

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Connect America Fund) WC Docket No. 10-90
)
ETC Reports and Annual 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
WTA – ADVOCATES FOR RURAL BROADBAND**

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SUMMARY

WTA – Advocates for Rural Broadband (“WTA”) files comments with respect to the Further Notice of Proposed Rulemaking portion of the Commission’s December 13, 2018 Connect America Fund Report and Order that (1) oppose use of the CAF Phase II mechanism or other reverse auction approaches to award high-cost support in existing broadband service areas that are “entirely” or “almost entirely” overlapped; (2) support a reasonable transition mechanism to minimize adverse and unpredictable budget control mechanism impacts as consumers migrate to stand-alone broadband services; and (3) support incorporation of a Tribal Broadband Factor into the high-cost support for cost-based Rate-of-Return carriers serving Tribal lands.

WTA opposes the CAF Phase II auction procedures in particular, as well as reverse auction approaches in general, as ways for determining (and in most cases significantly reducing) high-cost support for existing broadband service areas such as rural local exchange carrier (“RLEC”) study areas that are entirely or “almost entirely” overlapped by alleged “unsubsidized competitors.” Whereas the CAF Phase II mechanism may or may not prove successful in bringing sustainable broadband services for the first time to some or all of the unserved Auction 903 areas when compliance milestones are reached and reported in 3-to-6 years, very different circumstances and complexities apply in RLEC study areas with existing broadband customers and networks and outstanding broadband loans and obligations. The major flaw of the CAF Phase II mechanism and other reverse auction approaches in existing service areas is that they focus upon short-term high-cost support reductions at the expense of the existing and future broadband services needs of affected customers. In addition, reverse auctions create a “playing field” and conditions that are heavily slanted against incumbent RLECs, and make future high-cost support so unpredictable as to destroy incentives for long-term infrastructure investment.

In addition to these general problems, the proposed CAF Phase II mechanism will, *inter alia*: (a) create a host of technical and customer service problems by dividing up support for established networks on the basis unrelated census geography; (b) allow bidders with no local presence and with virtually no incremental costs to eliminate “market-based support levels” and drive off entities with existing local facilities and proven records of local service; (c) employ a multi-round descending clock procedure that does not adequately consider the very different service and cost characteristics of rural service areas; and (d) fail to consider to difficulties of retaining employees and maintaining critical broadband and public safety services when it becomes clear during or after a reverse auction that an incumbent RLEC will lose most or all of the high-cost support that constitutes a major portion of its revenue stream.

In light of these general and particular reverse auction issues as well as the known limitations of FCC Form 477 data, WTA believes the Commission should abandon its CAF Phase II auction mechanism proposal. If the Commission does not, it is absolutely imperative for the Commission to conduct a thorough challenge process before subjecting existing broadband service areas and customers to the vagaries of the CAF Phase II or any other reverse auction process.

WTA joins with NTCA to propose that the Commission limit the increase in Consumer Broadband-Only Loop (“CBOL”) conversions for which a cost-based RLEC may receive the broadband-only portion of Connect America Fund – Broadband Loop Support (“CAF-BLS”) to 10 percent of that carrier’s voice lines as of December 31 of the prior year, with any such limit expiring through an absolute sunset at the earlier of December 31, 2024 or the date on which the contemplated five-year budget review is completed. In the event that an RLEC has conversions of voice lines to standalone broadband during a year that exceed the 10 percent limit, it would receive support in that year “as if” those of its CBOL connections above the 10 percent limit

continued to include voice. WTA has reserved the right to modify this CBOL limitation proposal if revision is needed to more effectively address potential budget control mechanism (“BCM”) issues in light of the changes to the high-cost support budget or the BCM for cost-based RoR carriers that are likely to occur after the upcoming ACAM II elections are made.

Finally, WTA supports the comparably equivalent treatment of both RLECs serving Tribal areas that elect ACAM II support and RLECs serving Tribal areas that elect to remain on cost-based RoR support. It proposes that the latter RLECs and their customers should have access to a comparable Tribal Broadband Factor that adjusts their high-cost support – specifically, a reduction of the \$42.00 per month per line funding threshold for CAF-BLS in Tribal areas by 25 percent to \$31.50 in order to encourage additional broadband deployment on Tribal lands.

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**COMMENTS OF
WTA – ADVOCATES FOR RURAL BROADBAND**

WTA – Advocates for Rural Broadband (“WTA”) hereby submits its comments with respect to the *Further Notice of Proposed Rulemaking* (“FNPRM”) portion of the Commission’s *Report and Order, Further Notice of Proposed Rulemaking*, and Order on Reconsideration, FCC 18-176, released December 13, 2018 in the captioned proceedings (“*Order*”). These comments are filed in accordance with the schedule established in 84 FR 2132 (February 6, 2019).

WTA, a national trade association representing more than 340 rural telecommunications providers (“RLECs”) that offer voice, broadband and video-related services in rural America, has participated extensively in the comments, meetings, and joint association letters that comprise a significant portion of the record leading to the *Order*. WTA: (1) opposes the use of the CAF Phase II mechanism or other reverse auction approaches to award high-cost support in existing broadband service areas that are alleged to be “entirely” or “almost entirely” overlapped by “unsubsidized competitors”; (2) supports a reasonable transition mechanism to minimize adverse and unpredictable budget control mechanism (“BCM”) impacts as consumers migrate to stand-alone

broadband services; and (3) supports the incorporation of a Tribal Broadband Factor into the high-cost support for cost-based Rate-of-Return (“RoR”) carriers that serve Tribal lands.

