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

In the Matter of	)	
	)	WC Docket No. 10-90
Connect America Fund	)	

COMMENTS OF NTCA–THE RURAL BROADBAND ASSOCIATION

NTCA–The Rural Broadband Association[1] hereby submits comments in response to the Public Notice[2] released by the Federal Communications Commission ("Commission") on July 29, 2015 in the above-captioned proceeding. The Public Notice seeks comment on a proposed methodology that will be utilized by the Wireline Competition Bureau ("WCB") to identify rate-of-return carrier study areas that are 100 percent served by an unsubsidized competitor.

NTCA greatly appreciates the efforts by the Commission and the WCB to establish processes by which determinations of purported "unsubsidized competition" can be validated or denied by reference to data that go beyond a simple "check the box" approach. NTCA particularly appreciates the evolution of these processes based upon lessons learned from prior "challenge" efforts and based also upon the specific nature of the rules that govern RLEC support. By these comments, however, NTCA urges the WCB to ensure that the specific process now at issue is data-driven and applied faithfully consistent with the underlying requirement that ties the analysis of competition to specific, individual locations.

---

[1] NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers ("RLECs") providing service in 46 states. All of NTCA's RLEC members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities.

[2] *Wireline Competition Bureau Publishes Preliminary Determination of Rate-Of-Return Study Areas 100 Percent Overlapped By Unsubsidized Competitors*, WC Docket No, 10-90, Public Notice, DA 15-868 (rel. Jul. 29, 2015) ("Public Notice").

In particular, the WCB should require every purported unsubsidized competitor identified in the Public Notice and any others subsequently identified to verify their respective ability to provide service meeting the applicable voice and broadband performance metrics to all of the customer locations in the RLEC study areas at issue. Although a declaration may provide some threshold level of confidence in the provider's claims, the declaration must not represent mere self-repeated assertions of previously self-reported Form 477 data in different form. Instead, because the analysis required is specifically with respect to each and every location in the study area – information that is *not* captured in Form 477 – the data submitted must also include more specific indications of, for example:

a. The provision of quality fixed terrestrial facilities-based voice service to each location, including but not limited to reliable and resilient capabilities of the kind that the Commission has expressly indicated are expected of any provider delivering fixed voice services to any consumer.[3]

b. The offering of such voice service to each location on a *standalone* basis at reasonably comparable rates,[4] such that consumers are not compelled to procure more expensive "service bundles" to obtain access, for example, to 911 and E-911.

c. The provision of fixed terrestrial facilities-based broadband service to each location at rates that are reasonably comparable and that otherwise meet or exceed all applicable performance metrics with respect to broadband, including but not limited to latency and the achievement of actual speed thresholds.[5]

---

[3] It would be a glaring discrepancy indeed to place such significance on the quality and reliability of fixed voice service in one context, but to then accept substandard fixed voice service in another context a short time later. *See Ensuring Continuity of 911 Communications*, PS Docket No. 14-174, Report and Order (rel. Aug. 7, 2015) ("[T]he vital importance of the continuity of 911 communications, and the Commission's duty to promote 'safety of life and property through the use of wire and radio communication,' favor action to ensure that all consumers understand the risks associated with non-line-powered 911 service, know how to protect themselves from such risks, and have a meaningful opportunity to do so.").

[4] *See* Public Notice at ¶ 20.

[5] *See id*., ¶¶ 12-13, 20. As an additional example, the Commission is presumably aware that consumers on some wireless platforms are required to utilize wi-fi platforms – essentially relying upon more robust and proximate fixed broadband networks – to enable certain downloads, utilize certain services or applications, or engage in other activities. The WCB should confirm that any would-be "competitor"

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 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.

Such information at a minimum is required to validate any declaration claims with respect to 100 percent overlap; such reasonable data must accompany any declarations to verify Form 477 claims and ensure that "false positives" do not leave rural consumers without access to reasonably comparable voice and broadband service.[6] As several further points of further clarification:

- 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.[7] The Public Notice states that Form 477 only requires providers to report advertised speeds, and that the WCB intends to use these as a proxy for actual speeds.[8] But there is no need for use of a proxy here. This kind of analysis is *precisely* what the process now underway is intended to achieve, and the WCB should therefore use this process to gather such data from competitors. Indeed, as the Public Notice itself rightly observes elsewhere, only by obtaining information of this kind from the competitor (who should be in possession of such information) can the Commission possibly be "in a position to make a final 100 percent overlap determination for the affected rate-of-return carrier because [it] will know whether all locations are in fact served."[9]

---

does not in fact limit its consumers' use of broadband in such a manner in determining whether the service offered is truly a competitive substitute to fixed broadband offered by the RLEC in question.

