

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**REPLY COMMENTS OF THE
EASTERN RURAL TELECOM ASSOCIATION**

I. INTRODUCTION

The Eastern Rural Telecom Association (“ERTA”) respectfully submits these reply comments in response to a Further Notice of Proposed Rulemaking (“FNPRM”)¹ issued by the Commission on December 13, 2018. The Commission asked for comments on issues related to awarding support in service areas overlapped by unsubsidized competition. ERTA does not believe that auctions are the best solution to address overlapped areas. If the Commission proceeds then there are some obstacles to account for in order for customers to be best served.

¹ Connect America Fund, WC Docket No. 10-90, 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, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration FCC 18-176 (rel. December 13, 2018) (“FNPRM”).

ERTA is a trade association composed of community based local exchange companies and support companies providing telecommunications, broadband Internet, and video services to rural customers in the Eastern half of America. ERTA members have deep community roots and are proud of the roles they play in providing capital-intensive services to rural America as small businesses in high-cost areas. They are also passionate about the obligation and privilege to serve customers even when there is not a business case to provide service in some sections of the service area. Because they serve customers in high-cost areas, ERTA members use USF support to provide universal services at affordable rates.

II. OVERLAPPED AREAS

The Commission proposes to use data contained in FCC Form 477 filings to determine areas of overlap. As commenters and the Commission have noted, 477 data is not always accurate. Whether intentional or not, 477 filing errors occur and are not always realized. Two commenters questioned the accuracy of 477 data filed by BarrierFree.² In addition, one commenter noted two fixed wireless companies that have listed complete coverage of study areas where customers may not actually be able to receive services from these companies.³ ERTA believes that these comments reflect only the tip of the iceberg as its members have noticed multiple examples of competitors overstating actual coverage within their territories. One member noted that past 477 data erroneously showed that its affiliates provided service in each other's territory contrary to its own reporting.

ERTA is mindful of the manual nature of a challenge process and suggests that the Commission could minimize this effort by first reviewing actual locations served, not just areas

² Vantage Point Solutions, see Comments at page 7.

³ Id., at pages 4-5,

that could be served. Some ERTA members have reported that their competitive affiliates make choices to serve or not serve each location that their network could theoretically reach. In some instances, the choice is made to not offer residential service and in others, the choice is made to only serve businesses where prospective revenues indicate acceptable returns on investment. ERTA suspects that other competitors make similar business decisions. The Commission will be able to minimize the work required in a challenge process by excluding companies where a competitor does not serve a fixed percentage of locations, perhaps 40-50%.

After vetting the 477 data on its own, once the Commission is convinced that an area is 99-100% overlapped then it should allow a robust challenge process. “[A] challenge process will show whether or not the competitor is actually providing service on a common carrier basis or picking and choosing their customers.”⁴ “For example, an individual census block is designated as ‘served’ for broadband purposes if a provider merely *advertises* (but does not actually provide) a given level of service to *any* location in that census block.”⁵

The Commission’s prior 2015 effort to determine 100% overlap discovered that only one out of 15 companies were actually found to be totally overlapped. ERTA understands that data challenges consume resources for both the Commission and service providers. The resources spent by service providers would be better spent on providing services to customers and the resources spent by the Commission would be better spent on other endeavors. ERTA does not believe that the Commission would want an area currently receiving support to lose that support unless there was certainty it would be completely served by a competitor. “[T]he limits of data gathered via FCC Form 477 – and more specifically the dangers of ‘false positive’ competitive

⁴ USTelecom – The Broadband Association, Comments at page 6.

⁵ NTCA-The Rural Broadband Association, Comments at page 3.

overlap determinations that blind and absolute reliance on such data would produce – necessitate the use of robust challenges as part of any such process in order to protect rural consumers.”⁶

Once the challenge process has concluded then the Commission should not conduct an auction on any area less than a study area. It is worth noting that WISPA actually acknowledged that smaller auction areas would facilitate competitors serving only those customers it chooses when it stated that “bidders can target smaller areas that they truly want to serve instead of larger areas that may require more infrastructure, cost and time to build out.”⁷ The Commission should not structure an auction that allows cherry picking. Because of the enormous resources needed to bid and then build out service areas, it would not be a prudent use of Commission time to conduct auctions sooner than every 10 years at a minimum.