I

NEITHER THE CAF PHASE II MECHANISM NOR OTHER POTENTIAL REVERSE AUCTION DESIGNS WILL ADVANCE UNIVERSAL SERVICE GOALS IN AREAS WITH EXISTING CUSTOMERS, BROADBAND NETWORKS, AND INVESTMENT NEEDS AND OBLIGATIONS

WTA applauds the many substantial steps taken in the *Order* to provide the predictable and sufficient support necessary to promote and increase broadband investment and deployment in rural areas served by RoR carriers. The Commission has wisely recognized the critical importance of reliable, high speed, top quality, affordable and reasonably comparable broadband access that enables rural households and businesses to participate in and benefit from economic opportunity, job creation, education, and civic engagement (*Order* at ¶2). Unfortunately, the *FNPRM*’s proposal for reverse auctions in certain “entirely” or “almost entirely” overlapped RLEC study areas will exclude such areas and their residents from the *Order*’s predictability and sufficiency gains, will deter future long-term infrastructure investment therein and will reduce or render uncertain the availability and quality of present and future broadband service options.

Whereas they may be a feasible way to bring first-time service to unserved areas, reverse auctions are ill-suited to the complexities and uncertainties of the interrelated variety of present and future factors and considerations affecting existing broadband service areas. By focusing predominately upon the lowest amount of short-term high-cost support willing to be accepted by a competing bidder, reverse auctions largely ignore the present and future broadband service preferences and needs of affected customers, not to mention a host of additional considerations such as: (a) future local infrastructure investment needs and service upgrades; (b) existing construction loan repayment obligations and cost recovery; (c) ready access to local customer

service, installation and maintenance personnel; (d) existing and future local broadband service provider jobs; and (e) contingency plans for broadband and public safety services if a “winning bidder” fails or otherwise proves to be unable to meet its construction and service obligations after the current RLEC broadband service provider leaves the market after losing essential high-cost support revenues.

WTA is aware that the Commission views the CAF Phase II auction (Auction 903) conducted during July and August 2018 as a “success” that “unleashed robust price competition” (*Order* at ¶143). However, the critical difference vis-à-vis the *FNPRM* reverse auction proposal is that the CAF Phase II auction dealt with unserved areas whose previous price cap service providers had been unwilling or unable to accept broadband build-out and service obligations, and did not involve existing broadband customers, networks and services that could be disrupted or otherwise impacted by an auction. Without needing to deal with disturbances to existing arrangements, the Commission could reasonably and properly focus Auction 903 upon selecting new broadband service providers for unserved areas and customers on the basis of their willingness to accept an amount of high-cost support lower than that deemed to be minimally sufficient by competing bidders. However, it will not be clear for years whether the CAF Phase II auction will actually be successful in achieving the desired service levels at the “winning” high-cost support bids. First, reports that Auction 903 auction resulted in a high-cost support commitment of only \$1.488 billion (29.76 percent) of the initial aggregate reserve price of \$5 billion but had a final clearing point percentage of 78.35 percent of the reserve price for each area raise questions regarding the extent to which the reduced support outlay was due to robust bidding competition and/or to a significant reduction in the number of locations agreed to be served by the auction winners (713,176 new locations, reduced from the original 974,223 locations included in the

auction). Second, whether the auction “winners” will receive 29.76 percent or 78.35 percent of the ACAM reserve price for the census block groups where they were the low bidder, it will not be clear whether they will be able to construct and operate their proposed networks and provide their promised levels of broadband service on a sustained basis until they report their compliance or non-compliance with their required Year 3, Year 4, Year 5 and Year 6 service and build-out milestones. Third, even where the Auction 903 build-out milestones are met by the various satellite, wireless and wireline winners, it is not clear whether the networks that they proposed were designed for the long term, or whether they will need to be upgraded or replaced at substantial additional cost in order to meet the foreseeable future broadband capacity needs of the rural customers in their service areas.

Whether the CAF Phase II mechanism or another reverse auction design can successfully bring new broadband investment and sustainable broadband services to unserved areas, a wholly different set of goals, issues and complexities apply in rural study areas where customers are already being served by substantial broadband networks. Given that a predominant Section 254 universal service goal is to enable rural customers to have access to broadband services, service quality and rates that are reasonably comparable to those available in urban areas, the controlling consideration regarding this and other high-cost support issues must be the present and future broadband services available to customers in the affected rural areas. Rather than being unserved, rural customers in the study areas¹ potentially affected by the *FNPRM*'s reverse auction proposal already have one or more current broadband service options, and presumably have selected their existing broadband service and service provider on the basis of their own speed, quality, reliability, price and other preferences. The *FNPRM* gives no indication whether or how the service

¹ The *FNPRM* indicates that there are currently 8 potentially affected study areas with 100 percent overlap, and 7 with at least 95 percent overlap. *Order* at ¶185.

preferences and arrangements of these existing customers have been or will be considered if their service area is designated for auction. For example, the FNPRM does not discuss or request credible information from reverse auction proponents regarding the types of broadband service and rate changes that might be expected by existing customers in an auction area as a result of the reductions in high-cost support that a reverse auction is designed to achieve. Likewise, to the extent that reverse auctions cause the entry or exit of service providers, or significantly change competitive positions and/or market shares, there is no indication in the *FNPRM* of any intent to consider the willingness, ability and cost to affected customers to change their broadband service providers, equipment, email addresses and other aspects of their existing broadband services. For example, where a rural customer previously decided to subscribe to an RLEC's more expensive broadband service because it was more reliable and did not have quality issues during thunderstorms and peak foliage periods, how will that customer be better off if the local wireless Internet service provider ("WISP") wins the reverse auction and the customer's preferred RLEC service provider is forced to raise its rates substantially or to leave the local broadband service market as the result of losing its high-cost support?

