

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	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
)	

**REPLY COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**



By: /s/ Michael R. Romano
Michael R. Romano
Senior Vice President –
Industry Affairs & Business
Development
mromano@ntca.org

By: /s/ Brian J. Ford
Brian J. Ford
Director of Industry Affairs
bford@ntca.org

April 8, 2019

TABLE OF CONTENTS

I.	INTRODUCTION & SUMMARY	1
II.	THE RECORD SUPPORTS A COMPREHENSIVE COMPETITIVE OVERLAP EVALUATION THAT UTILIZES A ROBUST CHALLENGE PROCESS AS WELL AS OTHER PROTECTIONS FOR RURAL CONSUMERS.....	3
A.	The Record Supports A Robust Challenge Process	4
B.	The Record Supports Auctions No More Frequently Than Every Ten Years As Well As A 99 Percent Competitive Threshold As The Next Logical Step in The Commission’s Competitive Overlap Proceeding.....	8
C.	The Record Does Not Support The Use Of Geographic Areas For Auction Below The Study Area Level.....	13
D.	The Commission Should Strive For The Best Possible Service Standards For Rural Consumers In Overlapped Study Areas And Should Require Interested Bidders To Demonstrate Their Technical Ability To Meet Those Standards Before Auctions Are Held	14
III.	THE RECORD SUPPORTS A REASONABLE TRANSITION MECHANISM, SUBJECT TO AN AFFIRMATIVE SUNSET, TO SAFEGUARD THE SUSTAINABILITY AND PREDICTABILITY OF THE RLEC HIGH-COST PROGRAM BUDGET AS CONSUMERS MIGRATE TO STANDALONE BROADBAND SERVICES.....	16
IV.	THE RECORD SUPPORTS A TRIBAL BROADBAND FACTOR FOR ALL ENTITIES SERVING TRIBAL AREAS.....	19
V.	CONCLUSION.....	20

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	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
)	

**REPLY COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association¹ hereby submits these reply comments that address filings responding to the Further Notice of Proposed Rulemaking (“*Further Notice*”)² issued by the Federal Communications Commission (“Commission”) in December 2018 in the above-captioned proceedings.

Initial comments filed in response to the *Further Notice* support a robust and data-driven challenge process for any proceeding that replaces the 100 percent competitive overlap

¹ NTCA represents nearly 850 rural rate-of-return regulated telecommunications providers (“RLECs”). All of NTCA’s members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities.

² *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, 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, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18-176 (rel. Dec. 13, 2018) (“*Further Notice*” or “*Report and Order*”).

mechanism eliminated by the Commission in the December 2018 *Report and Order*. A number of parties representing providers of all sizes and technologies agree that FCC Form 477 is simply not “up to the task” of accurately identifying the presence of true competitive overlap. As discussed herein, this results in a very real danger of “false positive” determinations of competitive presence that can harm rural consumers. Simply put, the withdrawal of needed high-cost support for a rural study area inaccurately identified as overlapped could result in a “broadband availability backslide” that runs counter to the goals of universal service and every important step the Commission has otherwise taken to *expand* rural broadband access. Thus, the record supports a challenge process to make sure the Commission gets measures of availability as right as possible every time, for every consumer.

The record also supports using a 99 percent threshold of verified competitive overlap as a first step for potential changes to support. Not one party makes a convincing legal or policy, much less principled, argument for a lower threshold. Nor does any party make a compelling argument for a competitive bidding process at anything less than the rural study area level. Any other approach – any approach that sets the threshold at lower than 99 percent or auctions off census blocks, for example – can only enable the very “cherry picking” that the High Cost Universal Service Fund (“USF”) was intended to prevent and risk leaving customers “stranded” thereafter for a decade to come. In addition, NTCA reiterates herein support for conducting overlap analyses and ensuing auctions no more frequently than every ten years to provide all operators with the certainty they need to continuing investing in networks in rural America.

The record in this proceeding also supports a reasonable limit, subject to an affirmative 2024 sunset, on the maximum annual growth rate in Consumer Broadband-Only Loop (“CBOL”) line conversions for purposes of USF support calculations specifically. The potential budget

implications that could stem from a rapid increase in migration to standalone broadband service could quickly exhaust newly increased resources, and commenters agree that this would only reintroduce the unpredictability of budget controls that stymied investment in rural study areas before recent Commission action to stabilize the program. As discussed below, such a concept would neither penalize nor take away support from any individual carrier, nor would it preclude actual conversions to standalone broadband services by consumers – rather, because it applies only to CBOL conversions occurring after December 31, 2018, this limited temporary transition would simply provide a means to meter *future* growth in the Connect America Fund Broadband Loop Support (“CAF-BLS”) mechanism during a period when consumer adoption of standalone broadband services may accelerate.

