



# PUBLIC NOTICE

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## WIRELINE COMPETITION BUREAU PUBLISHES PRELIMINARY DETERMINATION OF RATE-OF-RETURN STUDY AREAS 100 PERCENT OVERLAPPED BY UNSUBSIDIZED COMPETITORS

WC Docket No. 10-90

**Comments Due: August 28, 2015**

**Reply Comments Due: September 28, 2015**

1. In this Public Notice, the Wireline Competition Bureau (Bureau) adopts the methodology used to determine rate-of-return carrier study areas subject to 100 percent overlap and publishes a preliminary list of such study areas using the adopted methodology. Pursuant to the Commission's direction in the *December 2014 Connect America Fund Order*, we seek comment on this preliminary determination.<sup>1</sup> Once the comment cycle is complete, we will publish a final determination of the study areas subject to a 100 percent overlap. Pursuant to Commission rule, high-cost universal service support for the study areas on the final list will be frozen at the amount disbursed in the prior calendar year, and the phase-down in support will commence.<sup>2</sup>

### A. Background

2. In the 2011 *USF/ICC Transformation Order*, the Federal Communications Commission (Commission) adopted a rule to eliminate high-cost universal service support in incumbent local exchange carrier (ILEC) study areas where an unsubsidized competitor or a combination of unsubsidized competitors offers voice and broadband services that meet the Commission's service obligations throughout the study area.<sup>3</sup> It defined an unsubsidized competitor as "a facilities-based provider of

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<sup>1</sup> *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15685, para. 116 (2014) (*December 2014 Connect America Fund Order*).

<sup>2</sup> Under the Commission's rules, the study areas on the final list will receive two-thirds of the frozen baseline amount in the first year, and one-third of the frozen baseline amount in the second year. 47 C.F.R. § 54.319; *see also December 2014 Connect America Fund Order*, 29 FCC Rcd at 15685, para. 116 (adopting April 2014 proposal to make "the baseline for support reductions to be the amount of support received in the immediately preceding year before a determination is made that there is a 100 percent overlap," *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051, 7136, para. 266 (2014)).

<sup>3</sup> *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order et al., 26 FCC Rcd 17663, 17766-68, paras. 280-84 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

residential fixed voice and broadband service that does not receive high-cost support.”<sup>4</sup> At that time, the Commission sought comment on a proposed methodology for determining whether a study area is 100 percent overlapped by an unsubsidized competitor and directed the Bureau “to publish a finalized methodology for determining areas of overlap and a list of companies for which there is a 100 percent overlap.”<sup>5</sup> The Commission subsequently codified the 100 percent overlap rule in April 2014.<sup>6</sup>

3. To conduct the 100 percent overlap analysis, the Bureau needed a complete and accurate set of ILEC study area boundaries. In November 2012, the Bureau adopted a program for the collection of study area boundary data to implement this and other universal service reforms.<sup>7</sup> The initial set of study area boundaries was collected in May 2013.<sup>8</sup> Because these boundaries included multiple overlaps among ILECs, the Bureau established a process for carriers to reconcile the overlaps and submit updated boundary data by March 2014.<sup>9</sup>

4. In December 2014, the Commission directed the Bureau to “publish its preliminary determination of those areas subject to 100 percent overlap and then provide an opportunity for comment on those preliminary determinations.”<sup>10</sup> The Commission stated that it expected the Bureau to review data from the study area boundary data collection, FCC Form 477 (Form 477), and the State Broadband Initiative/National Broadband Map (SBI/NBM) when determining whether and where 100 percent overlaps exist.<sup>11</sup>

**B. Results of the Preliminary 100 Percent Overlap Determination**

5. Based on the methodology we adopt today, we preliminarily find the 15 rate-of-return study areas listed in the table below to be 100 percent overlapped by an unsubsidized competitor or combination of unsubsidized competitors.

