

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

In the Matters 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 a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	

**COMMENTS OF
ITTA – THE VOICE OF AMERICA’S BROADBAND PROVIDERS**

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ITTA – The Voice of America’s Broadband Providers (ITTA) hereby submits these comments in response to the Commission’s Further Notice of Proposed Rulemaking seeking comment on how to implement an auction mechanism for competitive overlapped legacy rate-of-return areas, as well as on broadband-only line conversions by legacy rate-of-return carriers.¹

I. INTRODUCTION AND SUMMARY

Since long before the term “universal service” was common parlance in the telecommunications world, rate-of-return carriers have been at the forefront of bringing access to telecommunications services, and in recent years, broadband, to the hardest-to-reach rural areas in this country. This fundamental geographical reality renders providing service to these areas a particularly costly endeavor, and has entailed considerable investment by rate-of-return carriers, buttressed by support from the federal universal service fund (USF), to achieve it in a manner that is affordable to rural consumers. Notwithstanding these efforts by rate-of-return carriers, the

¹ *Connect America Fund et al.*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18-176 (Dec. 13, 2018) (*Report and Order and/or FNPRM*).

Commission is now poised, through competitive bidding, to divert USF support to third-party entrants in some current rate-of-return service areas that are “nearly” or “almost” entirely overlapped by service from one or more unsubsidized competitor(s). ITTA continues to oppose the contemplated competitive bidding process, which threatens to effectively strand investments made by rate-of-return carriers who have been serving the subject areas in many cases for decades.

Nevertheless, to the extent the Commission is determined to utilize an auction mechanism going forward to allocate USF support for providing service to ostensibly overlapped areas, it should proceed in a manner that affords rate-of-return carriers a realistic opportunity to continue providing quality services at affordable rates in their service areas. At the same time, any competitive bidding process and associated service rules must promote broadband deployment to Americans that remain unserved, and ensure that consumers do not suffer a loss of service during a transition to a new service provider, if applicable.

In furtherance of these objectives, the Commission should very narrowly construe the definition of “nearly” or “almost” entirely overlapped areas, only subjecting areas to competitive bidding where there is at least 99% overlap by unsubsidized competition. Given the extremely high stakes for legacy carriers of these service areas being eligible for auction, the Commission should employ a challenge process to corroborate the extent of competitive overlap, in order to ensure that these areas should be subject to competitive bidding. Winning bidders should be required to serve *all* locations in the auctioned area.

In areas where no third-party entity has applied to engage in competitive bidding or applied but not actually bid, legacy carriers should continue to receive support pursuant to the legacy rate-of-return support mechanisms. However, where an entity other than the legacy carrier places the winning bid, the legacy carrier should receive transitional support to help ensure that consumers do not lose service while awaiting deployment by the auction winner.

Finally, to address concerns related to arbitrage associated with the conversion of lines to broadband-only, while at the same time promoting the benefits of broadband-only service, the Commission should adopt a methodology that reasonably, but not excessively, limits broadband-only conversions.

II. IN DESIGNING THE OVERLAP AUCTION, THE COMMISSION SHOULD HONOR THE SUBSTANTIAL INVESTMENT MADE BY LEGACY CARRIERS

A. The Commission Should Construe Very Narrowly the Definition of “Nearly” or “Almost” Entirely Overlapped Areas

The *Report and Order* terminates the 100% overlap process² in favor of a competitive bidding process for legacy service areas that are “nearly”³ or “almost”⁴ entirely overlapped by unsubsidized competitors offering voice and 25/3 Mbps broadband services.⁵ The *FNPRM* follows with seeking comment on how to determine which study areas are almost entirely overlapped, as well as on other elements of how to implement the auction of subject areas.⁶

In its comments on the *Rate-of-Return Budget NPRM*, ITTA opposed use of an auction mechanism to award support in areas where there is significant competitive overlap.⁷ Legacy carriers have invested blood, sweat, tears and considerable financial sums to expand universal broadband and voice services to far-flung rural areas, and the prospect of auctioning the right to receive USF

² By this standard, high-cost USF support for study areas found to be 100% overlapped by one or more unsubsidized competitor(s) was to be frozen and then phased down and out.

³ *E.g.*, *Report and Order and FNPRM* at 41, para. 136.

⁴ *E.g.*, *id.* at 44, para. 145.

