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Executive Summary

We believe that any potential “unsubsidized competitor” should be required to file a petition at the state level that would contain at a minimum three basic elements: certification requirements, performance metrics, and subsidy tests.

We agree with the commenters who recommended the Commission reject the use of a 3 Mbps/768 kbps proxy. We support the concept offered in the Public Notice of a 6 Mbps/1.5 Mbps proxy.

To meet the standard of achieving a data-driven process, we agree with NTCA, et al that there “*is no basis for affording such a presumption to any would-be competitor. Indeed, the Bureau has cited no evidence whatsoever for affording such a presumption, and it would be the antithesis of ‘data-driven’ decision-making to give any one sector . . . such a ‘free pass.’*”

Our concern with a review of the instant Public Notice is that it provides a large segment of the industry (cable) a virtual free pass from providing substantiation for possible unfounded assertions, and relies heavily on an inaccurate and yet to be refined and tested National Broadband Map. This provides a poor basis to move forward with a transparent, data-driven platform.

The Commission sits on the proverbial launch pad, and must decide whether to relegate rural customers to second class service, or whether to fire the thrusters toward a long-term solution that meets both the federal laws still on the books from the Telecommunications Act of 1996 and the arbitrary and court-challenged fund restrictions emanating from the 2011 Transformation Order.

INTRODUCTION AND BACKGROUND

GVNW Consulting, Inc. (GVNW) submits reply comments filed pursuant to the Commission's Public Notice (DA 13-284), released on February 26, 2013. In the instant Public Notice, the Wireline Competition Bureau seeks further comment on issues regarding the service obligations and identification of unsubsidized competitors for purposes of Connect America Fund (CAF) Phase II support.

GVNW is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, intercarrier compensation reform, and strategic planning for communications carriers in rural America. We are pleased to have the opportunity to offer reply comments addressing the issues the Commission has raised in the *Public Notice*, focusing on issues for rural carriers.

PUBLIC POLICY GOALS SHOULD BE WELL DEFINED

As the Commission analyzes the issues in this important proceeding, we respectfully request that the needs of all customers, including those in the most extreme areas, be recognized. An appropriate public policy approach for this issue is to ensure a more robust process to confirm the extent to which unsubsidized competitors operate in a given territory. The flaw in an incomplete process is if it fails to capture with precision the extent to which a competitor offers a meaningful alternative.

Our concern with a review of the instant Public Notice is that it provides a large segment of the industry (cable) a virtual free pass from providing substantiation for possible unfounded assertions, and relies heavily on an inaccurate and yet to be refined and tested National Broadband Map. This provides a poor basis to move forward with a transparent, data-driven platform.

The Commission faces some important decisions in this docket. We encourage the Commission to consider the needs of all customers, including customers that live in high-cost to serve areas, as policies related to unsubsidized competitors are developed.

AN EVIDENTIARY-BASED PROCESS IS NEEDED IN THIS MATTER

Permeating the Public Notice are questions as to how the deliberations should consider assertions made by would-be competitors with regard to their presence in carrier markets.

We agree with the opinion expressed by NTCA – the Rural Broadband Association, The National Exchange Carrier Association, Inc., The Eastern Rural Telecom Association, and the Western Telecommunications Alliance (NTCA, et al) as noted at page 2 of their filing: *Specifically, nothing less than a meaningful and evidence-based process must be applied at each turn – **without short-cuts** – if the Commission is to fulfill its statutory universal service responsibilities to rural consumers. (Emphasis added)*

What would such a process look like? We believe that any potential “unsubsidized competitor” should be required to file a petition at the state level that would contain¹ at a minimum three basic elements: certification requirements, performance metrics, and subsidy tests.

1) Certification requirements. Establish that the carrier is properly certified with the state or has current eligible telecommunication carrier status, that it stands ready to meet all public interest obligations, and that it is capable of complying with any reporting, service monitoring, and accountability requirements as the USF recipient for the area in question.

¹ This is similar to the proposal offered by the Rural Associations in this docket on January 9, 2013 and reiterated in footnote 3 of their comments in this instant Public Notice. We have characterized the requirements as being included in three categories and added the affidavit requirement.