III. SUPPORT TRANSITION

To avoid negative customer impact, ERTA encourages continued support to any LEC that may not be successful in keeping an area during an auction. ERTA agrees with comments of the USTelecom when it stated “[i]f a company makes an investment with the anticipation of support, the Commission should not eliminate it unless the company has recovered that investment.”⁸ “Dual support should be provided until the new entrant has 100% coverage and the transition should provide recovery of prior investments made with the expectation of recovery under current systems over the remaining life of those investments.”⁹

ERTA does not endorse the Commission’s proposal that support should be reduced to any incumbent that does not participate in any auction. It cannot be assumed that any incumbent

⁶ Id., at pages 2-3.

⁷ The Wireless Internet Service Providers Association, Comments at page 5.

⁸ USTelecom – The Broadband Association, Comments at page 3.

⁹ Id., at page 4.

that does not participate does not need support. That would be a rush to conclusion without examining any underlying circumstances such as limited budgetary resources required to hire consultants in order to participate in a Commission auction. The Commission should realize the enormous resources to participate in an auction could be seen by small companies as better used on its customers instead of consultants.

To the extent that the Commission removes support from a carrier for prior investments, it lowers the value of future universal service support. Removing support for prior investments would signal universal service support uncertainties to future investors. Investors will then discount or even not consider support revenues when evaluating competing investment alternatives. The Commission has done a lot to provide certainty and inserting a new level of uncertainty would only negate some of the progress.

Lastly, ERTA notes that customers' service could be in jeopardy if support were quickly eliminated from the legacy LEC. One ERTA member experienced a competitor in its LEC and outside competitive service areas that precluded competition by contracting with a developer to provide service to all the homes it built and to charge its fees through the homeowner's association. When a competitor provides facilities in a greenfield situation, there is no reason to overbuild. Within a few years, the competitor ceased paying its vendors and filed for bankruptcy. The customers were left without service and approached the incumbent to see how quickly they could extend service to their communities. The incumbent then purchased the competitor's network and extended its own facilities to begin providing service, however numerous technical challenges developed and the community had to be overbuilt at much higher expense. If the Commission quickly removes support from a legacy LEC and a similar scenario

plays out with a new provider, there may not be an incumbent LEC to come to the rescue resulting in customers left without service for an extended period of time.

IV. CBOL

ERTA understands the Commission's concern about the percentage of customers dropping voice and converting to broadband only lines and the resulting changes to support. Increased broadband speeds make it easier for customers to obtain over the top VoIP services in lieu of traditional voice services. The Commission has been an advocate for advanced services such as VoIP service.

The Commission has adopted a 7% increase in the 2019 budget¹⁰ to allow for conversion of voice/broadband lines to broadband-only lines. ERTA has concerns that this level of constraint may be artificially low in the future as broadband speeds have the potential to keep increasing and customers continue to opt for alternatives to traditional voice service. ERTA supports the USTelecom proposal of a 10% cap that has some flexibilities built in.¹¹ The proposal is dynamic instead of a fixed static percentage because the flexibilities could allow for carriers to receive a more than 10% increase if the total budget had not been reached. If the BCM has not been triggered, there is no need for a CBOL conversion limitation.

The Commission should consider three factors in establishing this control. First, the proposal should not be triggered absent a CBOL reduction as its purpose is to minimize future CBOL reductions. Second, the process should be set up so that should the Commission fail to act by a 2024 sunset as recommended by NTCA,¹² it can continue to function effectively. Third,

¹⁰ FNPRM at 200.

¹¹ USTelecom – The Broadband Association, Comments at pages 7-8.

¹² NTCA-The Rural Broadband Association, Comments at pages 17-19.

the Commission should adopt an approach that allows customers to determine the rate of movement to an all broadband network.

V. CONCLUSION

The Commission is encouraged to consider customer impacts that would result from uncertainty or rigid rules. The Commission should fully vet areas it deems as overlapped using actual service data provided before implementing a challenge process. Only after a robust challenge process should it allow any auctions of study areas that are 99-100% overlapped. If unsubsidized competitors are awarded study areas in an auction, the legacy LEC should continue receiving transitional support to avoid customer harm and to maximize the value of future high cost support. The Commission should adopt an industry consensus approach for limiting CBOL growth along the lines of the USTelecom proposal.

Respectfully submitted,

EASTERN RURAL TELECOM ASSOCIATION

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April 8, 2019