



May 11, 2016

Ex Parte Notice

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Connect America Fund, WC Docket No. 10-90

Dear Ms. Dortch:

This letter is submitted on behalf of NTCA–The Rural Broadband Association (“NTCA”) with respect to the many “competitive challenge”-related filings recently made in connection with potential Alternative Connect America Cost Model (“A-CAM”) offers and elections in the above-referenced docket.

Although the Federal Communications Commission (the “Commission”) adopted a robust evidentiary process and more detailed standards for the identification and validation of would-be unsubsidized competitors in the context of non-model support,¹ the Commission provided for a much more “streamlined” challenge process for purposes of refining the A-CAM for final model offers.² This process appeared largely aimed in the first instance at allowing *competitors* to update their coverage data “to ensure that support is not provided to overbuild areas where another provider already is providing voice and broadband meeting the Commission’s requirements,” although the Commission indicated it would also consider filings from others seeking “to challenge the coverage data or provide other relevant information.”³

¹ See *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking (rel. March 30, 2016), at ¶¶ 116-145.

² See *id.* at ¶¶ 70-71.

³ *Id.* at ¶ 71.

The Commission received numerous filings in response to this invitation to submit “challenges” and “other relevant information.” As the Wireline Competition Bureau (the “Bureau”) pores over these submissions – many of which contain detailed data, including engineering studies – NTCA believes it is important that the Bureau thoughtfully weigh, even within the context of a “streamlined” process, the evidence submitted against the standards for determining the presence of unsubsidized competition. Specifically, even if there is a desire to treat the Form 477 data as presumptive in finalizing A-CAM model offers, one cannot overlook clear evidence in the record indicating that certain Form 477 data are simply inaccurate or imprecise in measuring the presence of competition. Several examples are particularly worthy of highlighting in this regard.

First, there are a number of challenges in which filers provide evidence that a would-be competitor does not actually offer voice service within the census block in question.⁴ To rely blindly upon the Form 477 data – which only reflects fixed voice service subscriptions somewhere within the much larger census tract or even the state⁵ – in the face of such data would constitute a “false positive” and deny the availability of A-CAM universal service support to the detriment of the consumers in the affected census block(s). Indeed, given the very high significance that the Commission has placed on the continued availability of voice services in other contexts,⁶ it would be an odd juxtaposition for the agency to ignore entirely evidence that a competitor is *not* offering voice to consumers in a given census block in fulfillment of the missions of universal service and public safety. Even in the relatively streamlined process established for consideration of challenges under the price cap model, the Bureau examined the actual offering of voice in a census block where such information was presented, in lieu of relying merely upon the checking of a box on Form 477 that provides no reassurance of such a truly localized offering.⁷ It is therefore

⁴ See, e.g., *Ex Parte* Letter from Donald D. Miller, CEO, Northwest Communications, Inc., to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed April 27, 2016); Competitive Challenge of Shawnee Tel. Co., WC Docket No. 10-90, *et al.* (filed April 27, 2016), at 3-4; Challenge of Inter-Community Tel. Co., LLC, WC Docket No. 10-90 (filed April 28, 2016), at 3-6.

⁵ See FCC Form 477 Local Telephone Competition & Broadband Reporting Instructions at 12, 19.

⁶ See, e.g., *Ensuring Continuity of 911 Communications*, PS Docket No. 14-174, Report and Order (rel. Aug. 7, 2015), at ¶ 1 (finding that backup power rules must be adopted to “ensure continued public confidence in the availability of 911 service by providers of facilities-based fixed, residential voice services in the event of power outages”).

⁷ See *A Basic Guide to the Challenge Process*, at 3, available at: <https://www.fcc.gov/general/connect-america-phase-ii-challenge-process> (noting that while Form 477 data were used to establish an initial list of eligible census blocks, these were “merely assumptions” that could be contested and highlighting in particular that census block-level data related to the availability of voice was not available).

essential as a matter of universal service *and* public safety policy that the Commission and the Bureau likewise take careful account here of all evidence in their possession (including the entirety of the Forms 477 already on file) as to the offering of voice on a census block-specific basis in finalizing A-CAM model offers.

Second and more broadly, a number of challenges raise serious evidentiary questions about the validity of the Form 477 data. NTCA is aware that this is not the first time the Commission and Bureau have confronted such issues and that the process of examining and resolving such concerns is hardly easy. But where clear evidence has been filed showing that, for example, a competitor simply does not offer 10/1 broadband,⁸ or does not offer *any* service *at all* in the area in question,⁹ or has implausibly expanded its claimed coverage as compared to prior filings and/or in a manner that defies explanation in light of its actual network architecture and substantial engineering data,¹⁰ such evidence should be considered and addressed even within a “streamlined” process.

Third, while this specific concern should not even necessitate a “challenge,” NTCA reiterates its prior concern about the handling of neighboring incumbent local exchange carriers (“ILECs”) in a “shared” census block in generating offers of model-based support.¹¹ The A-CAM currently treats two ILECs as competitors (or otherwise attributes deployment to the other) even when those ILECs operate in distinct parts of that census block and there is in fact no geographic overlap between them. As noted previously, NTCA appreciates the desire to move forward promptly with distribution of support via A-CAM, but this patent flaw will deny some companies that would otherwise be eligible for and potential electors of the model the ability to do so. NTCA further appreciates that the A-CAM is structured and coded at a census block level such that it is not easy to make prompt changes to address this specific issue, but we continue to urge creative consideration of some solution, such as the possibility of some kind of “manual override” in the calculation of model-based support, that could correct for this while still permitting consideration and resolution of model elections within the timelines initially contemplated.

⁸ See, e.g., Comments of Grand River Mutual Tel. Co. Challenging A-CAM Competitors Pursuant to Public Notice, WC Docket No. 10-90 (filed April 28, 2016), at 2-3.

⁹ See *id.* at 3.

¹⁰ See, e.g., A-CAM Competitive Coverage Challenge by Hamilton County Tel. Co-Op, WC Docket No. 10-90 (filed April 28, 2016).

¹¹ *Ex Parte* Letter from Michael R. Romano, Sr. Vice President – Policy, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed April 25, 2016); see also, e.g., *Ex Parte* Letter from Richard L. McBurney, CEO/GM, Butler-Bremer Mutual Tel. Co., to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90, *et al.* (filed April 28, 2016), at 2-3; Comments of SRT Communications Challenging Competitive Coverage in A-CAM Model, WC Docket No. 10-90, *et al.* (filed April 28, 2016), at 1-2.

Marlene H. Dortch

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Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

Sincerely,

/s/ Michael R. Romano

Michael R. Romano

Senior Vice President – Policy

cc: Stephanie Weiner
Rebekah Goodheart
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