Second, reverse auctions create a "playing field" that is massively slanted against incumbent RLECs, particularly those that previously have made material and substantial efforts to comply with Commission policies encouraging investment in and provision of high-speed broadband. Many of these RLECs have deployed expensive buried fiber deeper and deeper into their networks, and have little or no flexibility to engage in bidding wars for lower and lower high-cost support because they have large outstanding construction loans that must be repaid to the Rural Utilities Service ("RUS") or commercial lenders, plus established contractual and financial commitments to a variety of customers, employees, consultants, contractors and vendors.

Moreover, whereas the Commission's CAF Phase II and other auction rules strictly limit the information that participating bidders can have and share about potential competing bidders and bidding strategies in order to preclude collusion and unfair advantages, existing or potential bidders in a reverse auction for all or parts of an RLEC study area will have ready access to Universal Service Administrative Company ("USAC") reports detailing the target RLEC's high-cost support distributions and line counts on quarterly and annual bases for multiple prior years, plus Commission public notices regarding the RLEC's ACAM and ACAM II support offers and build-out obligations. In other words, reverse auction competitors have a major advantage over the target RLEC in devising their bidding strategies² whereas the RLEC may know little or nothing about the competing bidders or their financial and other characteristics. Even more important, RLECs and "unsubsidized competitors" are playing entirely different "games" in a reverse auction. Whereas the RLEC needs to retain most or all of the existing high-cost support that its owners and its lenders have relied upon to approve infrastructure investment projects and that it needs to repay construction loans, and to recover the capital and operating costs of its existing network and services, the "unsubsidized competitor" can "win" by reducing or eliminating the RLEC's support and can have a "successful" reverse auction even if it obtains little or no new support for itself. For example, a WISP that claims to be "serving" the "entire" or "almost entire" study area of an RLEC that is currently receiving \$900,000 a year in high-cost support can "win" by bidding to accept as little as \$10,000 (or even \$1.00) in high-cost support per year, because it is getting nothing now and will be better off even with little or no high-cost support if the RLEC against

² For example, it can be very useful for a reverse auction competitor devising its bidding strategy to know that its target RLEC last year received \$50,000 more in high-cost support than the total "reserve price" for the census blocks comprising its study area.

which it “competes” is forced to increase its rates or to go out of business when it loses all \$900,000 of its annual high-cost support revenues.

Third, once a study area is designated or likely to be designated for reverse auction, the termination of predictability regarding its future high-cost support (as well as the likelihood that such support will also become insufficient as it is reduced or lost in the reverse auction) means that pending and planned infrastructure investment will stop. This is true now for the 15 or so RLEC study areas referenced in the *FNPRM*; and is likely to be true in the future for auction “winners” and other high-cost support recipients that are likely to become subject to subsequent reverse auctions. Construction loans for wireline broadband networks generally have terms of 15 years or more, while most broadband plant facilities have useful lives of 20-to-30 years. Given that loan repayment and cost recovery are significantly dependent upon high-cost support, broadband loans and investments will not be made if there is a significant concern by lenders and capital-intensive service providers that high-cost support will be lost as the result of a reverse auction in two years, or seven years, or some other time period before loan repayments are completed and investment costs recovered.

Fourth, the ultimate losers with respect to reverse auctions for existing RLEC service areas will be the present and future rural customers in the affected areas. As just noted, once a study area is designated or deemed likely to be designated for a reverse auction that threatens the availability and amount of future high-cost support, substantial future infrastructure investment will stop, and little or no further broadband service upgrades will be made. And once the reverse auction is held, the availability, speed, quality, maintenance and cost of future broadband service is very likely to change, and the nature of such change will depend on who “won” the auction, the amount of support awarded and how soon the next reverse auction will take place. There are a

variety of potential outcomes here, but virtually all will leave most customers worse off. For example, if the RLEC “wins” but has to take a substantial reduction in its high-cost support, it will have to adjust by eliminating or postponing investments, upgrades and maintenance; reducing services and other expenses; and/or increasing rates. If the RLEC loses, it may have to cease operations, or to make major adjustments to its investments, upgrades, services, expenses and rates. And if the bidder that wins the auction cannot provide existing and future broadband service equivalent to that of the RLEC, or is unable to sustain its proposed broadband network and service on the basis of the low level of high-cost support it agreed to accept, the RLEC may no longer be in business to pick up the pieces if the auction winner cannot meet its annual service and build-out milestones during later years. Put another way, whatever service provider ends up winning an auction, the predominant importance of the “lowest bid” in both past and future auctions generally means that the present and future level, quality and reliability of the service available to customers will be reduced by the needs to minimize investment, maintenance and operating expenses. And if at some point the Commission decides to stop conducting reverse auctions for a study area, it may well end up providing a lot more high-cost support than it might otherwise have in order to make up and catch up for years of sub-optimal infrastructure investment and maintenance.

