

broadband service, with voice service being offered by another unsubsidized entity.⁵ The Bureau lacks authority to change the definition, which was explicitly stated by the Commission in the USF/ICC Transformation Order (“Transformation Order”)⁶ as an entity that provides both voice and broadband service. Moreover, delinking the provision of voice and broadband service as proposed by WISPA would be entirely inconsistent with the reform framework the Commission has adopted, and would increase the likelihood that areas will be left without access to fixed broadband and voice service.

A. The Bureau Does Not Have the Authority to Change the Definition

The definition of an “unsubsidized competitor, which is found in Section 54.5 of the Commission’s Rules⁷ adopted in the Transformation Order, is very clear. “An “unsubsidized competitor” is *a facilities-based provider of residential fixed voice and broadband service that does not receive high-cost support.*”⁸ There can be no doubt that the rules require a single provider to offer both voice and broadband.⁹ WISPA acknowledged as much in its Petition for Partial Reconsideration of the Transformation Order, in which it noted that both Section 54.5 of

⁵ While WISPA asserts that three entities – ViaSat, Inc., NTCH, Inc. and WISPA – filed separate petitions for reconsideration requesting revision or clarification of the definition of “unsubsidized competitor” back in December 2011,⁵ neither ViaSat nor NTCH addressed the issue raised here by WISPA. Even if the Commission acted on the NTCH and ViaSat petitions as WISPA requests,⁵ such action would not resolve the instant issue.

⁶ See *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96- 45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service – Mobility Fund*, WT Docket No. 10-208, Report and Order and FNPRM, 26 FCC Rcd. 17663 (2011), *pets. for review pending*, *Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (“*USF/ICC Transformation Order*” or “*Order*”).

⁷ 47 C.F.R. § 54.5.

⁸ Emphasis added.

⁹ *USF/ICC Transformation Order* at ¶ 103.

the Commission’s rules and the Transformation Order “appear to require that both the voice and the broadband service components be provided by the same existing entity.”¹⁰ The Bureau properly implemented the rule in the *R&O*, and it does not have the authority to change the rule.

If the Bureau were to alter the definition of unsubsidized competitor, it would also contravene the explicit language of the Transformation Order which states that the Commission “[w]ill revisit the definition of “unsubsidized competitor” as warranted. *Recognizing the benefits of certainty, however, we do not anticipate changing the definition for the next few years.*”¹¹ As the Commission correctly reasoned, changing the definition of unsubsidized competitor would be extremely disruptive to the upcoming challenge process as well as the planning work being done by potential recipients of CAF Phase II funding, be they incumbent wireline providers or others seeking to bid in states in which the incumbent declines to elect the statewide commitment.

B. Delinking the Provision of Voice and Broadband Service is Not Consistent with the Commission’s Reform Framework

Moreover, delinking the provision of voice and broadband service as proposed by WISPA would be entirely inconsistent with the reform framework the Commission has adopted. Rather than declaring that both voice and broadband are supported services, the Commission has chosen to retain voice as the lone supported service, and require carriers to provide broadband service as a condition of receiving support for the provision of voice service. Moreover, the Commission left in place existing state Carrier of Last Resort (“COLR”) obligations and thus far

¹⁰ See Petition for Partial Reconsideration of the Wireless Internet Service Providers Association at pp. 4-5, *In the Matter of Connect America Fund* (WC Docket No. 10-90), *A National Broadband Plan for Our Future* (GN Docket No. 09-51), *Establishing Just and Reasonable Rates for Local Exchange Carriers* (WC Docket No. 07-135), *High-Cost Universal Service Support* (WC Docket No. 05-337), *Developing an Unified Intercarrier Compensation Regime* (CC Docket No. 01-92), *Federal-State Joint Board On Universal Service* (CC Docket No. 96-45), *Lifeline and Link-Up* (WC Docket No. 03-109) and *Universal Service Reform – Mobility Fund* (WT Docket No. 10-208), filed December 29, 2011.

¹¹ See *USF/ICC Transformation Order* at ¶ 104. Emphasis added.

has made no changes to existing federal eligible telecommunications carrier (“ETC”) obligations. To permit providers that offer only an unsupported broadband service to block support for providers that remain subject to voice COLR and ETC obligations would result in a massive mismatch between obligations and support, undermine the entire framework the Commission has constructed, and potentially lead to widespread disengagement by local exchange carriers (“LECs”) in the high-cost areas they currently serve.

Ironically, this result also could deter the future entry of new broadband competitors like WISPs in high-cost areas, as these competitors often rely on wireline LECs for second- and middle-mile access. Indeed, even WISPA has repeatedly noted the need for backhaul, which is often supplied by the incumbent LEC in the area, in these proceedings.¹² By creating a regime in which the presence of a fixed wireless broadband provider in an area can block an incumbent LEC from receiving high-cost support, the Commission would be undermining future deployment and use of middle-mile facilities on which many non-LEC broadband providers depend.

