



further steps to ensure that the process of identifying true competitive overlap in 100 percent of any individual RLEC study area is at every turn data-driven and tied to a thorough analysis, consistent with the rule, as to *specific locations* within each study area at issue.

More specifically, comments filed in response to the Public Notice demonstrate that reliance on Form 477 deployment data, which formed the foundation of determinations of 100 percent competitive overlap identified in the Public Notice, is all but certain to lead to “false positives” in identifying unsubsidized competition. Indeed, comments filed by purported unsubsidized competitors in response to the Public Notice shine a spotlight on the limits of Form 477 deployment data. For example, at least one commenter attempts to dodge the very question of whether they serve specific locations, effectively reaffirming nothing more than that they serve “in the area” as stated on their Forms 477.<sup>4</sup> By contrast, others have been more diligent in examining the data and forthright in acknowledging the limitations of that data. For example, RCN notes that its review found that “the Bureau's determination appears to be incorrect to the extent that the Bureau relies only on the RCN deployment file and assumes that RCN served blocks constitute a 100% overlap with Ironton.”<sup>5</sup> RCN further notes that “it does not offer service to all possible locations within the blocks in RCN's deployment file.”<sup>6</sup> Comcast similarly notes that while Form 477 data show its deployment to the census blocks at issue, it does not offer service to each individual location within those census blocks.<sup>7</sup> Additionally, from the

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<sup>4</sup> Comments of Cablevision WC Docket No. 10-90 (fil. Aug. 28, 2015), p. 3.

<sup>5</sup> Comments of RCN Telecom Services (Lehigh) LLC, WC Docket No. 10-90 (fil. Aug. 26, 2015), p. 1.

<sup>6</sup> *Id.*

<sup>7</sup> Comments of Comcast Corporation, WC Docket No. 10-90 (fil. Aug. 28, 2015), p. 1.

perspective of rate-of-return carriers identified as overlapped by the Public Notice, Gervais Telephone, *et al.*,<sup>8</sup> demonstrate that reliance on 477 data for a determination of 100 or 99 percent competitive overlap does not yield accurate results in terms of the unsubsidized competitor's ability to serve each individual location.

NTCA therefore urges the Commission to take a more granular approach that moves beyond data provided via Form 477 and, consistent with the express nature of the rule at issue, to tie instead the analysis in this proceeding to the availability of voice and broadband service meeting robust performance metrics at individual locations. Reliance on Form 477 data alone, even if such data are certified, is insufficient to implement the rule precisely because the Form 477 data capture materially different information and are intended for a different purpose than the location-based rule actually requires. Put another way, Form 477 data can be instructive, but such data is hardly dispositive. To validate the applicability of Form 477 assertions in the context of the present rule, such data must be "backed up" by additional critical information. Specifically, as NTCA noted in initial comments, this should include data not captured by Form 477, specifically data and certifications demonstrating:

- a. that quality fixed terrestrial facilities-based voice service is available to each individual location, including but not limited to reliable and resilient voice service meeting performance standards of the kind that the Commission has expressly indicated are expected of any provider delivering fixed voice services to any consumer;
- b. that voice service is available to each location on a standalone basis at reasonably comparable rates, such that consumers are not compelled to procure more expensive "service bundles" to obtain access, for example, to 911 and E-911;
- c. that fixed terrestrial facilities-based broadband service is available to each location at rates that are reasonably comparable and that otherwise meet or exceed all applicable

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<sup>8</sup> Comments of Gervais Telephone Company, Monitor Cooperative Telephone Company, Mt. Angel Telephone Company, and St. Paul Cooperative Telephone Association, WC Docket No. 10-90 (fil. Aug. 28, 2015), p. 4.

performance metrics with respect to broadband, including but not limited to latency and the achievement of actual speed thresholds;

d. a reasonable written explanation to justify any claim with respect to the ability to have service up and running within 7 to 10 business days of a service request to each location in the relevant study area without special construction charges;

e. to establish its “facilities-based” nature, written confirmation that the competitor does not utilize last-mile facilities leased from the affected RLEC to enable service to any location and;

f. in terms of broadband speeds “offered,” competitors should be required to confirm the achievement of actual speeds delivered to consumers in the affected study areas.<sup>9</sup>

As to that last point, the Public Notice states that advertised speeds—provided on Form 477—will be used as a proxy for actual speeds. On this, and with respect to each of the items listed above, the limitations as to Form 477 data discussed above demonstrate the danger with respect to such an approach, as reliance on affirmations of previously self-reported deployment data may lead to “false positives” absent additional investigation and necessary data. While the use of Form 477 may have been useful in initially identifying companies listed in the Public Notice, as the Public Notice itself seems to recognize in calling for filings from competitors,<sup>10</sup> the final determination of 100 percent competitive overlap requires a more data-driven final determination based upon more relevant data provided by the would-be competitor. Only by obtaining such additional information from competitors—those in the best position to provide

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<sup>9</sup> The Commission must also consider that while a fixed wireless broadband provider may indicate on Form 477 or otherwise that it can serve all individual locations meeting these performance metrics, the technical limitations of such technology may prevent consumers from receiving such actual speeds. *See*, Vantage Point Solutions, *Wireless Broadband is Not a Viable Substitute for Wireline Broadband*, March 2015 (“Since the access portion of a wireless network is shared by many users, each user’s network speed and available capacity declines as more users attempt to use the network.”). available at: <https://www.ntca.org/images/stories/Documents/Advocacy/ExParteLetters/03.10.15%20ntca%20submits%20wireless%20technical%20paper,%20wc%2010-90%20and%2005-337.pdf>

<sup>10</sup> Public Notice, ¶ 20.

it—can the WCB ensure that “false positives” do not leave rural consumers without access to reasonably comparable voice and broadband service.

Respectfully Submitted,

**NTCA—THE RURAL BROADBAND ASSOCIATION**

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