



REDACTED – FOR PUBLIC INSPECTION

mlazarus@tlp.law
202.789.3114

March 13, 2023

VIA HAND DELIVERY AND ECFS

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
9050 Junction Drive
Annapolis Junction, MD 20701

ATTN: Chief, Wireline Competition Bureau

Re: *Nextlink Internet Petition for Reconsideration and/or Waiver of ELAP Participant Pro Rata Support Reduction*
Request for Confidential Treatment
WC Docket No. 10-90

Dear Ms. Dortch:

Enclosed, please find a Petition for Reconsideration and/or Waiver of the ELAP Participant Pro Rata Support Reduction (“Petition”) filed by Nextlink Internet (“Nextlink”).¹ Nextlink is submitting an original and four copies of the confidential version of the Petition to the Secretary’s Office and is filing a redacted version of the Petition via ECFS. Pursuant to Public Notice DA 20-361,² Nextlink will also provide a password-protected electronic copy of the confidential version of the Petition to Commission staff upon request.

Portions of this Petition contain confidential information that Nextlink would not reveal to the public in the normal course of business, as explained below. Nextlink therefore requests that the Commission withhold from public inspection and accord confidential treatment to all of the information designated as confidential in the Petition, pursuant to Sections 0.457(d) and 0.459 of the Commission’s rules.

In support of this request, and pursuant to Section 0.459(b) of the Commission’s rules, Nextlink submits the following:

¹ AMG Technology Investment Group, LLC does business as Nextlink Internet, and is referred to as Nextlink Internet or Nextlink in this document.

² *FCC Provides Further Instructions Regarding Submission of Confidential Materials*, Public Notice, 35 FCC Red 3973 (OGC & OMD 2020).



REDACTED – FOR PUBLIC INSPECTION

1. Identification of the Specific Information for Which Confidential Treatment is Sought (§0.459(b)(1))

Nextlink seeks confidential treatment with respect to the portions of the Petition that contain confidential and proprietary business and technical information, as indicated therein (the “Confidential Information”).

2. Identification of the Commission Proceeding in which the Information was Submitted or a Description of the Circumstances Giving Rise to the Submission (§0.459(b)(2))

Pursuant to 47 CFR § 1.429 and § 1.3, Nextlink is seeking reconsideration and/or waiver of the Wireline Competition Bureau’s Wireline Competition Bureau’s (the “Bureau”) February 9, 2023 Order regarding the Connect America Fund (“CAF”) Phase II Auction Eligible Locations Adjustment Process (“ELAP”) and resulting pro rata reduction of Nextlink’s CAF funding allocation.³ In order to support its request for relief, Nextlink is providing fact-specific technical and financial data that it would not ordinarily release to the public.

3. Explanation of the Degree to Which the Information is Commercial or Financial, or Contains a Trade Secret or is Privileged (§0.459(b)(3))

The Confidential Information includes sensitive commercial and proprietary information regarding, among other things, Nextlink’s network deployment, financial information, and future deployment plans which is not customarily released to the public.

4. Explanation of the Degree to Which the Information Contains a Service That is Subject to Competition (§0.459(b)(4))

The Confidential Information concerns Nextlink’s provision of broadband internet access service, which is a highly competitive industry.

5. Explanation of How Disclosure of the Information Could Result In Substantial Competitive Harm (§0.459(b)(5))

The Petition contains information that would not customarily be released to the public. Due to the competitive environment of the marketplace, the release of information relating to the Petition could substantially harm Nextlink’s ability to compete in the market for broadband services.

6. Identification of Any Measures Taken By the Submitting Party To Prevent Unauthorized Disclosure (§0.459(b)(6))

The Confidential Information is treated on a confidential basis, and would not ordinarily be

³ *Connect America Fund*, WC Docket No. 10-90, Order, DA 23-117 (rel. Feb. 9, 2023) (“2023 WCB ELAP Order”).



REDACTED – FOR PUBLIC INSPECTION

disclosed to the public. In order to prevent unauthorized disclosure of the subject information, the Petition has been marked as confidential, and this request is being sought.

7. Identification of Whether the Information Is Available to the Public and the Extent of any Previous Disclosure of the Information to Third Parties (§0.459(b)(7))

The Confidential Information is generally not available to the public or to third parties. To the extent that confidential or proprietary information is shared with a third party, these parties are contractually bound to protect such information and prohibited from using such information for any other purpose.

8. Justification of the Period During Which the Submitting Party Asserts that Material Should Not be Available for Public Disclosure (§0.459(b)(8))

The Petition contains proprietary and confidential commercial information that Nextlink will forever keep confidential. Because of the competitive sensitivity of the information contained in the Petition, Nextlink seeks FCC confidential treatment indefinitely.

9. Any Other Information That the Party Seeking Confidential Treatment Believes May Be Useful in Assessing Whether its Request for Confidentiality Should Be Granted (§0.459(b)(9))

Not applicable.

Please feel free to contact the undersigned with any questions.

Sincerely,

A handwritten signature in cursive script that reads 'Michael Lazarus'.

Michael Lazarus
of TELECOMMUNICATIONS LAW PROFESSIONALS PLLC

Counsel for Nextlink Internet

Enclosure

cc (via email): Trent B. Harkrader, Chief, Wireline Competition Bureau

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Petition for Reconsideration and/or Waiver)	
of ELAP Participant Pro Rata Support)	
Reduction)	
)	
To: Chief, Wireline Competition Bureau)	

**NEXTLINK INTERNET PETITION FOR RECONSIDERATION AND/OR WAIVER OF
ELAP PARTICIPANT PRO RATA SUPPORT REDUCTION**

Nextlink Internet

Michael Lazarus
Jessica DeSimone Gyllstrom
Ashley Brydone-Jack
Telecommunications Law Professionals PLLC
1025 Connecticut Ave, NW Suite 1011
Washington, DC 20036
(202) 789-3120