Finally, the record supports the National Tribal Telecommunications Association (“NTTA”) proposal to apply a Tribal Broadband Factor to the cost-based or “legacy” High-Cost program. Difficult conditions, lower take rates, and lower incomes persist across all Tribal lands irrespective of whether the local provider is Tribally-owned or happens to receive model-based support. Thus, any RLEC serving Tribal customers should receive Tribal Broadband Factor support based on all connections identified as “Tribal.”

II. THE RECORD SUPPORTS A COMPREHENSIVE COMPETITIVE OVERLAP EVALUATION THAT UTILIZES A ROBUST CHALLENGE PROCESS AS WELL AS OTHER PROTECTIONS FOR RURAL CONSUMERS.

Most parties commenting on the *Further Notice* concur with NTCA in recognizing the harms to rural consumers that could come about should the Commission fail to proceed carefully as it replaces the 100 percent competitive overlap process eliminated by the *Report and Order*. In the current context, this should mean moving forward with a process that evaluates

competitive overlap at a 99 percent threshold once every ten years, and proceeds to auction support for areas found to be so overlapped on a study area-wide basis.

A. The Record Supports a Robust Challenge Process.

As an initial matter, the record supports retention of a robust challenge process rather than an immediate move to a competitive bidding process for areas deemed overlapped based on Form 477 data. As nearly every party commenting states, Form 477 data is simply not “up to the task” of accurately identifying the presence of a competitor willing to provide broadband *and* voice services to an entire rural study area.³ Comments filed by Vantage Point Solutions, an engineering and cost study firm with extensive experience assisting rural carriers, offer the Commission a succinct but complete discussion addressing why self-reported Form 477 data is utterly unreliable on its own as a measure of competitive presence as well as the impact that a total loss of support based on such data could have on rural consumers.⁴ As VPS discusses, one filer (BarrierFree) certified as accurate a Form 477 that “affected 62 million end user locations and may have been a significant factor in falsely showing a dramatic increase in the number of locations served by broadband in recent FCC broadband reports.”⁵ That such an egregious error lurked for so long in the Commission record and might have driven support decisions is a

³ Comments of ITTA – The Voice of America’s Broadband Providers, WC Docket No. 10-90, et al. (fil. Mar. 8, 2019) (“ITTA”), pp. 4-5; Comments of FWA, Inc., WC Docket No. 10-90, et al. (fil. Mar. 8, 2019) (“FWA”), p. 5; Comments of US Telecom – The Broadband Association, WC Docket No. 10-90, et al. (fil. Mar. 8, 2019) (“US Telecom”), p. 5; Comments of TCA, Inc., WC Docket No. 10-90, et al. (fil. Mar. 8, 2019) (“TCA”), pp. 2-4; Comments of WTA – Advocates for Rural Broadband, WC Docket No. 10-90, et al. (fil. Mar. 8, 2019) (“WTA”), pp. 14-16; Comments of Vantage Point Solutions and its Affected Clients, WC Docket No. 10-90, et al. (fil. Mar. 8, 2019) (“VPS”), pp. 2-15; Comments of the Concerned Rural LECs, WC Docket No. 10-90, et al. (fil. Mar. 8, 2019) (“Concerned Rural LECs”), pp. 4-9.

⁴ VPS, pp. 2-10.

⁵ *Id.*, p. 7.

testament all on its own to the need for a challenge process. VPS sums it up well by stating that the potential negative impacts of “false positives” far outweigh the administrative burdens of utilizing a challenge process.⁶

Indeed, as TCA correctly notes, even purported competitors “who participated in past 100% overlap proceedings repeatedly indicated that their Form 477 filings should not be interpreted as providing 100% coverage in all census blocks listed, as they cannot guarantee that they serve every location in every census block they report.”⁷ WISPA, a party representing competitive providers of particular relevance to this discussion, supports a challenge process as well based on the inaccuracy of Form 477 data.⁸ It ought to be telling to the Commission that even providers that stand to benefit from the competitive overlap process recognize that Form 477 alone cannot form the basis of overlap findings. Moreover, as WISPA also correctly points out, the Commission has significant experience with competitive overlap determinations.⁹ NTCA submits that this experience should enable the Commission to perform the challenge process in short order and with limited administrative burden.