Preliminary Determination of Rate-of-Return Study Areas Subject to a 100 Percent Overlap by an Unsubsidized Competitor or Combination of Unsubsidized Competitors			
SAC	State	Study Area	Competitive Provider(s)
100020	ME	PINE TREE TEL & TEL	Time Warner, Comcast

<sup>4</sup> *Id.* at 17701-02, paras. 103-104. *See also* 47 C.F.R. §54.5.

<sup>5</sup> *Id.* at 17768, para. 284.

<sup>6</sup> *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051 (2014); 47 C.F.R. § 54.319.

<sup>7</sup> *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order, 27 FCC Rcd 13528 (Wireline Comp. Bur. 2012).

<sup>8</sup> *See infra* note 17.

<sup>9</sup> *Wireline Competition Bureau Publishes Online Map of Submitted Study Area Boundaries, Announces Procedures for Filing Revised Data*, Public Notice, 28 FCC Rcd 16315 (Wireline Comp. Bur. 2013); *Connect America Fund et al.*, Order, 29 FCC Rcd 171 (Wireline Comp. Bur. 2014).

<sup>10</sup> *December 2014 Connect America Fund Order*, 29 FCC Rcd at 15685, para. 116.

<sup>11</sup> *Id.* More information on the study area boundary data collection can be found at FCC, Study Area Boundary Data Collection, <http://www.fcc.gov/encyclopedia/study-area-boundary-data-collection>; more information on Form 477 can be found at FCC, Form 477 Resources for Filers, <http://www.fcc.gov/encyclopedia/form-477-resources-filers>; and more information on the SBI/NBM can be found at NTIA, State Broadband Initiative, <http://www2.ntia.doc.gov/SBDD> and National Broadband Map, <http://www.broadbandmap.gov/>.

160135	NJ	WARWICK VALLEY-NJ	Service Electric Cable, CSC Holdings
170175	PA	IRONTON TEL CO	Service Electric Cable, RCN
210330	FL	SMART CITY TEL LLC	Orlando Telephone, Brevard Wireless, Bright House, Comcast
230494	NC	PINEVILLE TEL CO	Time Warner
310737	MI	WINN TEL CO	CMSInter.Net
310777	MI	ACE TELEPHONE CO. OF MI, INC. (OLD MISSION)	COLI, Cherry Capital Connection
320790	IN	MONON TEL CO	Comcast, TRANSWORLD
330896	WI	LAKEFIELD TEL CO	Mercury Network, Time Warner, Comcast
411791	KS	LA HARPE TEL CO INC	JMZ, Cox
452200	AZ	FORT MOJAVE TEL, INC	TRANSWORLD, Suddenlink
462178	CO	AGATE MUTUAL TEL CO	Kellin
532373	OR	GERVAIS TELEPHONE CO	McMinnville Access, WaveDivision
532386	OR	MT. ANGEL TEL CO.	McMinnville Access, WaveDivision
532396	OR	ST PAUL COOP ASSN	McMinnville Access, DataVision

6. The Appendix to this Public Notice provides more detailed information regarding each study area that is 100 percent overlapped according to FCC Form 477 data. In addition, we have posted online at <https://www.fcc.gov/maps/100pct-overlap-map> both a map that depicting the overlapped study areas and a spreadsheet listing the unsubsidized competitors in each census block of those study areas based on Form 477 data.<sup>12</sup>

### C. Methodology for the Preliminary 100 Percent Overlap Determination

#### 1. Determining Census Blocks within Study Areas

7. To determine which fixed broadband providers are unsubsidized competitors in rate-of-return study areas, we relied on the Form 477 deployment data, as described in detail below.<sup>13</sup> Because these data are reported by census block<sup>14</sup> – the boundaries of which are not necessarily coterminous with study area boundaries – we first had to determine which census blocks overlap a study area.<sup>15</sup> To do this, we identified all census blocks that have any level of overlap with a study area, no matter how small and

<sup>12</sup> Only the Form 477 data relevant to the 100 percent overlap analysis is being released in conjunction with this Public Notice. Additional Form 477 data will be released at a later date. *See infra* para. 11 for a further discussion of Form 477 data.