Counsel to Nextlink Internet

March 13, 2023

TABLE OF CONTENTS

EXECUTIVE SUMMARY	ii
I. INTRODUCTION.....	3
II. STANDARD OF REVIEW	8
III. ALLOWING NEXTLINK TO RETAIN ITS FULL CAF PHASE II FUNDING ALLOCATION WILL TAKE PRESENT REALITIES INTO ACCOUNT AND PROMOTE BROADBAND DEPLOYMENT TO UNSERVED RURAL AREAS..	10
IV. APPLICATION OF THE PRO RATA SUPPORT REDUCTION TO NEXTLINK’S CAF PHASE II SUPPORT SHOULD BE RECONSIDERED AND/OR WAIVED	15
a. Reduction of Support Will Harm Consumers in Nextlink’s CAF Census Block Groups	15
b. Nextlink Should be Afforded the Benefit of the More Favorable Policy Changes Adopted Prior to the 2023 WCB ELAP Order and Applied to Other High-Cost Support Recipients	17
i. Nextlink Conducted Significant Due Diligence Prior to Participating in CAF Phase II and Should Not Be Penalized for Unanticipated Changes to the Location Count or the Vast Discrepancy in Available Locations.....	22
V. CONCLUSION	25

EXECUTIVE SUMMARY

Nextlink participated in the CAF Phase II auction and won support for broadband deployment to underserved areas on the basis of cost projections and location estimates prepared in good faith. It then applied for ELAP, again in good faith and in accordance with FCC procedures, obtaining and submitting to the agency more accurate data that showed fewer locations to be served. This enhanced accuracy, however, came at great cost to Nextlink – \$21 million in lost support that does not remotely correlate with any projected reduction in Nextlink deployment costs. In fact, those costs have only increased due to changed circumstances (e.g., pandemic-related supply chain delays, inflation) since Nextlink made its bids in 2018.

This petition reasonably asks the FCC *not* to reduce Nextlink’s CAF Phase II support under all the facts and circumstances presented. Those circumstances prominently include the FCC’s inadequately explained disparate treatment of similarly situated participants in RDOF, where post-auction reductions in locations generally do not produce reductions in deployment funding. The Commission’s reasoning in the RDOF context applies equally to Nextlink’s participation in CAF Phase II. Deployment costs are essentially related to the size of a census block’s service area, not the number of locations passed. Furthermore, given the Commission’s own current difficulties in generating accurate broadband deployment maps, it is particularly unjust to tie CAF Phase II funding reductions to an accuracy-enhancing process (ELAP) that bears no reasonable relationship to deployment costs. Lastly, the public interest will not be served by reducing Nextlink’s funding by \$21 million. In fact, the public interest will be harmed by the potential slowing of Nextlink’s ability to continue its rapid broadband deployment to rural areas that need it the most.

Accordingly, Nextlink’s requested relief is amply justified and respectfully requested.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Petition for Reconsideration and/or Waiver of ELAP Participant Pro Rata Support Reduction)	
)	
To: Chief, Wireline Competition Bureau)	

**NEXTLINK INTERNET PETITION FOR RECONSIDERATION AND/OR WAIVER OF
ELAP PARTICIPANT PRO RATA SUPPORT REDUCTION**

Nextlink Internet¹ is a success story in the FCC’s Connect America Fund (“CAF”) Phase II auction: a funding recipient that is deploying faster speeds and doing so more quickly than the FCC program rules require.² It has gone above and beyond the obligations associated with the auction: completing over 70% of its CAF network construction across six states, far exceeding the 40% completion benchmark required at the end of 2022.³ It has also deployed speeds of up to 500 Mbps in CAF areas where it was only required to deploy either 25 or 100 Mbps, and will soon be deploying gigabit speeds to CAF areas as well. This all in a time of significant inflation, rising construction costs, labor shortages, and an uncertain supply chain. COVID-19 has

¹ AMG Technology Investment Group, LLC does business as Nextlink Internet, and is referred to as Nextlink Internet or Nextlink in this document.

² See *Nextlink Internet Ahead of Schedule and Deploying Faster Speeds in its Rural Broadband Deployments*, Press Release, Aug. 16, 2022, available at <https://nextlinkinternet.com/nextlink-internet-ahead-of-schedule-and-deploying-faster-speeds-in-its-rural-broadband-deployments/>. (“Nextlink CAF 50% Press Release”)

³ See *Nextlink Internet Announces 70% CAF Project Completion, Headwinds Slowing Construction*, Press Release, Mar. 14, 2023, (“Nextlink CAF 70% Press Release”).

underscored just how critical access to broadband is in many of these communities receiving CAF funding, but due to the unjust application of the FCC’s Eligible Locations Adjustment Process (“ELAP”) funding reduction, construction of those networks to many of those areas will slow, and Nextlink may be forced to reduce offered speeds to the bare minimum program requirements, which will unduly harm consumers as well.

Due in part to the FCC’s CAF Phase II auction program, Nextlink has grown from a small fixed wireless broadband provider just outside of Dallas, Texas, to a provider of gigabit connectivity across multiple states. However, it was impossible for a tiny company in 2018 to accurately assess locations across multiple states in the face of imperfect mapping data. Indeed, it cost the company [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] to fully conduct an ELAP analysis across six states; expending this amount of time and money would have made it impossible for Nextlink to participate in the auction if it had attempted to conduct the analysis in the few months prior to the auction, after the FCC had announced the qualifying census blocks.

Therefore, Nextlink is requesting reconsideration pursuant to the Federal Communications Commission’s (“FCC” or “Commission”) rules, of the Wireline Competition Bureau’s (the “Bureau”) February 9, 2023 Order⁴ regarding the CAF Phase II auction ELAP and resulting pro rata reduction of support.⁵ In addition to reconsideration, or in the alternative,

⁴ *Connect America Fund*, WC Docket No. 10-90, Order, DA 23-117 (rel. Feb. 9, 2023) (“2023 WCB ELAP Order”).

⁵ This request is being timely filed within 30 days of the release of the February 9, 2023 WCB ELAP Order, which falls on Saturday, March 11, 2023. Per the FCC’s rules, filing deadlines that fall on weekends are moved to the next business day. *See* 47 C.F.R. § 1.4(e), (j). *See also* 47 C.F.R. § 1.429(d) (“The petition for reconsideration and any supplement thereto shall be filed

Nextlink respectfully seeks a waiver pursuant to the Commission’s rules,⁶ of the reduction of Nextlink’s CAF Phase II auction support on a pro rata basis. Grant of the relief sought herein would result in Nextlink receiving the full support amount it was originally awarded for each state in which its eligible locations were adjusted – rather than such amount being decreased by over \$21 million – money that had been earmarked for the deployment of broadband to areas that need it the most. As demonstrated herein, granting reconsideration and/or waiver would be just and in the public interest, as it would result in more rapid deployment of broadband to currently underserved and unserved rural areas.