⁶ VPS, p. 2. *See also*, Concerned Rural LECs, p. 8 (“It is not reasonable for the Commission to forego a challenge process simply because it may be somewhat time consuming or resource intensive, when the continued availability of high quality, affordable voice and broadband services in hard-to-serve rural areas is at stake.”).

⁷ Comments of TCA, p. 3, citing Letter from Beth Choroser, Comcast, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Sept. 11, 2017) and Letter from Ken Williams, President and CEO, W.A.T.C.H. TV Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Aug. 24, 2017).

⁸ Comments of the Wireless Internet Service Providers Association, WC Docket No. 10-90, et al. (fil. Mar. 8, 2019) (“WISPA”), pp. 3-5.

⁹ *See Id.*, p. 4.

It must also be reiterated here that, as NTCA noted in initial comments, providers report the availability of voice telephony on Form 477 *merely at a state level*.¹⁰ This provides no probative value whatsoever in establishing the availability of quality and reliable voice telephony – the actual supported service¹¹ – within the distinct geographic area claimed to be overlapped. Thus, not only could the Commission leave broadband consumers stranded without broadband service based on inaccurate 477 data, it could also inadvertently leave some without access to potentially life-saving public safety services.

In addition, the challenge process should include an “actually served” standard for its determination of whether 99 percent overlap exists.¹² More specifically, carriers purporting to serve 99 percent of a rural study area should not get credit towards that percentage for locations where the provider claims it can provide service within 10 business days. In the absence of such a standard, high-cost support, and the broadband service it enables, could be removed for locations now served by existing providers with the hope that the competitor may someday (but not now) deem it economically viable to extend their facilities to those locations. With no guarantee that the competitor upon winning at auction actually will step forward and fill the

¹⁰ Comments of NTCA, WC Docket No. 10-90, et al. (fil. Mar. 8, 2019), pp. 3-4; *See also* FWA, p. 5.

¹¹ Both the 2011 USF/ICC Transformation Order and a reviewing court confirmed that the supported telecommunications service for purposes of Section 254 of the Act is “voice telephony service.” *See Connect America Fund*, et al., WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011), ¶¶ 62-65 and 77-81; *In Re: FCC 11-161*, 753 F.3d 1015, 1048-49 (10th Cir. 2014).

¹² In addition, the Commission should remain faithful to the definition of unsubsidized competitor contained in its rules, which states that such an entity is “a facilities-based provider of residential fixed voice and broadband service that does not receive high-cost support.” 47 C.F.R. § 54.5. Under no circumstances should a provider get credit towards locations served utilizing wholesale services purchased from the incumbent, particularly as the latter may be forced to withdraw the availability of such facilities from the area in question as support is eliminated.

void, thousands of rural consumers could be left high and dry as support for the carrier already *actually* serving them is withdrawn based on the theory that someone else *could* show up within 10 business days of someday. Thus, in this particular context, the 10 business day rule makes little sense. Of course, the Commission could eliminate this problem by auctioning off the entire rural study area with a commitment by the winning bidder to serve every consumer.

As the Commission moves forward from its elimination of the 100 percent competitive overlap mechanism, the Commission cannot reasonably administer a *universal service* program and make informed decisions about where support is needed in the absence of a robust challenge process. To the contrary, as Chairman Pai recently observed, a meaningful evidentiary process is essential in the contexts of fixed and mobile services alike to ensure that the Commission provides support where it is needed and does not inadvertently withdraw support in areas where customer service depends upon it based on a mistaken finding that a competitor can or will in fact step in to fill the void.¹³ The needs of rural consumers for both voice and broadband consumers – as well as the Commission’s statutory duty to these consumers – outweigh any administrative efforts involved with a challenge process. Moreover, considering the Commission’s experience conducting such processes – experience that includes past demonstrations of how Form 477 is insufficient on its own – it becomes clear that the benefits of

¹³ See *Hearing on the FCC’s Fiscal Year 2020 Budget Request Before the Subcommittee on Financial Services and General Government, Committee on Appropriations, U.S. House of Reps.*, 116th Cong. (2019) (video available at: <https://appropriations.house.gov/legislation/hearings/federal-communications-commission-budget-hearing>) (“Q: Chairman Pai, you heard Commissioner Rosenworcel and I talking about mapping, and I wanted to give you a chance to weigh in. . . . Chairman, do you agree that a challenge/evidentiary process is a good way to improve the accuracy of maps before funding decisions are made? A: I couldn’t agree more, Congressman, and that’s why . . . two years ago . . . I set up a challenge process . . . that included not just competitive providers but opening up to others – farm bureaus for example, legislators, and others who might want to challenge those maps. . . . On the fixed broadband side, I share your frustration coming from a rural part of the country myself where it’s hard to get coverage.”).

a challenge process outweigh any administrative burdens. Nothing in the record disputes this and the Commission should retain a challenge process for any competitive overlap mechanism.

