

**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

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

The Wireless Internet Service Providers Association (“WISPA”) hereby replies to certain of the initial comments filed 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.¹

As further described below, the record unsurprisingly reflects division between those representing legacy rate-of-return carriers that seek a very narrow definition of “substantial overlap” and infrequent reverse auctions, and those representing competitive providers that seek a more expansive definition and more frequent reverse auctions. WISPA maintains its belief that areas that are overlapped by at least 50 percent by one or more unsubsidized competitors would result in lower support levels across more areas and therefore be the most cost-effective use of finite high-cost support.

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

On other issues, commenters generally agree that, given shortcomings with Form 477 reporting, the Commission should employ a challenge process to determine locations eligible for auction and, with some exceptions, should adopt auction procedures similar to those used in the Connect America Fund Phase II reverse auction.

Discussion

I. THE COMMISSION SHOULD DETERMINE THAT AREAS WHERE UNSUBSIDIZED COMPETITORS HAVE 50 PERCENT OR MORE OVERLAP ARE “SIGNIFICANTLY OVERLAPPED.”

In its Comments, WISPA urged the Commission to conduct auctions within study areas where one or more unsubsidized competitors overlap the rate-of-return carrier’s area by 50 percent or more.² Nothing in the record suggests that the public interest demands that “significantly overlapped” areas be limited to 100 percent³ or 99 percent,⁴ as other commenters suggest.

Although they provide no rationale, USTelecom and ITTA speculate that defining “significantly overlapped” below a 99 percent threshold would chill investment from rate-of-return carriers⁵ or would strand investment by rate-of-return carriers.⁶ Taking a different tack, the Concerned Rural LECs argue that by only auctioning legacy support to areas that are entirely, or 99 percent overlapped, there are greater assurances that “competitors who participate in auction are sufficiently invested” and have the technical and financial capability to meet

² Comments of WISPA, WC Docket No. 10-90, et al. (filed Mar. 8, 2019) (“WISPA Comments”) at 3.

³ Comments of The Concerned Rural LECs Comments, WC Docket No. 10-90, et al. (filed Mar. 8, 2019) (“Rural LECs Comments”) at 3-4; Comments of TCA, WC Docket No. 10-90, et al. (filed Mar. 8, 2019) at 7.

⁴ Comments of ITTA, WC Docket No. 10-90, et al. (filed Mar. 8, 2019) at 3-4; Comments of NTCA, WC Docket No. 10-90, et al. (filed Mar. 8, 2019) (“NTCA Comments”) at 9-10; Comments of WTA, WC Docket No. 10-90, et al. (filed Mar. 8, 2019) (“WTA Comments”) at 9; Comments of USTelecom, WC Docket No. 10-90, et al. (filed Mar. 8, 2019) (“USTelecom Comments”) at 2-3.

⁵ USTelecom Comments at 2-3.

⁶ ITTA Comments at 3-4.

obligations for the vast majority of the area.⁷ These somewhat opposing views illustrate that the extent of “significant overlap” can act as either a catalyst or deterrent to investment by legacy carriers. But in either event, unsubsidized competitors would invest less in deployment if they know that rate-of-return carriers are protected from competition by an extremely high overlap threshold. The evidence proves this out – according to the Commission, there are only 15 study areas with at least 95 percent overlap.⁸ To be sure, the Commission must consider not just the extent and effects of overlap on legacy carriers, but the incentives and disincentives its rules place on investment and deployment by unsubsidized competitors. To limit the auction to so few study areas that are likely to be small would not incentivize much market participation. As WISPA previously stated, areas with at least 50 percent overlap clearly reflect a competitor’s willingness to step into a void left by the incumbent, has enabled viable investment and deployment, and serves as a competitive inducement for carriers to protect and grow their current capacity to serve.⁹

NTCA contends that as the Commission moves away from the complete overlap standard, using 99 percent is the logical next step and would serve as a good sample size to determine if there is truly competition at that level before using Commission resources in a wider range of study areas.¹⁰ This is an insufficient basis for the Commission to adopt such an extremely high overlap threshold. The proven challenge process will identify areas where unsubsidized providers offer competition, and auctions are a proven method for the market to determine where support should be allocated. There is no need for a limited “sample” set that would effectively delay distribution of market-based support to more areas.