I. INTRODUCTION

Nextlink offers fast, reliable broadband and voice services to residential, business, educational, library, healthcare, and government customers in rural communities throughout Illinois, Iowa, Kansas, Nebraska, Oklahoma, and Texas. Since beginning operations in 2012, Nextlink has been committed to providing innovative communications solutions to customers and communities that have been frequently overlooked and underserved by other providers. Nextlink has invested considerable resources in developing a network plan that ensures its rural customers are offered competitive speeds and reliable, quality service they know they can depend on for their essential activities.

within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b).”) In addition, waiver requests are, by definition, never untimely. The 2023 WCB ELAP Order appears to be part and parcel of an ongoing FCC rulemaking proceeding, however to the extent the Bureau does not consider this item to be appropriate under Section 1.429, this petition also would qualify under the standard of Section 1.106 for the same reasons discussed herein.

⁶ See 47 C.F.R. § 1.3.

In 2018, Nextlink applied to participate in the CAF Phase II auction and won support in six states.⁷ Bidding in CAF Phase II was conducted on a census block group basis, and winning bids were selected based upon the amount of the bidder’s requested funding and proposed level of service.⁸ When adopting rules for the CAF Phase II auction, the Commission explicitly declined “to adopt an approach that would select bids on a dollar per location basis.”⁹ The Commission adopted service milestones based upon the percentage of eligible locations in each state where a participant was awarded funding, with an expectation that a provider would serve 100% of the eligible locations within six years of being authorized to receive support.¹⁰ Failing to meet the 100% service deployment would either result in the provider (a) having to refund a portion of the support they received (if they had built out more than 95% of the locations but less than 100%) or (b) being found to be in default of its deployment obligations (if they failed to build out at least 95% of the locations).¹¹

The Commission also recognized that the Connect America Cost Model (“CAM”), which was utilized to determine the number of CAF-eligible locations in each state, likely overestimated the number of locations in certain areas.¹² Understanding that large discrepancies in the CAM estimate and the number of actual locations in a given census block could result in a

⁷ These states include: Illinois, Iowa, Kansas, Nebraska, Oklahoma and Texas.

⁸ *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5976, para. 84, 5979, para. 89 (2016) (“CAF Phase II Report and Order”).

⁹ *Id.* at 5977, para. 85.

¹⁰ *Id.* at 5964, para. 40.

¹¹ *Id.* at 5966, para. 45.

¹² *Connect America Fund*, WC Docket No. 14-259, Order on Reconsideration, 33 FCC Rcd 1380, 1390, para. 23 (2018) (“CAF Phase II Recon Order”).

provider being unable to meet their service milestones, the FCC adopted ELAP.¹³ Through ELAP, providers could submit evidence to the Commission demonstrating that the actual number of locations in a provider's deployment area was less than the CAM estimate and accordingly receive an adjustment to their eligible location obligation.¹⁴ The Bureau would then decide, based on a preponderance of the evidence and on a state-by-state basis, whether the participant's total number of funded locations within the state exceeded the total number of actual eligible locations in the state, thus warranting a reduction in the participant's defined deployment obligation and a pro rata reduction in support.¹⁵ The Commission provided little explanation or justification for its adoption of the pro rata support reduction.¹⁶

After a substantial review costing significant time, effort and company resources to examine the number of locations in its winning bid areas, Nextlink determined that the CAM estimate was higher than the actual number of locations in certain areas where it had been authorized to receive support.¹⁷ Accordingly, Nextlink timely applied for ELAP in certain states to receive an adjustment of the number of eligible locations in those areas.¹⁸ On February 9, 2023, the Bureau released the 2023 WCB ELAP Order granting Nextlink's ELAP request and reducing the number of eligible locations Nextlink was required to serve in four states.¹⁹ Due to

¹³ *Id.* at 1390-92, paras. 23-28.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Illinois, Iowa, Kansas, and Oklahoma.

¹⁸ *See Summary of Eligible Locations Adjustment Process Prima Facie Participant Location Information by State and Study Area Code*, available at: <https://www.fcc.gov/file/22149/download>.

¹⁹ *See generally* 2023 WCB ELAP Order.

the pro rata share reduction, Nextlink’s funding support was decreased by a total of over \$21 million pursuant to this decision as well.

Prior to the 2023 WCB ELAP Order, the Commission adopted a Report and Order governing the Rural Digital Opportunity Fund (“RDOF”). In RDOF, the Commission’s goal was to expand broadband to rural communities through awards of funding to broadband providers, the same goal as that of CAF Phase II.²⁰ As with CAF Phase II, in adopting the RDOF procedures, the Commission implemented a location adjustment process, but the Commission expressly declined to adopt a pro rata share reduction, finding that such a reduction unnecessarily punished RDOF participants and interfered with the Commission’s goals of extending service to as many Americans as possible.²¹ This change in policy resulted in a location adjustment process for RDOF participants that is considerably more favorable than the process adopted for other high-cost recipients, like those in CAF Phase II, and that will lead to more support for increased broadband deployment. To justify this change, the Commission explained that “the costs of building and operating broadband networks are predominantly governed by the size and characteristics of the areas served rather than the precise number of locations,” and further recognized that pro rata support reductions “penalize support recipients when the location data used to establish milestones overstates the number of locations in an area.”²² Accordingly, rather than adopting a pro rata adjustment for any discrepancies between the CAM estimate of eligible locations and the actual number of RDOF locations, the Commission concluded that, if the

²⁰ *Rural Digital Opportunity Fund*, Report and Order, 35 FCC Rcd 686 (2020) (“RDOF Report and Order”).

²¹ *Id.* at 709-10, para. 46.

²² *Id.* at 709-10, para. 45-46.

number of actual locations for a given area was within 35 percent of the CAM model, the public interest and Commission’s goal of extending broadband to as many Americans as quickly as possible would be better served by allowing RDOF participants to retain all of their awarded funding.²³ Despite a Commission finding that the pro rata support reduction was unjustly punitive, and that the public interest and Commission’s goals for broadband expansion generally warranted a retention of funding, CAF Phase II participants, like Nextlink, continue to be subject to an unjust pro rata support reduction.