B. The Record Supports Auctions No More Frequently Than Every Ten Years As Well As A 99 Percent Competitive Threshold As The Next Logical Step in The Commission's Competitive Overlap Proceeding.

With respect to a competitive bidding process, a number of parties join NTCA in recognizing that such a method for distributing high-cost support risks undermining services already available across wide swaths of rural America.¹⁴ As these parties note, competitive bidding's focus on driving down support levels fails to account for "future local infrastructure needs and service upgrades."¹⁵ ITTA for its part notes the danger of stranded investment when support is suddenly withdrawn.¹⁶

¹⁴ Comments of ITTA – The Voice of America's Broadband Providers, WC Docket No. 10-90, et al. (fil. Mar. 8, 2019).

¹⁵ WTA, p. 16. WTA also offers the Commission grounds to revisit its earlier determination to utilize an auction mechanism, correctly stating that "reverse auctions are ill-suited to the complexities and uncertainties of the interrelated variety of present and future factors and considerations affecting existing broadband service areas." *Id.*, p. 2. NTCA concurs for several reasons. For one, the Commission seems to have judged the CAF II auction a success and a model to be used here before construction has begun; it remains to be seen whether all parties receiving support at levels below the reserve price can actually deliver on promises made in auction applications. In addition, a reverse action mechanism is designed to deliver service to unserved areas at the lowest support amount possible whereas the areas at issue here are substantially or nearly entirely served by providers from whom support will potentially be withdrawn. An auction mechanism does not have a contingency plan to protect presently served consumers the competitor may be unable or willing to serve and in the absence of the incumbent that may have withdrawn once support is eliminated. Rather, an auction sets a reserve price based on a total number of unserved locations but cannot reasonably predict the number of locations that may lose service once the incumbent leaves. In that sense it has no way to account for consumers that fall through the cracks. Nor has the Commission contemplated whether a reverse auction mechanism will ensure that consumers in the affected areas will have access to reasonably comparable services over the long-term. RLECs, on other hand, have made every effort and will continue to do so to push fiber deeper into their rural study areas. The reverse auction focus on the lowest possible support amounts, even with a weighting factor designed to incentivize fiber-based services, will inevitably lead to some less scalable infrastructure being deployed. The result will be, for the consumers in those areas, not access to service they never had but access to a lower quality service they never wanted.

¹⁶ ITTA, p. 7

On top of these harms, the Commission appears poised to inject a significant dose of uncertainty into the High Cost program by conducting such auctions every few years. This would be particularly problematic for carriers with buildout obligations attached to the receipt of cost-based or “legacy” support – these carriers working hard to improve and extend service in their difficult-to-serve rural communities (and often planning their investments to meet those buildout mandates incrementally over the five-year period) would be forced to constantly divert resources to fending off other carriers’ claims of service coverage. Even worse, these carriers would be forced to plan for investments for which support might be unavailable in just a few short years. This prospect of having “the rug pulled out” from prior investments is one that other USF recipients do not face. Indeed, as the Commission noted in adopting ten-year time frames for Alternative Connect America Cost Model (“A-CAM”) support and for those operators of all kinds accepting CAF II auction funds, predictability is critical to network operators serving rural areas and building out to and upgrading connections in sparsely populated areas.¹⁷ There is no reason the same fundamental principle should not apply in the case of cost-based support. Thus, just as with the A-CAM and CAF II auction mechanisms (and even for any winners of support in auctions conducted here as a result of verified competitive overlap determinations), a ten-year cycle will avoid the possibility of constant disruption while also enabling a periodic review of unsubsidized competitive presence as broadband deployments evolve.