⁷ Concerned Rural LECs Comments at 3-4.

⁸ *FNPRM* at 53 ¶ 185.

⁹ WISPA Comments at 3.

¹⁰ NTCA Comments at 9.

WTA asserts that anything less than a 99 percent overlap threshold would inherently mean that a sizable percentage of customers would be without any immediate service alternative if an unsubsidized competitor wins at auction.¹¹ By virtue of there being such a large overlap, there is clearly a viable business reason for the losing incumbent to keep providing service whether it maintains its USF support, or it is transitioned out, and for other providers to attempt to provide services to those areas. Further, any applicant that bids where there is a potential service gap would be obligated to provide service to all locations in the service area, invalidating any fears of a service gap. WTA's argument therefore does not withstand scrutiny.

II. THE COMMISSION SHOULD USE CHALLENGE PROCESSES AND REVERSE AUCTIONS TO DETERMINE AREAS THAT SHOULD RECEIVE A LESSER AMOUNT OF HIGH-COST SUPPORT.

In its Comments, WISPA supported the use of reverse auctions to award support for “significantly overlapped” areas.¹² The CAF Phase II reverse auction had an initial reserve price of \$5 billion over the next decade, but robust bidding brought the Commission's support level to \$1.488 billion, with more than 99 percent of winning bids committing to speeds of 25/3 Mbps or better.¹³ This demonstrates that a market-based approach will create meaningful competitive bidding and produce cost-effective results. As applied here, a reverse auction will determine whether the market will support a lower level of subsidy or if the current amount is appropriate and should be continued.

Most commenters, including those representing legacy rate-of-return carriers, agree that the Commission should implement competitive bidding for “significantly overlapped” areas

¹¹ WTA Comments at 9.

¹² WISPA Comments. at 2.

¹³ See News Release, *Connect America Fund Auction to Expand Broadband to Over 700,000 Homes and Businesses* (rel. Aug. 28, 2018).

regardless of how the Commission defines that term.¹⁴ A few commenters, however, argue that the Commission should not utilize a reverse auction¹⁵ or should wait to assess the effectiveness of CAF Phase II auction winners before prescribing another auction.¹⁶ WTA argues that the use of an auction in areas where service is already provided could potentially result in harms to the consumer, force incumbents to stop planned investments, and create a “playing field” against incumbent carriers.¹⁷ However, this is simply not the case. A reverse auction mechanism has the potential to attract more market participants and provide increased competition while driving the Commission’s per-location support level down. ITTA’s apprehension to the use of an auction because it threatens to “strand investments” in rural areas does not hold water – ITTA offers no alternative that would make a lesser amount of support available for unserved locations within the carrier’s study area.¹⁸ TCA’s concerns that an auction could lead to “cherry-picking” in lower-cost areas or would inject “artificial” competition into a market that cannot support competition defy logic.¹⁹ It is not accurate to describe an auction as leading to “cherry-picking” when multiple parties have the opportunity to determine where support should be deployed. The concept of “artificial” competition, to the extent there is such a thing, is eliminated through an auction process that utilizes a challenge process, which creates “real” competition in places with proven unsubsidized competition.

¹⁴ USTelecom Comments at 2; NTCA Comments at 9 (“regardless of what percentages are set, under no circumstance should the Commission move forward with an auction prior to the completion of a challenge process”); Concerned Rural LECs Comments at 3.

¹⁵ ITTA Comments at 3-4; WTA Comments at 2-8; Comments of TCA, WC Docket No. 10-90 (filed Mar. 8, 2019) (“TCA Comments”) at 5.

¹⁶ Comments of FWA, WC Docket No. 10-90 (filed Mar. 8, 2019) (“FWA Comments”) at 4.

¹⁷ WTA Comments at 2-8.

¹⁸ ITTA Comments at 3-4. The Commission observes that winning bids in the CAF Phase II reverse auction were 78.35 percent of the reserve price. *See FNPRM* at 53 ¶ 187.

¹⁹ TCA Comments at 5.

