

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**REPLY COMMENTS OF  
NTCA–THE RURAL BROADBAND ASSOCIATION  
ON FURTHER NOTICE OF PROPOSED RULEMAKING AND  
INITIAL REGULATORY FLEXIBIILTY ANALYSIS**

**I. INTRODUCTION**

NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> hereby submits these Reply Comments in response to the Further Notice of Proposed Rulemaking (“FNPRM”)<sup>2</sup> in the above-captioned proceeding and its corresponding Initial Regulatory Flexibility Analysis.<sup>3</sup> In the FNPRM, the Federal Communications Commission (the “Commission”) requests further public

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<sup>1</sup> NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

<sup>2</sup> In the Matter of Connect America Fund, WC Docket No. 10-90, Universal Service Reform – Mobility Fund, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking (Rel. March 7, 2017) (“Order and FNPRM”).

<sup>3</sup> The Commission has a statutory duty to consider significant alternatives to reduce the burden of its rules on small providers. 5 U.S.C. § 601-12, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law No. 104-121, 110 Stat. 857 (1996). NTCA’s proposals herein should be considered as alternative, less burdensome proposals in response to the Commission’s Initial Regulatory Flexibility Analysis. FNPRM, Appendix C.

comment on the parameters for the challenge process for the Mobility Fund Phase II (“MF II”).<sup>4</sup> The Commission specifically seeks comment on two potential structures for the challenge process,<sup>5</sup> stating that it intends “to take the most effective parameters from these various options, as well as possible alternatives” to assemble a structure for the challenge process.<sup>6</sup>

In Comments, NTCA proposed a four-step process for the challenge process.<sup>7</sup> In Step 1, the Commission would use the current Form 477 data to create a list of: a) all census blocks in which an unaffiliated, unsubsidized competitor(s) is believed to be able to provide voice and LTE data to all or a substantial portion of the geographic area in question; and b) areas for which no unsubsidized competitor is identified and are therefore eligible for funding.<sup>8</sup> In Step 2, the identified unsubsidized competitors would have 60 days to file information to validate or refine their claimed Form 477 coverage.<sup>9</sup> The first two steps in this NTCA proposal are designed to

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<sup>4</sup> FNPRM, ¶ 225.

<sup>5</sup> See, “Option A,” at FNPRM ¶¶ 232 – 240, based on a proposal submitted by U.S. Cellular, and “Option B” at FNPRM ¶¶ 241 – 246, based on a joint proposal submitted by AT&T, ATN and Blue Wireless.

<sup>6</sup> FNPRM, ¶ 231.

<sup>7</sup> NTCA Comments, pp. 7-8.

<sup>8</sup> The Commission determined that any census block that is not fully covered by unsubsidized 4G LTE, defined as having minimum advertised download speeds of at least 5 Mbps, will be eligible for support in the MF II auction, FNPRM ¶¶ 51-52. The Commission neglected to require an upload speed in its Order. However, this approach is inconsistent with the Commission’s goal of ensuring reasonably comparable mobile broadband in all areas of the country and is the subject of a Petition for Reconsideration. See, [Rural Wireless Association, Inc. Petition for Reconsideration and/or Clarification](#), WC Docket No. 10-90, WT Docket No. 10-208, at pp. 2-11) (filed Apr. 12, 2017) (asking the Commission to reconsider its 5 Mbps download area eligibility speed threshold in favor of a 10 Mbps download/1 Mbps upload threshold).

<sup>9</sup> NTCA proposed that unsubsidized competitors be required to file with the Commission a declaration of service verifying its ability to provide service in the area(s) that it claims to serve,

minimize the burden on providers and Commission staff by ensuring that areas eligible for MFII support are properly identified. Unsubsidized providers are afforded a one-time opportunity to correct the data used to define the areas ineligible for MF II funding.<sup>10</sup>

CTIA submitted a proposal similar to NTCA's, suggesting however that *all* mobile providers that file Form 477 data must submit shapefiles containing new coverage data that would be used in lieu of Form 477 4G LTE speed data.<sup>11</sup> However, CTIA's proposal is overbroad and unnecessarily burdensome for small, subsidized providers. The Commission determined that all areas that lack unsubsidized 4G LTE service are eligible for funding via a reverse auction, including those areas currently served by a subsidized provider.<sup>12</sup> Because there is no challenge process for areas that are served only by subsidized providers, there is no need for more data from subsidized providers to identify the areas that may be challenged – those areas are already subject to the auction. NTCA's proposal thus appropriately apportions the burdens to providers with the data necessary to support their claimed service territory, while not causing unnecessary delay in the MFII challenge process or requiring excessive filings from parties that would not be dispositive in moving that process forward.

Step 3 of NTCA's challenge proposal would offer providers 30 days to challenge the unsubsidized providers' claimed contours. The competitor(s) would be permitted to submit

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backed by an officer certification. NTCA suggested that a declaration of service should include technical support, including an engineering (propagation) map that demonstrates the claimed coverage using a -85 dB measure. Other Commenters offered suggestions on specifications to be used to determine actual service contours (*See, e.g.*, Comments of CTIA, CCA). NTCA supports the use of any consistent measure that defines areas actually served.

<sup>10</sup> The identified areas must be areas actually served by 4G LTE as of the date of filing, and not areas that are planned to be served or may be served at some future point in time.

<sup>11</sup> CTIA Comments, p. 4.