C. An Unsubsidized Competitor Should be Prepared to Stand in the Place of the Unfunded Incumbent

Though the Commission has not yet reevaluated ETC obligations in light of its significant reforms to the high-cost program, it is a logical outgrowth that the lack of funding for an incumbent ETC in an area served by an unsubsidized competitor should relieve the incumbent of both its ETC and carrier of last resort responsibilities. If the unsubsidized competitor who is blocking the incumbent from receiving high-cost support fails to offer both voice and broadband

¹² See, e.g., Comments of the Wireless Internet Service Providers Association, CC Docket Nos. 01-92 and 96-45, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, and WT Docket No. 10-208, at 5-6 (January 18, 2012); Letter from Stephen E. Coran, counsel for WISPA, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92 and 96-45, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, and GN Docket No. 09-51, at 2 (June 6, 2011).

service, however, it is not able to “step into the place of” the incumbent. Therefore, if the incumbent decides to no longer serve the area, perhaps because it is no longer economically viable for it to do so, consumers may be left without access to a single provider of voice and broadband service. Though consumers might be able to subscribe to voice service from one provider and broadband services from another, they would lose the option to purchase both as a bundled service, which might offer favorable pricing. In short, the change WISPA is seeking would harm consumers by limiting their choices and increasing the likelihood they will be left without adequate service.

In addition, it must be noted that WISPA’s members are largely fixed wireless broadband providers who, they claim, *choose* not to provide voice services so they can avoid regulation under Title II.¹³ In other words, WISPA is seeking a regime whereby fixed wireless broadband providers would be able to block carriers from receiving CAF support in areas that those fixed wireless providers serve as long as a terrestrial fixed voice provider also serves the area without a subsidy. It is not competitively neutral to require incumbent ETCs to receive support in exchange for providing voice and broadband service while permitting the denial of that support in areas in which an unsubsidized competitor provides only one of those services.

D. Not Requiring an Unsubsidized Competitor to Provide Both Voice and Broadband Will Result in More Unserved Areas Being Classified as Served

Finally, permitting the alleged presence of a fixed wireless provider’s broadband service (without accompanying voice service) to block a carrier from receiving support in a given area will result in more unserved areas being depicted as “served”—and more consumers stranded

¹³ See Petition for Partial Reconsideration of the Wireless Internet Service Providers Association, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, at 7 (December 29, 2011) (noting that “in some rural and hard-to-serve markets, WISPs find the cost of incurring additional Title II regulations would exceed the benefits of deploying and providing voice services to customers”).

without access to any adequate broadband service. The National Broadband Map (NBM), on which the Commission may choose to rely to determine the presence of an unsubsidized competitor, overstates broadband coverage by fixed wireless service. The National Broadband Map shows that some fixed wireless providers overstated their service areas by claiming that they offer service to all locations within the radius of their towers despite the fact that they are using line-of-sight technologies that produce service areas that are variegated like the service areas submitted for the National Broadband Map by other providers using the same technologies.

II. Changing the Evidentiary Standard Governing the Challenge Process Will Result in a Less Fair and Accurate Result

The Bureau has adopted a reasonable standard to decide the status of a census block -- whether it is “more likely than not” that a census block is inaccurately classified as served or unserved.¹⁴ Merely because the initial determination as to the status of the census block is reflected in the NBM does not add any weight or credibility to that determination.

The current evidentiary standard and procedures were developed with two goals in mind—ensuring the highest possible level of accuracy while striving for an expeditious resolution that allows for the speedy implementation of CAF Phase II. Moreover, given that the rules developed here will have a significant long-term impact on the state of broadband deployment in price cap areas, the Bureau is appropriately guided by the principle that these procedures should err on the side of being inclusive rather than potentially leaving unserved areas with no hope for relief in the foreseeable future.

Establishing an accurate list of census blocks that should be eligible for CAF Phase II support is essential for the operation of the Connect America Cost Model, the incumbent LEC statewide Commitment process and the auctions that potentially succeed that commitment

¹⁴ See *R&O* at ¶ 21 and n. 48.

process. Census blocks that are excluded from support because of the alleged or actual presence of an unsubsidized provider will forego universal service for five years or more. Moreover, the existence of flaws in the data underlying the NBM is undisputed. Corrections to the status of areas for the CAF Phase I mechanism involved tens of thousands of census blocks.¹⁵ In light of the Commission's reliance on the NBM as an initial screen, a "more likely than not" standard is appropriate, and WISPA's proposed heightened evidentiary standard would result in a greater level of inaccuracy in making the important determination of the presence of an unsubsidized competitor due to its reliance on the NBM. That would be unfair to both potential CAF Phase II recipients and the consumers in the areas implicated.

III. Conclusion

The Bureau should deny both requests by WISPA and promptly move ahead with implementation of all elements of CAF Phase II, including the challenge process as currently structured by the *R&O*.

Respectfully submitted,

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August 7, 2013

¹⁵ See letter of Mary McManus, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, re Areas Shown as Unserved on The National Broadband Map for Connect America Phase I Incremental Support, Connect America Fund, WC Docket No. 10-90, (January 24, 2013).