To determine “significantly overlapped” areas eligible for auction, the record shows broad consensus for a challenge process.²⁰ Commenters agree that reliance on the Form 477 data alone is an insufficient basis upon which to award support because of its inherent limitations that do not accurately determine locations that are unserved.²¹ The Commission should adopt its proposal.

Reverse auctions should take place every two years as the Commission suggests.²² Some commenters recommend that auctions occur less frequently to limit the legacy carriers’ ongoing potential loss of support and disruption.²³ These arguments, however, look solely to the risks of not building out, consequently neglecting consumers and other providers desiring to serve. However, to the extent the Commission adopts a definition of “significant overlap” that results in a large number of reverse auctions, WISPA would not object to challenge processes and reverse auctions being conducted less frequently given the additional administrative resources that would be required to resolve challenges and implement reverse auctions.

III. AUCTIONS SHOULD BE MODELED ON THE CAF PHASE II REVERSE AUCTION.

WISPA and other commenters support the Commission’s proposed auction design, which is predicated on the approach used for the successful CAF Phase II reverse auction.²⁴ There is no

²⁰ ITTA Comments at 4; NTCA Comments at 4-8; USTelecom Comments at 5 (“there absolutely has to be a challenge process”); FWA Comments at 5; Concerned Rural LECs Comments at 4 (“The Commission must conduct a challenge process before finalizing ...study areas that are entirely or almost entirely overlapped”); TCA Comments at 2 (“The importance of retaining a challenge process cannot be overstated”); Comments of Vantage Point Solutions, WC Docket No. 10-90 (filed Mar. 8, 2019) (“Vantage Point Comments”) at 2-3;

²¹ See, e.g., ITTA Comments at 6-8; WTA Comments at 14-16; FWA Comments at 5; TCA Comments at 2-3; USTelecom Comments at 5-7; Concerned Rural LECs Comments at 4-9; Vantage Point Comments at 2-11.

²² *FNPRM* at 55 ¶ 199; see also WISPA Comments at 2-3.

²³ ITTA Comments at 13-14 (auctions every seven years); NTCA Comments at 14 (auctions every ten years).

²⁴ WISPA Comments at 6-7; Concerned Rural LECs Comments at 14; NCTA Comments at 1; Comments of ADTRAN, Inc., WC Docket No. 10-90, et al. (filed Mar. 8, 2019) at 3.

compelling evidence in the record that this design is too narrow, that it can't be applied to areas that are currently served,²⁵ or that it will result in overbuilding.²⁶ Commenters opposing reverse auctions offer only self-serving criticisms of the auction process and present no alternatives.²⁷

Reverse auctions should be open to any provider that meets the Commission's eligibility requirements,²⁸ not just the incumbents and unsubsidized providers that currently serve the overlapped study area²⁹ or are providing voice *and* broadband services meeting specified service obligations.³⁰ In the CAF Phase II auction, the Commission expressly rejected arguments that would limit the universe of potential bidders.³¹ In particular, based on a full record, the Commission required only that short-form applicants demonstrate that they had a track record of providing voice *or* broadband – not both – and did not limit the geographic areas where a company could bid. The Commission also did not require *bidders* to have a history of meeting certain performance requirements, but instead conducted a review of the *technologies* proposed to determine eligibility for specific bidding tiers.³² In sum, proposals seeking to restrict the number of eligible participants serve only the interests of incumbents that want to preserve their historical federal support without challenge from those that might require a lesser amount.

With respect to bidding tiers and weights, the Commission should reject WTA's argument that would create a significant weighting advantage to bidders that have "already demonstrated a substantial and long-term commitment to serve subject areas," such as those that have operated in the market for five or more years and have a local office staffed with ten or

²⁵ WTA Comments at 2-3, 8-11.

²⁶ TCA Comments at 5-6.

²⁷ *See, e.g.*, ITTA Comments at 4; WTA Comments at 2; TCA Comments at 5.

²⁸ WISPA Comments at 6.

²⁹ WTA Comments at 12.

³⁰ Concerned Rural LECs Comments at 13.

³¹ *Connect America Fund, et al.*, 31 FCC Rcd 5949, 5980-5986 (2016).