<sup>13</sup> *See infra* para. 11.

<sup>14</sup> Census blocks are the smallest geography for which the Census Bureau collects population data, and the United States comprises approximately 11 million census blocks. *See* U.S. Census Bureau, 2010 Census Summary File 1, Technical Documentation, at A-10 and A-12 (Sept. 2012), available at <http://www.census.gov/prod/cen2010/doc/sf1.pdf>; U.S. Census Bureau, 2010 Census Summary File 1 Urban/Rural Update (Sept. 2012). According to 2010 Census documentation, census blocks “are statistical areas bounded by visible features, such as streets, roads, streams, and railroad tracks, and by nonvisible boundaries, such as selected property lines and city, township, school district, and county limits and short line-of-sight extensions of streets and roads.”

<sup>15</sup> Census blocks wholly contained within a study area were attributed to the study area.

considered those blocks to be overlapping the study area. This method of determining which blocks overlap a study area is the most inclusive and ensured that we capture all locations served by rate-of-return carriers.

8. We excluded from the analysis census blocks with no housing units. We conclude that if the portions of a study area that contain housing units are served by an unsubsidized competitor(s), then the study area should be considered 100 percent overlapped. We relied on the 2010 Census as the basis for determining whether a block contains no housing units. The 2010 Census data are available to the public at no cost.<sup>16</sup>

## **2. Addressing Overlaps between Study Area Boundaries**

9. We used the most recently certified study area boundary data collected by the Commission. These data are as of May 26, 2015 and are published on the Commission's website.<sup>17</sup> While many of the overlaps between study area boundaries in the original data collection have been resolved, certain overlaps remain. Most of the overlaps currently shown on the online study area boundary map are between rate-of-return and price cap carriers.<sup>18</sup> In these cases, we made no modifications to the rate-of-return carrier's boundary and assumed the overlap belongs in its study area. Regarding the overlaps between rate-of-return carriers, we accepted these overlaps and included the area of an overlap in each rate-of-return carrier's study area when conducting the preliminary 100 percent overlap analysis. This method is the most inclusive and ensured that the housing units in these areas are included in our analysis.

## **3. Determining Which Providers Are Unsubsidized Competitors**

10. To conduct the 100 percent overlap analysis, we determined which fixed broadband and voice providers are unsubsidized competitors. The first step in this process was to select the appropriate source of data on which entities provide fixed broadband and voice services within a study area.<sup>19</sup>

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<sup>16</sup> This approach addresses the concern of one commenter who opposed the use of third party or proprietary data for which stakeholders would need to pay a fee or for which they would be denied access in assessing the 100 percent overlap decision. Comments of the National Association of State Utility Consumer Advocates, Maine Office of the Public Advocate, the New Jersey Division of Rate Counsel, and the Utility Reform Network, WC Docket No 10-90 *et al.*, at 42 (filed Jan. 18, 2012).

<sup>17</sup> The original study area boundaries were due in May and June of 2013 for ILECs and state commissions, respectively. *Wireline Competition Bureau Announces Procedures and Deadlines for Submissions of Study Area Boundaries*, Public Notice, 28 FCC Rcd 2852 (Wireline Comp. Bur. 2013). Revisions resulting from the reconciliation of boundary overlaps were due in March 2014. *Connect America Fund et al.*, WC Docket Nos. 10-90, 05-337, Order, 29 FCC Rcd 171 (Wireline Comp. Bur. 2014). Updated boundary data reflecting changes made during 2014 were due March 23, 2015, and filers were required to recertify their boundaries by May 26, 2015. *Wireline Competition Bureau Extends the Filing Deadline for Study Area Boundary Changes to March 23, 2015 and Sets Recertification Date of May 26, 2015*, Public Notice, 30 FCC Rcd 2239 (Wireline Comp. Bur. 2015). The study area boundary data collected by the Commission are available for viewing and download at FCC, Study Area Boundary Data as of August 15, 2014, <http://apps.fcc.gov/wcb/sabdata/>.