⁵ *See id.* at 41-44, Sec. III.C.6. Purported unsubsidized competitors are also to meet required latency standards and usage allowances, and to certify prior to any auction that their rates are reasonably comparable to rates for comparable offerings in urban areas. *See id.* at 44, para. 144 n.313.

⁶ *See id.* at 52-55, Sec. IV.A.

⁷ *See* Comments of ITTA, WC Docket Nos. 10-90, 14-58, 07-135, CC Docket No. 01-92, at 33 (May 25, 2018); *Connect America Fund et al.*, Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18-29 (Mar. 23, 2018) (*Rate-of-Return Budget NPRM*).

subsidies to overbuild that deployment threatens to effectively strand that investment. Therefore, ITTA still opposes the contemplated competitive bidding process.⁸

Nevertheless, to the extent the *Report and Order* already has determined to utilize an auction mechanism to award support not only in 100% overlapped areas but also in areas not entirely overlapped, the Commission should contour the overlap auction with utmost narrowness. To begin with, the Commission should only render eligible for the overlap auction study areas where there is at least 99% overlap by unsubsidized competition.⁹

In addition, the Commission should employ a robust challenge process to corroborate the extent of competitive overlap.¹⁰ For one thing, the limitations of the FCC's Form 477 data, which the *Report and Order* designates to be the foundation of competitive overlap determinations,¹¹ are well documented.¹² The stakes are simply too high for legacy carriers to be potentially forced out of the market and to abandon their extensive sunk investments based on uncorroborated deployment data that, by their design, frequently lend themselves to overestimation. Moreover, the *Report and*

⁸ See *Report and Order and FNPRM* at 52-53, para. 185 (seeking comment on whether support in legacy study areas that are less than 100% overlapped by unsubsidized competition should also be awarded through competitive bidding).

⁹ See *id.* (seeking comment on whether support in legacy study areas that are, e.g., 99% or 95% overlapped by unsubsidized competition should be awarded through competitive bidding).

¹⁰ See *id.* at 53, para. 185 (seeking comment on whether the Commission should conduct a challenge process to verify affected study areas rather than solely rely on FCC Form 477 data).

¹¹ See *id.* at 44, para. 144.

¹² E.g., National Telecommunications and Information Administration, Improving the Quality and Accuracy of Broadband Availability Data, 83 Fed. Reg. 24747, 24748 (May 30, 2018) (“A provider offering service to any homes or businesses in a Census block is instructed to report that block as served in its Form 477 filing, even though it may not offer broadband services in most of the block. This can lead to overstatements Moreover, there is no independent validation or verification process for Form 477 data”); *Connect America Fund*, Report and Order, FCC 19-8 at 43, Statement of Commissioner Jessica Rosenworcel (Feb. 15, 2019) (*Connect America Phase I Transition Order*) (The Commission’s broadband data “overstate coverage in too many areas and understate it in others. . . . We need to check . . . where deployment takes place . . . [and to] have accurate data that informs our work.”). Not only does Form 477 data chronically mischaracterize deployment, especially through overstatement, but using it without a challenge process serves a double-dose of non-verification.

Order's dismissiveness towards the use of challenge processes to verify overlap determinations is inapposite in the context of potential third-party market entry via competitive bidding.¹³ Specifically, while the *Report and Order* chronicles the prior disincentive for unsubsidized competitors to participate in the challenge process to support relatively high-hurdle claims of 100% overlap,¹⁴ now third parties that wish to enter a study area will have incentive to participate in a challenge process.

In sum, although the *Report and Order* suggests that a challenge process and an auction mechanism are mutually exclusive,¹⁵ the Commission should view them as complementary. A challenge process is critical towards establishing the predicate of whether a study area should be subject to competitive bidding in the first instance, especially in light of the inaccuracy of FCC Form 477 data.¹⁶ While a challenge process is rigorous both for interested parties and Commission staff, because it will serve an important gatekeeping function in establishing the bona fides of whether a study area should be included in the auction to begin with, the benefits of conducting it outweigh the efforts of doing so.¹⁷

¹³ *Contra, e.g., Report and Order and FNPRM* at 42, para. 137 (“To date there has been little participation in the current process by unsubsidized competitors . . . and when they do participate, it is inefficient to adjudicate competing claims by incumbents and competitors.”).

