



PUBLIC NOTICE

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DA 17-760
Released: August 11, 2017

WIRELINE COMPETITION BUREAU PUBLISHES AND REQUESTS COMMENT ON RATE-OF-RETURN STUDY AREAS POTENTIALLY 100 PERCENT OVERLAPPED BY UNSUBSIDIZED COMPETITORS

WC Docket No. 10-90

Comments Due: September 11, 2017
Reply Comments Due: October 10, 2017

1. In this Public Notice, the Wireline Competition Bureau (Bureau) publishes a list of study areas potentially subject to the 100 percent overlap rule. We seek comment on whether the competitors in the study areas codes (SACs) listed are in fact offering voice and broadband to 100 percent of locations in the relevant census blocks meeting the requirements in 47 CFR § 54.319(a).¹ We also provide examples of the types of information we will find most persuasive from commenters seeking to demonstrate that they are offering voice and broadband to 100 percent of the locations in the relevant census block(s), and we describe ways in which we have simplified the review process. Once the comment cycle is complete, we will publish a final determination of the study areas subject to a 100 percent overlap. Pursuant to our rules, 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.²

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 (incumbent LEC) 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.³ An unsubsidized competitor is defined as "a facilities-based

¹ *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*); 47 CFR § 54.319(a).

² 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 CFR § 54.319.

³ *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).

provider of residential fixed voice and broadband service that does not receive high-cost support.⁴ The Commission subsequently codified the 100 percent overlap rule in April 2014.⁵

3. 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.”⁶ The Commission specified that it expected the Bureau in its biannual review to consider 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.⁷ In 2015, the Bureau conducted its first 100 percent competitive overlap process after seeking comment on its proposed methodology.⁸

B. Results of the Preliminary 100 Percent Overlap Determination

4. Using updated Form 477 data from June 30, 2016, and the methodology we used in 2015 for the competitive overlap process, we have identified the 13 rate-of-return study areas listed in the table below as potentially 100 percent overlapped by an unsubsidized competitor or combination of unsubsidized competitors.

⁴ *Id.* at 17701-02, paras. 103-104. See also 47 CFR §54.5.

⁵ *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051 (2014); 47 CFR § 54.319.

⁶ December 2014 *Connect America Fund Order*, 29 FCC Rcd at 15685, para. 116.

⁷ *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/>.

⁸ See *Connect America Fund*, Order, WC Docket No. 10-90, 30 FCC Rcd 14145 (WCB 2015) (2015 100 Percent Overlap Order).

State	SAC	Study Area Name	Competitive Provider
NJ	160135*	WARWICK VALLEY-NJ	CenturyLink, Inc.
			Service Electric Cable Television of New Jersey, Inc.
			CSC Holdings LLC
			Verizon New Jersey Inc.
PA	170175*	IRONTON TEL CO	Service Electric Cable TV, Inc.
			RCN Telecom Services (Lehigh) LLC
			Verizon Pennsylvania LLC
OH	300589	BASCOM MUTUAL TEL CO	Time Warner Cable Inc.
			W A T C H TV
MI	310678	BLANCHARD TEL ASSN	Crystal Automation Systems, Inc.
			Winn Telephone Company
			CMSInter.Net LLC
			Frontier Communications Corporation
			Winn Telephone Company
MI	310737*	WINN TEL CO	Blanchard Telephone Co.
			Crystal Automation Systems, Inc.
			CMSInter.Net LLC
			Frontier Communications Corporation
MI	310777*	ACE TELEPHONE CO. OF MI, INC. (OLD MISSION)	COLI, Inc
			Cherry Capital Connection, LLC
IN	320790*	MONON TEL CO	TRANSWORLD NETWORK, CORP
			COMCAST CABLE COMMUNICATIONS, LLC
IL	341032	HOME TEL CO-ST JACOB	Wisper ISP, INC
			AT&T Services, Inc.
IA	351175	FARMERS TEL CO - BAT	Natel
SD	391649	BERESFORD MUNICIPAL	Jefferson Communications, LLC
			Skybeam Acquisition Corporation
SD	391653	CITY OF FAITH MUNIC	Golden West Telecommunications Cooperative, Inc.
KS	411791*	LA HARPE TEL CO INC	Fiber Communications of Columbus LLC dba Optic Communications
			JMZ CORPORATION
			Cox Communications, Inc
CO	462178*	AGATE MUTUAL TEL CO	Big Sandy Telecom, Inc.
			Kellin Communications
			DirectLink,LLC
			Bijou Telephone Cooperative Association Inc.

5. The SACs marked with an asterisk were on the preliminary determination list in the 2015 100 percent overlap process but based on the information submitted to the Bureau at the time, we found

that competitor(s) were not offering voice and broadband to 100 percent of the locations in those SACs.⁹ We recognize situations may have changed over the last two years. In addition, we posted online at <https://fcc.gov/maps/100-pct-overlap-2017> a map 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.¹⁰

C. Public Comment on the Preliminary Determination

6. We seek comment on our preliminary determinations. After reviewing the comments and replies received in response to the preliminary 100 percent overlap determination, we will publish a final determination. The companies operating in the affected study areas, both the incumbent LECs and the unsubsidized competitors, are invited to review and confirm or refute the results of our preliminary analysis. We encourage companies to access the online map posted at <https://fcc.gov/maps/100-pct-overlap-2017> 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 Form 477 data as of June 30, 2016, in the census blocks that overlap the identified study areas. Each census block is color coded according to which competitors are serving the block.

