

**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 THE
SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION**

The South Dakota Telecommunications Association (SDTA) hereby submits reply comments in the *Further Notice of Proposed Rulemaking*¹ (FNPRM) proceeding concerning the Commission's proposals to: (1) use a reverse auction mechanism in rural incumbent local exchange carrier (RLEC) service or study areas that are entirely overlapped or “almost entirely overlapped”, similar to the mechanism used for the recent Connect America Fund (CAF) Phase II Auction (Auction 903); and (2) to incorporate a Tribal Broadband Factor into the existing legacy high cost support mechanism for those carriers serving tribal lands. SDTA supports the comments of parties expressing opposition to the use of a reverse auction mechanism as the future means of distributing high cost universal service support in those rural service or study areas that are determined to be competitively overlapped, even when one or more competitive carriers overlap less than 100% of an RLEC's service area. SDTA also supports commenters who argue for the adoption of a Tribal Broadband Factor adjustment for those rural carriers serving tribal lands that choose to remain on the legacy high cost support mechanisms.

¹ *Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration*, FCC 18-176, rel. Dec. 13, 2018 (FNPRM).

SDTA's member companies² are facilities-based eligible telecommunications carriers (ETCs) using universal service support to provide high-quality voice and broadband services throughout their study areas.³ A number of SDTA's members provide essential voice and broadband services on Tribal lands, including cooperatives, privately owned, and tribally-owned companies. Accordingly, without question, the Commission's proposals in this proceeding stand to impact SDTA's members.

I. The Proposed Use of a Reverse Auction in Rural Service Areas Already Receiving Broadband Service Is Not In The Public Interest

The initial comments filed in this matter show that the Commission's proposed use of a reverse auction mechanism within rural service areas that are “competitively overlapped” could have serious negative consequences on the continued availability of and quality of broadband services that have already been deployed in such areas. The Commission proposes to conduct a reverse auction patterned after the CAF Phase II auction mechanism in RLEC study areas where one or more competitive LECs provide voice and broadband service to less than 100% of the locations in a study area. The Commission suggests an auction where there is 99% or 95% competitive overlap. To determine competitive overlap, the Commission proposes to solely rely on the information provided through Form 477 filings, indicating that no challenge to that data would be allowed. The Commission proposes to auction off support based on census blocks.

The initial comments filed by NTCA, WTA and other parties discuss many of the various concerns that must be addressed by the Commission should it, in fact, proceed to conduct any reverse auctions for the purpose of addressing rural service areas that are “overlapped,” and make it clear that such a process, contrary to universal service mandates, could actually lead to a

² SDTA's member companies are listed in Attachment 1.

³ See, Connecting South Dakota's Future, A Report on the Deployment and Impact of Rural Broadband at <https://www.southdakotadashboard.org/11270-broadband-report> (SD Broadband Report).

reduction in service to consumers who already have access to high quality, state-of-the-art, broadband services. Unlike the Commission's recently concluded CAF Phase II reverse auction, which dealt with unserved areas, the reverse auction outlined in the *FNPRM* would not be used to bring broadband service to an area that is unserved or underserved, but instead would be conducted for the sole purpose of reducing the support dollars distributed within “overlapped” study areas. SDTA agrees with WTA and NTCA that there are good grounds for the Commission to revisit its earlier determination to utilize an auction mechanism for this purpose. WTA correctly states 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.”⁴ Given the likelihood that using a reverse auction mechanism in areas determined to be competitively overlapped would put at risk existing investments, threaten continued network investments and in other ways negatively impact rural broadband providers and broadband services in areas already served, it is difficult to understand how use of such a process could be viewed as either consistent with statutory universal service mandates or otherwise in the best interest of rural consumers.

The Proposed Reverse Auction Mechanism is Contrary to the Act

Section 254 of the Act directs the Commission to preserve and advance universal service, not contract it. Notably, the Act directs the Commission to be guided by a number of principles including, “[q]uality services should be available ...”⁵; “[a]ccess to advanced telecommunications and information services should be provided ...”⁶; and “[c]onsumers in all regions of the Nation, ... should have access to telecommunications and information services, including interexchange

⁴ Comments of WTA – Advocates for Rural Broadband at 14-16 (WTA Comments).

⁵ 47 USC §254(b)(1).

⁶ 47 USC §254(b)(2).

services and advanced telecommunications and information services...."⁷ As indicated by the initial comments of various parties, the Commission's proposed use of a reverse auction in "overlapped" service areas over the long term carries a substantial risk of reducing the availability and quality of existing broadband services to rural consumers, who today have access to broadband services. As such, it is contrary to the goals of Section 254 of the Act, is not in the public interest, and should not be adopted.

Use of Reverse Auctions As Proposed Would Negatively Impact Broadband Services Already Available to Rural Consumers

The SDTA member RLECs operate as carriers-of-last-resort and make voice and broadband services available throughout the entirety of their rural service areas. Further, the companies have deployed and operate fiber-based networks,⁸ and a good number have deployed fiber-to-the-premises (FTTP) network to all of the customer locations within their service areas. Even where there is a competitive provider in their service areas, most consumers continue to subscribe to the RLECs' voice and broadband internet access services. It is not speculative to conclude that this is at least in part due to the fact that consumers view the RLECs' fiber-rich networks and services as being superior in speed, quality and reliability to the competitive provider's service.