In light of these and other complexities and concerns, WTA does not believe that the CAF Phase II auction mechanism is feasible or practicable for RLEC study areas with existing broadband customers, services, networks and investment obligations. WTA has serious reservations and concerns about any reverse auction process, but clearly the CAF Phase II approach should be rejected for the foregoing general reasons and the following specific ones.

Affected Study Areas. A 95 percent overlap threshold means that at least 5 percent of an affected study area’s locations have no asserted, much less existing, “unsubsidized competitor”

actually offering service to them as of the relevant date. Hence, if an “unsubsidized competitor” were to win an auction and replace the incumbent RLEC, at least 5 percent of the customers in the RLEC’s study area would not have an immediate service alternative, and might not obtain an alternative service option (much less, one acceptable to them) for some time, if ever. This service gap of at least 5 percent is too much, particularly where existing customers and services are likely to be impacted. If, for any reason, some type of reverse auction was determined to be feasible for “almost entirely overlapped” areas, a 99 percent overlap should be the limit (and subject to a challenge process, as detailed below).

Eligible Areas. RLECs build and maintain integrated networks to serve their entire study areas. As the Commission recognized in Note 60 of the *Order*, “from a network design perspective, a carrier will typically have to build fiber facilities in the relatively low cost, more densely populated areas closer to the wire center in order to provide even lower levels of service in the costlier, less densely populated areas further from a wire center.” Moreover, integrated networks mean that costs are averaged over higher and lower cost, and more densely and more sparsely populated portions of RLEC study areas. As the Commission may recollect, disaggregation of rural study areas has often resulted in increases in the associated aggregate high-cost support.

Dividing RLEC study areas into census geography such as census block groups or census blocks for reverse auction purposes makes no sense in terms of either RLEC network design or customer service. For one thing, neither census block groups nor census blocks have any relation to the existing exchange and study area boundaries that were established decades ago on the basis of actual telephone service areas authorized by state commissions. In some cases, a census block group or census block may be larger than an RLEC exchange or study area, or may contain

substantial areas and locations that are not part of the RLEC's service territory. In other cases, there may be several census block groups or census blocks within the RLEC's study area and network. By subjecting RLEC study areas to reverse auctions for a multiplicity of census blocks or census block groups, the *FNPRM* creates the possibility that unrelated bidders will get high-cost support for separate portions of what once was a single integrated network and study area served by a common web of switches/routers, trunks and customer loops. A census-related, non-telecommunications disaggregation will not only exacerbate the problems of lack of scale economies that have long plagued rural telecommunications service, but also will unnecessarily complicate network design, upgrades and maintenance by dividing service areas into census-based subdivisions that have little or no relevance to telecommunications technologies or services. And particularly given the fact that very few customers know or care about the census block or census block group in which they are located, it will also result in serious customer dissatisfaction and complaints when households on one side of a road have access to one supported service but not another, or where households in supported and unsupported portions of the study area may be charged different prices for the same or similar broadband services.

Public Service Obligations / Service Tiers. The performance tiers and weights used in the CAF Phase II auction were reasonable for unserved areas where none of the participating bidders has an existing local broadband network, but are unduly narrow for auctions involving existing broadband customers, networks and services. Where customers have no existing broadband service and the winning bidder will have to design and build a new broadband network, it is appropriate to set weights solely on the basis of proposed speed, usage and latency performance tiers. However, when existing broadband networks and services are already in place and customers have selected their existing service arrangements, there must be weighting factors that reflect not

only proposed performance, but also existing presence, facilities and customer service, and the ability to upgrade and keep up with foreseeable increases in customer demand and broadband service needs. First, rural areas are difficult and expensive to serve, and require a significant commitment from proposed service providers. One way to ensure this is to give a significant weighting advantage to bidders that have already demonstrated a substantial and long-term commitment to serve the subject areas. For example, a significant weighting advantage can be given to bidders that are locally owned and controlled (*i.e.*, where there is *de jure* control by established residents of the study area). An additional way to recognize and insure local interest and commitment is to provide a significant weighting advantage to a bidder that has provided telecommunications services to the auction area for at least five years (significant weight) and for at least ten years (larger weight). Second, bidders that have a substantial existing local presence (for example, a local office that is staffed by ten or more managers, technicians and customer service representatives situated within the study area) that existing and future customers can readily contact for service and problems should be afforded a substantial weighting advantage. Third, bidders that have a substantial existing network covering the entire study area should receive a substantial weighting advantage if such network (for example, a fiber-to-the-home or fiber-to-the-curb network) can readily and rapidly be upgraded to meet increased customer broadband speed demands without significant or time-consuming new construction (for example, by replacing electronics rather than constructing additional lines or transmitting sites). These and similar types of weightings recognize the value of existing investment, networks and services, and would help to provide some correction to an auction “playing field” that is slanted heavily and inequitably in favor of satellite and wireless bidders that can “win” reverse auctions by undercutting established RLECs with unreasonably low bids and unproven promises of future networks and services.

