

**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
	)	

To: The Commission

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

The Wireless Internet Service Providers Association (“WISPA”) replies herein to certain of the initial comments filed in response to the Commission’s *NPRM* proposing reforms to the process by which the Commission measures competitive overlap for phase-out of universal service support in legacy rate-of-return study areas.<sup>1</sup> As described in its initial comments, WISPA shares the Commission’s goals of enhancing the efficacy and efficiency of the Connect America Fund (“CAF”) through changes to the 100% overlap challenge process, including a potential reverse auction mechanism in areas where there is significant, but less than 100%, competitive overlap.

The initial comments concerning the Commission’s proposal fall into two distinct camps: (1) rural incumbent service providers that are currently receiving subsidies, which predictably reject any change to the inefficient *status quo*, and (2) providers of competitive service that seek a more fair and effective means of determining where overlap exists and of distributing the limited

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<sup>1</sup> See *Connect America Fund, et al.*, Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18-29 (rel. March 23, 2018) (“*NPRM*”).

financial resources available to support new service to unserved areas. Joining WISPA in this latter group is NCTA – The Internet and Television Association, which sensibly argues that “the Commission should establish an auction process to allow non-incumbent providers to compete with incumbent LECs to provide broadband in rural areas and should take steps to target support only to areas where it is needed.”<sup>2</sup> Like WISPA, NCTA advocates the establishment of an efficient auction mechanism that allows both incumbents and competing providers to bid for high-cost program support in still unserved areas. As NCTA states, “[a]n auction mechanism would provide an administratively simpler way for non-incumbents to compete to receive the high-cost support that currently is reserved exclusively for incumbents.”<sup>3</sup> NCTA and WISPA share agreement on the recommended auction approach, which would apply “in any study area in which any combination of non-incumbents serve 50 percent or more of the locations.”<sup>4</sup>

Arrayed against this reasonable, market-based approach are a handful of other trade groups, incumbent carriers and their consultants, all with a vested interest in maintaining the *status quo*, regardless of whether it results in efficient and effective distribution of available universal service support. The arguments advanced by these parties all have a similar ring, with several opposing any change to the current rules without offering any substantive basis for rejecting the proffered changes.<sup>5</sup> Broad aspersions are cast on the ability of competing providers to offer new service to unserved areas without any supporting data other than the skewed information produced by the failed challenge process. Others maintain, again absent any supporting data, that most competing

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<sup>2</sup> NCTA Comments at 1.

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.*

<sup>5</sup> *See, e.g.*, Blooston Rural Carriers Comments at 16; ITTA Comments at 33.

carriers tend to focus their service offerings solely on the most densely populated parts of rural communities.<sup>6</sup>

These bare assertions, however, ignore what the Commission expressly acknowledged in the *NPRM* – that in the current challenge process, there is a fundamental mismatch between the effort and resources required for competing providers to participate and the incentives for these providers to allocate these necessary resources towards a challenge.<sup>7</sup> Because competitors have nothing to gain directly from a demonstration that a study area is fully served by unsubsidized service providers generally, any purported “benefit” is both incremental and delayed. That is, “success” means only depriving an incumbent provider of a subsidy, and that subsidy is phased out gradually over a multi-year period.

Also fundamentally misdirected are claims by incumbent carriers, based on comments taken out of context from other proceedings, that the ability of wireless service providers to deliver service to new locations is inherently uncertain until installation occurs.<sup>8</sup> As WISPA has observed in a related proceeding, however, each type of broadband technology is subject to its own technical and terrain-based uncertainties in deploying service to new locations. A fiber network, for example, may face significant challenges in building out new infrastructure or gaining timely access to needed rights-of-way due to environmental or other considerations, circumstances which may place substantial limitations on both the speed and ultimate availability of wireline service to certain isolated areas.<sup>9</sup> Accordingly, WTA’s implication that wireless service providers have unique issues

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<sup>6</sup> See *id.* at 16; WTA Comments at 37.

<sup>7</sup> See *NPRM* at ¶ 161 (“This lack of participation likely reflects the absence of incentives to participate”).

<sup>8</sup> See WTA Comments at 37-38, *citing* WISPA Comments, WC Docket No. 11-10 (filed Oct. 10, 2017), at 11.