<sup>18</sup> See FCC, Study Area Boundary Data as of August 15, 2014, <http://apps.fcc.gov/wcb/sabdata/>.

<sup>19</sup> In response to the 2011 FNPRM, one commenter suggested that providers should submit address-level data on their broadband coverage to the Commission. Comments of Surewest Communications, WC Docket No 10-90 *et al.*, at 6 (filed Jan. 18, 2012). However, the Commission subsequently declined to collect broadband availability data at the address level due to concerns about the complexity and burden of collecting such data. *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Report and Order, 28 FCC Rcd 9887, 9904-05, para. 35 (2013) (*Form 477 Order*).

11. We relied on the Form 477 broadband deployment data to make our preliminary determination of which providers offer broadband service in a study area. Form 477 offers several advantages over the SBI/NBM data. First, the Form 477 data collection is mandatory, and Form 477 filers must certify to the accuracy of their data.<sup>20</sup> Certain commenters opposed the use of SBI/NBM data in the overlap analysis due to concerns over the reliability of the data,<sup>21</sup> and we therefore conclude that using the Form 477 data is preferable. Second, Form 477 does not collect bandwidth data in pre-determined tiers as the SBI/NBM data collection did, but instead requires providers to report the maximum advertised upload and download speeds they offer in a census block.<sup>22</sup> Therefore, when selecting the appropriate speed that a provider must offer in order to be considered an unsubsidized competitor, we do not need to use a pre-set speed tier as a proxy for that appropriate speed.<sup>23</sup> Third, as discussed below, use of the Form 477 data ensures consistency in the data used to determine both broadband and voice competitors.<sup>24</sup> Finally, while both SBI/NBM and Form 477 data historically could be used to analyze broadband availability, only Form 477 data will be available going forward. We performed our analysis using Form 477 data as of December 31, 2014.

12. To be considered an unsubsidized competitor for purposes of the 100 percent overlap analysis, a fixed broadband provider must offer service in accordance with the Commission's service obligations on speed, latency, and usage allowances.<sup>25</sup> In December 2014, the Commission adopted a new minimum speed standard for carriers receiving high-cost support: they must offer actual speeds of at least 10 Mbps downstream and 1 Mbps upstream (10/1 Mbps).<sup>26</sup> Therefore, we used 10/1 Mbps as the speed threshold in the preliminary 100 percent overlap analysis. Because Form 477 collects data on advertised rather than actual broadband speeds, we used advertised as a proxy for actual speed.

13. The Commission currently does not collect comprehensive, block-level data on broadband latency or monthly usage allowances, as it does for broadband speed.<sup>27</sup> However, data collected by the Commission through the Measuring Broadband America program suggest that the latencies associated with most fixed broadband services are low enough to allow for real time applications, including Voice over Internet Protocol.<sup>28</sup> In addition, data from the Commission's urban

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<sup>20</sup> *Form 477 Order*, 28 FCC Rcd at 9897-98, paras. 23-24.

<sup>21</sup> Comments of Surewest Communications, WC Docket No 10-90 *et al.*, at 4-5 (filed Jan. 18, 2012); Comments of the National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and the Western Telecommunications Alliance, WC Docket No 10-90 *et al.*, at 76-77 (filed Jan. 18, 2012).

<sup>22</sup> *Form 477 Order*, 28 FCC Rcd at 9897, para. 20.

<sup>23</sup> For example, if a broadband provider must offer an upstream speed of at least 1 Mbps in order to be considered a competitor, we did not need to use 768 kbps as a proxy for 1 Mbps with the Form 477 data as would have been necessary with the SBI/NBM data.

<sup>24</sup> *See infra* para. 13.

<sup>25</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17767-68, para. 283. *See infra* para. 20 (providing additional information on the latency and usage allowance obligations).

<sup>26</sup> *December 2014 Connect America Fund Order*, 29 FCC Rcd at 15649, para. 15.