¹⁴ *See id.*

¹⁵ *E.g., id.* at 42, para. 139 (the Commission sought comment on using an auction mechanism “[i]n lieu of the current [challenge] process”); 53, para. 185 (seeking comment on whether a challenge process is necessary “given that the areas will be subject to auction”). Because the *Report and Order* appears resolute to award support based on competitive bidding in areas not entirely overlapped, it is not inherently the case that conducting a challenge process will result in undermining the Commission’s goal “to reduce funding to a more competitive level.” *Id.* at 44, para. 145; *contra id.* (if challenge process “evidence shows even one location in the study area is not served by unsubsidized competition, the entire process results in zero savings”). In fact, the *Report and Order* “recognize[s] that an auction could theoretically result in more funding in an area entirely or almost entirely overlapped by unsubsidized competitors.” *Id.*

¹⁶ *See id.* at 17, para. 50 (referencing the broadband coverage “false positives that the challenge process is intended to address”).

¹⁷ As discussed above, with potential third-party entrants introduced into the mix and a contemplated auction of areas not entirely overlapped, the prior disincentive for unsubsidized competitors to participate in challenge processes, and hairpin trigger for disqualifying a study area from overlap consideration, should dissipate. At the same time, although the *Report and*

(continued...)

B. The Commission Should Require Winning Bidders to Serve All Locations Within the Auctioned Area

The *FNPRM* proposes that winning bidders would be required to serve all locations within each auctioned unit, with interim and final deployment milestones similar to those of recipients of Connect America Fund (CAF) Phase II auction support, and seeks comment on whether the Commission should make any changes to that framework.¹⁸ ITTA supports the proposal.

In Section 706 of the Telecommunications Act of 1996, Congress enunciated the national policy of encouraging the deployment of advanced telecommunications capability *to all Americans*.¹⁹ In 2009, Congress reiterated that the national broadband plan it directed the Commission to develop was to ensure that “all people of the United States” have access to broadband capability.²⁰ Over the past decade, and particularly spurred by the landmark *USF/ICC Transformation Order*²¹ and its progeny, time and time again this policy has driven Commission action and been the girding for it. From the beginning of the Pai Chairmanship

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Order, citing burdensomeness compounded by a low success rate, declined to adopt a challenge process for the second offer of model-based (A-CAM) support after fewer than one-quarter of 250 challenges were successful relative to the first A-CAM offer, *see id.* at 16-17, para. 50, here there will be *at most* 15 study areas subject to a challenge process, and potentially fewer if the Commission adopts a 99% overlap threshold for eligibility for the competitive bidding process. *See, e.g., id.* at 44, para. 144 (finding there are eight legacy study areas with 100% overlap and seven additional legacy study areas with at least 95% overlap); *cf. also id.* at 53, para. 186 (noting that the Commission previously declined to auction units as small as census blocks, but seeking comment on whether to use census blocks as the minimum geographic bidding area for the overlap auction given the relatively small number of eligible areas in the overlap auction).

¹⁸ *See id.* at 54, para. 190.

¹⁹ *See* 47 U.S.C. § 1302 (codifying, within Title 47 of the United States Code, Section 706 of the Telecommunications Act of 1996).

²⁰ American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, § (6001)(k)(2)(D), 123 Stat. 115, 516 (2009).

²¹ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *aff’d sub nom.*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

through the *Connect America Phase I Transition Order* released just a few weeks ago, the Commission has consistently reinforced this policy as a primary point of emphasis.²² Yet, the Commission’s most recent deployment data reveal that nearly 20 million Americans still lack access to a fixed broadband connection meeting the FCC’s 25/3 Mbps speed benchmark.²³

The *Report and Order* properly recognizes that in a study area that is 100%, or almost entirely, overlapped by unsubsidized competitors, “there may still be some locations within census blocks that do not have access to broadband, i.e., although a block is partially served by an unsubsidized provider not all of the locations in that block are served.”²⁴ Requiring winning bidders to serve all locations within each auctioned unit is the most effective way for the Commission to leverage the overlap auction to fulfill its foundational broadband deployment policy. It is also conceptually consistent with the Commission’s acknowledgement in the *USF/ICC Transformation Order* that there are instances where an unsubsidized competitor offers broadband and voice service to a significant percentage of the customers in a particular study area but not to the remaining customers in the rest of the study area, and that “continued support may be required to enable the availability of supported voice services to those remaining