2) Performance metrics. Include as a part of its filing speed tests that substantiate that it can deliver on the date of the petition both voice and broadband service at speeds of at least 4Mbps down/1 Mbps up, as well as meet latency tests and usage limits per the Commission’s performance standards for all of the residential and business locations in the proposed competitive zone. The service must be provisioned by the entity on a stand-alone basis without a contractual commitment, using its own facilities in whole or substantial part, in a manner comparable to the relevant USF recipient, at a reasonably comparable rate level.

3) Subsidy Tests. Include as a part of its filing an affidavit that it neither receives high-cost support of any kind and does not cross-subsidize its operations in the proposed study area with revenues from other sources or areas of operation.

As NTCA et al point out at page 2 of their comments, *“the Bureau should take further steps to implement an evidentiary-based process that takes more true account of the very issues discussed in its most recent Public Notice – such as the availability of both broadband and voice service, the prices for such services, and the quality of service in each instance.”*

INITIAL THRESHOLDS ARE KEY FOR RURAL AREAS

At paragraph 9 of the Public Notice, the Bureau seeks input on what speed threshold should be utilized as a proxy for a 4 Mbps/1Mbps broadband service as a part of the process of identifying census blocks served by competitive providers.

We agree with the commenters who recommended the Commission reject the use of a 3 Mbps/768 kbps proxy. For example, NTCA et al suggest at page 8 of its filing that

this proposal be “*summarily rejected.*” As Alaska Communications Systems (ACS) states at page 2 of its filing: “*setting the eligibility threshold at the lower 3 Mbps downstream/768 kbps upstream speed that is captured in the NBM will relegate many customers in Alaska to sub-standard service.*” The Independent Telephone & Telecommunications Alliance (ITTA) observes at page 4 of its comments that it is “*encouraged that the Bureau now recognizes the significant shortcomings of a 3 Mbps/768 kbps proxy and is proposing instead that a 6 Mbps/1.5 Mbps threshold proxy be used.*” And as the United States Telecom Association (US Telecom) notes at page 4 of its filing: “*Using 3/768 as a proxy for developing the list of census blocks as unserved by an unsubsidized competitor offering service that meets the broadband performance obligations for CAF Phase II potentially excludes from funding eligibility some high-cost areas that lack access to 4/1 service from either the incumbent or an unsubsidized competitor.*”

We support the concept offered in the Public Notice of a 6 Mbps/1.5 Mbps proxy. As the California Public Utilities Commission and the People of the State of California note at page 5 of its filing: “*the CPUC recognized that the common uses of Internet access had changed and that using the benchmark of 6 Mbps/1.5 Mbps would better support popular capabilities such as streaming video.*”

PRESUMPTIONS ARE CONTRARY TO DATA DRIVEN POLICIES

The Commission has repeatedly stressed its desire to use a transparent, data-driven process to develop telecommunications public policy. If it is to achieve this standard, it must be very careful in the assumptions it uses that are not supported by empirical data.

We believe that the Commission has missed the mark for a data-driven process with the statement it offers in footnote 19 of the Public Notice: *“Thus, while we would assume that a cable provider that meets the speed threshold also would meet the price, capacity, and latency requirements discussed below, this is a rebuttable presumption.”*

To meet the standard of achieving a data-driven process, we agree with NTCA, et al at pages 6 and 7 of its filing that there *“is no basis for affording such a presumption to any would-be competitor. Indeed, the Bureau has cited no evidence whatsoever for affording such a presumption, and it would be the antithesis of ‘data-driven’ decision-making to give any one sector . . . such a ‘free pass.’ . . . As a statutory principle, ‘reasonable comparability’ should not be contingent upon guesswork, conjecture, ‘check-the-box’ use of incomplete and at least partially inaccurate databases, and/or limited access to certain service characteristics that any given sector of the industry almost certainly holds proprietary. . . Instead, the Commission should require all providers – whether fixed wireline or fixed wireless – to make the same meaningful affirmative evidentiary showing that they meet the necessary speed, latency, capacity and price criteria.”*

There has been ample discussion about the level of problems with the current results of the National Broadband Mapping (NBM). While that process is refined, would-be competitors should be required to make affirmative showings that their data is supportable and correct.

GVNW Consulting, Inc.
Reply Comments in WC Docket No. 10-90 – Unsubsidized Competitors Issues in CAF Phase II
April 12, 2013

Respectfully submitted,

Via ECFS at 4/12/13

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