By proposing use of a reverse auction mechanism, as outlined in the *FNPRM*, even in service areas that are not entirely overlapped by a competitor or competitors broadband services, the Commission nonsensically puts in jeopardy existing RLEC state-of-the-art, high-quality FTTP networks and services, despite the fact that the RLEC would in all likelihood continue to be relied upon to provide broadband services to consumers who do not have access to the

⁷ 47 USC §254(b)(3).

⁸ See, SD Broadband Report at 7. As of year-end 2017, 65% of the SDTA member companies' customers were served by Fiber-to-the-Premises technology.

competing provider(s) services. In the *FNPRM*, the Commission asks if a reverse auction should be conducted if competitors cover 99% or 95% of locations in the study area. This could mean that in a study area with 10,000 locations, 100 to 500 locations may not be served by any competitor. With an auction support mechanism based on census blocks, some of these locations (and the consumers at these locations), would likely never be served by the competitive provider. The competitive provider would be free to seek support only for the areas it currently serves or it could seek support only for "town" or "business" customers within a study area, deciding to "cherry-pick" only the lowest-cost, highest revenue customers within that area.

It is evident that absent extending to RLECs (before conducting a reverse auction in "overlapped" areas), an ability to de-average costs and continue to receive high cost funding on a disaggregated basis, the voice and broadband services available to many consumers within rural service areas could be negatively affected. As acknowledged by the Commission, RLEC network design typically requires fiber facilities in the lower cost areas closer to the wire center in order to provide service in the higher cost areas farther from the wire center.⁹ An RLEC would be stuck maintaining much of the existing network throughout its study area so that it could continue providing service to its remaining supported areas, if any. Also, most RLECs have construction loans and bond obligations, which can have repayment terms of 15, 20 or more years that were incurred to build their existing study area-wide network. These financial obligations still must be repaid even if the RLEC loses support for some portion of its study area. With less revenue and roughly the same total costs, more likely than not, the RLEC's current network and service levels would suffer. The RLEC may not be able to make new investments or provide new service and may even need to curtail services to higher-cost locations within its service area.

⁹ WTA Comments at 9, citing *FNPRM* at note 60.

The Commission's proposed use of reverse auctions in “overlapped” areas also risks replacing the consumers' access to high quality, reliable broadband service with an untested broadband service of unknown quality and reliability. The Commission proposes that any competitive provider, even those that do not currently provide any service in the study area, would be able to participate in the auction. In the recently concluded reverse auction held by the Commission to award universal service support to unserved areas, satellite and Wireless Internet Service Providers (WISP) providers were among the auction winners. There is every reason to expect a similar result if the Commission goes forward with a reverse auction for areas determined to be competitively overlapped.

It is clear that existing satellite broadband services are not on par with fixed wireline broadband, especially FTTP, when it comes to speed, capacity and low-latency performance. WISP services are also disadvantaged versus FTTP, in particular relative to speed and capacity that can be offered to customers within the claimed coverage area. In addition, WISP providers acknowledge that their service is simply not available to all consumers.¹⁰ In its comments, Vantage Point Solutions (VPS) discusses the failings of fixed wireless services, where bandwidth is shared by all customers on a cell site and, as a result, “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 service.”¹¹ According to VPS, “the advertised speed is often the average speed and there can be many customers that receive far less speed when they are further away from the tower and receive weaker signal strength.”¹²

Because an auction winner, as the Commission proposes, would not have to already be providing its voice and broadband services in the affected study area, any claim of reliability,

¹⁰ WTA Comments at 12.

¹¹ Initial Comments of Vantage Point Solutions and Its Affected Clients (VPS Comments) at 11.

¹² VPS Comments at 11.

speed and quality will be just that-- a claim and not a reality. The results of the Commission's CAF Phase II reverse auction should not presently be viewed as a reason to ignore any such concerns because the Auction 903 winners have not yet been required to build out or meet service requirements. As noted by WTA, it is still an unknown as to whether the winning entities will actually meet the imposed service obligations agreed to at the funding levels awarded.¹³

The RLECs' existing FTTP networks do not suffer from these deficiencies. They are state-of-the-art FTTP networks with a known track record for service quality, speed and reliability and generally are preferred by many customers for their fixed broadband services. Given the extensive fiber deployments already made by RLECs in South Dakota and by many other RLECs throughout the Nation and the consumer preferences for high-speed fiber-based broadband service, any suggestion that the use of reverse auctions will bring positive results over the long term seem questionable, at best.

The Commission's proposed reverse auction mechanism also would not result in predictable high cost support, as is required by the Act. In the *FNPRM*, the Commission asks if a reverse auction should be conducted every two years. If this short schedule for conducting the auctions was adopted it would make support entirely unpredictable and unworkable when network investments often demand a twenty year commitment or more. Further, in light of the fact that the Commission grants ACAM model participants ten years of support, it would be unfair for the Commission to award universal service support through a reverse auction process, for non-ACAM RLECs, on a shorter timeline.