²² See, e.g., Ajit Pai, Chairman, Fed. Communications Comm’n, Remarks at “Broadband for All” Seminar 2 (June 26, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-345512A1.pdf (“Since my first day as Chairman of the FCC, I’ve said repeatedly that my number one priority is closing the digital divide and bringing the benefits of the Internet age to all Americans.”); *Connect America Phase I Transition Order* at 1, para. 1 (“In this Report and Order, the Commission takes a small but important step towards closing the digital divide and making broadband available for all Americans”); *id.* at 42, Statement of Commissioner Brendan Carr (“Closing the digital divide—ensuring that every American has access to next-generation broadband and the opportunity it enables—has been this FCC’s top priority.”).

²³ News Release, FCC, Report: America’s Digital Divide Narrows Substantially; Draft 2019 Broadband Deployment Report Shows More Than 25% Drop in Americans Lacking Access to Fixed Broadband at 1 (Feb. 19, 2019), <https://docs.fcc.gov/public/attachments/DOC-356271A1.pdf>.

²⁴ *Report and Order and FNPRM* at 43, para. 143.

customers. . . . [T]here should be a process to determine appropriate support levels.”²⁵

However, over seven years into the CAF program, support for voice services is no longer adequate; it is time to furnish those “remaining customers” with broadband availability. It follows that support via the overlap auction would now be the process for determining appropriate support levels.

Relatedly, wherever an overlap auction winner is an entity other than the legacy carrier, the auction winner should assume any carrier-of-last-resort (COLR) obligations to which the legacy carrier has been subject heretofore in the auctioned area. The lynchpins are that it is the entity receiving support that should be subject to such obligations, as well as the converse that no entity should be subject to such obligations absent the receipt of support. These principles recognize that those portions of a study area not served by an unsubsidized competitor are so situated because the business case for competitive deployment does not exist.²⁶ In such a case,²⁷ it would be highly inequitable for the legacy carrier to retain any service obligations where another entity is receiving support for service to that area.²⁸

²⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17767, para. 282.

²⁶ *Cf. id.* at para. 281 (agreeing with commenters that “USF support should be directed to areas where providers would not deploy and maintain network facilities absent a USF subsidy, and not in areas where unsubsidized facilities-based providers already are competing for customers.”) (citations omitted).

²⁷ ITTA recognizes that a legacy carrier’s relinquishment of its service obligations in such a case would require certain procedural prerequisites pursuant to Section 214 of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 214.

²⁸ *Cf. USF/ICC Transformation Order*, 26 FCC Rcd at 17768, para. 284 n.468 (“For those states that still maintain voice COLR obligations, we encourage them to review their respective regulations and policies . . . and revisit the appropriateness of maintaining those obligations for entities that no longer receive either state or federal high-cost universal service funding and where competitive services are available to consumers”). As discussed below, *see infra* Sec. II.D., the Commission should provide transitional support to the legacy carrier where another entity places a winning bid for the legacy carrier’s service area in the overlap auction, and competitive services should be available to consumers by the time the transitional support term is over.

C. Legacy Carriers Should Continue to Receive Support Pursuant to Legacy Rate-of-Return Support Mechanisms Where No Other Entity Bids for Their Subject Service Areas

The *FNPRM* seeks comment on what should become of legacy support for an incumbent local exchange carrier (ILEC) when it, but no other carrier, bids in its service area, and whether, if the ILEC is the sole applicant to bid in its service area, and no other carriers apply to bid, it should continue to receive support pursuant to the legacy rate-of-return support mechanisms.²⁹ In both of these scenarios, legacy carriers should continue to receive support pursuant to the legacy rate-of-return support mechanisms.

The *FNPRM* asks whether the Commission should “infer that by not applying to participate in the auction the competitors are demonstrating that they are not capable of providing service to the entire study area.”³⁰ ITTA responds with an emphatic yes. However, the inference should extend further to where an entity applies to bid but does not actually end up bidding. In either scenario, the entity has determined that the business case to provide service simply does not exist in the subject area. Put another way, although the *Report and Order* explains that “[c]ompetitive bidding will result in a market-based allocation of limited funding in areas where support is overwhelmingly not needed to achieve [the Commission’s] universal service goals as evidenced by the amount of unsubsidized competition,”³¹ in both of the above scenarios the clear market signals are that sufficient support *is* needed to achieve the Commission’s universal service goals of broadband availability for all Americans.³²

²⁹ See *Report and Order and FNPRM* at 55, para. 196.

