

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
Developing an Unified Inter-carrier Compensation Regime)	CC Docket No. 01-92

**PETITION FOR CLARIFICATION AND/OR RECONSIDERATION
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;
NTCA-THE RURAL BROADBAND ASSOCIATION;
EASTERN RURAL TELECOM ASSOCIATION; and
WTA – ADVOCATES FOR RURAL BROADBAND**

Pursuant to section 1.429 of the rules of the Federal Communications Commission (the “Commission”),¹ the Rural Associations listed above² seek clarification, or to the extent necessary, reconsideration of the Commission’s June 10, 2014 *Order* in the above-captioned

¹ 47 C.F.R. § 1.429.

² NECA is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally*, 47 C.F.R. §§ 69.600 *et seq.*; *MTS and WATS Market Structure*, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983). NTCA represents nearly 900 rural rate-of-return regulated local exchange carriers (“RLECs”). All of NTCA’s members are full service local exchange carriers and broadband providers, and many of its members provide wireless, video, satellite, and long distance and other competitive services to their communities. ERTA is a trade association representing rural community based telecommunications service companies operating in states east of the Mississippi River. WTA is a national trade association that represents more than 250 rural telecommunications carriers providing voice, video and data services. WTA members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

proceedings. This request is presented specifically with respect to the means by which the Commission will implement the newly codified rule to eliminate support for a RLEC where an unsubsidized competitor or combination of unsubsidized competitors offers voice and broadband services that meet Commission-defined service obligations to 100 percent of the residential and business locations within that RLEC's study area.³

In the first instance, in an abundance of caution, the Rural Associations seek clarification that the directive from the Commission to the Wireline Competition Bureau (the "Bureau") to move forward with implementation of this rule in fact requires – as it does in price cap-carrier served areas – additional processes and requirements beyond mere reconciliation of study area boundaries. Alternatively, to the extent that the *Order* contemplates implementation of the rule and phase-down of support with no further evidentiary process or additional requirements to validate the actual presence of an unsubsidized competitor beyond simple reconciliation and review of mapping and FCC Form 477 data, the Rural Associations request reconsideration of such determination.

I. BACKGROUND

In the *2011 USF/ICC Order*, the Commission adopted a policy to phase down over three years and ultimately eliminate support in a given RLEC study area where an unsubsidized competitor or combination of unsubsidized competitors offers voice and broadband that meet

³ *Connect America Fund*, WC Docket No. 10-90, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54 (rel. June 10, 2014) (*Order*), at ¶¶ 54-56.

Commission-defined service obligations throughout the entirety of that RLEC's study area.⁴ In the most recent *Order*, the Commission codified this policy by rule.⁵ The Commission further indicated that the Bureau should now move forward “to publish a finalized methodology for determining areas of overlap and a list of companies for which there is a 100 percent overlap,”⁶ and that, to do so, the Bureau “should review the study area boundary data in conjunction with data collected on the FCC Form 477 and the National Broadband Map every other year to determine whether and where 100 percent overlaps exist.”⁷ It is with respect specifically to this last statement that clarification, or reconsideration in the alternative, is sought.

II. DISCUSSION

During the evolution of Connect America Fund (“CAF”) Phase I through rounds 1 and 2 and continuing through development of CAF Phase II, the Commission and the Bureau have attempted to define and refine, based upon experience, the processes by which would-be unsubsidized competitors will be identified and validated.⁸ Although some have urged the

⁴ 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 Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, 17766-68 (2011), at ¶¶ 280-284.

⁵ *Order*, at ¶ 54; see also 47 C.F.R. § 54.319.

⁶ *Order*, at ¶ 55.

⁷ *Id.* at ¶ 56.

⁸ See, e.g., *Connect America Fund*, WC Docket No. 10-90, Report and Order. 28 FCC Rcd 7211 (Wireline Comp. Bureau 2013); *Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process*, DA 14-864, Public Notice (rel. June 20, 2014).

Commission to do little more than adopt a “check and rely as much as possible only upon the map that contains my self-asserted data” approach,⁹ the Commission and the Bureau have rightly rejected such pleas and migrated away from such simplistic views of competition. Instead, the Commission and the Bureau have, over time, more carefully defined both the standards and challenge processes by which unsubsidized competition will be established and verified.