Eligibility to Participate. The Commission should not allow any “eligible provider” that is not one of the “unsubsidized competitors” whose service constitutes all or part of the alleged “entire” or “substantially entire” overlap to participate in any RLEC study area reverse auction that might be designated. There is no evidence that “more auction participants are more likely to lead to market-based support levels” (*Order* at ¶191). Rather, the CAF Phase II auction showed a very substantial participation by satellite service providers that, once they get their satellite built and lifted into orbit, incur little or no incremental cost to serve additional customers and locations within their footprint area. Most urban and rural customers can obtain satellite broadband service now if they want it and are able to purchase, install and maintain the necessary satellite dishes and related equipment. However, by letting satellite and other entities with no current on-the-ground presence in a study area participate in a reverse auction, the Commission is more likely to drive support levels down close to the zero level of satellite incremental costs rather than to establish some sort of “market-based” support levels. Whereas satellite broadband services may be the most viable alternative in some unserved areas, most existing RLEC broadband customers would not be satisfied or well served if their existing local broadband service were superseded or replaced by a distant satellite provider with little or no local presence or support staff. Hence, should some type of reverse auctions for any reason be employed in RLEC study areas, they should be limited to the RLEC and the alleged “unsubsidized competitors” that demonstrate the requisite “entire” or “almost entire” overlap. (WTA will discuss the requisite challenge process below.)

Auction Design. A multi-round descending clock auction where bidders participating in all markets and proposing different performance levels compete head-to-head in a free-for-all may have worked in the CAF Phase II auction where the Commission had a limited budget and where no customers lost service if some unserved areas remained unserved. However, it can wreak havoc

in an auction relating to RLEC study areas where individual RLEC service areas have very different cost characteristics and where the services of existing customers can and will be disrupted. For example, if 15 RLEC study areas were each auctioned individually, each could have a different final clearing point percentage due to the different cost and service characteristics of the specific study area. On the other hand, if all 15 study areas are auctioned together as in the CAF Phase II auction, the common final clearing point percentage is likely to be too low for many, if not all but one, of the study areas and could result in no “winning bid” for many census block groups. If, as in the CAF Phase II auction, the absence of a “winning bid” means that a census block group gets no support, what happens to the broadband service of the existing customers residing in it?

Transition for Incumbent Provider. Where an incumbent RLEC does not win a reverse auction and loses most or all of its existing high-cost support, the Commission cannot readily ensure that customers who are currently served by the RLEC do not lose access to voice service or to existing broadband service prior to the deployment of service to those locations by the winning bidder. RLECs are law-abiding entities with a long and established record of taking their service responsibilities seriously, and would not terminate service in contravention of a Commission or state commission order or denial of a Section 214 discontinuance application. However, if an RLEC loses the high-cost support it needs to continue operations and to avoid bankruptcy or loan defaults, it cannot stop its employees (particularly highly sought after broadband technical personnel) who see the handwriting on the wall from seeking and taking new jobs elsewhere. Loss of critical RLEC staff can quickly result in degradation or breakdown of the existing broadband services of RLECs that lose their high-cost support in a reverse auction. This situation not only can deprive existing business and household customers of critical Internet access

and other data and information services, but also can disrupt public safety reporting and response networks and systems.

Frequency of auctions. The *Order* emphasizes the Commission's recognition of the need to ensure sufficient and predictable support in order to enable reasonably comparable broadband deployment in rural areas (*Order* at ¶70). Regardless of whether an RLEC or a competing bidder "wins" a reverse auction, nothing would undermine the predictability of its support or its ability to fund and make long-term investments more than having to go through the same process again in two years and then every two years thereafter. Moreover, if the Commission were to adopt service and build-out milestones similar to the Year 3-to-Year 6 reports required for CAF Phase II auction winners, the bi-annual auctions would occur before the winners of the previous auction were required to meet and report their compliance with their Year 3 milestones, much less to complete their entire six-year obligation. Whatever scheduling options may be considered, the next auction at the very minimum should not be conducted until the service and build-out milestones for the previous auction have been completed, or in the alternative until it becomes reasonable for the Commission to conclude that such milestones will not be met.

Challenge process. In sum, WTA does not believe that the CAF Phase II auction mechanism is appropriate or practicable for areas with existing broadband customers, services, networks and investment obligations. The very prospect of such an auction will halt broadband investment and service upgrades, while the support changes resulting from them will harm existing customers by disrupting their current service arrangements and rates. In the end, it is existing rural customers who are likely to be impacted the most adversely by reverse auctions.

If the Commission for any reason determines to move forward with some form of reverse auction in overlapped RLEC study areas, it needs to re-focus its attention and goals from reducing

and minimizing high-cost support dollars to ensuring that the services available to existing customers are protected and, if possible, improved. A critical step in this direction is the establishment of a challenge process that ensures that voice and 25/3 broadband service are actually available from one or more “unsubsidized competitors” to 99 percent of the locations in an RLEC study area before it is designated for reverse auction.

WTA is well aware that FCC Form 477 data indicates only that a service provider offers a specified level of service to at least one customer location in a census block, and does not indicate one way or the other whether the service provider can serve all or “almost all” of the customer locations within such census block. That is not sufficient in any respect to demonstrate that “unsubsidized competitors” actually can serve 100, 99 or 95 percent of the locations within a census block, much less the encompassing RLEC study area. In fact, one of significant alleged “unsubsidized competitor” groups – that representing WISPs – has admitted in comments filed with the Commission that “it is not possible to determine with any certainty what potential customers will be or would be readily served using fixed wireless technology until an on-site technical assessment is made”³ and that they “often cannot determine with certainty whether [their] service is ‘available’ until a skilled installer is working on the potential customer’s premises.”⁴ Moreover, WTA members who provide WISP services and attend WISP industry meetings report that many WISPs are well aware that they cannot provide specified broadband speeds throughout many of the census blocks and other areas where they (correctly) report on their FCC Form 477s that they offer or advertise the specified level of service to at least one location.