[6] Concerns with respect to "false positives" are significant given that, in some cases, investments may have been made years before any competitor manifested. Revoking support for costs that were sunk prior to the arrival of a competitor in a market is particularly troubling, and would be exacerbated if the competitor does not in fact serve all of the market as required by the newly-applied rule.

[7] *See* Public Notice at ¶ 12. ("In December 2014, the Commission adopted a new minimum speed standard for carriers receiving high-cost support: they must offer *actual* speeds of at least 10 Mbps downstream and 1 Mbps upstream (10/1 Mbps).") (emphasis added).

[8] Public Notice at ¶ 12.

[9] *Id*. ¶ 20. To be clear again, mere repeated self-assertions of previously filed Form 477 data cannot constitute sufficient data for the location-based determination required under the Commission's standard.

- In terms of the availability of "reasonably comparable" services, consumers in the affected study areas should not be deemed to have access to truly competitive, robust broadband if their only competitive choices come via capped data plans. While a competitor might be able to demonstrate the offering of a "reasonably comparable" capped data offering, to the extent that urban consumers today typically have access to uncapped plans as well, it should be of grave concern to the Commission as a universal service policy matter if the only service options available to some rural consumers are capped plans and there are no uncapped plans of any kind available.[10]

Finally, the Public Notice notes that, pursuant to federal law, all parties "face criminal penalties for knowingly and willingly making false, fictitious, or fraudulent statements or representations in official matters before the Commission."[11] Beyond this admonition, the Commission should make clear that, if it is found at any time after the challenge process has been completed, a provider that has made a declaration and the other requisite related showings does not in fact meet the applicable standards, high cost universal service support will be restored to the RLEC so that universal service may be sustained – in addition to (in cases where the competitor was never actually able to meet the standards in the first instance) any sanctions that may be applicable to the competitor and a retroactive restoration of support for the affected RLEC.[12]

---

[10] This is particularly important as to businesses and anchor institutions. The Commission and other policymakers have devoted substantial attention in recent years to ensuring anchor institutions will have sufficient access to broadband-capable networks and advanced services. A would-be competitor should not be deemed an effective substitute if it cannot deliver higher-speed, uncapped broadband services, for example, to schools, libraries, hospitals, or public safety entities. At the same time, as a broader policy matter, it remains unclear why or how an entity that receives federal support via some program other than high-cost to deliver broadband-capable networks and advanced services to anchor institutions (*e.g.*, via the E-rate program) should be considered "unsubsidized" in serving the area in question.

[11] Public Notice at fn. 43, citing 18 U.S.C. § 1001. ("Parties face criminal penalties for knowingly and willingly making materially false, fictitious or fraudulent statements or representations in official matters before the Commission.")

[12] It is also important that the Commission confirm, prior to withdrawal of support, that the affected RLEC is no longer subject to any federal Eligible Telecommunications Carrier ("ETC") obligations, and that it need no longer report on matters such as five-year plans and progress and performance reports that otherwise apply to high-cost support recipients. *See, e.g.*, *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17633, 17853 ¶

III. CONCLUSION

NTCA appreciates the evolution in the processes by which the Commission and the WCB are seeking to validate the presence of perceived competitive overlap in the context of universal service programs. Certain reasonable showings remain necessary, however, even within the context of this evolved process to confirm that, in fact, consumers do have and will continue to have access to reasonably comparable voice and broadband services at reasonably comparable rates in areas where competitors operate. Without such showings, the risk of "false positives" persists, contrary to the statutory mandate of universal service and to the ultimate detriment of rural consumers who could find themselves stranded without *any* effective prospect – competitive or at all – to obtain quality and reliable broadband or voice services in rural areas.

583 (2011) (absolving certain ETCs whose support was being phased down of numerous reporting requirements); , citing *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15700, ¶ 52 (2014) (forbearing from ETC obligations in areas deemed subject to unsubsidized competition). The Commission should also consider preempting altogether any carrier-of-last-resort obligations once support is phased down, as the ability of an RLEC to fulfill such obligations will be in serious doubt, if not impossible, once 100% of its universal service support has been eliminated. This stands in stark contrast to even carriers electing model-based support, who while losing support in census blocks where unsubsidized competitors operate, will still receive support in other parts of their study areas (and perhaps even obtain increased support as a whole compared to prior receipts), thus retaining at least some relatively greater ability to comply with such obligations than a carrier for whom all universal service support is being eliminated.

Respectfully Submitted,

NTCA–THE RURAL BROADBAND ASSOCIATION

By: */s/ Michael R. Romano*
Michael R. Romano
Senior Vice President – Policy
mromano@ntca.org

Brian Ford
Regulatory Counsel
bford@ntca.org

4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

August 28, 2015