

**Before the
Federal Communications Commission
Washington, DC 20230**

In the Matter of)	
)	
Protecting Against National Security)	WC Docket No. 18-89
Threats to the Communications Supply)	
Chain Through FCC Programs)	

**REPLY OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby replies to the Opposition filed by Mediacom Communications Corporation² (“Mediacom”) to the Petition for Reconsideration filed by the Rural Wireless Association, Inc.³ (“RWA”) of the Commission’s *Third Report and Order* in the above-captioned proceeding.⁴ In the Petition, RWA sought reconsideration of the Commission’s decision in the *Third Report and Order* not to sub-prioritize reimbursement funding for eligible telecommunications carriers (“ETCs”) as adopted by the

¹ NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA service provider members are full service rural local exchange carriers and broadband providers, and many provide fixed and mobile wireless, video and other competitive services in rural America as well.

² Opposition of Mediacom Communications Corporation, WC Docket No. 18-89 (filed Jan. 14, 2022) (“Opposition”).

³ Petition for Reconsideration of the Rural Wireless Association, Inc., WC Docket No. 18-89 (Sep. 22, 2021) (“Petition”).

⁴ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Third Report and Order (July 13, 2021) (“*Third Report and Order*”).

Commission in the *Second Report and Order*⁵ in the event that the amount of funding allocated by Congress is insufficient to fully reimburse all providers with 2 million or fewer customers.⁶

II. ENSURING ETCs ARE FULLY REIMBURSED FOR THE COST OF REMOVING AND REPLACING COVERED EQUIPMENT AND SERVICES IS NECESSARY FOR MAINTAINING THEIR SERVICE IN RURAL COMMUNITIES.

NTCA agrees with Mediacom that the Consolidated Appropriations Act, 2021 (“CAA”) requires the Commission to prioritize reimbursement to all providers with 2 million or fewer customers pursuant to the CAA. Contrary to Mediacom’s assertion, however, the CAA did not require the Commission to eliminate the sub-prioritization categories established in the *Second Report and Order*. Instead, as the Commission stated in the rulemaking proceeding leading up to the *Third Report and Order*, the CAA was silent on this issue.⁷ As the CAA demonstrated, Congress is perfectly capable of “overriding” previously adopted Commission rules where it feels the need to do so. Thus, if Congress had intended to eliminate the sub-prioritization categories adopted by the Commission, the CAA could have easily and plainly stated as much. Thus, the Commission rightly proposed to retain the sub-prioritization categories adopted just two months earlier, wherein “[i]f aggregate demand exceeds available funding, we will prioritize

⁵ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Second Report and Order, 35 FCC Rcd 14284 (2020) (“Second Report and Order”).

⁶ “We propose to adopt the Consolidated Appropriations Act of 2021 prioritization scheme ... to first allocate funds to approved applications with 2 million or fewer customers.” *Third Report and Order* at ¶ 23.

⁷ *Id.* at ¶ 24 (“the CAA is silent on how the Commission should further prioritize funding within the three main categories.”).

funding requests from [eligible telecommunications carriers (“ETCs”)] subject to a remove and replace requirement before funding the requests of non-ETCs.”⁸

The well-reasoned basis for prioritizing ETCs to ensure they receive full reimbursement for the cost of removing and replacing covered equipment and services has not changed. As NTCA described in comments in response to the *Third Further Notice of Proposed Rulemaking*, ETCs not only are quite conceivably most in need of reimbursement funding due to the high cost of providing service to their communities but also are at risk of losing critical universal service funding if they do not remove and replace covered equipment and services.⁹ ETCs serve some of the most hard-to-reach and densely populated areas of the country and rely upon universal service funding to have the ability to provide essential telecommunications services to their community at rates comparable to those in more urban areas. The loss of universal service funding combined with the added cost of financing even a portion of the cost of removing and replacing covered equipment and services presents a potentially unsurmountable challenge for these providers. The ensuing result is most harmful to the communities served by these small providers and contrary to the Commission’s, Congress’ and even the White House’s goal of ensuring everyone has access to broadband service.¹⁰ Accordingly, NTCA supports RWA’s Petition and encourages the Commission to recognize the critical need for ETCs to be fully

⁸ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Second Report and Order, WC Docket No. 18-89 (Dec. 11, 2020) at ¶ 141.

⁹ Comments of NTCA – The Rural Broadband Ass’n, WC Docket No. 18-89 (filed Apr. 12, 2021), p. 4.