³⁰ *Id.*

³¹ *Id.* at 44, para. 144.

³² And, of course, in the case of an entity applying to bid but not actually bidding, the fundamental predicate of *competitive bidding* has not been met.

In addition, in the scenario of the legacy carrier, but no other entity, actually bidding in the legacy carrier's service area, the case is no less compelling for the legacy carrier to continue receiving support pursuant to the legacy rate-of-return support mechanisms than it is when no other entity even applies to bid. In the former scenario, legacy carriers may bid artificially low in order to enhance their chances of remaining in the auctioned areas through receiving *some* level of support, but at artificially low support levels will be forced to sacrifice some service features if they actually win. It follows that where the legacy carrier is then the only bidder, it will be forced to accept artificially low support, resulting in diminution of its incentive to invest in its network beyond fulfilling its buildout obligations.

Finally, a corollary to the merits of legacy carriers continuing to receive support pursuant to the legacy rate-of-return support mechanisms in both of these scenarios is that the same outcome should result where the legacy carrier does not apply to bid but unserved locations remain in the service area, and no other entity bids for the service area or applies to bid for it. In this corollary scenario, where the unsubsidized competitor also has not deployed to all locations, market signals are indicating that support levels beyond those to be derived through an auction are necessary to fulfill the Commission's universal service goals of broadband availability to all Americans.

The outcome of legacy carriers continuing to receive support pursuant to the legacy rate-of-return support mechanisms in all of these depicted scenarios is also consistent with the Commission's recent action with respect to auction-eligible areas where there was no winning bidder in the CAF Phase II auction. There, price cap carriers serving such areas will continue to receive price cap "legacy" support until further Commission action.³³

³³ See *Connect America Phase I Transition Order* at 5, para. 13. In that order, the Commission adopted a methodology for disaggregating price cap carriers' existing frozen ("legacy") support in areas where there was no winning bidder in an auction-eligible census block. See *id.*; see also (continued...)

D. Where Another Entity Places a Winning Bid in the Overlap Auction, the Legacy Carrier Should Receive Transitional Support

The *FNPRM* seeks comment on what, if any, transitional support should be provided to the legacy carrier where another entity places a winning bid for the legacy carrier's service area in the overlap auction.³⁴ ITTA urges the Commission to adopt transitional support in such circumstances.

The Commission long has recognized that sudden cuts in carriers' support can harm consumers and potentially lead to their loss of service, outcomes that by their very nature contravene the public interest. For instance, the Commission has declared that it "generally prefers to avoid flash cuts in support that would dramatically affect consumers"³⁵ or carriers.³⁶ It also has "sought to phase in reform with measured but certain transitions, so companies affected

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id. at 3-4, paras. 9-10. ITTA notes, however, that an analogous disaggregation of legacy rate-of-return carriers' support would not be appropriate. The methodology adopted in the *Connect America Phase I Transition Order* is based on cost results derived by employing the price cap carrier cost model. *See id.* at 3-4, paras. 9-10. However, by their very nature, legacy carriers do not receive support based on a cost model. ITTA also observes that the Commission refrained from disaggregating "legacy" support among fixed competitive ETCs' service areas, in large part because of the complexity and effort entailed for a relatively minimal amount of support. *See id.* at 7, para. 18 n.39. Similarly here, there are at most 15 study areas that would be subject to the overlap auction. *See supra* note 17. If the Commission nevertheless adopts a disaggregation mechanism for legacy carriers continuing to receive support pursuant to the legacy rate-of-return support mechanisms, it should utilize a disaggregation mechanism "that ensures that sufficient support is provided to those areas where the [legacy carrier] is the sole provider of voice and broadband," recognizing that "non-competitive areas are likely to be relatively higher cost." *Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3140, para. 138 (2016) (*Rate-of-Return Reform Order*). Similarly, in such an event, the Commission should provide legacy carriers flexibility to determine the disaggregation approach that "best reflects the unique characteristics of their service territory." *Id.*; *see id.* at 3139-42, paras. 138-45.

³⁴ *See Report and Order and FNPRM* at 55, para. 197.