7. Based on our previous experience, we recognize 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 even if in a given block it offers service to only a fraction of the residential and business locations. Given those considerations, we conclude, as we did in 2015, that we cannot finalize the list—which triggers the phase-down in support mandated by the Commission—without confirmation that the unsubsidized competitor or competitors are 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.¹¹

8. In the 2015 100 percent competitive overlap process, we treated a declaration from 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.¹² However, if the incumbent LEC replies with its own declaration and evidence that the competitor is not offering service meeting the criteria and the competitor’s initial declaration was not supported with sufficient documentation, we will be unlikely to rely on the competitor’s statement.¹³ By encouraging supporting documentation, we will reduce the burden on both the parties and the Commission in completing these determinations. For those SACs with an asterisk in the table above, competitive providers that submitted evidence that the Bureau determined in 2015 was not persuasive and that plan to certify they now serve 100 percent of locations should not simply resubmit the same evidence.

⁹ See 2015 100 Percent Overlap Order, 30 FCC Rcd at 14146, 14148-50, paras. 3, 8-9, 11-12.

¹⁰ See https://apps.fcc.gov/edocs_public/attachmatch/DOC-345889A1.xlsx.

¹¹ 2015 Public Notice, 30 FCC Rcd at 8186, para. 19. The service obligations can be found at 47 CFR § 54.319(a).

¹² 2015 Public Notice 30 FCC Rcd at 8187, para. 20.

¹³ Parties face criminal penalties for knowingly and willingly making materially false, fictitious or fraudulent statements or representations in official matters before the Commission. See 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 (WCB 2015).

9. In particular, we encourage competitors to address in their comments whether they currently offer service meeting the conditions in section 54.319(a) of the Commission's rules to all locations within the blocks reported on Form 477 and which overlap the incumbent's study area identified in the preliminary list above. To meet those service requirements a provider must offer:

- (1) fixed voice service at rates at or below the 2017 reasonable comparability benchmark of \$49.51,¹⁴ and
- (2) fixed broadband service at actual downstream speed of at least 10/1 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 (160 GB); and at rates that are reasonably comparable to those in urban areas.¹⁵ For example, \$77.98 is the benchmark for service at 10/1 Mbps, with unlimited usage.¹⁶

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 7 to 10 business days without an extraordinary commitment of resources.¹⁷

10. Supporting documentation we would find persuasive includes, for example, a list of all the addresses deployed to in the census blocks, a franchise agreement demonstrating a cable competitor's franchise area including the relevant census blocks, or a detailed map(s) clearly depicting coverage of all locations in the relevant census block; speed tests in the relevant area during peak times; a brief narrative detailing arrangements for being able to provide service within 7 to 10 business days; marketing materials/website screen shots showing the competitor offers service meeting the speed, usage capacity and rates (pricing) for voice and broadband services described above;¹⁸ and, for fixed wireless providers, propagation model data for determining coverage and speed, as well as speed test data to confirm the propagation model data.¹⁹

11. Rate-of-return carriers identified on the preliminary list of 100 percent overlapped study areas also are free to submit evidence, either in the initial comment or the reply comment period, that an unsubsidized competitor does not offer service to all locations in the census blocks specified in the provided spreadsheet²⁰ and/or that the competitor is not offering service to all locations within those blocks.

¹⁴ See 47 CFR § 54.319(a); see also *Wireline Competition Bureau Announces Results of 2017 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for ETCs Subject to Broadband Public Interest Obligations*, Public Notice, DA 17-167, at 1 (WCB 2017) (*2017 Urban Rate Survey Public Notice*).

¹⁵ See 47 CFR § 54.319(a). *2017 Urban Rate Survey Public Notice*, at 3

¹⁶ See *id.* at 2.

¹⁷ 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 (WCB 2014).

¹⁸ See 47 CFR § 54.319(a).

¹⁹ For the data to submit showing propagation, see the Appendix. We note that a map of a fixed wireless provider's service area without additional data would not constitute clear evidence that the provider is able to serve all of the locations in the relevant study area.

²⁰ See https://apps.fcc.gov/edocs_public/attachmatch/DOC-345889A1.xlsx.

D. Filing Requirements

12. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,²¹ 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).²²

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.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.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th 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.
 - 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.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

13. *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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

14. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

15. *Permit-But-Disclose.* The proceeding this Notice of Proposed Rulemaking initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.²³ 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

²¹ 47 CFR §§ 1.415, 1.419.

²² See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

²³ 47 CFR §§ 1.1200 *et seq.*

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 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 Suzanne Yelen, Industry Analysis & Technology Division, Wireline Competition Bureau at 202-418-0626 or Suzanne.Yelen@fcc.gov.

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Appendix

Propagation Data

The Bureau recommends that fixed wireless competitors submitting propagation data in support of their comments to submit the data below in a .csv file.

Data Point	Data Type	Sample	Notes
site_id	Integer	22	Unique identifier for each site
Latitude	Float	38.8834816	Latitude of site in degrees to 7 decimals
Longitude	Float	-77.0305135	Longitude of site in degrees to 7 decimals
antenna_height	Float	60.65	Antenna height in meters
antenna_orientation	Float	23.75	Antenna azimuth in degrees
channel_capacity	Integer	10	Channel bandwidth in MHz
erp_measurement	Float	30.0	Power measurement in dBm
link_budget_rssi_threshold	Float	-85.0	Link budget signal strength threshold in dBm
link_budget_sinr_threshold	Float	12.5	Link budget signal to interference and noise ratio threshold in dBm
avg_download_speed	Float	10.0	Estimated average download speed in Mbps
avg_upload_speed	Float	1.0	Estimated average upload speed in Mbps
path_loss_slope	Float	20.0	Model path loss slope in dB/Decade
path_loss_intercept	Float	80.0	Model path loss intercept in dB@1km