<sup>12</sup> *See*, Order and FNPRM, ¶ 16.

actual speed data from hardware- or software-based drive tests or app-based tests that spatially cover the challenged area. The submission would be substantiated by the certification of a qualified engineer, under penalty of perjury. After reviewing other comments filed in this proceeding,<sup>13</sup> NTCA agrees that challengers should not be limited to providers. States, localities, and other parties have a vested interest in ensuring ubiquitous mobile broadband coverage and should be able to submit a challenge with the requisite showing. While NTCA’s proposed process is arguably more burdensome on its face for challengers than “Option A”<sup>14</sup> because it requires data to support a challenge, there should be substantially fewer challenges due to the improved data from which the challenge process starts – meaning the overall burden for all involved, including not only the smaller provider but also other providers and Commission staff, should be much less.

The Commission seeks to preserve and advanced 4G LTE to those areas of the country where there is no unsubsidized provider, consistent with its stated goal of “ubiquitous availability of mobile service.”<sup>15</sup> Options that start the challenge process from the Form 477 data, despite known inaccuracies, risk failing to meet that goal.<sup>16</sup> Not only do the options place the burden of disproving information known to be riddled with inaccuracies squarely on the shoulders of the

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<sup>13</sup> See, e.g., Comments of Deere and Co. (any interested party should be permitted to submit a challenge) and the Rural Wireless Association (“RWA”) (businesses and individual residents should be eligible to challenge).

<sup>14</sup> Order and FNPRM, ¶¶ 232-240

<sup>15</sup> Order and FNPRM, ¶ 14, citing Connect America Fund, *et.al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17773, ¶ 298.

<sup>16</sup> E.g., Order and FNPRM “Option A,” ¶¶ 232-240, Comments of CCA, Comments of RWA.

party with the least (or no) access to the underlying data,<sup>17</sup> it virtually ensures that areas that should be eligible for MFII will be declared ineligible. Although Form 477 data is certified by carriers, carriers did not utilize a common standard for coverage on their Form 477s. Instead Form 477 enabled carriers to choose their own metrics for determining the minimum advertised upload and download speeds associated with a certain network technology in a frequency band.<sup>18</sup> The Form 477 data thus very likely overstates actual coverage, making it highly likely that there are areas that will erroneously be declared to be ineligible for funding. The only way to achieve the Commission's goal of targeting funding to areas currently unserved by an unsubsidized provider is to create a more accurate picture of where unsubsidized providers serve.

## **CONCLUSION**

The Commission should adopt NTCA's challenge process proposal. It represents the most efficient and timely means of ensuring real data will underpin service coverage determinations and would help ensure that Mobility Fund II funding is made available for areas that are currently unserved by unsubsidized 4G LTE. Specifically, NTCA recommends that the Commission adopt its proposed challenge process with slight modifications as incorporated below.

- 1) Using the available Form 477 data, the Commission should publish a list identifying
  - a) all census blocks in which an unaffiliated, unsubsidized competitor(s) is believed to be able to provide voice and LTE data to all or a substantial portion of the

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<sup>17</sup> See, NTCA Comments, pp. 3-4.

<sup>18</sup> FCC Form 477 Local Telephone Competition and Broadband Reporting Instructions, OMB Control No. 3060-0816, p. 24 ("477 Instructions"), available at <https://transition.fcc.gov/form477/477inst.pdf>.

geographic area in question; and b) areas for which no unsubsidized competitor is identified and therefore eligible for funding.<sup>19</sup>

- 2) The identified unsubsidized competitor(s) should then have 60 days to file information that would validate or refine what is shown on the Form 477 to make a final claim of competitive presence. The identified competitor(s) should be required to file with the Commission and serve on other service providers in the identified geographic area(s) a declaration of service verifying its ability to provide service in the area(s) that it claims to serve, backed by an officer certification and consistent technical support.<sup>20</sup> If no declaration of service is filed, the competitor is presumed not to offer unsubsidized service in the census block(s) in question, notwithstanding the Form 477 report, and the area will be deemed eligible for MF II funding.
- 3) Interested parties should then be provided 30 days to challenge the declaration of service. Challengers may submit actual speed data from hardware- or software-based drive tests or app-based tests that spatially cover the challenged area. The submission

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<sup>19</sup> The Commission determined that any census block that is not fully covered by unsubsidized 4G LTE, defined as having minimum advertised download speeds of at least 5 Mbps, will contain areas that are eligible for support in the MF II auction, FNPRM ¶¶ 51-52. The Commission neglected to require an upload speed in its Order. However, this approach is inconsistent with the Commission's goals of providing mobile broadband to all areas of the country and is the subject of a Petition for Reconsideration. See, [Rural Wireless Association, Inc. Petition for Reconsideration and/or Clarification](#), WC Docket No. 10-90, WT Docket No. 10-208, at pp. 2-11) (filed Apr. 12, 2017) (asking the Commission to reconsider its 5 Mbps download area eligibility speed threshold in favor of a 10 Mbps download/1 Mbps upload threshold).

<sup>20</sup> The information should support the 477 submission and should not include speculative future build out plans.

would be substantiated by the certification of a qualified engineer, under penalty of perjury.<sup>21</sup>

- 4) The Commission would reach a decision and the party declaring an area to be served and thus ineligible for MF II funding would have the burden of proving an area *is* served by a preponderance of the evidence.

This process would be data driven and consistent with the underlying requirement that ties the analysis of competition to specific geographic areas; it provides the most accurate results and minimizes the number of challenges the Commission would have to sort through. It is also timely and efficient since the Commission would have the information necessary to make a determination within 90 days of its publication of a MF II ineligibility/eligibility list based on the Form 477 data. Finally, this process is not unduly burdensome, offering the unsubsidized competitor sufficient time to identify and confirm its geographic coverage and notify the Commission and affected USF recipients.

Respectfully submitted,



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<sup>21</sup> Unsubsidized providers would make a similar showing to demonstrate that they serve an area that was erroneously deemed eligible for funding.