As it departs from a standard of 100 percent overlap, the Commission should start by identifying those study areas with 99 percent competitive overlap. As NTCA noted in initial

¹⁷ See *Connect America Fund*, et al., WC Docket No. 10-90, et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33 (rel. Mar. 30, 2016) (“*2016 Rate-of-Return Reform Order*”), ¶ 22; *Connect America Fund* et al., WC Docket No. 10-90 et al., Report and Order et al., FCC 14-54 (rel. Jun. 10, 2014), ¶ 35.

comments, setting the competitive overlap threshold at 99 percent is the logical next step in this process – it would call for an analysis of approximately 10 rural study areas¹⁸ and would serve as a good sample size to determine what, if any, unsubsidized competition truly exists at that level before additional Commission and provider resources are consumed in a wider range of study areas and census blocks.

The record adopted in response to the Further Notice supports the use of a 99 percent threshold as a first step. As the Concerned Rural LECs noted, use of a 99 percent threshold “provides greater assurance that the competitors who participate in the auction are sufficiently invested in the study area and have the financial and technical capability to meet the FCC’s public interest obligations for the vast majority of the area.”¹⁹ As the Concerned Rural LECs go on to state, “[i]t is essential that competitors bidding in the auction are capable of serving not only the lower cost ‘town’ areas, but also the remote, hard-to-serve areas as well.”²⁰ In other words, a 95 percent or lower threshold could allow a competitor that has extended service to the lower-cost portion of a rural study area to remove support from the incumbent – support that is intended to serve *every customer* – and leave the highest-cost customers high and dry. This is no different than the “cherry picking” that *universal* service support has long sought to combat and would leave policymakers scrambling to extend service to that last five to ten percent that the competitive provider will have no incentive or support to serve.

¹⁸ The *Report and Order* estimates that eight study areas are 100 percent overlapped and seven additional study areas are 95 percent overlapped. *Report and Order*, ¶ 144.

¹⁹ Concerned Rural LECs, pp. 3-4.

²⁰ *Id.*, p. 4.

Under no circumstances should the Commission indulge the Cable/WISPA proposal to utilize a 50 percent competitive overlap threshold.²¹ Considering that both of these parties provide no discussion or thought whatsoever as to how all of the consumers in a rural study area will continue to have access to reasonably comparable and affordable voice and broadband service – also known as “universal service,” as called for by statute – these proposals seem less principled than punitive. In fact they risk leaving significant numbers of rural consumers in study areas across the country without voice or broadband coverage for prolonged periods of time as the incumbent withdraws service and the competitor either fails to build out further or fails to materialize. Attacking support without considering the ramifications is undeserving of serious consideration.

To the extent the Commission moves below the 100 percent threshold, a robust, data-driven challenge process (as well as a longer period between overlap proceedings) becomes all the more necessary. Rural consumers deserve protection from the repercussions of “false positive” determinations of competitive presence that remove support for the incumbent provider; a competitor not able to live up to the representations it made on Form 477 could be unable to provide service (based either on lack of a business case or technical ability) to customers that the former incumbent is now *also* unable to make a business case to serve. While higher percentage overlap thresholds may perhaps implicate a small number of rural study areas, the use of more significant measures of overlap to prompt auctions could implicate tens of thousands of rural consumers, allowing competitors that have “cherry picked” the lowest-cost portions of an area to determine the broadband fate of an entire community of very rural consumers.

²¹ Comments of NCTA, WC Docket No. 10-90, et al. (fil. Mar. 8, 2019), p. 2; WISPA, p. 4.

Predicting such a result – tens of thousands of rural consumers left stranded in a broadband desert – is far from mere speculation, as both NTCA members and the Commission’s own data confirm. For the most part, any competition that exists in rural study areas is often found in the more densely populated town centers that comprise only a tiny percentage of the total geography at issue. While a competitor often cannot make a business case to serve beyond these town centers, RLECs have been able to bundle together both their commitment to their rural communities, networks built up over decades, and High-Cost support that is intended to make voice and broadband universally available and truly serve *the entire area*.

It must also be noted that fixed wireless broadband – while a valuable “tool in the toolkit” that many NTCA members utilize to serve rural consumers – has its own limitations not currently captured via Form 477. Specifically, as VPS notes in its comments, with fixed wireless carriers, “bandwidth is shared by all customers on a given cell site and speeds can vary greatly depending on the number of customers, distance from the tower and usage at any given time on any sector of the [fixed wireless] service. Further, the advertised speed is often the average speed and there can be many [fixed wireless] customers that receive far less speed when they are further away from the tower and receive weaker signal strength.”²² These technical limitations are, unfortunately, not captured by Form 477, and thus the Commission should not make important decisions about where and where not to direct support when a fixed wireless carrier can install a few towers, draw circles around their *theoretical* ability to serve and potentially leave a large number of rural consumers without access to broadband once the incumbent is forced from the market and hundreds or thousands of new customers attempt to utilize a few towers meant for a much smaller number of actual subscribers. To be clear, the discussion here

²² VPS, p. 11.

should not be taken as a critique of fixed wireless technologies – the point is, rather, to highlight the very real dangers of “false positives” based on Form 477 data and the fact that such harms will only be compounded should the Commission move to a very low threshold for competitive overlap as called for by a few parties. The better approach – one that protects rural consumers and will set appropriate incentives for rural investment – is to begin by conducting a 99 percent competitive overlap threshold once every ten years with a robust challenge process and an ensuing auction for those study areas where such overlap is confirmed.