<sup>27</sup> *See* FCC, A Basic Guide to the Connect America Phase II Challenge Process at 2 (July 31, 2014), [http://www.fcc.gov/wcb/tapd/Challenge\\_Process/ChallengeProcessGuide7-31-14.docx](http://www.fcc.gov/wcb/tapd/Challenge_Process/ChallengeProcessGuide7-31-14.docx).

<sup>28</sup> According to the 2014 Measuring Broadband America Report, round-trip latency averaged 34.9 milliseconds across all terrestrial technologies during peak periods. *See* FCC Office of Engineering and Technology and Consumer and Governmental Affairs Bureau, *2014 Measuring Broadband America Fixed Broadband Report* at 16, <http://data.fcc.gov/download/measuring-broadband-america/2014/2014-Fixed-Measuring-Broadband-America->

rate survey indicate that many fixed broadband providers offer unlimited data usage or usage allowances greater than 100 gigabytes per month.<sup>29</sup> Therefore, we assumed that providers meeting the speed criteria also meet the non-speed criteria.

14. This is similar to the approach taken by the Bureau in the Connect America Fund Phase II challenge process.<sup>30</sup> One of the lessons learned from the Phase II challenge process was that no party was able to demonstrate high latency by competitors, and very few providers prevailed in a challenge exclusively focused on a competitor's usage/price. This provides us with confidence that, as a general matter, it is reasonable to assume that a provider that in fact is in the area providing the requisite speed is also meeting the latency and usage requirements.

15. To be considered unsubsidized competitors, providers must offer both fixed broadband and fixed voice service in a study area.<sup>31</sup> Form 477 provides the best data available on whether broadband providers also offer fixed voice service. To determine whether a broadband provider also offers voice service, we assumed that, if a broadband provider reported any fixed voice connections in a state in its Form 477 filing, then it offered voice service throughout its entire broadband service area in that state. The Bureau used the same approach to identifying voice providers in developing the model adopted for the offer of Phase II support to price cap carriers and also in the Connect America Fund Phase II challenge process.<sup>32</sup>

16. Finally, we excluded competitive Eligible Telecommunications Carriers (CETCs) receiving universal service support, as well as certain affiliates of ILECs, from the 100 percent overlap analysis. We did not include CETCs that received universal service support in the study area's state at any time during the first quarter of 2015 in our preliminary determination because these providers are not "unsubsidized." We also conclude, for purposes of implementing the 100 percent overlap rule, that an affiliate that an ILEC is using to meet its broadband public interest obligation in its study area is outside the scope of the rule.<sup>33</sup> If we were to conclude otherwise, a rate-of-return carrier would automatically be

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Report.pdf. In 2013, the Bureau required price cap carriers receiving Phase II model-based support to provide broadband service with a round-trip latency of 100 milliseconds or less. *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 15060, 15068-70, paras. 19-22 (Wireline Comp. Bur. 2013) (*Phase II Service Obligations Order*).

<sup>29</sup> FCC, Urban Rate Survey Data, *2015 Urban Rate Broadband Survey Results*, <https://www.fcc.gov/encyclopedia/urban-rate-survey-data>. In the Connect America Fund Phase II context, the Bureau concluded that 100 GB was a reasonable initial usage allowance for price cap carriers accepting model-based support. *Phase II Service Obligations Order*, 28 FCC Rcd at 15066, para. 16.

<sup>30</sup> See FCC, A Basic Guide to the Connect America Phase II Challenge Process at 2 (July 31, 2014), [http://www.fcc.gov/wcb/tapd/Challenge\\_Process/ChallengeProcessGuide7-31-14.docx](http://www.fcc.gov/wcb/tapd/Challenge_Process/ChallengeProcessGuide7-31-14.docx).

<sup>31</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17767-68, para. 283.

<sup>32</sup> *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211, 7215-16, paras. 9-11 (Wireline Comp. Bureau 2013).

