provide updated information.

¹ See *Connect America Fund*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, WC Docket No. 10-90, FCC-CIRC1812-02 (rel. Nov. 21, 2018) (“*Draft Report & Order*”).

² See *id.* at ¶ 44.



WISPA recognizes that the Commission has long held that evolving technical capabilities and user needs may require the periodic adjustment of minimum broadband speeds supported through various Universal Service Fund initiatives.³ Moreover, WISPA supports the Commission’s goal that all consumers nationwide, including in rural areas, should ultimately have access to 25/3 Mbps service.

However, WISPA believes that, in this instance, the Commission has not yet allowed the unsubsidized market to mature sufficiently, and threatens private investment in areas that would have no service but for the presence of an unsubsidized provider. Accordingly, while 25/3 Mbps service may be an appropriate minimum speed requirement for A-CAM recipients, subsidies should be available only in areas where an unsubsidized provider is not offering voice and broadband service of at least 10/1 Mbps.

The WISPA representatives also noted that the *Draft Report and Order* proposes to “extend the [A-CAM II] offer to carriers that have reported deploying 10/1 Mbps service to more than 90% of eligible locations.”⁴ We noted the inequity inherent in providing additional subsidies to rate-of-return carriers in areas where *they* provide 10/1 Mbps service but adopting a higher standard of 25/3 Mbps where *unsubsidized competitors* offer service deployed with private investment. In effect, the Commission would be prioritizing overbuilding of subsidized networks that offer lower speeds while offering no policy support for unsubsidized networks that offer speeds between 10/1 and 25/3 Mbps.

The WISPA representatives emphasized that many WISPA members provide service that allows for robust consumer internet connectivity. Moreover, these providers are constantly striving to boost connection speeds. The *Draft Report and Order’s* proposal to fund rate-of-return carriers, even in areas where existing unsubsidized competitors already provide robust service, cannot be squared with the Commission’s well-established policy goal of increasing access to consumers who are truly unserved or underserved. We pointed out that a rural consumer who is able to receive, for example, 20/5 Mbps service, can hardly be considered “underserved,” especially when other rural consumers are still lacking any form of residential broadband access. Nor can such service be considered “inferior.”⁵ The WISPA representatives emphasized that the Commission’s goals would be better served by directing A-CAM support to areas that lack any service at all and those that have access only below 10/1 Mbps, before allocating finite USF resources to areas that fall short – by even a small measure – of the 25/3 Mbps proposed speed.

³ See, e.g., *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17726 (2011); see also 47 U.S.C. § 254(b)(2) (referring to universal service as “an evolving level of telecommunications services”).

⁴ *Draft Report and Order* at ¶ 38.

⁵ *Id.* at ¶ 44.



Stated differently, government funds should be employed first to support a provider deploying service to a truly unserved or underserved area, not to promote competition among multiple providers in areas already receiving adequate service. Senators Thune and Klobuchar have openly talked about concerns with overbuilding.⁶ FCC Commissioners past and present have expressed concerns about government subsidies being distributed without sufficient regard to existing, unsubsidized broadband services. In opposing the Alaska Plan as structured, Chairman Pai lamented that the Commission “reward[ed] wireless carriers for serving remote areas already served by qualified competitors.”⁷ Commissioner O’Rielly also has warned about the inefficiencies and unfairness of overbuilding.⁸

The WISPA representatives stated that offering A-CAM II support to rate-of-return carriers in already-served areas will also seriously harm the many unsubsidized competitors who have invested their own resources to bring high-speed broadband service to their rural customers, and who continue to invest to improve that service. These providers raised their own private capital – in some instances by using their principals’ personal savings and equity – in order to establish self-funded broadband service in rural areas. These providers relied on the Commission’s representations that the establishment of 10/1 Mbps service would be sufficient to avoid government-funded subsidies flowing to competitors. It would be a serious blow to the reliance interests of unsubsidized rural providers to have invested their own capital only to have new, competing carriers overbuild their service areas using government subsidies.

The goal of model support has never been to introduce government-funded competition in areas that are currently adequately served by unsubsidized providers. Yet the *Draft Report and Order* proposing to provide support to rate-of-return carriers even in those rural areas already receiving service up to 25/3 Mbps would do just that.

Finally, we pointed out that, irrespective of any decision the Commission may make with respect to the areas eligible for A-CAM II support, the Commission must rely on the most recent Form 477 to better ensure that areas where 25/3 Mbps service is available are not subject to A-

⁶ See *Oversight of the Federal Communications Commission Before the S. Comm. on Commerce, Sci., & Transp.*, 115th Cong. (2018) (Comments of Sen. John Thune, Chairman, S. Comm. on Commerce, Sci., & Transp.); *id.* (Comments of Sen. Amy Klobuchar).

⁷ *Connect America Fund*, et al., 31 FCC Rcd 10139, 10208 (2016), Dissenting Statement of Commissioner Ajit Pai., *see also id.* at 10205, Dissenting Statement of Commissioner Mignon L. Clyburn (“**We do not** subsidize competition. **We do not** provide duplicative high-cost support to carriers in the same area, and **we do not** subsidize carriers where other unsubsidized carriers are providing service.”) (emphases in original).

⁸ See, e.g., *Cristiano Lima, Senate GOP to Trump Admin: Don’t Get Sloppy with Broadband*, Politico Morning Tech (Aug. 23, 2018) (quoting testimony of Commissioner O’Rielly at FCC Oversight Hearing before the U.S. Senate Committee on Commerce, Science and Transportation on Aug. 16, 2018 in which he said programs such as the Rural Utilities Service should “help people who lack broadband options rather than subsidizing those who just have subpar internet service.”)



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CAM support, as supplemented with more current information through a separate reporting opportunity or challenge process. The WISP industry continues to grow and, because of the ability of fixed wireless networks to expand rapidly, outdated Form 477 data may yield results that would direct A-CAM subsidies to areas served by unsubsidized competitors with qualifying broadband speed.

In sum, the Commission's universal service objectives would be best served by making available A-CAM II support only to areas where an unsubsidized provider is not offering voice and broadband service of at least 10/1 Mbps. The Commission should revise its *Draft Report and Order* accordingly or, at a minimum, seek comment on this issue in the *Further Notice of Proposed Rulemaking*.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed in ECFS. Please do not hesitate to contact the undersigned with any questions.

Respectfully submitted,

/s/ Stephen E. Coran

Stephen E. Coran

cc: Preston Wise
Arielle Roth
Claude Aiken