<sup>9</sup> See WISPA Reply Comments, Connect America Fund Phase II Auction (Auction 903) Public Notice, WC Docket No. 10-90 (filed Oct. 18, 2017), at 5.

in being able to establish service availability at new locations is a red herring that lends no credence to its argument that competing providers lack the capability to compete for high cost area service support. Moreover, the Commission established technology neutral rules for its CAF Phase II reverse auction, indicative of the ability of fixed wireless platforms to serve rural areas of the country where broadband service is not available. And, as noted in WISPA's initial comments, traditional wireline carriers may themselves decide to deploy fixed wireless facilities due to cost and other practical considerations, such as terrain and population density.<sup>10</sup>

The self-serving nature of the incumbent rural carrier comments reaches its zenith in the suggestion of a couple of these parties that, rather than reform the challenge process to improve the distribution of funding to areas that most need it, the Commission should instead entertain either eliminating the subsidy phase-out entirely or, alternatively, should significantly extend the time interval at which such challenges to incumbent support may be made.<sup>11</sup> The effect of either approach would simply be to entrench current subsidy recipients at current funding levels without subjecting them to timely, or even any, review to determine whether such subsidy dollars remain necessary and to provide the most efficient means of expanding service to the public.

In addition, to the extent that multiple incumbent RLEC providers complain about the accuracy of the data gathered using FCC Form 477,<sup>12</sup> the Commission already has under consideration potential changes to its Form 477 requirements to mandate more granular reporting concerning broadband deployment. The institution of improved Form 477 data collection is the

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<sup>10</sup> See WISPA Comments at 3.

<sup>11</sup> See GVNW Comments at 10-11; TCA Comments at 9

<sup>12</sup> See, e.g., NTCA Comments at 58-59; Blooston Rural Carrier Comments at 14; TCA Comments at 9; GVNW Comments at 4, 5, 9 & 11; WTA Comments at 36.

optimal means of providing a more efficient and reliable measure of broadband penetration than the Commission's current reliance on a time-consuming and burdensome adversarial process.

In short, the incumbent carriers' objections to the Commission's reverse auction proposal are both ill-defined and unsupported. To a significant extent, they also seem to rely on a willful misinterpretation of how such auctions would be expected to work. For example, TCA asserts that the "FCC should not create an auction to distribute support *in truly 100% competitively overlapped areas*," and that the Commission's proposal "would potentially shift support away from cost based RLECs *serving true noncompetitive areas*."<sup>13</sup> Similarly, both GVNW Consulting and WTA incorrectly assert that if a competitive carrier wins a reverse auction for support in a partial overlap area, then the RLEC is immediately a fully competitive unsubsidized carrier that makes it unnecessary to award any support to the auction winner.<sup>14</sup> In fact, the proposed auction would only apply in areas that fall short of 100% competitive overlap, so that the Commission would simply be shifting funding previously available only to incumbents for the purpose of expanding service to unserved areas to a different provider for purposes of achieving the same result – but at less per-location cost to the Commission's USF budget. Only when all potential customers in the study area have access to service from one provider or the other would the necessary service benchmark to end subsidies be achieved. The suggested approach simply recognizes that when a competing provider is serving a critical mass of nearby areas, the incumbent carrier is no longer uniquely capable of rolling out new service to locations within the study area that remain unserved, and that efficient

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<sup>13</sup> TCA Comments at 9-10 (emphases added).

<sup>14</sup> See GVNW Consulting Comments at 9 ("adoption of the NPRM's auction proposal would result in 100 percent competitive overlap by the RLEC on the first day after the auction funds were awarded to the competitor"); WTA Comments at 41 ("if an unsubsidized competitor 'wins' the contemplated auction for a particular RLEC study area and the defeated RLEC is able to remain in business for at least a while, is not the RLEC then an 'unsubsidized competitor' that makes it unnecessary to provide high-cost support to the 'winner' of the reverse auction?").

distribution of scarce support dollars requires a more competitive process to achieve optimal distribution of both funding and expanded service. Simply put, competition for financial support will allow more projects to receive support. And contrary to the objections of incumbent carriers that such a process must necessarily be complicated and time-consuming, the Commission has substantial expertise in setting up simple auctions, so that such a program can be implemented quickly and easily.

### **Conclusion**

For the reasons it has described in this proceeding, WISPA urges the Commission to abandon the unsuccessful “100% overlap” challenge process, and adopt a simple reverse auction mechanism that makes support available to a significantly broader range of providers once a 50% competitive benchmark is reached, thereby making funding available to more service providers on a more efficient and cost-effective basis.

Respectfully submitted,

**WIRELESS INTERNET SERVICE  
PROVIDERS ASSOCIATION**

By: /s/ Claude Aiken  
Claude Aiken, President/CEO

Stephen E. Coran  
David S. Keir  
Lerman Senter PLLC  
2001 L Street, NW, Suite 400  
Washington, DC 20036  
(202) 416-6744  
*Counsel to the Wireless Internet Service Providers Association*

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