<sup>33</sup> In 2013, the Bureau recognized that many rate-of-return ILECs would be meeting their broadband public interest obligations through an affiliated Internet service provider. See *Connect America Fund*, WC Docket No. 10-90, Order, 28 FCC Rcd 7227, 7228-79, para. 6 (Wireline Comp. Bur. 2013) (clarifying that, for purposes of rate-of-return carriers reporting regarding their obligation to provide broadband service to customers upon reasonable request, the relevant "customer" is the end-user customer of the retail broadband Internet access service regardless of whether the customer purchases the service directly from the ETC or from an Internet service provider that purchases the ETC's wholesale broadband transmission service). Two additional study areas would have been considered 100 percent overlapped in our preliminary determination if we had included study areas that were partially overlapped by an affiliated entity that served customers with fiber or DSL, as reported in Form 477.

subject to competitive overlap wherever its affiliate is offering broadband and voice service as a condition of receiving high-cost support. However, we are aware that in some instances ILECs have acquired cable operators in their incumbent territory, and such entities have separate facilities from the incumbent's network. If such entities were providing both broadband and voice services to consumers in a given geography, we would consider them to be entities meeting the definition of an unsubsidized competitor that the Commission adopted in 2011, specifically, "a facilities-based provider of residential fixed voice and broadband service that does not receive high-cost support."<sup>34</sup>

#### 4. Defining a 100 Percent Overlap

17. Only study areas in which 100 percent of the overlapping census blocks are served by an unsubsidized competitor are included in the preliminary determination.<sup>35</sup> This approach was supported by several commenters who opposed defining 100 percent as anything less than 100 percent.<sup>36</sup> For informational purposes, we also have identified, in the table below, study areas with an overlap of 99 percent or greater, but less than 100 percent, by an unsubsidized competitor or combination of competitors.<sup>37</sup> We invite commenters to provide any relevant information about whether these study areas are in fact 100 percent overlapped.

Rate-of-Return Study Areas with an Overlap Between 99 and 100 Percent by an Unsubsidized Competitor or Combination of Unsubsidized Competitors			
SAC	State	Study Area	Competitive Provider(s)
100005	ME	COBBOSSECONTEE TEL	Time Warner
100022	ME	SACO RIVER TEL & TEL	Time Warner, MetroCast Cablevision, Biddeford
100031	ME	WARREN TEL CO	Time Warner, Biddeford
110037	MA	RICHMOND TEL CO	Time Warner
150135	NY	WARWICK VALLEY-NY	CSC Holdings, XCHANGE, Time Warner
320744	IN	CAMDEN TEL CO - IN	Comcast, New Wave, TRANSWORLD
320813	IN	PULASKI-WHITE RURAL	Comcast, TRANSWORLD, RTC
320839	IN	YEOMAN TEL CO, INC	Comcast, TRANSWORLD
330952	WI	SE TEL OF WISCONSIN	Time Warner, E-Vergent.Com
500758	UT	DIRECT COMMUNICATIONS CEDAR VALLEY, LLC	InnovativeAir, Digis
532384	OR	MONITOR COOP TEL	WaveDivision, McMinnville Access,

<sup>34</sup> 47 C.F.R. § 54.5.

<sup>35</sup> As discussed above, only overlapping census blocks with housing units were included in the analysis. *See supra* para. 8.

<sup>36</sup> Comments of Accipiter, WC Docket No 10-90 *et al.*, at 14 (filed Jan. 18, 2012); Comments of Alaska Rural Commission, WC Docket No 10-90 *et al.*, at 14 (filed Jan. 18, 2012); Comments of Moss Adams, WC Docket No 10-90 *et al.*, at 27 (filed Jan. 18, 2012); Comments of the National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and the Western Telecommunications Alliance, WC Docket No 10-90 *et al.*, at 84 (filed Jan. 18, 2012); Comments of Section D Rurals, WC Docket No 10-90 *et al.*, at 7 (filed Jan. 18, 2012).

<sup>37</sup> To calculate the area of the census blocks with an unsubsidized competitor, we included only the portion of the block's area that is inside the boundary of the study area. *See* the Appendix for more detailed information on these study areas.