³² *Id.* at 5980-5983, 5986-5989.

more managers, technicians, or customer service representatives.³³ WTA offers no explanation of why such an entity – most likely eliminating many potential bidders – guarantees a higher level of performance that cannot be determined through the proposed speed and latency bidding tiers and the Commission’s extensive application review process. Longevity in the market and the size of a provider do not ensure success. Indeed, it can be argued that if the legacy rate-of-return carrier had done a better job of providing service for many years, it would not be subject to “significant overlap” and the contemplated auction process. Overall, proposals to preclude participation through either eligibility restrictions or contrived performance weights are nothing more than thinly veiled efforts to preserve and extend support to those that may not be deserving.

Finally, the Commission should again reject NTCA’s proposal to allow interested parties and stakeholders – including competitors – to expose their technical plans to public scrutiny.³⁴ There is no evidence that Commission staff is incapable of vetting applicants’ technical plans, and Commission staff appears to be comfortable with its review of CAF Phase II proposals without competitors having the opportunity to unnecessarily slow down the process. As WISPA has stated, the Commission’s vetting and standards that it has used for the CAF Phase II auction are rigorous and performance failures can result in severe penalties.³⁵

³³ WTA Comments at 10-11.

³⁴ NTCA Comments at 10-11. The Commission previously rejected this argument with respect to the CAF Phase II reverse auction. *See* Public Notice, *Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903*, 33 FCC Rcd 1428, 1455, 1515 ¶¶75, 300 (2018).

³⁵ Letter from Claude Aiken, President & CEO of WISPA, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90 (filed Dec. 4, 2018) at 4.

IV. THE MINIMUM GEOGRAPHIC BIDDING AREA SHOULD BE CENSUS BLOCKS.

Some commenters argue against the Commission's proposal to conduct auctions at the census block level and instead recommend auctioning larger census tracts³⁶ or even entire study areas.³⁷ The effect of these proposals would be that recipients would be subject to ETC, Lifeline, carrier of last resort and other obligations across a larger area where support is not intended to be applied. This could have the effect of precluding auction participation from potential bidders that do not want to incur obligations except in areas that better approximate overlapped areas. Further, by allowing bidders to target smaller census blocks, there should, theoretically, be more auction participation because bidders will be able to bid on the areas they want to serve rather than larger areas that require more time, money, and infrastructure build out.³⁸

V. THE COMMISSION SHOULD PHASE DOWN LEGACY SUPPORT FOR SUBSIDIZED INCUMBENTS.

The Commission should adopt a two-year phase down of support that begins on the first day of authorized support nationwide for subsidized incumbents that bid in the auction and lose.³⁹ This two-year phase down proposal tracks the CAF Phase II phase-down for fixed competitive ETCs.⁴⁰ Commenters favoring a four-year,⁴¹ ten-year,⁴² or even dual support until the new entrant can provide 100 percent coverage⁴³ should be rejected outright. These commenters have not shown why the two-year phase down the Commission just adopted is inappropriate with respect to legacy rate-of-return carriers, who could leverage their

³⁶ Concerned Rural LECs Comments at 9.

³⁷ NTCA Comments at 12; Concerned Rural LECs Comments at 9.

³⁸ WISPA Comments at 5.

³⁹ *Id.* at 8.

⁴⁰ *See Connect America Fund*, Report and Order, WC Docket No. 10-90, FCC 19-8 (rel. Feb. 15, 2019) at 6-8.

⁴¹ ITTA Comments at 11-13.

⁴² NTCA Comments at 13; Concerned Rural LECs Comments at 17-18.

⁴³ USTelecom Comments at 4.

infrastructure to support lower bids and retain federal support – a large advantage over other bidders, and an incentive to bid to avoid losing support. It makes little sense to maintain support to the unsuccessful legacy carrier bidder for ten years where the auction process has produced a provider willing to accept a lesser level of federal support.

Conclusion

For the foregoing reasons, WISPA urges the Commission to conduct reverse auctions for areas that are currently overlapped by 50 percent or more by an unsubsidized competitor or a combination of unsubsidized competitors, and to adopt an auction process similar to that successfully employed for the CAF Phase II auction, with a transition phase-down similar to recently adopted standards.

Respectfully submitted,

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