C. The Record Does Not Support The Use Of Geographic Areas For Auction Below The Study Area Level.

With respect to the competitive bidding process, commenters support auctioning off *the entire rural study area* and point to the problems with using smaller geographic units.²³ As NTCA noted in comments, the entire study area and the rural consumers that reside there need to be served – and the incumbent provider may be forced to exit all or part of the market at such time as support is revoked or reduced. An auction using census blocks or census block groups would allow competitors to “cherry pick” the lowest-cost portions of the rural study area,²⁴ ironically driving up the support needed to serve the remaining consumers left for the incumbent. As NTCA noted in its comments, focusing the auction and ensuing buildout obligations only on individual census block groups threatens economic efficiencies gained through providing voice and broadband services throughout the entirety of a service area and puts at risk the services

²³ See, Concerned Rural LECs, pp. 9-10; WTA, pp. 9-10.

²⁴ WISPA’s comments in this regard are telling, flagging openly the desire to cherry-pick rural areas for subsidized service at the expense or abandonment of others; as WISPA states in its comments advocating for census blocks or census block groups, “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.” WISPA, p. 5.

already being supplied by the incumbent rural carrier to “the 99 percent.”²⁵ Finally, the use of census blocks or census block groups would require the Commission to disaggregate support for the incumbent for those census blocks in which a competitor does not provide service, a return to the 2016 *Rate-of-Return Order* provisions that the Commission has yet to even implement.²⁶

D. The Commission Should Strive For The Best Possible Service Standards For Rural Consumers In Overlapped Study Areas And Should Require Interested Bidders To Demonstrate Their Technical Ability To Meet Those Standards Before Auctions Are Held.

Finally, NTCA reiterates its call for provisions to ensure that rural consumers in areas deemed competitive and put up for auction are truly served with reasonably comparable service. First, the Commission should adopt the service tiers as proposed in the *Further Notice*, but adjust the weighting factors more heavily toward tiers that will deliver services consumers can depend upon a decade from now. The Commission should aim for the best possible service and underlying infrastructure it can to ensure that consumers can access high-quality service now and over time. The Commission should also function as a responsible agent of universal service dollars and seek the “best bang for the buck.” Bids should therefore be weighted in a manner (specifically, 70 for 25/3 “baseline” service, 35 for 100 Mbps “above baseline” service and 0 for the Gigabit tier) that recognizes the greater value of higher-quality levels of broadband that are

²⁵ NTCA comments, p. 12; *see also*, WTA, p. 10 (“A census-related, non-telecommunications disaggregation will not only exacerbate the problems of lack of scale economies that have long plagued rural telecommunications service, but also will unnecessarily complicate network design, upgrades and maintenance by dividing service areas into census-based subdivisions that have little or no relevance to telecommunications technologies or services.”).

²⁶ *Connect America Fund*, et al., WC Docket No. 10-90, et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33 (rel. March 30, 2016) (“Rate-of-Return Reform Order”), ¶¶ 138-144.

reasonably comparable to those available in urban areas and that will deliver a return on the investment of USF resources for years to come.

Moreover, to ensure that bidders can actually live up to their promises – and again to protect consumers and limited universal service funds – interested bidders should be obligated to make detailed, upfront showings of their technical capability. In the CAF II auction, bidders stepped forward promising service at certain speed thresholds that have never been offered on a widespread commercial basis using certain technologies to tens of thousands of customers across far-reaching rural areas. To the extent these providers cannot deliver on their unprecedented network designs and deployment plans, the Commission may have to step in to find a way to extend service to thousands of unserved consumers. Here, however, the stakes are different, as thousands of rural consumers (or tens of thousands depending on where the Commission sets the competitive overlap threshold) that are *now already served* by an incumbent could suddenly find themselves backsliding onto the wrong side of the digital divide. As NTCA noted in initial comments, a prudent and responsible universal service policy would establish beforehand that the bidder can actually deliver on that promise in lieu of only checking *after* the auction has been conducted and awards of support had been announced. NTCA therefore proposes that technical specifications should be submitted by potential bidders for review by the Commission, and that such information should also be available for review by interested parties and stakeholders pursuant to a protective order. The latter step would augment the Commission’s own analysis, and could be accomplished in relatively short order through a brief window for review and comment, all while appropriately and necessarily protecting proprietary network information from the public domain pursuant to the agency’s well-established protective order procedures.