On June 10, 2020, a coalition of CAF Phase II participants requested that the pro rata support reduction be waived and that the RDOF rules be applied to CAF Phase II participants. On November 1, 2021, the Bureau released an Order denying the request on procedural grounds, concluding that the requested waiver was ultimately an untimely request for reconsideration.²⁴ The Bureau also addressed the coalition’s RDOF arguments, finding that there were significant differences between CAF Phase II and RDOF participants which did not justify a waiver. For the reasons set forth below, Nextlink requests that application of the pro rata reduction, as adopted in the 2023 WCB ELAP Order, be reconsidered and/or waived and that Nextlink be authorized to receive all of its initially-allocated support as determined by its CAF Phase II winning bids prior to the conclusion of ELAP. Without the relief requested herein, the application of the ELAP pro rata reduction is exceptionally unfair and unjust to Nextlink as applied and would result in significant public interest harms. Denying access to over \$21 million in funding for the deployment of broadband to areas that sorely need it is in direct contradiction

²³ *Id.* at 710, para. 49.

²⁴ *Connect America Fund*, Order, 36 FCC Rcd 15428 (WCB 2021) (“2021 WCB ELAP Order”).

to the Commission’s stated goals of the CAF Phase II high-cost program, as well as broader Administration and Congressional goals associated with rapid broadband deployment.²⁵

II. STANDARD OF REVIEW

An interested party may seek relief from Commission obligations by petitioning for reconsideration of a final order or action and/or by seeking a waiver of the adopted rule. A petition for reconsideration will be granted based on events that have occurred or circumstances that have changed since the last opportunity to present such matters to the Commission or if reconsideration is necessary to serve the public interest.²⁶ A waiver of the Commission’s rules is appropriate for “good cause shown.”²⁷ Courts have found that a waiver is appropriate where the

²⁵ See e.g., Infrastructure Investment and Jobs Act of 2021, Division F, Title IV, Section 60101, Public Law 117-58, 135 Stat. 429 (Nov. 15, 2021) (“IIJA”); see also, *Connect America Fund*, Report and Order, 29 FCC Rcd 15644, 15645, para. 2 (2014) (“2014 CAF Report and Order”); RDOF Report and Order, 35 FCC Rcd at 687, para. 2.

²⁶ 47 C.F.R. § 1.429; *Leetek America, Inc.*, Memorandum Opinion and Order, 27 FCC Rcd 13487, 13489, para.6 (2012). Nextlink’s petition for reconsideration at this point in time should be treated as analogous to one of the two lawful ways to challenge a statute – by means of an “as-applied” challenge (here, ELAP as applied to Nextlink), rather than through a “facial” challenge (i.e., to ELAP’s application to CAF Phase II as a whole). Compare *United States v. Treasury Employees*, 513 U.S. 454, 477-78 (1995) (as-applied challenges are favored by the Courts because they allow for the provision of narrower remedies to actual litigants based on specific case facts rather than bestow universal relief on non-parties) with *United States v. Stevens*, 559 U.S. 460 (2010) (setting forth the strict tests a facial challenge must meet). Given the lack of any rational nexus between the formulaic ELAP reductions in Nextlink CAF Phase II locations and the increases in Nextlink’s real-world deployment costs, as well as the many changes in the regulatory landscape since the Commission’s 2018 decision to apply ELAP generally to CAF Phase II participants (e.g., the entirely opposite approach taken by the FCC in RDOF, finding no correlation between typical ELAP-related reductions in locations and applicant deployment costs/funding levels; the COVID-19 pandemic and directly related supply chain delays; the rise in inflation levels), the funding reduction now being “applied” to Nextlink is arbitrary and capricious and contravenes the public interest, to the clear detriment of those residents in the underserved areas Nextlink is working to reach.

²⁷ 47 C.F.R. § 1.3.

particular facts make strict compliance inconsistent with the public interest.²⁸ In considering a waiver, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁹ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.³⁰ The Commission has found that a waiver is also appropriate if the rule, as applied to a party, would be unjust.³¹

The Commission has repeatedly found that expanding, maintaining, and strengthening broadband services is in the public interest.³² This is particularly true when the expanded broadband service would increase access to unserved and underserved rural communities.³³ Similarly, reconsideration is in the public interest if application of a rule is arbitrary and capricious or would violate the Commission’s authorizing statute.³⁴ Granting Nextlink’s request

²⁸ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

³⁰ *Northeast Cellular*, 897 F.2d at 1166.

³¹ *NYNEX Telephone Companies 1995 Annual Access Tariff Filings*, Memorandum Opinion and Order, 11 FCC Rcd 5448, 5453, para. 12 (1995).

³² *Applications of Altice N.V. and Cablevision Systems Corporation to Transfer Control of Authorizations from Cablevision Systems Corporation to Altice N.V.*, 31 FCC Rcd 4365, 4787-88, para. 47-48 (2016) (noting that Altice’s broadband commitments would serve the public interest); *Applications of Frontier Communications Corporation and Verizon Communications, Inc. for the Partial Assignment or Transfer of Control of Certain Assets in California, Florida, and Texas*, 30 FCC Rcd 9812, 9825-26, paras. 32-34 (2015) (noting that Frontier’s ability to accelerate broadband service “represents a tangible public interest benefit”).

³³ *See, e.g.*, 2014 CAF Report and Order, 29 FCC Rcd at 15645, para. 2; RDOF Report and Order, 35 FCC Rcd at 687, para. 2.

³⁴ *See FCC v. Fox TV Stations, Inc.* 556 U.S. 520, 513 (2009) (recognizing that an agency’s action is arbitrary or capricious if it fails to examine the relevant data and provide a satisfactory supporting explanation); *Hawaiian Tel. Co. v. FCC*, 498 F.2d 771, 772 (D.C. Cir. 1974) (case remanded due to the Commission’s failure to comply with its statutory mandate).

for reconsideration, or in the alternative, a waiver, resulting in the elimination of Nextlink’s pro rata support reduction would be in the public interest because allowing Nextlink to retain the full amount of its initially approved CAF Phase II support would result in significant increases in the availability and quality of broadband service in rural areas, and would treat Nextlink in a just and fair manner, consistent with the treatment of other high-cost recipients.

