

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

To: The Commission

**COMMENTS OF  
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”) hereby comments in response to the Further Notice of Proposed Rulemaking (“*FNPRM*”) in the above-captioned proceeding regarding rules and procedures for allocating support in rate-of-return overlap areas.<sup>1</sup>

As further described below, WISPA supports the reverse auction framework the Commission proposes, with some refinements to better ensure market-driven outcomes that do not result in ongoing federal support to areas that are significantly overlapped. In particular, and because WISPA’s members continue to accelerate fixed broadband build-out at a faster pace than others, WISPA is concerned that the Commission may rely on outdated information derived from Form 477 that may not reflect current overlap situations. WISPA therefore recommends the use of a challenge process as a precursor to identifying areas subject to the reverse auction. Once that process is completed, the Commission should conduct simplified reverse auctions that are open to any broadband provider. Areas eligible for auction should be census blocks where an

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<sup>1</sup> *Connect America Fund*, Further Notice of Proposed Rulemaking, WC Docket No. 10-90, *et al.*, FCC 18-176 (rel. Dec. 13, 2018) (“*FNPRM*”).

unsubsidized competitor or a combination of unsubsidized competitors overlaps the carrier's study area by 50 percent or more. Because the auctioned areas would be smaller census blocks, not census block groups, build-out milestones should require completion within five years.

## **Discussion**

### **I. The Commission Should Utilize a Reverse Auction to Award Support for Areas Overlapped or Almost Entirely Overlapped by Unsubsidized Competitors**

The Commission correctly observes that an auction is an efficient way to award support in areas that are “overlapped or almost entirely overlapped by unsubsidized competition.”<sup>2</sup> The success of the first-of-its-kind CAF Phase II reverse auction demonstrates that this is a market-based approach that balances performance with cost. The Commission should employ a reverse auction for significantly overlapped areas under the simplified procedures described below.<sup>3</sup>

Further, because of the presence, investment and deployment by unsubsidized competitors like WISPA's members, a reverse auction would enable existing providers to participate and have the opportunity to protect their investments. In significantly overlapped areas, there are likely to be at least two providers that will have a strong interest in obtaining federal support, creating a competitive auction that will drive down the Commission's support level and thus make more efficient use of finite high-cost support.

#### ***Timing of Overlap Auctions***

Overlap auctions should occur every two years, as the Commission suggests.<sup>4</sup> This process will create certainty, conserve valuable Commission resources and account for changing market conditions. Annual overlap auctions would unnecessarily tax the Commission's resources

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<sup>2</sup> *FNPRM* at 52 ¶ 184.

<sup>3</sup> See Comments of WISPA, WC Docket No. 10-90 (filed May 25, 2018) (“WISPA NPRM Comments”), at 5-7.

<sup>4</sup> *FNPRM* at 55 ¶ 199.

and burden providers, and less frequent overlap auctions would fail to adequately account for changed market conditions and advances in available services.

### ***Significantly Overlapped Areas***

The Commission asks what percentage it should use to “determine those study areas that are almost entirely overlapped.”<sup>5</sup> WISPA recommends that “significantly overlapped” areas where an unsubsidized competitor (or a combination of unsubsidized competitors) can substantiate, through a challenge process, that the unsubsidized competitor(s) overlap(s) the rate-of-return carrier’s area by 50 percent or more. Areas where at least half of the area already has significant private, at-risk investment illustrate the existing rate-of-return carriers’ failure to extend service and competitors’ willingness to step into the void with a business model that has enabled investment, deployment and success. Limiting areas available for auction to a higher percentage of overlap – say 90 or 95 percent – would create less incentive for competitive bidding given the fewer and smaller areas that would be auctioned.

Of course, there must be a high degree of rigor and precision to identify the percentage of overlap. WISPA agrees with the Commission’s proposal to use the most current Form 477 data as a starting point for identifying eligible areas, and urges the Commission to implement a challenge process to ensure that unsubsidized competitors have the opportunity to present updated information reflecting new service in overlapped areas.<sup>6</sup> The legacy carrier also would have the opportunity to contest the competitor’s evidence. The Commission has acknowledged the need to improve Form 477 data collection and is taking steps to improve it.<sup>7</sup> But in the meantime, the Commission should not rely solely on Form 477 reporting to determine eligible

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<sup>5</sup> *Id.* at 52 ¶ 185.

<sup>6</sup> *See id.* at 53 ¶ 185.