³⁵ *Connect America Fund et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, 7067, para. 50 (2014) (*April 2014 Connect America Report and Order*).

³⁶ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17752, para. 242.

by reform have time to adapt to changing circumstances.”³⁷ To its credit, the *FNPRM* is cognizant of ensuring that “customers who are currently served by the [legacy carrier] do not lose access to voice service or existing broadband service prior to the deployment of service to those locations by the winning bidder,” and seeks comment on how best to ensure that.³⁸

The *FNPRM*’s concerns are well-founded. In many cases, a flash cut of legacy carrier support where another entity places a winning bid for the legacy carrier’s service area in the overlap auction will lead to either of two highly unpalatable outcomes: either the legacy carrier will exit the market, or, more likely, the legacy carrier will dramatically raise prices for its existing customers. The former case threatens to realize the precise concerns that the *FNPRM* identifies. The latter scenario flies in the face of the Commission’s duties under the Act to ensure that “[q]uality services . . . [are] available at just, reasonable, and affordable rates,”³⁹ and that “consumers . . . in rural, insular, and high cost areas . . . have access to telecommunications . . . and advanced telecommunications and information services . . . that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”⁴⁰ Neither scenario is in the public interest.

To avoid these harms, the Commission should provide transitional support to the legacy carrier where another entity places a winning bid for the legacy carrier’s service area in the overlap auction. There should be two elements to such transitional support. First, the Commission should provide for a gradual decrease in operating expenses (opex). One model that the Commission could consider is to reduce opex support annually in equal increments over three years with the carrier receiving no opex support in year four. This is similar to the

³⁷ *Id.* at 17671, para. 11.

³⁸ *Report and Order and FNPRM* at 55, para. 197.

³⁹ 47 U.S.C. § 254(b)(1).

⁴⁰ *Id.* § 254(b)(3).

Commission's approach to reduction in support associated with the prior 100% overlap mechanism as well as in other contexts.⁴¹ Second, the Commission should phase down support for capital expenses over the remaining useful life of the legacy carrier's assets. This is equitable because legacy carriers made capital investments based on the assumption of receiving support over the lifespan of the assets, and depreciated these assets accordingly.

E. The Commission Should Not Conduct Overlap Auctions Every Other Year

The *FNPRM* notes that the prior 100% overlap process was conducted every other year, and seeks comment on whether the Commission should conduct overlap auctions on a similar schedule.⁴² As an initial matter, it is unclear whether the *FNPRM* is contemplating overlap auctions of newly eligible study areas every other year, or previously auctioned study areas every other year. The latter interpretation would *ensure* that no entity will bid in an overlap auction. Perhaps less obvious, the former characterization would also be ill-advised.

Conducting overlap auctions even of newly eligible study areas every other year would deter investment by legacy carriers in their networks, because the specter of loss of support would reappear every other year.⁴³ The competitive overlap challenge process that the Commission adopted in the *Rate-of-Return Reform Order* relative to overlapped provision of Connect America Fund Broadband Loop Support (CAF BLS), to take place every seven years, tacitly and properly recognized that a legacy carrier's investment cycle is typically every seven years or so. The Commission also found that "[r]e-examining the extent of competitive overlap

⁴¹ See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17768, para. 284; *April 2014 Connect America Report and Order*, 29 FCC Rcd at 7067, para. 51.

⁴² See *Report and Order and FNPRM* at 55, para. 199.

⁴³ As the *Report and Order* acknowledges, study areas subject to the overlap auction may still contain unserved locations. See *id.* at 43, para. 143. Therefore, the Commission's prior admonishment that it "cannot and will not condone new investment subsidized by universal service funds to occur in areas that are already served by marketplace forces" would not apply. *April 2014 Connect America Report and Order*, 29 FCC Rcd at 7073, para. 68.

in this time frame will provide stability and consistency for all interested stakeholders.”⁴⁴ ITTA urges the Commission to correspondingly adopt a seven-year interval between overlap auctions.