III. ALLOWING NEXTLINK TO RETAIN ITS FULL CAF PHASE II FUNDING ALLOCATION WILL TAKE PRESENT REALITIES INTO ACCOUNT AND PROMOTE BROADBAND DEPLOYMENT TO UNSERVED RURAL AREAS

Reconsidering or waiving the pro rata support reduction will better ensure that Nextlink is able to deploy broadband to regions and communities that need it most. As noted above, the Commission has recognized that the “costs of building and operating broadband networks are predominantly governed by the size and characteristics of the areas served rather than the precise number of locations.”³⁵ This reflects the reality of broadband deployment. When building a broadband network, the specific number of locations does not substantially impact a provider’s costs when expanding into a new area. While there are undoubtedly costs associated with extending service to each location, the vast majority of the costs associated with deploying a broadband network are “distance-caused costs.”³⁶ These are the costs that the provider must expend regardless of the number of locations that will be served, such as laying fiber along the road to a location.³⁷ The cost of extending the fiber along the road such that it will be capable of

³⁵ RDOF Report and Order, 35 FCC Rcd at 709, para. 45.

³⁶ Steve G. Parsons, Parsons Applied Economics, and James Stegeman, CostQuest Associates, *Rural Broadband Economics: A Review of Rural Subsidies* (July 11, 2018) (available at: <https://www.ustelecom.org/wp-content/uploads/2018/11/Rural-Broadband-Economics-A-Review-of-Rural-Subsidies-final-paper-1.pdf>) (“CostQuest Study”).

³⁷ *Id.* at 11.

serving the furthest location from the current network footprint does not significantly increase based upon the number of locations that will be served along the way. Indeed, CostQuest has found that while the variable cost of connecting locations increases linearly in direct proportion to the number of locations to be connected, “the distance-caused costs of running the cable on the roads to the homes remains relatively constant.”³⁸ While adding locations to the build means that the overall cost per location decreases, the cost to the provider to expand the network remains largely the same.

The pro rata support reduction completely fails to take distance-caused costs into account. While the ELAP process increased the accuracy of the overall number of locations that providers are required to serve, it did not modify the overall area providers are required to serve. Indeed, for Nextlink, the reduction in locations has no impact on the overall area over which it must expand its network. **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END CONFIDENTIAL]**. The only difference pre- and post-ELAP is that there will be fewer locations along the way that Nextlink must extend service to, and thereby fewer chances to obtain a return on its investment. The cost to reach the most far-flung locations remains the same despite the number of locations covered.

Since decreasing the number of locations Nextlink must serve will not materially decrease Nextlink’s costs, decreasing the amount of support it receives will negatively impact its ability to deploy high-speed, affordable, reliable broadband to the areas that need it most. This is simply not in the public interest. In fact, it actively undermines the Commission’s goals of

³⁸ *Id.* at 12.

expanding broadband as quickly as possible to all Americans and contradicts the Commission’s statutory mandate to ensure “access to advanced telecommunications and information services [is] provided in all regions of the Nation” and that “consumers . . . in rural, insular, and high cost areas [] have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas.”³⁹

In order to meet its deployment obligations, Nextlink will be required to cut back on other planned projects that are focused on expanding broadband to additional unserved and underserved communities. Nextlink had planned to expand high-speed service to traditionally unserved and underserved areas that have lacked service in large part because of the expense involved with reaching them.⁴⁰ Continuing with its current expansion plan will be impossible with such a drastic loss of funding, as such expansion requires substantial investment in high-quality broadband infrastructure to deploy to rural and difficult-to-reach locations. Nextlink will also need to slow the pace of its CAF Phase II network deployment and will experience greater difficulty in meeting its baseline program obligations, preventing the company from upgrading its network to include faster speeds and improved service offerings. In short, this funding reduction will cause Nextlink to slow down its builds and potentially offer slower speeds. This is in direct contradiction to the Commission’s goals and statutory mandates.

This reality is compounded by labor shortages and unanticipated inflation and supply chain-related costs, which have significantly increased the costs related to broadband deployment

³⁹ 47 U.S.C. § 254(b)(2)-(3).

⁴⁰ *See, e.g.*, RDOF Report and Order, 35 FCC Rcd at 687, para. 2.

since the CAF Phase II funds were awarded.⁴¹ [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]. Such events certainly qualify as changed circumstances beyond Nextlink's control that could not have been previously anticipated. Since CAF Phase II concluded, COVID-19 Pandemic supply chain shortages and historic levels of inflation have drastically increased the cost of building a broadband network. Even prior to the ELAP reduction, Nextlink was implementing cost-saving measures to correct the unanticipated differences in building out the network from its original calculations when bidding occurred in 2018. Nextlink is already going to have to do more with less, and without the requested Commission action, it will have to figure out how to do more with considerably less.

In addition, Nextlink is a relatively small company, the type of company that the Commission has been actively attempting to encourage to participate in funding auctions to expand competition for consumers. Nextlink's business model is intentionally designed to ensure it is providing local jobs, improving the communities it enters into, and providing quality

⁴¹ See, e.g., D. Kish, *The Vicious Cycle of the Supply Chain in Fiber Broadband – Is an End in Sight?* Broadband Communities Magazine, <https://www.bbcmag.com/community-broadband/the-vicious-cycle-of-the-supply-chain-in-fiber-broadband-is-an-end-in-sight> (Nov./Dec. 2021); C. Cash, *Down to the Wire: A Perfect Storm of Shortages Threatens to Douse Rural Broadband Progress*, Rural Electric Magazine, <https://www.cooperative.com/remagazine/articles/pages/kinks-in-the-chain-a-perfect-storm-of-shortages-threatens-to-douse-rural-broadband-progress.aspx> (Aug. 1, 2021); D. Goovaerts, *ISPs: Inflation has doubled RDOF build costs*, Fierce Telecom, <https://www.fiercetelecom.com/broadband/isps-inflation-has-doubled-rdof-build-costs> (Oct. 24, 2022); S. Pratt, *Fiber providers feeling inflation as cost of materials and labor rise*, Render, <https://www.rendernetworks.com/resources/fiber-providers-feeling-heat-of-inflation> (Sep. 26, 2022).

broadband service to consumers that have been denied such service in the past. Given this business model, the company does not have a large sum of funding simply sitting aside to compensate for drastic changes in its funding allocations. It is also more difficult for smaller carriers to adjust their network planning. The costs of acquiring data and the people-hours spent on network projects have a more significant effect on smaller providers; the removal of \$21 million from a network build is almost unimaginable for a company of Nextlink's size and resources.

In a time where more money than ever is being spent on broadband infrastructure, rescinding ELAP funding also runs contrary to current broadband policy.⁴² The IIJA has committed billions of dollars in funding to expand broadband access to all Americans.⁴³ Treasury programs are similarly investing hundreds of millions of dollars in broadband infrastructure and deployment.⁴⁴ The Department of Agriculture has also distributed hundreds of millions of dollars for broadband through its ReConnect Program.⁴⁵ If the universal goal is expanding access to broadband and investing in this critical resource, rescinding funding that aids in this purpose is certainly not in the public interest.