To date, however, the Commission has not specifically examined and addressed the ways in which such standards and processes might be applied in RLEC-served areas to implement the “100 percent competitive overlap” rule. Much as it has done in the price cap carrier-served areas – but tailored for the mechanisms that distribute support in RLEC-served areas and the very structure of the “100 percent competitive overlap” rule – the Commission needs to evaluate how best to identify whether unsubsidized competition exists and what evidence and processes would be necessary to validate such preliminary identification. Indeed, to this end, the Commission has specifically sought comment on how to implement unsubsidized competition policies in RLEC-served areas in the further notice of proposed rulemaking that accompanies the *Order*.¹⁰ In response to this call for comments, the Rural Associations are filing today specific recommendations on the evidentiary requirements and processes that should govern implementation of such a policy; in those comments, the Rural Associations look in the first instance to the requirements and processes that apply in price cap carrier-served areas as a baseline, but then propose and explain how certain of those requirements and processes should

⁹ See, e.g., Consolidated Reply of the Wireless Internet Service Providers Association to Petition for Partial Reconsideration, WC Docket No. 10-90 (filed Aug. 19, 2013), at 3 (arguing for application of a higher evidentiary standard to challenges of data contained in the National Broadband Map or FCC Forms 477).

¹⁰ See *Order*, at ¶¶ 266, 274.

be tailored for the workings of universal service distribution mechanisms in RLEC areas and the specifics of implementing the “100 percent competitive overlap” rule in RLEC-served areas.¹¹

In light of the ongoing comment cycle initiated by the *Order* and given the more detailed processes and requirements that currently govern the evaluation and confirmation of the presence of unsubsidized competition in price cap-carrier served areas, it seems reasonably clear that the Commission does not intend to regress in the *Order* to a simplistic “check the map (and Form 477 data)” approach in identifying 100 percent competitive overlap in RLEC-served areas. While the process ultimately adopted certainly might *include*, among other things, review of mapping and Form 477 data following study area boundary reconciliation,¹² it should not rely exclusively upon such data. Instead, it appears from review of the *Order* as a whole that the Commission’s intent was to initiate discussions about the development of a more detailed methodology whereby such competition could be identified and validated in RLEC study areas. In an abundance of caution, however, the Rural Associations seek simple clarification on this specific point – or, in the alternative, the Rural Associations request reconsideration on this point. In either case, the Commission must provide a reasonable opportunity to allow for development of a data-driven, detailed process to identify and validate the presence of unsubsidized competitors that is based upon the methodology that has been implemented in price cap carrier-served areas but is tailored for RLEC-specific universal service distribution mechanisms and for the fact that the “100 percent competitive overlap” rule requires more granular analyses of the services offered at each customer location.

¹¹ See Comments of the Rural Associations, WC Docket No. 10-90, *et al.* (filed Aug. 8, 2014) (“Comments”), at 39-57.

¹² Although as noted in the Comments, there would appear still to be substantial work to do to complete the study area boundary reconciliation process. See Comments at 43-44.

III. CONCLUSION

For the foregoing reasons, the Rural Associations request clarification, or in the alternative reconsideration, of the process and evidentiary standards by which the Commission will identify and then verify the presence of unsubsidized competitors throughout RLEC-served areas. Specifically, the Rural Associations seek clarification that the Commission intended in the *Order* to direct the Bureau to consider and implement a process, informed by study area boundary reconciliation, other relevant data, and the comments just now being received, for identifying “100% competitive overlaps” in RLEC-served areas. In the alternative, to the extent that the Bureau has been directed to identify “100% competitively overlapped” areas immediately following study area boundary reconciliation with no further process, data review, or comment from interested stakeholders and affected parties, the Rural Associations seek reconsideration of such a directive.

Respectfully submitted,

NTCA – THE RURAL BROADBAND ASSOCIATION

By: /s/ Michael R. Romano

Michael R. Romano

Senior Vice President–Policy

4121 Wilson Boulevard, 10th Floor

Arlington, VA 22203

(703) 351-2000

WTA - ADVOCATES FOR RURAL BROADBAND

By: /s/ Derrick Owens

Derrick Owens

Vice President of Government Affairs

317 Massachusetts Avenue N.E.,

Ste. 300C

Washington, DC 20002

(202) 548-0202

By: /s/ Gerard J. Duffy
Gerard J. Duffy
Regulatory Counsel for
WTA-Advocates for Rural Broadband
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
2120 L Street NW
Suite 300
Washington, DC 20037
(202) 659-0830

EASTERN RURAL TELECOM ASSOCIATION

By: /s/ Jerry Weikle
Jerry Weikle
Regulatory Consultant
PO Box 6263
Raleigh, NC 27628
(919) 708-7464

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

By: /s/ Richard Askoff
Richard Askoff
Robert J. Deegan
Its Attorneys
Teresa Evert, Senior Regulatory Manager
80 South Jefferson Road
Whippany, NJ 07981
(973) 884-8000

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