

I. CARRIERS HAVE CORRECTLY RELIED UPON THE COMMISSION’S RULES AND ORDERS TO IDENTIFY SERVICEABLE LOCATIONS.

In their Petition, NEIT and WIATEL pointed out that the guidance provided by the Universal Service Administrative Co. (“USAC”) in the HUBB Frequently Asked Questions (“HUBB FAQ”) regarding how to enter locations in the HUBB when a business and residence share the same property is inconsistent with the Commission’s rules and orders. Specifically, the HUBB FAQ indicates, “For a carrier to count [as a location] a business run out of a house or a business run out of a shed or other structure on the property, there must be separate facilities (drop/line) and separate equipment (e.g., modem) and the business must separately subscribe....”³ This answer directly conflicts with the Commission’s rules and orders, which not only do not require separate facilities or equipment to be installed for every location, but also do not require a customer to have subscribed to the service before such location can be considered served by the carrier. Instead, the Commission’s rules and orders specify that a carrier is considered to be offering service to any given location when service can be delivered to that location within ten (10) business days upon request from the residence or business located there.⁴

The record unmistakably demonstrates that carriers have been relying upon the definition of serviceable locations contained in the Commission’s rules and orders in determining whether to elect A-CAM support.⁵ Changing the rules midstream, and without the opportunity for notice

³ See Petition at p. 2, fn 5 (emphasis in original).

⁴ See Comments of NTCA – The Rural Broadband Ass’n, WC Docket No. 10-90 (filed July 10, 2019) at p. 2 (citing to 47 C.F.R. § 54.310(c) and *Connect America Fund, et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3133, ¶ 121 (2016)).

⁵ See, e.g., Comments of WTA – Advocates for Rural Broadband (“WTA”), WC Docket No. 10-90 (filed July 10, 2019), at p. 2.

and comment, would be detrimental to carriers that relied upon the Commission’s rules and orders and now face losing a portion of the funding offered, along with being subjected to fines, if there are fewer serviceable locations under the “new” definition than were available when the carrier selected A-CAM support. Furthermore, requiring carriers to follow the interpretative guidance offered by a non-governing body that is on its face inconsistent with rules and orders established by the Commission through a rulemaking process is not only contrary to administrative law, but also to the Commission’s goal of ensuring the rules governing universal service support – such as that provided through A-CAM – offer predictable support.⁶

ITTA, consistent with the Comments filed by NTCA, pointed out that the guidance contained in the HUBB FAQ regarding the need for carriers to install “separate facilities” to each location before the location can be counted as served conflicts not only with the Commission’s rules and orders, but also with industry standards. Specifically, ITTA commented that carriers typically “install one fiber drop per physical address,” and then may add fiber strands to the drop to meet the needs of locations at that address as served by that drop.⁷ The HUBB FAQ, by contrast, would require a separate drop for every location, creating an unnecessary cost to carriers and an impractical use of limited universal service funds.

⁶ The Commission established A-CAM support to “ensure sufficient and predictable support for legacy carriers and spur additional deployment of 25/3 Mbps broadband service...” *Connect America Fund* et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, WC Docket No. 10-90 et al., ¶ 70 (rel. Dec. 13, 2018). Ironically, the HUBB FAQ, which USAC presumably intended to help carriers understand and comply with the Commission’s rules, has the opposite effect as it creates uncertainty among those receiving A-CAM support and would invariably result in higher costs than carriers budgeted for when deciding whether to elect A-CAM support.

⁷ Comments of ITTA – The Voice of American’s Broadband Providers, WC Docket No. 10-90 (filed July 10, 2019) at p. 3.

II. THE HUBB FAQ GUIDANCE WOULD HARM RURAL AREAS BY UNDERMINING ACCESS BY THE KINDS OF LOCATIONS THAT NEED BROADBAND ACCESS IN RURAL AMERICA AND INCREASING THE ALREADY HIGH COST OF PROVIDING BROADBAND SERVICE TO RURAL HOMES AND BUSINESSES.