³ “Comments of the Wireless Internet Service Providers Association, WC Docket No. 11-10, dated October 10, 2017, at p. 11.

⁴ *Id.*, at p. iii.

If the broadband service of the existing customers of an RLEC is going to be disrupted by a reverse auction, the very least that the Commission should do is to ensure that “unsubsidized competitors” actually can provide the required levels of broadband and voice service to the existing customers and customer locations in the RLEC’s study area before subjecting them to the vagaries of a reverse auction. The FCC Form 477 data does not address, much less prove, this critical matter. Hence, the Commission needs to establish a challenge process in which “unsubsidized competitors” will have the burden of proving that they can provide 25/3 service to the requisite number and percentage of locations (including all existing customers served by the RLEC whose current high-cost support is subject to the auction in question), and in which affected RLECs have the opportunity to review, question and/or rebut the offers of proof. WTA has prepared sample forms in the past for use in challenge processes,⁵ and is willing to do so again. But the key point here is that “unsubsidized competitors” must have and satisfy the burden of proving that they actually can serve the requisite percentage of “entirely” or “almost entirely” overlapped locations within an RLEC study area before the existing customers, services, networks and investment obligations thereof are disrupted.

II

A REASONABLE TRANSITION MECHANISM SHOULD BE ADOPTED TO MINIMIZE ADVERSE AND UNPREDICTABLE BUDGET CONTROL MECHANISM IMPACTS AS CONSUMERS MIGRATE TO STANDALONE BROADBAND SERVICES

The *FNPRM* seeks comment on how to address concerns that potential increases in the adoption of Consumer Broadband-Only Loop (“CBOL”) services that are more rapid than expected may exhaust the newly increased budget resources for cost-based RLECs and reintroduce

⁵ Letter from Gerard J. Duffy, WTA Regulatory Counsel, to Marlene H. Dortch, Secretary, filed October 24, 2016 in *Connect America Fund*, WC Docket No. 10-90.

the unpredictability of the budget control mechanism (“BCM”).⁶ WTA joins with NTCA – The Rural Broadband Association (“NTCA”) in a proposal to limit potential cost-based RoR budget increases associated with CBOL growth for a brief transition period in order to provide carriers with the predictable support necessary to make long-term broadband infrastructure investments, while continuing to enable consumer adoption of standalone and other broadband services.

As the Commission is well aware, following the *2016 Rate of Return Reform Order*,⁷ RLECs receiving cost-based support were subjected to a BCM that increased rapidly to a 12.3 percent average reduction in support for the period June 2017-June 2018 and to 15.5 percent the next year. Fortunately, the Commission recognized the damage that such uncertainty could produce and took substantial and appropriate steps in March and December 2018 to end and restore BCM support reductions and to provide an increased budget for cost-based RLECs.⁸ But it is important now to finish the work of minimizing the unpredictability and adverse impact of the BCM for a transition period during which consumers are likely to continue to move to standalone broadband services.

Data available to WTA confirms that this concern is reasonable. Based on assumptions included in Appendix D of the Order, an average 10 percent conversion of prior year’s voice lines to CBOL during 2019 can produce an estimated 5.5 percent BCM reduction in 2019 high-cost support [High Cost Loop Support (“HCLS”) and Connect America Fund – Broadband Loop Support (“CAF-BLS”)] for current cost-based (*i.e.*, non-ACAM) RLECs. This potential BCM-

⁶ *FNPRM*, ¶¶ 200-204.

⁷ *Connect America Fund*, et al., WC Docket No. 10-90, et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33 (rel. Mar. 30, 2016) (“*2016 Rate-of-Return Reform Order*”).

⁸ *Connect America Fund*, et al., WC Docket No. 10-90, et al., Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18-29 (rel. Mar. 23, 2018); and *Order* at ¶¶ 72-100.

related support decrease is smaller than those experienced prior to the March and December 2018 orders, but it is still troubling in light of the significant efforts in the *Order* to restore sufficiency and predictability to these mechanisms. Moreover, WTA understands that a 20 percent average increase in CBOL connections for the same time period would produce an estimated 13.4 percent BCM-related decrease in HCLS and CAF-BLS for that same period.⁹

To address these concerns, WTA joins with NTCA to propose that the Commission limit the increase in CBOL conversions for which a cost-based RLEC may receive the broadband-only portion of CAF-BLS support to 10 percent of that carrier's voice lines as of December 31 of the prior year, with any such limit expiring through an absolute sunset at the earlier of December 31, 2024 or the date on which the five-year budget review contemplated by the *Order*¹⁰ is completed.

To be clear, the proposed limit would *not* restrict the *actual* number or percentage of a cost-based RLEC's customers that could convert to standalone broadband in a given year. Actual conversions to CBOL service would and should be driven solely by customer demand. Indeed, under the proposed limit, from 50% or so up to 100% of every RLEC's customer base could, in theory, be converted to standalone broadband by the 2024 sunset date without any effect on that carrier's support. That is, migrations can and will still occur even with such limits in place. Nor will the proposed limit *discourage* CBOL conversions, because, as described below, cost-based RLECs will continue to receive support for such connections in excess of the annual limit "as if" they were voice lines. Put another way, the proposed limit would *only limit the increased support* a carrier could receive from such conversions over the next several years, and thereby minimize

⁹ As will be addressed further below, these BCM impact estimates are based upon CBOL growth and BCM impacts for all current cost-based RLECs before some of these RLECs elect to accept a new ACAM offer of model-based support (ACAM II). WTA reserves the right to review and potentially revise the current proposed CBOL transition mechanism in light of any significantly revised CBOL adoption data and BCM impact estimates after it is known which and how many RLECs elect ACAM II support.