III. THE COMMISSION SHOULD ADOPT REASONABLE LIMITS ON CONVERSION OF LINES TO BROADBAND-ONLY

One of the most significant actions taken by the Commission in the *Rate-of-Return Reform Order* was adoption of the CAF BLS mechanism, which gives legacy carrier customers additional flexibility to purchase broadband-only lines, and in the process also creates incentives for legacy carriers to deploy modern networks and encourage adoption of broadband.⁴⁵ The *FNPRM* expresses concern, however, that some carriers may be moving consumers onto broadband-only lines for the purpose of artificially increasing the support they receive from the USF.⁴⁶ In light of such concerns, it seeks comment on whether the Commission should adopt limits on the number of converted lines for which a carrier may seek broadband-only support.⁴⁷ Below, ITTA proposes a methodology for such limits, which it believes will largely mitigate apprehensions regarding an “artificial constraint on conversions”⁴⁸ and continue to promote the benefits of the CAF BLS mechanism, while also reducing the arbitrage opportunities that underlie the *FNPRM*’s concerns.

Specifically, each year beginning with 2019, a legacy carrier receiving or wishing to receive CAF BLS support should be permitted to convert 10 percent of its lines to broadband-only and receive CAF BLS support for such converted lines. The base to which the 10 percent would apply would be the legacy carrier’s line counts as of January 1st of the given year. Any lines in excess of 10 percent that the carrier converts to broadband-only during the given year

⁴⁴ *Rate-of-Return Reform Order*, 31 FCC Rcd at 3139, para. 137.

⁴⁵ *See, e.g., id.* at 3091, para. 5; *Report and Order and FNPRM* at 55, para. 200.

⁴⁶ *See Report and Order and FNPRM* at 55-56, para. 200.

⁴⁷ *See id.* at 56, para. 201.

⁴⁸ *Id.*

would be considered voice/broadband lines for USF support purposes, and therefore not eligible for CAF BLS support.

One of the foremost advantages of this approach is the simplicity of administering it. A related feature of such simplicity is that it does not entail any changes to the High-Cost Loop Support (HCLS) or Connect America Fund intercarrier compensation (CAF ICC) mechanisms.⁴⁹ And because arbitrage opportunities tend to be cultivated more readily when mechanisms are complex and difficult to verify, the simplicity of this approach should also, by its very nature, help to diminish the purported arbitrage that the *FNPRM* seeks to thwart. Finally, with the combined minimum 7 percent legacy program budgetary increase that the Commission adopted for 2019⁵⁰ and annual budgetary increases to adjust for inflation,⁵¹ ITTA anticipates that there would be sufficient budgetary space for the support increases attributable to broadband-only conversions subject to ITTA's proposed conversion limits, such that the Commission should not have to revisit this issue until it revisits the legacy budget as a whole in 2024.⁵²

IV. CONCLUSION

Legacy rate-of-return carriers that have substantial unsubsidized competition in their service areas deserve better than the proverbial kick in the seat after decades of providing service to consumers in hard-to-reach rural areas. Any auction winner that seeks to effectively supplant the legacy carrier must be required to serve all locations in the service area, including those not

⁴⁹ *But see id.* at 56, 57, paras. 202, 204 (seeking comment on whether carriers should immediately lose HCLS for any lines converted to broadband-only, and on whether the Commission should adjust its CAF ICC rules in order to discourage arbitrage).

⁵⁰ *See, e.g., id.* at 55, para. 200.

⁵¹ *See, e.g., Report and Order* at 3, para. 3.

⁵² *See id.* at 31, para. 97 (Commission does not expect to review the budget prior to 2024). As a corollary, to the extent the *FNPRM* seeks comment on broadband-only conversion limits in light of its concerns surrounding the budgetary implications of unfettered conversions, should there be no budget control mechanism, there would be no need for such limits.

reached by the legacy carrier or the unsubsidized competitor. The overlap auction process should be designed in a manner that enables legacy carriers to compete but also recognizes that areas with remaining locations unserved with broadband may be that way simply because the business case has not existed to deploy to such locations, and any lack of a third-party bid or application to bid to serve an area subject to auction should be interpreted by the Commission as the marketplace declaring that the legacy carrier should continue to receive support pursuant to the legacy rate-of-return support mechanisms. However, even where there is a winning bidder that is not the legacy carrier, the legacy carrier should receive transitional support so as to ensure that no consumer loses service while awaiting deployment by the auction winner. Finally, the Commission should adopt a methodology that reasonably, but not excessively, limits broadband-only conversions, thereby addressing concerns regarding arbitrage while at the same time promoting the benefits of broadband-only service.

Respectfully submitted,

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