#### D. Public Comment on the Preliminary Determination

18. After reviewing the comments received in response to the preliminary 100 percent overlap determination, we will publish the final determination. The companies operating in the affected study areas, both the ILECs and the unsubsidized competitors, are invited to review and, if necessary, confirm or refute the results of our preliminary analysis. We encourage companies to access the online map posted at <https://www.fcc.gov/maps/100pct-overlap-map> for more information on and a geographical depiction of the results of the preliminary analysis. Interested parties can use the mouseover feature to see which competitors offer service, based on December 2014 Form 477 data, in the census blocks that overlap the identified study areas. Each census block is color coded according to which competitors are serving the block.

19. In December 2014, the Commission directed the Bureau to “publish its preliminary determination of those areas subject to 100 percent overlap and then provide an opportunity for comment on these preliminary determinations, building on experience gained in conducting the Phase II challenge process in price cap areas.”<sup>38</sup> Based on the Phase II challenge experience, we have learned that it is extremely difficult for an incumbent provider to prove a negative – that a competitor is not serving an area. Rather, the purported competitor is in a much better position to confirm that it is offering service in a given area. We also are mindful of the fact that, while a Form 477 filer may truthfully certify that it offers service in a particular census block, the filer may not offer service to all locations in that census block; a Form 477 filer is required to report service in a given block where it offers service to only a fraction of the residential and business locations. Given those considerations, we conclude that we cannot finalize the list – which triggers the phase-down in support mandated by the Commission – without knowing whether the unsubsidized competitor is offering fixed broadband and voice service in accordance with the Commission’s service obligations for universal service to all locations within the blocks reported on Form 477 and which overlap the study area.

20. In particular, we encourage competitors to address in their comments whether they currently offer, to all locations within the blocks reported on Form 477 and which overlap the incumbent’s study area, (1) fixed voice service at rates under the 2015 reasonable comparability benchmark of \$47.48,<sup>39</sup> and (2) fixed broadband service at actual downstream speed of at least 10 Mbps and actual upload speed of at least 1 Mbps; with latency suitable for real time applications, including Voice over Internet Protocol; with usage capacity that is reasonably comparable to offerings in urban areas; and at rates that are reasonably comparable to those in urban areas.<sup>40</sup> For example, a competitor

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<sup>38</sup> *December 2014 Connect America Fund Order*, 29 FCC Rcd at 15685, para. 116. Several commenters previously had argued that there should be a challenge or confirmation process for the final 100 percent overlap determination. Comments of Accipiter, WC Docket No 10-90 *et al.*, at 15 (filed Jan. 18, 2012); Comments of American Cable Association, WC Docket No 10-90 *et al.*, at 10 (filed Jan. 18, 2012); Comments of the National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and the Western Telecommunications Alliance, WC Docket No 10-90 *et al.*, at 84 (filed Jan. 18, 2012); Comments of TCA, WC Docket No 10-90 *et al.*, at 10 (filed Jan. 18, 2012); Comments of US Telecom, WC Docket No 10-90 *et al.*, at 9 (filed Jan. 18, 2012).

<sup>39</sup> *Wireline Competition Bureau Announces Results of 2015 Urban Rate Survey for Fixed Voice and Broadband Services and Posting of Survey Data and Explanatory Notes*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 3687 (Wireline Comp. Bureau 2015).

<sup>40</sup> 47 C.F.R. § 54.319(a). While the Commission has not adopted specific measures for purposes of the 100 percent overlap rule for determining what is “latency suitable for real time applications” and “usage reasonably comparable

offering broadband service at 10 Mbps downstream and 1 Mbps upstream, with unlimited usage, would be subject to a benchmark of \$77.81 for its broadband service.<sup>41</sup> Relevant information could include whether the provider has voice and broadband-capable physical assets in or adjacent to the relevant area, holds itself out to the public as offering service, and is willing and able to provide service to a requesting customer within seven to ten business days without an extraordinary commitment of resources.<sup>42</sup> We would treat a declaration by a competitor that it is offering service as specified above throughout the blocks reported on Form 477 and within the study area as persuasive evidence that we would consider in our final determination.<sup>43</sup> Absent such a submission from the competitor, we would not be in a position to make a final 100 percent overlap determination for the affected rate-of-return carrier because we will not know whether all locations in fact are served.

