

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
Wireline Competition Bureau Seeks Comments on )
Areas Shown as Unserved on the National )
Broadband Map for Connect America Fund Phase I )
Incremental Support )
Wireless Internet Service Providers Association )
Emergency Petition for Reconsideration or, )
Alternatively, for an Extension of Time )
Connect America Fund ) WC Docket 10-90

ORDER

Adopted: January 23, 2013

Released: January 23, 2013

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) dismisses in part and denies in part a petition for reconsideration or, alternatively, for an extension of time filed by the Wireless Internet Service Providers Association (WISPA).1

II. BACKGROUND

2. In a recent Further Notice of Proposed Rulemaking (FNPRM), the Commission instructed the Bureau to publish a list of unserved census blocks in price cap territories based on the National Broadband Map.2 The Bureau was directed to solicit public input on updates, revisions, and other potential changes to that list.3 To carry out the Commission's direction, the Bureau issued a Public Notice announcing the availability of such a list and seeking comment regarding the list.4

1 Emergency Petition for Reconsideration or, Alternatively, for an Extension of Time, WC Docket No. 10-90 (filed Dec. 21, 2012) (WISPA Petition).

2 See Connect America Fund, WC Docket No. 10-90., Further Notice of Proposed Rulemaking, 27 FCC Rcd 14566, 14570, para. 15 (2012) (Connect America Phase I FNPRM).

3 See id.

4 See Wireline Competition Bureau Seeks Comment on Areas Shown as Unserved on the National Broadband Map for Connect America Phase I Incremental Support, WC Docket No. 10-90, Public Notice, DA 12-1961 (Wireline Comp. Bur. rel. Dec. 5, 2012) (Unserved Census Blocks PN); see also Wireline Competition Bureau Updates the List of Potentially Unserved Census Blocks in Price Cap Areas and Extends the Deadline for Comment on the List,

(continued . . .)

### III. DISCUSSION

3. WISPA requests that the Bureau reconsider and rescind the Public Notice seeking comment on the list.<sup>5</sup> The Bureau dismisses WISPA's petition for reconsideration as not ripe for decision. A petition for reconsideration must relate to a final action in a rulemaking or proceeding.<sup>6</sup> The Public Notice at issue is not a final action. It merely seeks comment on the list of potentially unserved census blocks.<sup>7</sup> That list may, at some point in the future, be used as part of a final Commission action.<sup>8</sup> If and when the Commission uses the list as part of a final action, WISPA may request reconsideration of that final action; however, it may not seek reconsideration of the issuance of a Public Notice seeking comment.<sup>9</sup> The Bureau therefore dismisses WISPA's petition for reconsideration.

4. As an alternative to its petition for reconsideration, WISPA requests the Bureau extend the deadline for filing comments and reply comments on the Public Notice until after the Commission has adopted final rules in this matter.<sup>10</sup> WISPA argues that it would be prudent to wait until final rules are adopted before seeking comment on unserved areas, and contends that any information in submitted comments will be superseded by updates to the National Broadband Map.<sup>11</sup>

5. It is the policy of the Commission that extensions of time shall not be routinely granted,<sup>12</sup> and WISPA has failed to persuade us that an extension is warranted in this instance. The Commission instructed the Bureau to gather comments during the pendency of the rulemaking so that "a finalized list of eligible census blocks [could] become available shortly after the adoption of the revised rules under consideration . . . ."<sup>13</sup> Waiting until final rules are adopted to establish a comment cycle to update the most recent map available at that time would frustrate this goal, as the Commission sought to expedite the process of generating a finalized list of unserved census blocks. Likewise, the fact that the National Broadband Map is expected to be updated in the near future does not compel extending the comment

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WC Docket No. 10-90, Public Notice, DA 12-2001 (Wireline Comp. Bur. rel. Dec. 10, 2012) (extending deadline to file comments until January 9, 2013).

<sup>5</sup> WISPA Petition at 4.

<sup>6</sup> See 47 C.F.R. § 1.429 ("Petitions for reconsideration of *final orders* in rulemaking proceedings" (emphasis added)); see also 47 C.F.R. § 1.429(a) ("Any interested person may petition for reconsideration of a *final action* . . . ." (emphasis added)).

<sup>7</sup> See *Unserved Census Blocks PN*.

<sup>8</sup> See *Connect America Phase I FNPRM*, 27 FCC Rcd at 14570, paras. 15-16. The Commission proposed using the list to limit the locations eligible for Phase I support – it has not made a final determination on how the list will be used, or even if it will be used at all. Such determinations will be made when the Commission releases its final report and order.

<sup>9</sup> If WISPA takes issue with the manner in which the Commission proposes to conduct a Connect America Phase I challenge process, the proper forum is not petitioning for reconsideration of the Public Notice, but rather commenting on the *Connect America Phase I FNPRM*. Comments on the FNPRM are due by January 28, 2013, with replies due by February 11, 2013. See *Comment Cycle Established for Commission's Further Notice of Proposed Rulemaking Regarding Modifications to Connect America Phase I*, WC Docket No. 10-90, Public Notice, DA 13-4 (Wireline Comp. Bur. rel. Jan. 2, 2013).

<sup>10</sup> WISPA Petition at 4.

<sup>11</sup> *Id.* at 4-5.

<sup>12</sup> 47 C.F.R. § 1.46.

<sup>13</sup> *Connect America Phase I FNPRM*, 27 FCC Rcd at 14570, para. 16.

deadline. Developing a record on potential updates to the December 2011 map allows Commission staff to begin reviewing the information submitted. Moreover, in many instances there will be no change in the status of broadband deployment between the December 2011 data and the June 2012 data. For these reasons, WISPA's motion for an extension of time is denied. Pursuant to section 1.46 of the Commission's rules, WISPA is afforded two business days after the release of this Order to file comments regarding the current list of unserved census blocks.

#### IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED that, pursuant to sections 0.91, 0.291, and 1.429 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.429, the Emergency Petition for Reconsideration filed by the Wireless Internet Service Providers Association, IS DISMISSED.

7. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.46 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.46, the Request for an Extension of Time filed by the Wireless Internet Service Providers Association IS DENIED.

8. IT IS FURTHER ORDERED that, pursuant to section 1.46 of the Commission's rules, 47 C.F.R. § 1.46, for two business days after the release of this Order, any comments filed by the Wireless Internet Service Providers Association in relation to documents DA 12-1961 and DA 12-2001 WILL BE TREATED AS TIMELY.

9. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach  
Chief  
Wireline Competition Bureau