

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
State of Competition in the Communications) GN Docket No. 22-203
Marketplace)

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



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I. INTRODUCTION AND SUMMARY.

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these comments in response to the Public Notice² released by the Federal Communications Commission (“Commission”) on May 16, 2022 in the above-captioned proceeding. The Public Notice seeks comment on the state of competition in the communications marketplace, “including competition to deliver voice, video, audio, and data services among providers of telecommunications, providers of commercial mobile service ..., multichannel video programming distributors ..., broadcast stations, providers of satellite communications, Internet service providers, and other providers of communications services,”³ to provide a detailed report to Congress pursuant to the RAY BAUM’s Act.⁴

¹ NTCA represents approximately 850 rural local exchange carriers (“RLECs”). All of NTCA’s members are voice and broadband providers, and many of its members provide wireless, video, and other competitive services to their communities.

² *Office of Economics and Analysis Seeks Comment on the State of Competition in the Communications Marketplace*, GN Docket No. 22-203, Public Notice, DA 22-535 (rel. May 16, 2022) (“Public Notice”).

³ *Id.*

⁴ Section 401 of the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018 (RAY BAUM’S Act), Pub. L. No. 115-141, 132 Stat. 1087.

NTCA members leverage the Commission’s Universal Service Fund (“USF”) to provide many of the communications services referenced in the RAY BAUM’S Act throughout some of the most rural, sparsely populated areas of the country, ensuring that even residents of these small, rural areas have access to much-needed communications services and at rates comparable to more urban areas. A recent survey of NTCA members found that, on average, 75% of members’ serviceable locations are served by fiber to the home and more than 75% of members’ customers are able to receive 100 Mbps or greater downstream speed while over 50% of customers can receive upstream speed of one Gig or higher.⁵ NTCA members also provide residential and business local exchange voice services as well as interconnected VoIP service,⁶ fixed wireless broadband service and video service.⁷

When assessing competition and the state of the marketplace in rural America, the Commission must recognize that although NTCA members are upgrading broadband Internet services in their communities and expanding their reach into other areas still to be served, two of the largest challenges they face in deploying broadband service in rural markets are: (1) permitting delays and fees, especially the costs and process associated with traversing railroad crossings and federal lands; and (2) long delays in the availability of equipment, including but not limited to fiber and consumer premises equipment.

⁵ Broadband/Internet Availability Survey Report, NTCA – The Rural Broadband Ass’n, Dec. 2021, available at <https://www.ntca.org/sites/default/files/documents/2021-12/2021-broadband-survey-report-final-12-15-21.pdf> (“NTCA Broadband Survey”).

⁶ *Id.* at p. 4 (NTCA members had an average of 2,890 residential and 1,040 business local exchange voice grade access lines in service in 2021 as well as 1,450 residential and 437 business interconnected VoIP lines in service in 2021.).

⁷ *Id.* at p. 29.

Moreover, sound policies are needed to overcome remaining digital divides through funding where the marketplace cannot justify delivery of service on its own. In tackling these challenges and developing such policies, the Commission should set clear standards and fully evaluate the capabilities of providers and the platforms they propose to use to deliver services prior to deciding to award funding. Invoking a simplistic mantra of “competition” to allow providers of all kinds to seek funding without first vetting those providers and the technologies they would propose to use is short-sighted, yielding multiple participants perhaps in programs seeking funding but leading to the potential for failure when it comes to deployment or the ongoing delivery of services. Similarly, the Commission must ensure its Broadband Data Collection map accurately identifies where broadband service is and is not available based on real-world experience and well-defined objective standards rather than lab tests and marketing claims. Finally, to promote competition and put consumers first, the Commission’s rules must reinforce providers’ ability to interconnect on reasonable terms and conditions for the exchange of data so that consumers’ expectations can be fulfilled on a seamless basis across the many networks that make up the online experience.

With respect to the USF, the Commission should ensure support can be used not only for the initial construction of broadband services but also for the ongoing maintenance of those services, consistent with the Communications Act. NTCA also encourages the Commission to recognize the public safety and public interest benefits that flow from ongoing support and subsidies for voice services using Lifeline and other mechanisms. Finally, in the context of video services, the ongoing and significant rate increases charged by programmers in retransmission consent agreements are causing a number of video providers to exit the video marketplace, resulting in less competition and higher costs to the detriment of consumers.

II. THE MARKETPLACE FOR FIXED BROADBAND SERVICES.

The Commission requested comment in the Public Notice on industry data and trending factors in the provision of fixed broadband services including “the extent to which differences in service quality, e.g., latency, actual (as opposed to advertised) speeds received ... affect consumers’ ability to use the services effectively, and whether these differences significantly affect competition.”⁸ The Commission also sought comment on “whether laws, regulations, regulatory practices” create a barrier to entry for small businesses.⁹

One important factor in terms of the Commission’s understanding of competition – particularly as it influences the agency’s universal service policy going forward – is the “market failure” associated with serving many rural areas. Specifically, in many rural areas including those served by NTCA members, “reasonably comparable” end-user rates are not sufficient, standing alone, to cover the costs of paying loans or otherwise recovering capital that make broadband networks possible in the first instance and then to maintain and upgrade such networks over the long-term to keep up with consumers’ needs. Reasonably comparable service at reasonably comparable rates in these remote, sparsely populated areas is possible only through sufficient and predicible support made available through the high-cost USF program.

NTCA members are leveraging their USF support to deliver faster broadband speeds to more locations year after year; however, they also are confronting a number of challenges that, if not addressed by the Commission, will harm consumers through delayed broadband service availability, lower broadband speeds, and higher costs. These include permitting delays and fees, equipment supply chain delays, demonstrated testing of new services prior to awarding

⁸ Public Notice, sec. III.