Allowing Nextlink to retain the funds it was initially allocated will ensure it is better able to expand its network and serve communities that need it the most. It will also ensure that such

⁴² IIJA § 60101.

⁴³ *Id.*

⁴⁴ See, e.g., *Coronavirus State and Local Fiscal Recovery Funds*, Department of Treasury, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds> (last accessed Mar. 9, 2023).

⁴⁵ *Announcements, ReConnect*, Department of Agriculture, <https://www.usda.gov/reconnect/announcements> (last accessed Mar. 9, 2023).

funds go toward broadband deployment in an identifiable timeframe rather than not being put to productive use. Such a result is clearly in the public interest.

IV. APPLICATION OF THE PRO RATA SUPPORT REDUCTION TO NEXTLINK’S CAF PHASE II SUPPORT SHOULD BE RECONSIDERED AND/OR WAIVED

Forcing Nextlink to surrender funding considering the changed circumstances since 2018 is not only against the public interest, but it is flatly unjust. Notably, Nextlink is losing the most funding out of all the other companies that participated in ELAP. Nextlink will lose over \$21 million in CAF Phase II funding, which comprises over 13% of the total CAF Phase II funding Nextlink was allocated for the four affected states. Such a drastic reduction in funding is extremely harmful to a company such as Nextlink, particularly when the cost to meet the Commission’s milestones has not decreased – but, rather, has substantially increased due to real-world factors as discussed herein. Nextlink is simply seeking fair and just treatment, consistent with the treatment given to other high-cost support programs and recipients, and in recognition of the significantly changed circumstances that have occurred since 2018.

a. Reduction of Support Will Harm Consumers in Nextlink’s CAF Census Block Groups

Reconsidering or waiving the ELAP rules in this instance will more effectively achieve the public interest goals of ensuring rural Americans have access to fast, reliable broadband as quickly as possible. The goal of the CAF program is “to bring broadband service to every corner of the country.”⁴⁶ Strict application of the ELAP process will not only harm Nextlink but will ultimately harm thousands of consumers in the CAF census block groups. While the Commission reasonably chose a six-year build timeframe for the CAF and RDOF auctions, many

⁴⁶ 2014 CAF Report and Order, 29 FCC Rcd at 15645, para. 3.

of these areas need internet service *now*, not years from now. For this reason, Nextlink has been particularly diligent in building out its CAF Phase II areas, having already completed construction to 70% of all eligible locations.⁴⁷ It has also been offering speeds far above the requirements set out in the CAF Phase II auction, and has announced its intention to offer gigabit speeds in CAF areas as well.⁴⁸

Reducing Nextlink's CAF Phase II funding will impede all of these goals. Equipment capable of speeds above 100 Mbps is more expensive, and a reduction in funding will require Nextlink to evaluate whether that more expensive equipment currently being deployed is feasible considering such reduced support. Nextlink has started deploying fixed wireless equipment made by Tarana, which can deliver speeds of up to 500 Mbps to rural locations.⁴⁹ For example,

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] **[END CONFIDENTIAL]** currently utilized to provide 100/20 Mbps service in CAF census block groups.

The significant decrease in support will also cause Nextlink to slow its network build. The speed with which Nextlink has deployed to date reflects a commitment to utilize all CAF funding available to enable the company to deploy its network as quickly as possible to close the digital divide. Deploying quickly means Nextlink is creating more jobs, buying more equipment, and opening more local offices in the communities that it serves. This reduction in funding will necessitate slowing deployment, and all of the related benefits, to reduce the overall costs of network deployment to better reflect the revised CAF funding streams.

⁴⁷ Nextlink 70% CAF Press Release.

⁴⁸ Nextlink CAF 50% Press Release; Nextlink 70% CAF Press Release.

⁴⁹ Nextlink CAF 50% Press Release.

b. Nextlink Should be Afforded the Benefit of the More Favorable Policy Changes Adopted Prior to the 2023 WCB ELAP Order and Applied to Other High-Cost Support Recipients

Reconsidering or waiving the pro rata support reduction would ensure that current high-cost support recipients are treated similarly. Courts have found that justice requires that the Commission treat similarly situated parties similarly or provide an adequate explanation for treating such parties differently.⁵⁰ The Commission has failed to do so in this instance. In adopting RDOF, the Commission decided that it would *not* apply pro rata support reductions to RDOF participants who report that the location data used to establish milestones overstated the number of locations in an area.⁵¹ The Commission concluded that a pro rata support reduction would essentially “penalize” RDOF participants and would be contrary to the Commission’s goal of ensuring “the availability of broadband and voice services to as many rural consumers and small businesses within the Phase I auction areas by the end of the ten-year term as possible.”⁵² The same rationale applies to Nextlink. Yet, despite the fact that the goals of CAF Phase II and RDOF are identical (i.e., expanding broadband to as many Americans as possible as quickly as possible), the Commission, nevertheless, has applied a pro rata support reduction to CAF Phase II participants. This penalty will not only slow the construction of broadband to these un- and underserved areas but will also result in those locations receiving lower speeds than they otherwise would have. This approach not only treats similarly situated parties differently,

⁵⁰ *Petroleum Communs., Inc. v. FCC et al.*, 22 F.3d 1164, 1172 (D.C. Cir. 1994) (citing *New Orleans Channel 20, Inc. v. FCC*, 830 F.2d 361, 366 (D.C. Cir.1987); *Public Media Center v. FCC*, 587 F.2d 1322, 1331 (D.C. Cir.1978); *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733, (D.C. Cir. 1965)).

⁵¹ RDOF Report and Order, 35 FCC Rcd at 709-10, para. 46.

⁵² *Id.* at 709-10, paras. 46-47.

resulting in an unjust outcome for Nextlink,⁵³ but also results in unnecessary harm to rural Americans who are desperately waiting for broadband.

Although the Bureau previously concluded that CAF Phase II participants and RDOF participants are not similarly situated, the work Nextlink has done to meet its initial deadlines demonstrates that this is not the case.⁵⁴ For instance, although CAF Phase II recipients supposedly bid on a location-by-location basis for a fixed set of locations, while RDOF participants were “expected to estimate costs based on the network build rather than a per-location cost,”⁵⁵ as explained above, both CAF and RDOF participants were effectively required to “estimate costs based on the network build.” The number of locations does not significantly change the cost analysis of the build.