<sup>7</sup> *See generally Modernizing the FCC Form 477 Data Program*, 32 FCC Rcd 6329 (2017) (“*Form 477 Modernization NPRM*”); *see also* Ex Parte Comments of NTIA, WC Docket No. 11-10, at 4 (filed Jan. 2, 2018) (recommending that the Commission increase data accuracy of Form 477).

areas when it has acknowledged the lack of accuracy and granularity inherent in the existing reporting process. As Commissioner O’Rielly cogently observes, “[w]hile a challenge process can be administratively burdensome and would create delays in implementing the second model offer, relying on the Form 477 data is hard to square with our ongoing proceeding on improving our broadband coverage data.”<sup>8</sup> The Commission has used the challenge process in the past to determine areas eligible for support, and thus has a body of decisions on which to rely in adjudicating overlap challenges. To determine fixed wireless coverage, the Commission should rely on the “safe harbors” WISPA proposed in the *Form 477 Modernization NPRM* proceeding.<sup>9</sup> The “safe harbors” establish propagation methodologies for the spectrum bands commonly used for last-mile fixed wireless broadband service and are intended to form reasonable and reliable estimations of coverage that will avoid competing “he said/she said” interpretations and thereby streamline Commission decision-making.

Because a challenge process can improve on the accuracy and currency of Form 477 data and can be streamlined for administrative efficiency, it can be effective in ensuring that the

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<sup>8</sup> *FNPRM*, Statement of Commissioner Michael O’Rielly at 1 (“O’Rielly Statement”). Commissioner O’Rielly also notes that Form 477 was not intended to be used for CAF support allocation decisions. *Id.*

<sup>9</sup> See Letter from S. Jenell Trigg, Counsel to WISPA, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 11-10 and 10-90 (filed Oct. 22, 2018), at Attachment. The “safe harbor” parameters that WISPA recommends are as follows:

For the 5 GHz band a customer antenna up to 10 meters above ground or changed as needed to reach the customer and explained by the provider, signal strength as low as -75 dBm, and coverage computed assuming up to 25 dB customer antenna gain, or as allowed by the Commission;

For the CBRS band a customer antenna up to 10 meters above ground or changed as needed to reach the customer and explained by the provider, signal strength as low as -77 dBm, and coverage computed assuming up to 17 dB customer antenna gain, or as allowed by the Commission;

For the 2.4 GHz band a customer antenna up to 10 meters above ground or changed as needed to reach the customer and explained by the provider, signal strength as low as -75 dBm, and coverage computed assuming up to 25 dB customer antenna gain, or as allowed by the Commission;

For the 900 MHz band customer antenna up to 10 meters above ground or changed as needed to reach the customer and explained by the provider, signal strength as low as -72 dBm, and coverage computed assuming up to 11 dB customer antenna gain, or as allowed by the Commission; and

For the 600 MHz band a customer antenna up to 10 meters above ground or changed as needed to reach the customer and explained by the provider, signal strength as low as -74 dBm, and coverage computed assuming up to 8 dB customer antenna gain, or as allowed by the Commission.

Commission allocates support to mitigate the potential for support to be applied inefficiently to areas that are already being served by unsubsidized competitors. While the use of a challenge process is far from perfect, it will lead to better outcomes than “blindly supporting the Form 477 data as is”<sup>10</sup> and thus better ensure that finite USF support flows to areas that need it the most.

### ***Minimum Geographic Bidding Area***

The Commission asks whether it should use census blocks or census block groups as the minimum geographic bidding area.<sup>11</sup> Here, unlike the CAF Phase II reverse auction, WISPA recommends that the Commission adopt census blocks as the minimum geographic bidding area. The Commission correctly observes that “there are likely to be fewer total eligible areas” than in the CAF auction such that aggregating census blocks into census block groups for bidding purposes should not be necessary.<sup>12</sup> Moreover, the ability to bid on single census blocks should, theoretically, lead to more active bidding as bidders can target smaller areas that they truly want to serve instead of larger areas that may require more infrastructure, cost and time to build out.

## **II. The FCC Should Adopt its Proposed Auction Design**

WISPA encourages the Commission to adopt its proposed auction design. The design proposed by the Commission is based on the highly successful CAF Phase II reverse auction and WISPA believes that using the same general auction design would work well.

### ***Public Interest Obligations***

The Commission proposes to adopt the performance criteria it used for the CAF Phase II reverse auction, with the elimination of the Minimum Tier (10/1 Mbps).<sup>13</sup> Given that there were very few Minimum Tier auction winners, it makes sense to eliminate this tier from the auction

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<sup>10</sup> O’Rielly Statement at 1.

<sup>11</sup> See *FNPRM* at 53 ¶ 186.

<sup>12</sup> *Id.*

<sup>13</sup> See *id.* at 53-54 ¶ 188.

process. With the Commission adopting an “advanced telecommunications capability” minimum speed of 25/3 Mbps,<sup>14</sup> the overlap auction process should not support speeds below that threshold.