If the Commission proceeds with reverse auctions, SDTA shares the view of other commenters that transitional support would be necessary at some level for existing RLECs

¹³ WTA Comments at 4.

providing service that do not win reverse auction support. Transition support would be necessary, for example, to fund existing RLEC debt obligations, maintain existing network and services on a service or study area basis, and to continue to provide services to consumers not served by the competitive carriers. Transitional support would effectively serve as a backstop or "insurance policy" if the auction winners do not ultimately meet their service obligations or if consumers continue to be unserved by competitive providers.

II. Form 477 Data is Unreliable for Purposes of Removing Support from RLECs

The record makes clear that Form 477 data alone is simply not sufficiently reliable to accurately identify areas having one or more competitors able to provide broadband and voice services. The comments of VPS demonstrate a number of issues with the data in the Form 477 and highlight numerous specific instances where the Form 477 data is incorrect and not reliable.¹⁴ NTCA notes that the Form 477 data for voice service is reported at the state level and, therefore, cannot be used at all to show competitive overlap on a study area or census block level.¹⁵ WTA points out that Form 477 data "indicates only that a service provider offers a specified level of service to at least one customer location in a census block, and does not indicate one way or the other whether the service provider can serve all or 'almost all' of the customer locations within such census block."¹⁶

SDTA, therefore, agrees with the many commenting parties supporting the use of a challenge process if the Commission intends to use Form 477 data to remove support from an RLEC. Otherwise, there will be no assurance that any competitor is in fact willing and able to serve residential and business consumers in parts of any affected rural study area.

¹⁴ See, VPS Comments.

¹⁵ Comments of NTCA- The Rural Broadband Association (NTCA Comments) at 3.

¹⁶ WTA Comments at 15.

III. A Tribal Broadband Factor Should Be Available To All RLECs Serving Tribal Lands

SDTA supports the establishment of a Tribal Broadband Factor for all RLECs serving tribal lands, whether they are receiving ACAM model support or remain on legacy support mechanisms. The extra challenges of serving tribal land are well established. These include the fact that many tribal lands are extremely remote and are sparsely populated with few businesses. Extra regulatory costs also are oftentimes incurred when serving tribal lands. These extra challenges increase the cost of serving tribal land for any RLEC that does so. Accordingly, a Tribal Broadband Factor should be available to all RLECs serving tribal land.

The SDTA members serving tribal lands use universal service support to deploy and maintain facilities throughout their service areas, including on tribal lands. In recent years, SDTA's members have made significant investments in FTTP network facilities, continuing to deploy other new broadband infrastructure and maintaining high quality networks on tribal land, even in the face of declining high cost support due to the Commission's orders and rules.¹⁷

Thus, SDTA supports those commenters who urge the Commission to apply the same Tribal Broadband Factor to cost-based RLECs as was adopted for RLECs that elect ACAM II by reducing the CAF-BLS funding threshold of \$42.00 per line per month to \$31.50, a 25% reduction. SDTA agrees with WTA that this adjustment "constitutes an equitably and effectively targeted way to promote increased broadband deployment and affordability in Tribal areas, and treat RLECS serving Tribal areas and their Tribal customers in a reasonably equivalent manner whichever form of high-cost support the RLECs elect to take."¹⁸

¹⁷ See, Comments filed by SDTA at 2-3, Aug. 31, 2015, *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, FCC 15-71 (rel. June 22, 2015).

¹⁸ WTA Comments at 23.

IV. Conclusion

SDTA opposes the use of reverse auctions as a means of addressing RLEC study areas that are entirely overlapped or almost overlapped by competitive voice and broadband services. Using such an approach would put at risk the high quality, reliable FTTP service already available to many consumers and businesses in rural South Dakota and has the potential over the long term to relegate them to lower quality voice and broadband services. Where an existing FTTP network is available to all residential and business customers, universal service support should continue to be used as a means of ensuring the continued availability and affordability of that network. It should certainly not be used to support and/or subsidize networks that may not meet either the needs or preferences of existing rural consumers.

SDTA also supports Commission adoption of an effective 25% Tribal Broadband Factor that is available to all RLECs serving tribal lands. This would promote increased broadband deployment and affordability in Tribal areas and treat RLECS serving Tribal areas and their Tribal customers in a reasonably equivalent manner.

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Beresford Municipal Telephone Company
Cheyenne River Sioux Tribe Telephone Authority
Faith Municipal Telephone Company
Fort Randall Telephone Company
Golden West Telecommunications
Interstate Telecommunications Cooperative
James Valley Telecommunications
Kennebec Telephone Company
Midstate Communications
RC Technologies
Santel Communications Cooperative
Swiftel Communications
TrioTel Communications
Valley Telecommunications Cooperative
Venture Communications Cooperative
West River Cooperative Telephone Company
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