For example, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]. In both instances, Nextlink must incur the costs to open and staff an office and/or warehouse, hire capable staff, construct a tower, and purchase networking equipment sufficient to service those locations. As another example,

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END

⁵³ *Petroleum Communs*, 22 F.3d at 1172; *McElroy Elecs. Corp. v. FCC*, 990 F.2d 1351, 1365-66 (D.C. Cir. 1993).

⁵⁴ 2021 WCB ELAP Order, 36 FCC Rcd at 15436, paras. 17-18.

⁵⁵ *Id.*

CONFIDENTIAL]. In sum, the cost to build out a network is not dependent on the number of locations; it is dependent on the area the network is expected to cover. Since the ELAP process has begun, Nextlink has also participated in RDOF. The cost analysis it conducted for both CAF Phase II and RDOF was largely the same. This does not justify disparate treatment between CAF Phase II participants and RDOF participants when it comes to the pro rata reduction. Accordingly, such treatment as applied to Nextlink is unjust.

Although the Commission included a potential option for increased RDOF deployment obligations, this is a facial difference that has little-to-no real-world impact on rural broadband deployment and surely does not otherwise justify the imposition of a pro rata support reduction on Nextlink as a CAF Phase II participant. In adopting this increased location potential, the Commission did not anticipate that RDOF providers would be incurring significant increases in their deployment burden. Indeed, those providers who experienced an increase in RDOF locations of greater than 35% were allowed to petition the Commission for an increase in support in recognition that the overall coverage area would increase as a result of the significant addition of locations.⁵⁶ Thus, in providing for this “under-35%” increase in location counts without corresponding increases in funding, the Commission recognized that any added locations within this threshold would be more than likely captured by the provider’s already-planned network

⁵⁶ RDOF Report and Order, 35 FCC Rcd at 710, para. 49. Further, this requirement was not absolute as the Bureau implied. The FCC explicitly stated that “[a]ny such ETC with increased deployment obligations may also seek to have its new location count adjusted to exclude additional locations, beyond the number identified by CAM, that it determines before the end of year eight are ineligible (e.g., are not habitable), unreasonable to deploy to (e.g., if it would require a carrier to install new backhaul facilities or other major network upgrades solely to provide broadband to that location), or part of a development newly built after year six for which the cost and/or time to deploy before the end of the support term would be unreasonable.” *See id.* at 710-11, para. 50.

expansion.⁵⁷ In CAF Phase II, new locations added within the provider’s planned network expansion would be captured, same as with RDOF.⁵⁸ The real world effects of both these programs demonstrate that the mandate in RDOF to serve the updated locations was merely another reflection of the Commission updating its policies – a clear changed circumstance – to align with the realities of broadband deployment and ensure that later funding is not being used to provide duplicate service to areas that are actually served. Thus, this also does not justify disparate treatment between CAF Phase II participants and RDOF participants.

Bidding for both CAF Phase II and RDOF was conducted on a census block level, and winning bidders were expected to offer service to every location in a census block.⁵⁹ A provider is “deemed to be commercially offering voice and/or broadband service to a location if it provides service to the location or could provide it within 10 business days upon request.”⁶⁰ Given typical population growth, the reality is that CAF Phase II participants will likely be offering service to “new locations” even without the mandate. In census blocks where the population is spread out, the network will have to be extended to cover nearly the entire census block. In census blocks where the population is congregated, it is most likely that any potential

⁵⁷ It is worth noting that the changes to Nextlink’s locations pursuant to ELAP do not reach the 35% threshold set forth in RDOF.

⁵⁸ *Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903*, Public Notice, 33 FCC Rcd 1428, 1435, para. 14 (2018) (“CAF Phase II Auction PN”); RDOF Report and Order, 35 FCC Rcd at 711, para. 54.

⁵⁹ CAF Phase II Report and Order, 31 FCC Rcd at 5964, para. 40, 5977, para. 85; RDOF Report and Order, 35 FCC Rcd at 702, para. 30, 709-712, paras. 45-55.

⁶⁰ CAF Phase II Auction PN, 33 FCC Rcd at 1435, para. 14; RDOF Report and Order, 35 FCC Rcd at 711, para. 54.

growth will expand from existing population centers, meaning new locations are likely near the planned network expansion.

Additionally, as with the increased location counts, this mandate is not absolute. RDOF participants are only required to provide service to new locations upon “reasonable request.”⁶¹ Thus, RDOF providers are only expected to extend service to newly built locations if it makes economic sense; the exact same analysis providers would make without an RDOF mandate.

In sum, the alleged differences between the participants are superficial at best. The reality of the deployments demonstrates that CAF Phase II and RDOF participants are similarly situated parties and must be treated similarly; to do otherwise would be unjust. Failing to reconsider or waive application of the pro rata support reduction for Nextlink would be arbitrary and capricious, particularly since, in adopting the pro rata reduction for CAF Phase II participants, the Commission provided minimal explanation for its decision to reduce participant support,⁶² while actively finding pro rata share reductions are punitive in RDOF.⁶³ Finding that

⁶¹ RDOF Report and Order, 35 FCC Rcd at 711, para. 52. In determining whether or not a request is reasonable the Commission has stated that providers can consider “whether it would be reasonable to make the necessary upgrades in light of anticipated end-user revenues from the retail provision of broadband service and other sources of revenues, including but not limited to federal or state universal service funding projected to be available under current rules.” *See* 2014 CAF Report and Order, 29 FCC Rcd at 7072, para. 65. The Commission also concluded that a request would not be reasonable “[i]f the incremental cost of undertaking the necessary upgrades to a particular location exceeded the revenues that could be expected from that upgraded line.” *See id.*

⁶² CAF Phase II Recon Order, 33 FCC Rcd at 1390-92, paras. 23-28.

⁶³ RDOF Report and Order, 35 FCC Rcd at 709-10, paras. 46-47 (“Most commenters in this proceeding oppose the pro rata support reductions, and argue that we should not penalize support recipients when the location data used to establish milestones overstates the number of locations in an area. [The Commission] agree[s], and will not reduce support if the Bureau’s updated location counts indicate fewer actual locations in the awarded areas in most circumstances.”).

the pro rata support reduction would hurt one set of participants while applying it without justification to the other set is not in the public interest and is unjust as applied to Nextlink.

i. Nextlink Conducted Significant Due Diligence Prior to Participating in CAF Phase II and Should Not Be Penalized for Unanticipated Changes to the Location Count or the Vast Discrepancy in Available Locations

As the Commission has learned over the past few years, coming up with accurate broadband locations and maps is extremely difficult. Ultimately, the Commission should not penalize providers like Nextlink that conducted significant and reasonable due diligence just because such diligence did not result in completely accurate locations. There was no way for an entity like Nextlink to determine that the CAM estimate of locations would so drastically affect the funding Nextlink would be able to receive.

