Hamilton County Telephone Co-op

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August 23, 2016

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 10-90
Hamilton County Telephone Co-op A-CAM Challenge
Notice of *Ex Parte*

Dear Ms. Dortch:

Hamilton County Telephone Cooperative ("Hamilton" or the "Company") hereby files this notice of written *ex parte* to discuss a recent decision by the Wireline Competition Bureau ("WCB") and to bring attention to what Hamilton believes was an egregious and flawed rational in the Alternative Connect America Model ("A-CAM") challenge process.[1] Hamilton held *ex parte* calls with Commissioner staff[2] prior to the release of the Order to argue its case, but the WCB would not accept requests for meetings on this matter. As such, Hamilton wishes to reiterate why it feels that its challenge should have been granted.

Hamilton filed an A-CAM challenge on April 28, 2016 against Wisper ISP, Inc. ("Wisper"), a fixed wireless ISP. In Hamilton's challenge, the Company made extensive arguments and provided detailed data that categorically demonstrated that Wisper's June 2015 Form 477 contained extensive and material inaccuracies.[3] Hamilton diligently analyzed it's A-CAM results in the previous versions of the model, but only in version 2.2 did Wisper's fixed wireless broadband service "knock out" over two thousand locations from A-CAM eligibility. Upon this realization, Hamilton reached out to Wisper to discuss the issue, and a series of conversations were held where it appeared that Wisper was willing to revise its Form 477 to more accurately reflect its coverage. However, while Wisper conveyed an intent to revise its Form 477,

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[1] *In the Matter of Connect America Fund,* Order, WC Docket No. 10-90, DA 16-842, rel. July 25, 2016 ("A-CAM Challenge Order").

[2] *See* Letter from John Kuykendall, Vice President, JSI to Marlene H. Dortch, Secretary, *Ex Parte* Presentation in WC Docket No. 10-90 dated June 20, 2016. Additional *ex parte* notices were filed on July 5, 2015, and July 8, 2016.

[3] *Connect America Fund, Challenge Process to Competitive Coverage in the Alternative Connect America Cost Model (A-CAM),* WC Docket No. 10-90, Comments of Hamilton County Telephone Co-operative (filed April 28, 2016).

no evidence was ever provided by the company to confirm this action, thus prompting Hamilton to file its April 28 challenge.

In laying out its foundation for consideration of the challenges filed, the WCB articulated a standard that challengers must demonstrate that "it is more likely than not that the Form 477 data utilized in v2.2 is incorrect"[4] (emphasis added). The burden was on the filer to make a showing that no locations in a challenged block were served by a competitor. As summarized below, the information submitted by Hamilton went well beyond the more likely than not standard, and illustrated categorically that the 477 submitted by Wisper was fundamentally inaccurate. Specifically, Hamilton lost eligible locations, and hence access to critical funding that would have both broadened and accelerated broadband deployment despite categorical evidence reflecting the following:

- Written statements from Wisper's sales group categorically stating service was not available in areas represented to be covered in Wisper's 477.
- Written statements made by Wisper's CTO surrounding system capacity limitations which were confirmed by independent tests of actual equipment used by Wisper in Hamilton's service territory. As reflected in Hamilton's challenge, such categorical limitations allow for a maximum serviceable customer base of 240. As noted in its challenge, despite a 240 customer limitation, Wisper's 477 eliminated 586 census blocks. Even assuming Wisper had the signal to reach all the customers identified in its 477 (which it does not), based on written statements by its own CTO, its network is not capable of serving even ½ of the census blocks eliminated using the operative 1 customer per census block standard.
- Extensive drive tests and a detailed engineering study conducted and certified by an independent third party engineer definitively illustrating that, due to limited tower locations (as provided by Wisper itself) combined with the terrain and topology characteristics present, a lack of sufficient signal dramatically reduced Wisper's serviceable footprint vis a vis the coverage represented in the company's 477.

In light of the evidence submitted by Hamilton in conjunction with its filing and summarized in part above, it is incomprehensible how the WCB concluded that Hamilton failed to meet the FCC's threshold of a more than likely chance that Wisper's 477 was inaccurate. Hamilton used statements and data flowing directly from information provided by Wisper as the basis for its case which, in turn, provided incontrovertible evidence that actual service capabilities were fundamentally different than those represented in the company's 477.

As noted in its challenge, Chairman Wheeler stated the ACAM was designed to allow companies behind in their broadband deployments the opportunity to catch up. As an average schedule company with nominal levels of 10/1 service deployed, the denial of Hamilton's challenge has dramatically impacted its ability to broaden and accelerate broadband deployment. As such, the ruling, at least in Hamilton's case, is at odds both with the policy intent articulated by the Commission in its creation of the ACAM mechanism, and the standard outlined by the WCB governing the consideration of challenges filed.

In closing, Hamilton believes that based on the foregoing, the WCB's ruling was fundamentally flawed, and points to the fact that more attention and consideration of the ample evidence

[4] A-CAM Challenge Order at ¶ 9.

submitted by the Coop was warranted. Hamilton attempted to discuss its evidence and the basis for its challenge with the WCB, but offers to engage via an *ex parte* discussion were rejected.

With this letter, Hamilton hopes to draw attention to the fact that the process of rejecting Hamilton's challenge was flawed and lacked the full benefits that *ex parte* discussions with the WCB could have had in resolving the challenge in a more thoughtful and logical way. Such procedural infirmities have contributed to an outcome that will negatively impact the scope and speed of Hamilton's Broadband deployment capabilities, and by extension, the rural consumers the Cooperative serves.

Please direct any questions regarding the filing to the undersigned.

Sincerely,

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