### ***Application Process***

WISPA supports the Commission’s proposed two-stage application process for auction participants.<sup>15</sup> This process is similar to the CAF Phase II application process, which proved to be successful in identifying applicants for eligibility and then subjecting auction winners to a more detailed post-auction review of technical and financial information. WISPA recommends and supports use of the same application process.

The auction should be open to any provider that can meet the Commission’s proposed eligibility criteria, not just the legacy carrier and unsubsidized competitors in the study area.<sup>16</sup> By allowing any provider that meets the Commission’s proposed criteria to participate in the auction, the auction will potentially have a larger number of bidders that should result in more active bidding and lower support levels. Moreover, by allowing any provider that meets the performance and eligibility criteria to participate in the auction, winning bidders operating in adjacent areas can expand into subsidized areas by leveraging existing infrastructure and resources. These providers should not be foreclosed from participating in the auction.

### ***Reserve Price***

WISPA believes that reserve prices should be based on the A-CAM model rather than the proposed legacy support model.<sup>17</sup> Adopting the A-CAM model would set a more realistic and

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<sup>14</sup> See generally, *2018 Broadband Deployment Report*, 33 FCC Rcd 1660 (2018).

<sup>15</sup> See *id.* at 54 ¶ 192.

<sup>16</sup> See *id.* at 54 ¶ 194.

<sup>17</sup> See *id.* at 53 ¶ 187.

easily determined reserve price than adopting the proposed use of legacy costs across census blocks, thus allowing for more competitive bidding.

### ***Bidding Rules***

WISPA agrees with using the Commission's proposed multiple-round descending clock auction design that would operate in a similar manner as the CAF Phase II auction.<sup>18</sup> Because there will be fewer auction lots and local providers are more likely to bid on areas closer to them and not in geographically disparate areas, WISPA recommends that the auction be less complex. Specifically, WISPA recommends that, as contrasted with the CAF Phase II auction, there should be no package bidding and limited bid switching between bidding areas.

### ***Build-Out***

If the Commission allocates auctioned support by census block, the Commission should adopt a five-year build-out period instead of the six-year build-out period it is using for CAF recipients. Census blocks are smaller and thus will require less infrastructure, and therefore can be built out more quickly. WISPA proposes the following build-out milestones:

<b>Year</b>	<b>Milestone</b>
1	*
2	25%
3	50%
4	75%
5	100%

### ***Oversight and Accountability***

Finally, the Commission should adopt its proposal to provide the same oversight and accountability standards to recipients that it has implemented for the CAF Phase II auction

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<sup>18</sup> See *id.* at 54-55 ¶ 194.

recipients.<sup>19</sup> Utilizing the rigorous oversight and high standards of accountability the Commission has already imposed will create a single system that will make it easier for the FCC USAC to administer.

### **III. The Commission Should Reduce Legacy Support for Subsidized Incumbents**

WISPA agrees with the Commission's proposal to reduce an incumbent's support if the incumbent elects not to participate in the auction, regardless of whether or not any other carrier chooses to bid.<sup>20</sup> As the Commission suggests, if an incumbent does not bid in the auction then it is reasonable to infer that the incumbent either does not need support to continue providing service or does not want to offer service in the auctioned census block.<sup>21</sup> In addition, if a subsidized provider is the only bidder, then it should receive either its legacy support or the reserve price.<sup>22</sup>

Finally, the Commission asks what transitional support, if any, should be provided to an incumbent carrier that bids in the auction but loses.<sup>23</sup> WISPA recommends the Commission adopt a two-year phase-down schedule that begins on the first day of authorized support nationwide, similar to what the Commission recently adopted in the CAF Phase II phase-down order for fixed competitive ETCs.<sup>24</sup> WISPA believes that two years of phase-down support following the first day of the authorized support nationwide will provide sufficient time for the carrier to account for the loss of support without it upsetting budgets.

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<sup>19</sup> *See id.* at 55 ¶ 198.

<sup>20</sup> *See id.* at 55 ¶ 195.

<sup>21</sup> *Id.*

<sup>22</sup> *See id.* at 55 ¶ 196.

<sup>23</sup> *See id.* at 55 ¶ 197.

<sup>24</sup> *See Connect America Fund*, Report and Order, WC Docket No. 10-90, FCC 19-8, at 6-8 (rel. Feb. 15, 2019).



## **Conclusion**

For the foregoing reasons, WISPA urges the Commission to adopt a reverse auction for areas that currently are overlapped 50 percent or more by an unsubsidized competitor or a combination of unsubsidized competitors, and to adopt the other refinements to the Commission's proposals described above.

Respectfully submitted,

**WIRELESS INTERNET SERVICE  
PROVIDERS ASSOCIATION**

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