III. THE RECORD SUPPORTS A REASONABLE TRANSITION MECHANISM, SUBJECT TO AN AFFIRMATIVE SUNSET, TO SAFEGUARD THE SUSTAINABILITY AND PREDICTABILITY OF THE RLEC HIGH-COST PROGRAM BUDGET AS CONSUMERS MIGRATE TO STANDALONE BROADBAND SERVICES.

In initial comments, NTCA and several other parties²⁷ supported a transition mechanism to address the potential budget implications that could stem from a rapid increase in consumer adoption of standalone broadband service. As these parties recognize, absent some brief transition mechanism to responsibly limit the amount of additional support that could be gained as a result of CBOL conversions, associated potential budget increases that will result from such conversions to that service could quickly exhaust newly increased budget resources and reintroduce the insufficiency and unpredictability of budget cuts in the wake of an order that promised to mitigate, if not fully resolve, them.²⁸ As NTCA stated in its comments, the transition to standalone broadband will inarguably place increased pressure on federal support mechanisms – as more network costs are effectively transferred into the interstate jurisdiction, those costs associated with new investments as well those associated with prior investments will be reclassified as interstate when a consumer ceases to buy regulated local exchange voice service on the same line. While the degree of such increased budget pressures cannot be predicted with certainty, what is certain is that rapid CBOL conversions end up creating the risk of significant budget cuts that fall predominantly upon other carriers not converting lines at as rapid a pace. Fortunately, as the Further Notice indicates, the Commission has responsibly

²⁷ USTelecom, pp. 7-8; ITTA, pp. 14-15; FWA, pp. 6-11; Comments of Triangle Telephone Cooperative Association, WC Docket No. 10-90, et al. (fil. Mar. 3, 2019), pp. 3-5.

²⁸ See *Further Notice*, ¶¶ 200-204.

thought ahead and is seeking to identify ways of minimizing the likelihood of a reintroduced budget control if at all possible.

While some parties express concern that the proposed CBOL conversion limit would artificially interfere with consumer choice for broadband-only service,²⁹ it must be reiterated that the proposal has no effect on consumer behavior.³⁰ That is, consumer demand will continue to drive the pace of conversions to stand-alone broadband service. The limit as proposed would *only limit the increased support* a carrier could receive from such consumer-driven conversions over the next several years. With a limit in place, substantial migrations driven by consumer demand could still occur – with a 10 percent limit in place,³¹ for example, every RLEC’s customer base could, in theory, be nearly 50 percent up to nearly 100 percent converted to standalone broadband by the 2024 sunset date (a measure included in the NTCA proposal)

²⁹ Comments of the Midwest Carriers, WC Docket No. 10-90, et al. (fil. Mar. 3, 2019), pp. 3-4.

³⁰ Nor would RLECs subject to the proposed limit (those with conversion rates in excess of 10 percent in a given year) be disadvantaged by the loss of both forgone retail voice revenue as well as the additional CAF-BLS revenue otherwise flowing to CBOLs in excess of the limit. This is because a carrier provisioning a CBOL connection to a consumer can also sell the consumer a Voice over Internet Protocol (“VoIP”) service. As the Midwest Carriers correctly state, National Exchange Carrier Association guidelines consider such a service (as well as an Over-the-Top VoIP service) to be a non-regulated service not subject to cost recovery via high-cost support. That said, RLECs subject to the CBOL limit would remain free to offer such services as additional retail services. Of course, as NTCA noted in initial comments, evidence that a carrier has converted significant portions of its customer base nearly simultaneously from local exchange service to VoIP without customer consent and/or deployment of equipment within the customer premises that enables the delivery of a new IP-enabled service could represent strong evidence of gaming.