¹⁰ *See, e.g.*, Infrastructure Investment and Jobs Act, Public Law No: 117-58 (Nov. 1, 2021) (providing \$65 billion to help close the digital divide and ensure that all Americans have access to reliable, affordable, high-speed broadband).

reimbursed for the cost of removing and replacing covered equipment and services by reinstating the sub-prioritization category for ETCs.

III. THE COMMISSION SHOULD GRANT AN EXTENSION OF TIME FOR AFFECTED PROVIDERS TO REMOVE AND REPLACE COVERED EQUIPMENT AND SERVICES.

RWA also requested in its Petition that the Commission issue a general extension of the one-year deadline for all affected providers to remove and replace covered equipment and services in light of supply chain and labor shortages.¹¹ NTCA supports this request. As the Commission has recognized on several occasions,¹² telecommunications providers began seeing equipment shortages and resulting delays nearly two years ago. Instead of being a brief setback, the delays have not only persisted but increased. To further exacerbate the challenges faced by providers, many – like most industries – are also experiencing a shortage of workers. The shortage of workers in rural areas is especially acute given the everyday challenge that has persisted for years of hiring and retaining qualified technicians.

Granting an extension is also in the public interest and meets the Commission’s standards for waiver of its rules. NTCA further notes that such an extension, while providing an important safeguard for providers that require additional time, will not impede the incentive inherent in the Commission’s reimbursement procedures for providers to obtain reimbursement as soon as they are eligible to do so.¹³

¹¹ RWA Petition at pp. 5-6.

¹² See, e.g., *Connect America Fund*, Order, WC Docket No. 10-90 (Jan. 3, 2022) (granting an extension of the waiver of the performance testing requirements due to supply chain delays).

¹³ See *Wireline Competition Bureau Finalizes Application Filings, Procedures, Cost Catalog, and Replacement List for the Secure and Trusted Communications Networks Reimbursement Program*, Public Notice, WC Docket No. 18-89 (Aug. 3, 2021).

The Commission first recognized the unanticipated challenges facing providers in this proceeding in March 2020.¹⁴ Forces beyond the control of the Commission and the industry continue to affect carriers and their marketplace. While materials and supply shortages are affecting many industries across many markets, the telecommunications industry has been affected significantly due to heavy reliance on electronic components that have been most affected by chip shortages. Even as there may be reports of some constrictions easing,¹⁵ backlogs at U.S. ports persist and are not expected to ease until well into this year.¹⁶ Moreover, while demand for telecommunications components and supplies remains high, vendors' ability to deliver is challenged.

Under Section 1.3 of the Commission's rules, the Commission may waive a rule "for good cause shown."¹⁷ Waiver is appropriate where the "particular facts would make strict compliance inconsistent with the public interest."¹⁸ The Commission may grant a waiver of its rules where the requested relief would not undermine the policy objective of the rule in question, special circumstances warrant a deviation from the general rule, and such deviation will serve the

¹⁴ See *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Order, WC Docket No. 18-89 (Apr. 2, 2020).

¹⁵ Stella Yifan Xie, Jon Emont, Alistair MacDonald, "Supply-Chain Problems Show Signs of Easing," Wall Street Journal (Nov. 21, 2021) (<https://www.wsj.com/articles/supply-chain-problems-show-signs-of-easing-11637496002>) (visited Jan. 20, 2022).

¹⁶ Paul Berger, "U.S. Ports See Shipping Logjams Likely Extending Far Into 2022," Wall Street Journal (Sep. 5, 2021) (<https://www.wsj.com/articles/u-s-ports-see-shipping-logjams-likely-extending-far-into-2022-11630843202>) (visited Jan. 22, 2022).

¹⁷ 47 CFR § 1.3.

¹⁸ See *AT&T Wireless Services, Inc. et al. v. FCC*, No. 00-1304 (D.C. Cir. 2001), citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

public interest.¹⁹ The instant request for relief meets all objectives that the Commission found warranted the same relief nearly two years ago.

IV. CONCLUSION

NTCA supports reconsideration of the Commission's removal of the sub-categorization priority for ETCs seeking reimbursement for the cost of removing and replacing covered equipment and services from their networks. NTCA further supports a general extension of time for providers to obtain reimbursement funding for the cost of removing and replacing covered equipment. Both requests by RWA are in the public interest as ensuring ETCs remain eligible for reimbursement of the full cost of removing and replacing covered equipment and services and have sufficient time to do so. Granting the requests would also represent a sensible step toward ensuring the continued availability of the important services offered to the communities of these providers. Any different outcome would be contrary to actions taken by Congress and the Commission to date and cause significant financial hardship for smaller providers.

Respectfully submitted,



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¹⁹ See generally, *WAIT Radio v. FCC*, 418 F. 2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).