



adopted may influence the processes and procedures for funding in purportedly competitive areas served by smaller rural carriers.

**I. THE COMMISSION SHOULD NOT ELEVATE THE EVIDENTIARY STANDARD FOR CHALLENGING A DETERMINATION OF SERVED OR UNSERVED AREAS.**

WISPA requests that the Commission reconsider the process by which carriers and existing broadband providers could challenge the status of the National Broadband Map's depiction of a census block as either "served" or "unserved." It asks that the Commission force challengers to prove that an area is not served by "clear and convincing evidence" rather than the "more likely than not" standard that was adopted. WISPA's approach would therefore place the entire burden on the party lacking the evidence to meet the burden, rather than the parties in the best position to defend their submissions to the National Broadband Map ("NBM") as to specific locations and census blocks served. In other words, WISPA's proposal puts would-be challengers in the impossible position of having to prove a negative with evidence that alleged competitors might or might not make publicly available. It would be virtually impossible to meet the WISPA proposed evidentiary standard.

Indeed, substantial reliance on the National Broadband Map ("NBM") for factual determinations of this kind is unjustified. There is much on the record demonstrating that the mapping tools and data upon which this process would rely are unreliable. A series of flaws and erroneous reporting may lead the mapping data to simultaneously overstate broadband coverage in some areas and understate it in others. At best, the NBM is useful in determining where an area might be served. The "challenge process" adopted by the Bureau is woefully insufficient to ferret out false or imprecise indications or omissions of meaningful competitive presence and the need for support, or lack thereof, in a given area.

In light of the foregoing, if anything, the Bureau’s process gives substantial benefit-of-the-doubt to would-be “unsubsidized competitors” by compelling others to disprove self-reported and unsubstantiated coverage on the NBM. The statutory mandate of universal service requires more than reliance on flawed, dated, and incomplete mapping database that is subject to correction only through a challenge process. A more precise, robust and disciplined process should be triggered at the request of a would-be competitor. Rather than forcing challengers to “prove a negative” with respect to the absence of effective competition, the burden should be on the would-be unsubsidized competitor to make the necessary showings as to the scope and extent of its service offerings. The competitor should be required to aver and show in a petition to a state commission that at a minimum:

1. It is a state-certified carrier or ETC (to ensure adequate opportunity for regulatory and consumer advocate oversight);
2. It can satisfy any public interest obligations required of a USF recipient (to ensure continuing service quality);
3. It can deliver, as of the filing of the petition, both voice telephone service and the required broadband speeds and with latency and usage limits that meet the Commission’s broadband performance requirements through the use of its own or in substantial part and in a manner comparable to the relevant USF recipient (fixed or mobile).<sup>3</sup> A fixed service can be either fixed wired or fixed terrestrial wireless. A fixed terrestrial wireless

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<sup>3</sup> As the Bureau recognizes, a party cannot be considered an “unsubsidized competitor” unless it offers a meaningful substitute, including latency, usage, and other pricing and service characteristics. See, *Wireline Competition Bureau Seeks Further Comment on Issues Regarding Service Obligations for Connect America Phase II and Determining Who Is an Unsubsidized Competitor*, WC Docket No. 10-90, Public Notice, 28 FCC Rcd 1517, ¶ 20 (Wireline Comp. Bur. 2013).

service should be defined as one that does not support roaming and requires a fixed ground station transmitting to a fixed transceiver located at the customer's premises;

4. It offers each of those broadband and voice services on a stand-alone basis on a month-to-month basis at rates that are reasonably comparable to those offered by the USF recipient (to ensure affordability of rates for consumers);
5. It will comply with all of the same reporting, service monitoring and other "accountability requirements" as the USF recipient for the area in question (to ensure a continuing ability for the Commission to monitor service quality and ensure that the state and the Commission are aware to the extent that the competitor no longer serves the entire market in the manner presented in the initial petition); and
6. It neither receives high-cost support of any kind NOR cross-subsidizes its operations in the specific, affected study area with revenues from other areas of operation or sources. Any competitor seeking to establish that it provides unsubsidized competition should be required to present evidence demonstrating that the area is indeed "economic" of its own accord and can support a stand-alone business plan.

Once such a petition has been filed, the USF recipient whose support would be affected by the purported presence of unsubsidized competition should then be given the opportunity to rebut or otherwise address the competitor's showing.

It is essential as a matter of public policy and the statutory mandate of universal service, that a more robust and carefully designed process based upon objective and complete data be employed in assessing the purported presence of “unsubsidized competition.” Presumptions of service and service quality based on maps with known flaws and self-reported data do not provide a complete record by which the Bureau or Commission can judge whether support for a carrier should be awarded or modified and does nothing to ensure that consumers have the opportunity to enjoy quality and affordable voice and broadband services.

**II. DECLINED PHASE I FUNDS SHOULD BE USED TO FILL IMMEDIATE NEEDS RATHER THAN BEING HELD FOR USE IN A STILL-TO-BE-DEFINED REMOTE AREAS FUND THAT WOULD RELEGATE EVEN MORE CONSUMERS TO SUBSTANDARD BROADBAND AND PERHAPS NO VOICE SERVICES.**

In its Petition, WISPA urged the Commission to apply funds declined in the first round of CAF Phase I funding to the RAF, rather than including it in a second funding round. The second round of Phase I applications have been received and now that the process is winding down, the Commission is in a better position to know exactly what funds remain. Rather than holding those funds over for the distant and still-unclear contours of a Remote Areas Fund, the Commission should hold firm to a commitment to put those funds “to work” as soon as possible, so that as many consumers as possible will have sustainable access to a network capable of offering affordable quality voice and broadband services.

**III. CONCLUSION**

For the above referenced reasons, the Commission should deny the Wireless Internet Service Providers Association’s Petition for Partial Reconsideration as it relates to elevating the

evidentiary standard for challenges to the National Broadband Map and using unclaimed funds for the Remote Area Fund.

Respectfully submitted,



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