The HUBB FAQ states that a business sharing the same location as a residence must “separately subscribe” to a carrier’s service prior to the carrier being able to include both the residence and business as separate locations in the HUBB. However, as noted by Petitioners, carriers have no control over whether a person or entity will choose to subscribe to the carrier’s service.⁸ Notably, the HUBB FAQ does not impose the same “subscription” requirement upon multi-tenant buildings, but rather, allows the carrier to count every unit in the building as a separate location even if some units have not subscribed to the carrier’s service.⁹ Thus, it would be inequitable to impose a subscription requirement upon a business and residence that share the same building or property and would almost universally single out rural areas. As Vantage Point noted, “[t]he realities of rural economies include a lack of commercial structural development and, in its place, a necessity for home-based businesses is commonplace.”¹⁰ Many rural areas, in fact, are dependent upon broadband connections to monitor their livestock and their crops, as well as to operate irrigation systems, all of which most often share the same parcel of land as a

⁸ See Petition at p. 3.

⁹ See HUBB FAQ at <https://www.usac.org/res/documents/hc/pdf/tools/HC-HUBB-FAQ.pdf> (Q. If a carrier provides service to an apartment building with 10 units ... but only five units subscribe, can the carrier still report that as 10 locations deployed? A. Yes.) (last visited July 23, 2019). It is unclear how the HUBB FAQ can offer this guidance, as well as the statement that “[a] location is considered served if the carrier could turn up service ... within 10 business days of receiving an end-user request”, and still suggest a separate subscription and equipment installation are necessary for businesses sharing the same structure or parcel of land to be considered served.

¹⁰ Letter from Larry Thompson, Vantage Point Solutions, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (June 23, 2019) (“Vantage Point ex parte”).

residence and require separate broadband service.¹¹ Furthermore, requiring carriers to deploy separate equipment to businesses that share the same structure or piece of land as a residence would add unnecessary costs to areas that are already considered “high-cost” areas – and which rely upon the Commission’s universal service funding to make broadband service in those areas economically viable in the first place.

III. CONCLUSION

Commenters agree with, and support, the Commission’s intent to ensure carriers use the financial support provided by A-CAM for its intended purpose of delivering high-speed broadband service to the entirety of rural service areas, rather than solely to locations that can be reached easily and with the least cost. However, commenters also agree that USAC’s HUBB FAQ not only does not further this goal but rather, undermines achievement of the goals the Commission expressed when establishing A-CAM support by creating uncertainty among carriers and adding unnecessary costs and delays to customers seeking to subscribe to broadband service in rural areas.¹² NTCA also reiterates the recommendation from its Comments that the Commission can ensure carriers are not purporting to serve businesses that do not exist or structures that could not conceivably receive broadband service by directing USAC to modify the HUBB FAQ as follows:

¹¹ See, e.g., Letter from Michael Romano, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed July 1, 2019). The Commission also recently announced a goal of “promot[ing] effective policy and regulatory solutions that encourage the adoption of broadband Internet access service on farms and ranches and promote precision agriculture.” See also, FCC Announces the Establishment of the Task Force for Reviewing Connectivity and Technology Needs of Precision Agriculture in the United States and Seeks Nominations for Membership, *Public Notice*, DA 19-568 (rel. June 17, 2019).

¹² See Vantage Point ex parte. (“current discrepancies between Commission statements and USAC guidance regarding what constitutes a valid location creates confusion and uncertainty” for rural carriers, leaving many carriers “in doubt as to whether ACAM II support is a viable option to support their deployment ambitions.”).

Q. How should a carrier report deployment at a residence that also has a home-based business within the same structure?

A. A carrier receives credit for and must report the house as a served location a residence at which broadband is available, regardless of whether the house resident subscribes to the service. A carrier likewise receives credit for and must report as a served location a business at which broadband is available, regardless of whether the business subscribes to the service.

For a carrier to count as a separate location a business that shares a physical structure with a residence and thereby count the residence and home-based business in that same structure as two separate units (and thus two separate locations) for reporting and deployment milestone purposes, the carrier must validate the existence of the home-based business based upon sources of business information where available (e.g., a governmental agency registration or other indications of business activity) and provide such information to USAC upon request. run out of a house or a business run out of a barn, shed or other structure on the property there must be separate facilities (drop/line) and separate equipment (e.g., modem) and the business must separately subscribe (get its own bill) to at least the minimum speed required. See DA-16-1363 WCB Guidance on Location Reporting for Carriers Receiving CAF Support.

Such modifications would align the HUBB FAQ with the Commission's rules and orders while providing safeguards to protect against misrepresented locations.

Accordingly, NTCA respectfully requests the Commission grant the relief requested in the Petition as unilaterally supported by commenters and direct USAC to modify the guidance provided in its HUBB FAQ to be consistent with Commission rules and orders and industry practice.

Respectfully submitted,



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