21. We note this approach is largely consistent with that proposed by several parties for purposes of implementing the 100 percent overlap rule.<sup>44</sup> We are not persuaded, however, that we should require the competitor to demonstrate that it is not using cross-subsidies of any kind to provide service in the relevant area; such a requirement would go beyond the framework established by the Commission for implementation of this rule. In adopting the rule, the Commission specifically focused on the receipt of high-cost support; it did not define an unsubsidized competitor as an entity that does not receive any form of universal service support. Also, as noted above, we exclude from our analysis affiliates offering voice and broadband via fiber or DSL technologies, as we assume that those entities are the ones that the ILEC uses to meet its public interest obligation to provide broadband as a condition of receiving high-cost support, but we would include cable affiliates that provide both voice and broadband services over facilities that are separate from regulated incumbent network.<sup>45</sup>

22. Rate-of-return carriers identified on the preliminary list of 100 percent overlapped study areas also are free to submit evidence that an unsubsidized competitor does not offer service to all locations in the census blocks specified in the appendix and/or that the competitor is not offering service to all locations within those blocks. We note that the type of evidence that we found persuasive in the

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to urban areas,” commenters may find it helpful to consider the standards adopted for the Phase II challenge process in price cap areas in formulating their positions. *See Phase II Service Obligations Order*, 28 FCC Rcd 15060.

<sup>41</sup> *Wireline Competition Bureau Announces Results of 2015 Urban Rate Survey for Fixed Voice and Broadband Services and Posting of Survey Data and Explanatory Notes*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 3687 (Wireline Comp. Bureau 2015); FCC, Reasonable Comparability Benchmark Calculator, <https://www.fcc.gov/encyclopedia/reasonable-comparability-benchmark-calculator>. If a competitor offers a broadband product with different bandwidths and/or usage allowances, then a different benchmark would apply, and the competitor should consult the benchmark calculator. *Id.*

<sup>42</sup> The Bureau used similar criteria in the Phase II challenge process. *See Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 7505, 7507-08, para. 9 (Wireline Comp. Bureau 2014).

<sup>43</sup> Parties face criminal penalties for knowingly and willingly making materially false, fictitious or fraudulent statements or representations in official matters before the Commission. 18 U.S.C. § 1001. *See also Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 30 FCC Rcd 2718, 2730-31, para. 38 & n.93 (Wireline Comp. Bureau 2015).

<sup>44</sup> *See Letter from Michael R. Romano, Senior Vice President – Policy, NTCA – The Rural Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission*, WC Docket No. 10-90 (filed July 16, 2015). Our decision to utilize this approach for implementation of the 100 percent overlap rule does not prejudice how the Commission may address the issue in other contexts, including any changes to the competitive coverage shown in the Alternative Connect America Model (A-CAM).

<sup>45</sup> *See supra* para. 16.

Phase I and Phase II challenge process to establish that service was not being offered in an area was evidence that a provider's online service availability tool showed "no service available" for particular addresses in the relevant area.<sup>46</sup> In this context, such information would be relevant to our final determination.

#### **E. Filing Requirements**

23. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- (1) All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- (2) Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- (3) U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>47</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's

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<sup>46</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 30 FCC Rcd 2718, 2731, para. 41 & n.95 (Wireline Comp. Bureau 2015).

<sup>47</sup> 47 C.F.R. §§ 1.1200 *et seq.*

written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact Chelsea Fallon, Industry Analysis & Technology Division, Wireline Competition Bureau at 202-418-7991 or [Chelsea.Fallon@fcc.gov](mailto:Chelsea.Fallon@fcc.gov), or Suzanne Yelen, Industry Analysis & Technology Division, Wireline Competition Bureau at 202-418-0626 or [Suzanne.Yelen@fcc.gov](mailto:Suzanne.Yelen@fcc.gov).

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