¹⁰ *Id.* at ¶ 97.

the likelihood (or at least the magnitude) of BCM reductions affecting *other* RLECs as a result of such conversions during that transitional period.

More specifically, pursuant to this proposal, each individual RLEC receiving cost-based High-Cost support would have its support calculated based on a maximum annual growth rate in CBOL lines of 10 percent of that RLEC's prior year voice lines, starting at each carrier's baseline of such broadband-only connections as of December 31, 2018. For those additional CBOL connections up to and equal to the annual limit, the RLEC would receive CAF-BLS support for that number of additional CBOL lines just as it does for all other CBOL connections previously in place. But *only* for those CBOL connections in excess of the limit—in other words, in the event of significant conversions of voice lines to standalone broadband that exceed the 10% limit—the RLEC would receive support in that year “as if” those CBOL connections above the 10% limit continued to include voice. (Any residual interstate costs not recovered through USF support or the CBOL benchmark would then be recovered through interstate special access rates.)

In this regard, the proposed limit would look and operate quite similarly to the “one-page plan” put forward by Chairman Pai in 2015,¹¹ but only with respect to those CBOL connections in excess of the annual limit and only until 2024 when this limit would sunset. All migrations thereafter would then receive “CBOL CAF-BLS” (unless the Commission were to decide affirmatively at that point to renew and/or adjust the limit). Moreover, to be clear, such a limit on annual CBOL conversions for purposes of CAF-BLS support would not penalize or take away support for existing CBOL lines from any individual carrier. Rather, because it applies only to CBOL conversions occurring after December 31, 2018, it would simply provide a means to meter

¹¹ Statement of FCC Commissioner Ajit Pai Announcing His Plan to Support Broadband Deployment in Rural America (Jun 29, 2015), available at: <https://www.fcc.gov/document/commissioner-pai-announces-rural-broadband-plan>.

future growth in the CAF-BLS mechanism so that the likelihood of substantial BCM reductions rearising is minimized and the overall RLEC High-Cost program budget is shared equitably by all eligible carriers going forward. Again, any individual carrier limited by the proposed conversion limit would still receive the combination of CAF-BLS/HCLS it would otherwise receive for voice or voice/broadband lines for CBOL lines above the 10 percent annual conversion limit, thereby ensuring no harm to affected carriers. In short, this approach only “limits the upside” of CBOL conversions through 2024 but does not reduce support for any affected RLEC. At bottom, this approach would help to ensure the sustainability of the recent budget reforms adopted by the Commission, ensure greater equity going forward in terms of how the revised (but still fixed) budgets will be shared among cost-based RLECs, and promote continued predictability in the wake of such reforms through an initial transition period ending 2024.

By contrast, the alternative mentioned in the *FNPRM* to immediately withdraw HCLS for carriers’ lines that convert to broadband only¹² is unnecessary. It would upset expectations for carriers that have made investment decisions based on anticipated HCLS revenues, and adversely impact RLECs and customers in the most rural, highest-cost areas. As an additional complication, RLECs would seemingly be forced to differentiate between “new” CBOL lines and conversion of “old voice lines” to broadband-only lines for purposes of this exercise, and then be compelled to “true-up” which lines were and were not eligible for HCLS. The “savings” would not be worth the significant complications to RLEC filings and USAC and Commission review, particularly when a simpler, more straightforward, and more equitable approach is available as suggested above.

¹² *Order*, ¶ 202.

The *FNPRM* also mentioned an alternative approach that would modify the Commission’s CAF-ICC rules.¹³ This suffers from the same infirmities. For one, a modification requiring carriers to impute some portion of their broadband-only revenues is unnecessarily complicated. It would also undermine one of the main virtues of the CAF-ICC mechanism, which is the regulatory certainty it provides. For these reasons, such an approach is less promising or useful than the sort of transitional limit described above.

The *FNPRM* also indicated that the proposal to modify the CAF-ICC rules may be useful in dealing with possible incentives for “gaming” of CBOL conversions.¹⁴ Given the operation of these systems under a fixed and shared budget, RLECs and the associations that represent them share the Commission’s interest to deter gaming and to sanction it when it arises. The better approach for addressing the possibility for such gaming of the system, however, is to periodically review data submitted by RLECs receiving CAF-BLS support, and then to fashion potential fines or forfeitures if and when any such “gaming” is verified. For example, evidence that a carrier has converted significant portions of its customer base nearly simultaneously from local exchange service to Voice over Internet Protocol service (“VoIP”)—without customer consent and/or deployment of equipment within the customer premises that enables the delivery of a new IP-enabled service—could represent strong evidence of gaming. By contrast, an overwhelming response by consumers in the wake of a marketing campaign touting the availability of a broadband-only connection and over-the-top VoIP service, on the other hand, would indicate nothing more a good-faith effort to fulfill consumer demands, and such consumer-driven migrations should be neither deterred nor discouraged. The Commission, the industry, and consumers are all therefore better served through audits and enforcement of existing rules in this

¹³ *Order*, ¶ 204

¹⁴ *Id.*

regard (and tailored responses to any violations found) than by modifying existing cost recovery mechanisms in ways that may have unintended consequences for standalone broadband conversions.