³¹ Pursuant to this concept, each individual RLEC receiving cost-based high-cost support would have its support calculated based on a maximum annual growth rate in CBOL lines of 10 percent of that RLEC’s prior year voice lines, starting at each carrier’s baseline of such broadband-only connections as of December 31, 2018. For those CBOL connections up to and equal to the annual limit, the RLEC would receive CAF-BLS support for CBOLs just as it does for all other CBOL connections previously in place. But *only* for those CBOL connections in excess of the limit – in other words, in the event of significant conversions of voice lines to standalone broadband – the RLEC would receive support in that year “as if” those CBOL connections continued to include voice. (Any residual interstate costs not recovered through USF support or the CBOL benchmark would then be recovered through interstate special access rates.)

without any effect on that carrier's support. In addition, carriers would continue to receive support for such connections in excess of the annual limit "as if" they were voice lines, and thus again consumers would ultimately drive the conversions and carriers would still receive support. At bottom, the proposal is only meant to *meter future growth* in the CAF-BLS mechanism so that the likelihood of support cuts "rearing their ugly head again" and hitting carriers in an unpredictable manner is minimized to the extent possible.

Moreover, as noted above, this proposal is necessary to minimize the likelihood (or at least the magnitude) of a budget control being foisted on *other* RLECs as a result of such conversions during that transitional period.³² Perhaps more importantly, the budget pressures caused by rapid CBOL conversions will be met with the return of the budget control mechanism that devastated investment in rural broadband networks over the past few years. Carriers uncertain as to whether – much less to what degree – budget controls could limit their cost recovery understandably pulled back, and it was rural consumers that ultimately paid the price. The Commission wisely took steps in December 2018 to address this problem, and it should take the final step here through a time-limited transitional mechanism that would meter *increases* in support in order to promote the sustainability of the important measures adopted in December 2018 and provide greater predictability to *all* providers regardless of the pace at which their consumers elect to convert to standalone broadband services.

³² NTCA, p. 17. *See also*, WTA, pp. 17-18 (like NTCA, stating that "the proposed limit would only limit the increased support a carrier could receive from such conversions over the next several years, and thereby minimize the likelihood (or at least the magnitude) of BCM reductions affecting other RLECs as a result of such conversions during that transitional period.").

IV. THE RECORD SUPPORTS A TRIBAL BROADBAND FACTOR FOR ALL ENTITIES SERVING TRIBAL AREAS.

NTCA reiterates its support for the inclusion of a Tribal Broadband Factor in the cost-based RLEC high-cost support mechanism and notes that the record contains only several persuasive arguments in favor of such a pro-consumer action. The Commission's commendable inclusion of such a factor in the ACAM II offer is a great first step and should be followed up with additional action to address the "unique challenges of deploying high-speed broadband to rural Tribal communities"³³ that apply to any carrier serving Tribal lands.

With respect to these challenges, comments by NTTA are illustrative of both the hurdles that providers face in building on Tribal lands as well as the consequences produced.³⁴ Simply put, as NTTA demonstrates, Tribal Lands lag far behind in terms of access to communications services that most urban Americans take for granted. NTCA members serving Tribal lands can attest to the lower "take rates" due to lower incomes and more residential versus business customers as well as the fact that the areas at issue are in sparsely populated rural areas and served by carriers that must overcome the challenges that these parts of the country pose for any provider.

It is important to note, however, that these conditions exist irrespective of whether the local provider is Tribal-owned or not, or receiving High-Cost support based on a model or not. Any RLEC serving Tribal customers should receive support adjusted by a Tribal Broadband Factor based on all connections identified as "Tribal."

³³ *Report and Order*, ¶ 55.

³⁴ *See* Comments of the National Tribal Telecommunications Association, WC Docket No. 10-90, et al. (fil. Mar. 8, 2019) ("NTTA").

V. CONCLUSION

The record in response to the *Further Notice* supports:

- replacement of the Commission's 100 percent competitive overlap process eliminated by the December 2018 *Report and Order* with the NTCA proposal that is centered upon a robust and data-driven challenge process;
- transitional measures (subject to a 2024 sunset) for sustaining the USF budget for recipients of cost-based support over the next several years as consumers migrate away from traditional local exchange voice telephony services and toward standalone broadband services; and
- a Tribal Broadband Factor that applies to the support received by any RLEC committed to serving Tribal areas.

Respectfully submitted,



By: /s/ Michael R. Romano
Michael R. Romano
Senior Vice President –
Industry Affairs & Business Development
mromano@ntca.org

By: /s/ Brian J. Ford
Brian J. Ford
Director of Industry Affairs
bford@ntca.org

4121 Wilson Boulevard, Suite 1000
Arlington, VA 22203
703-351-2000