Participants in CAF Phase II were advised by the Commission to conduct reasonable due diligence prior to bidding to determine what the network build would reasonably look like, how much the build would cost, and how much support they would need to complete the build.⁶⁴ Nextlink conducted such due diligence in accordance with the Commission's guidance and rules, which had a direct impact on Nextlink's bidding decisions. At no point could this due diligence have reasonably led participants like Nextlink to anticipate that the Commission's own location calculations were so vastly overestimated for the census blocks where ELAP participants filed challenges. And to expect such a determination during the due diligence stages of the auction would be unjust and, frankly, impossible. Indeed, even the Commission could not have expected

⁶⁴ CAF Phase II Report and Order, 31 FCC Rcd at, 5980, para. 92 ("We note that each potential bidder has the sole responsibility to perform its due diligence research and analysis before proceeding to participate in the Phase II auction.").

that the discrepancy in locations could result in withholding \$21 million from broadband deployment.

Nextlink appropriately conducted reasonable due diligence when it elected to participate in CAF Phase II, and as a result, its bids were primarily calculated based upon the cost to cover a particular geographic area with fixed wireless service. The number of locations in the build, while a factor Nextlink considered, was not the primary determinant in Nextlink's bidding strategy since the number of locations does not directly correlate to the cost of building a rural fixed wireless network, as the Commission expressly stated in the RDOF proceeding. Imposing a pro rata reduction completely disregards distance-based costs because, as noted above, the cost to add an additional location to a network build is not the expensive part; reaching the last mile of the build is where providers realize the expense. Building the infrastructure to serve the house farthest from the current network footprint costs the same regardless of whether the provider is serving 50 or 50,000 houses along the way. The pro rata support reduction assumes, incorrectly, that the cost to reach every house is identical, regardless of distance or environmental factors that may impact the build.

There was no reasonable way for Nextlink to determine just how inaccurate the Commission's location estimates were prior to the auction. As part of its efforts to confirm locations, Nextlink purchased location data, which required an intensive manual review process, including thousands of hours of manual visual confirmation of satellite data to enable an acceptable level of confidence, something that could not have been completed before the auction. Nextlink estimates that the total cost of the review [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL]. Yet, after spending significant funds to evaluate locations, the cost to build the network is the same,

despite the fact that there are fewer locations. The location shortages were the result of unforeseeable circumstances and could not reasonably be anticipated at the time of Nextlink's bid placement.

Further, many of these rural areas are losing population, sometimes at a significant rate, resulting in even fewer serviceable locations now than in 2018.⁶⁵ For example, one of Nextlink's CAF counties in Iowa lost 11.2 % of its population between the 2010 and 2020 census.⁶⁶ Effectively, applying ELAP doubly punishes Nextlink: reducing its support all the while resulting in fewer serviceable locations to be able to sustain a business. This results in an unjust, disproportional penalty to Nextlink for its inability to predict the future.

The Broadband Data Collection ("BDC") is illustrative of how difficult it is to determine with specificity how many broadband serviceable locations exist in any given area. The Commission has paid nearly \$45 million to CostQuest to develop a broadband location fabric that contains every single broadband serviceable location in the United States.⁶⁷ CostQuest has stated that it used "a mix of aerial and address databases, land and local tax records, and other sources the vendor identifies as helpful for determining, as completely as possible, the locations of structures throughout the United States where fixed broadband service can be installed."⁶⁸

⁶⁵ Fremont County. See G. Lucht, *Decade of population growth changes rural Iowa*, Iowa Farmer Today, https://www.agupdate.com/iowafarmertoday/news/state-and-regional/decade-of-population-growth-changes-rural-iowa/article_1079fb0c-375d-11ec-aef6-9feddbbefdcf.html (Nov. 2, 2021)

⁶⁶ *Id.*

⁶⁷ FCC Broadband Serviceable Location Fabric, SAM.gov, <https://sam.gov/opp/7c2c1895e603440bb2be0d55199c6dc9/view> (last accessed Feb. 26, 2023).

⁶⁸ *What is the location Fabric?*, Broadband Data collection Help Center, <https://help.bdc.fcc.gov/hc/en-us/articles/5375384069659-What-is-the-Location-Fabric-> (Jan. 10, 2023).

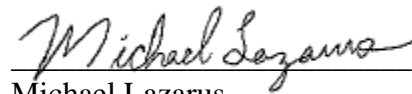
Despite that high price tag, the multitude of sources, and the expertise CostQuest has in developing such maps, the first iteration was missing over one million locations.⁶⁹

CostQuest was unable to develop a complete map, even though it is an expert in developing such maps, had significant funding to do so, and had access to a breadth of resources; nevertheless, the Commission apparently expected providers participating in CAF Phase II to almost- perfectly locate the qualifying locations in the potential areas where they planned to bid, with less expertise and fewer resources. That is an impossible standard for any provider to meet, the result of which is unjust as applied to Nextlink.

V. CONCLUSION

Allowing Nextlink to retain its CAF Phase II funding at pre-ELAP levels is clearly in the public interest as it will further the Commission's goal of expanding broadband internet service to those regions that need it most. Further, maintaining the reduction punishes Nextlink unnecessarily and unreasonably holds it to a higher standard than the Commission itself can meet. Accordingly, the Commission should reconsider and/or waive application of Nextlink's pro rata support reduction.

Nextlink Internet



Michael Lazarus

Jessica DeSimone Gyllstrom

Ashley Brydone-Jack

Telecommunications Law Professionals PLLC

1025 Connecticut Ave, NW Suite 1011

Washington, DC 20036

(202) 789-3120

March 13, 2023

Counsel for Nextlink Internet

⁶⁹ D. Goovaerts, *FCC chair says it received 1.1M location challenges to broadband map*, Fierce Telecom, <https://www.fiercetelecom.com/broadband/fcc-chair-says-it-received-11m-location-challenges-broadband-map> (Feb. 21, 2023).