Finally, WTA notes that the effect of the proposed 10% limitation on annual conversion to CBOL and the related BCM impacts may change somewhat – perhaps, significantly -- depending upon the number and characteristics of the current cost-based RLECs that elect to take the proposed new offer of model-based support that will soon be made by the Commission (ACAM II). WTA reserves the right to modify the present proposal if such is needed to more effectively address potential BCM issues in light of changes to the high-cost support budget or BCM for cost-based RoR carriers after the ACAM II elections are made.

III

THE COMMISSION SHOULD ESTABLISH A TRIBAL BROADBAND FACTOR FOR CARRIERS SERVING TRIBAL LANDS

WTA believes that both RLECs serving Tribal areas that elect ACAM II support and RLECs serving Tribal areas that elect to remain on cost-based RoR support should have access to a comparable Tribal Broadband Factor that adjusts their high-cost support. WTA has several members that serve Tribal areas, and is fully aware that it is very difficult and expensive to construct, maintain and operate broadband networks on Tribal lands, and that such task can be complicated by Tribal sovereignty, allotments, cultural clearances, archaeological resource protection, and Tribal hiring requirements. Most important, there are substantial unmet needs for broadband services and upgrades in many Tribal areas whether they will be served in the future by RLECs electing ACAM II support or cost-based support.

In particular, WTA believes that the Commission should treat cost-based RLECs serving Tribal lands similar to those that will elect ACAM II by reducing the \$42.00 per month per line

funding threshold for Connect America Fund – Broadband Loop Support (“CAF-BLS”) in Tribal areas by 25 percent to \$31.50. This adjustment constitutes an equitably and effectively targeted way to promote increased broadband deployment and affordability in Tribal areas, and to treat RLECs serving Tribal areas and their Tribal customers in a reasonably equivalent manner whichever form of high-cost support the RLECs elect to take.

IV

CONCLUSION

WTA opposes the CAF Phase II auction procedures in particular, as well as reverse auction approaches in general, as ways for determining (and in most cases significantly reducing) high-cost support for existing broadband service areas such as RLEC study areas that allegedly are entirely or “almost entirely” overlapped by “unsubsidized competitors.” Whereas the CAF Phase II mechanism may or may not prove successful in bringing sustainable broadband services for the first time to some or all of the unserved Auction 903 areas when compliance milestones are reached and reported in 3-to-6 years, very different circumstances and complexities apply in RLEC study areas with existing broadband customers and networks and outstanding broadband loans and obligations. The major flaw of the CAF Phase II mechanism and other reverse auction approaches in existing service areas is that they focus upon short-term high-cost support reductions at the expense of the existing and future broadband services of the affected customers. In addition, reverse auctions create a “playing field” and conditions that are heavily slanted against incumbent RLECs, and make future high-cost support so unpredictable that long-term infrastructure investment cannot be justified by service providers or their lenders. In addition to these general problems, the proposed CAF Phase II mechanism will, *inter alia*: (a) create a host of technical and customer service problems by auctioning support on the basis of unrelated census geography

pieces of established integrated networks; (b) allow bidders with no local presence and with virtually no incremental costs to undermine “market-based support levels” and drive off entities with existing local facilities and proven records of local service; (c) employ a multi-round descending clock procedure that does not adequately consider the very different service and cost characteristics of rural service areas; and (d) fail to consider to difficulties of retaining employees and maintaining critical broadband and public safety services when it becomes clear during or after the reverse auction that an incumbent RLEC will lose most or all of the high-cost support that constitutes a major portion of its revenue stream.

Given all of these general and particular reverse auction issues as well as the known limitations of FCC Form 477 data, WTA believes that – if the Commission determines anyway to move forward with reverse auctions -- it is absolutely imperative for it to conduct a thorough challenge process before subjecting existing broadband service areas and customers to the vagaries of the CAF Phase II or any other reverse auction process.

WTA joins with NTCA to propose that the Commission limit the increase in CBOL conversions for which a cost-based RLEC may receive the broadband-only portion of CAF-BLS support to 10 percent of that carrier’s voice lines as of December 31 of the prior year, with any such limit expiring through an absolute sunset at the earlier of December 31, 2024 or the date on which the five-year budget review contemplated by the *Order* is completed. In the event that an RLEC has conversions of voice lines to standalone broadband during a year that exceed the 10% limit, it would receive support in that year “as if” those of its CBOL connections above the 10% limit continued to include voice. WTA has reserved the right to modify this CBOL limitation proposal if revision is needed to more effectively address potential budget control issues in light

of the changes to the high-cost support budget or the BCM for cost-based RoR carriers that are likely to result after the upcoming ACAM II elections are made.

Finally, WTA supports the relatively equivalent treatment of both RLECs serving Tribal areas that elect ACAM II support and RLECs serving Tribal areas that elect to remain on cost-based RoR support. It proposes that the latter RLECs and their customers should have access to a comparable Tribal Broadband Factor that adjusts their high-cost support – specifically, the reduction of the \$42.00 per month per line funding threshold for CAF-BLS in Tribal areas by 25 percent to \$31.50 in order to encourage additional broadband deployment on Tribal lands.

Respectfully submitted,
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