⁹ *Id.*

funding to those services, interconnection on reasonable terms and conditions, and ongoing USF support.

A. Permitting Delays and Fees.

Permitting and access, particularly with respect to federal lands or attached to the receipt of federal funding, can present a significant impediment to the deployment of rural broadband infrastructure. Obtaining federal permits to deploy broadband facilities typically tops the list of NTCA member concerns, especially in certain parts of the country.¹⁰ Members recount delays of up to a year in obtaining necessary permissions for construction of such infrastructure.

Environmental and historic preservation processes can lengthen an already long and arduous process, and even if a project only touches federal lands for a very short distance as part of a larger deployment of fiber, for example, the entire project can be delayed by the time-consuming process of obtaining a permit for areas under an agency's purview. Yet, rural providers often have no choice but to, for example, install fiber under a road touching Bureau of Land Management or Forest Service land, as re-rerouting even that small portion of the project is impossible due to either the substantial distances involved, impassible terrain, or the inability to obtain easements on adjacent privately held land (if any).

The Commission's Broadband Deployment Advisory Committee Streamlining Federal Siting Working Group addressed this concern by recommending that all federal agencies retain more of the fees they collect from broadband deployment to alleviate staff constraints that were

¹⁰ See NTCA Broadband Survey at p. 16 (20.4% of respondents identified permitting delays as a significant barrier to deployment).

reportedly resulting in delays in reviewing siting applications.¹¹ NTCA supports federal agencies recovering an administrative fee for new siting applications provided the fee is tied directly to the actual, documented costs incurred in reviewing the application and the funds recovered will be used *exclusively and entirely* for this purpose. Simply adding costs to siting applications, however, without the additional funding being used to hire additional staff or to reallocate existing staff to ensure timely review of siting applications, only harms broadband deployment by adding yet more cost to a remote, hard-to-serve area.

These delays and costs are not exclusive to federal permits and often extend to railroad rights-of-way as well. One NTCA member reported that it took seven months and tens of thousands of dollars to cross just three railroad rights-of-way across two different railroads. Notably, these costs did not include the actual costs of construction but only the costs of fees and the resources required to receive approval for three railroad rights-of-way.

In addition to being costly and delaying the availability of broadband Internet service to certain locations, lengthy permitting and siting delays could result in providers being unable to meet universal service obligations or federal grant deadlines for deploying broadband service to planned locations. Accordingly, these high costs and lengthy delays can have a direct impact on the availability and cost of broadband services, to the detriment of residents and businesses in hard-to-reach areas that often have already waited years for broadband service to arrive.

¹¹ Broadband Deployment Advisory Committee, “Streamlining Federal Siting” Working Group, Final Report, (Jan. 24, 2018) (“*BDAC Federal Siting Report*”), available at: <https://www.fcc.gov/sites/default/files/bdac-federalsiting-report-012018-2.pdf>.

B. Supply Chain Delays.

Lengthy delays in the availability of telecommunications and broadband supplies, combined with significant increases in the cost of such equipment, are causing significant concern about the ability to meet deployment obligations under various federal and state programs – programs specifically designed to expand broadband availability to unserved and underserved communities. In particular, more than half of respondents to NTCA’s Broadband Survey named fiber order fulfillment delays as a significant barrier to deployment – twice as many as the previous year –while approximately 80% of responding companies reported they are experiencing an inability or delay in procuring supplies needed for network deployment. This includes fiber, customer premises equipment (including ONTs and routers), and network electronic components for fixed wireline service.¹²

This same survey revealed the impact of these delays, or the inability to procure supplies at any price, which is delayed installation of service at customer premises for 66.7% of responding companies and delayed network construction for 64% of responding companies.¹³ Equipment delays have also impacted NTCA members’ ability to assist customers with remote learning, telehealth and other services that moved online during the pandemic.

NTCA members are working hard to account for equipment delays to ensure they can continue expanding high speed Internet capability to more areas while also guarding against any service disruption. This has required ordering equipment far in advance, carrying greater inventory than a smaller operator typically would, and, in some instances, switching to a different equipment provider where possible. Other providers have had to compensate for the

¹² See NTCA Broadband Survey at pp. 16-17.

¹³ *Id.* at p. 17.

delay by suspending efforts to build redundancy into their network or halting network expansion efforts. While providers are working diligently and creatively to compensate for current equipment shortages and delays, the longer the shortage and delays continue, the more likely providers will be faced with making difficult decisions that will negatively impact their communities. Indeed, a number of NTCA members have reported an increase in the price of supplies, which in turn logically affects capital budgets, the cost of services for consumers, and even the amount of grants, loans, or subsidies needed under federal and state broadband programs designed to promote the availability of advanced services. Members also report that their suppliers often cite workforce/labor constraints that limit their ability to produce necessary equipment. In short, if the supply chain crisis persists unabated, the federal dollars expended to deploy and sustain broadband will have far less reach and impact than intended and hoped.

Indeed, the Commission itself recognized a year ago that a “shortfall in the global supply of semiconductors can have consequences for the U.S. communications industry and for Commission priorities and initiatives ... including increased lead times (the duration between when an order for a semiconductor is placed and when it is actually filled) or cost increases.”¹⁴ The shortfall in semiconductors and other supplies continues (if not grows) and the longer equipment delays persist, the larger the impact will be on providers – and consumers – as providers are unable to meet their internal broadband expansion plans and must carefully assess whether to take the risk of defaulting on broadband grants due to necessary equipment being unavailable in time to meet buildout deadlines.

¹⁴ *Wireless Telecommunications Bureau Seeks Comment on the Impact of the Global Semiconductor Shortage on the U.S. Communications Sector*, Public Notice, WT Docket No. 21-195 (May 11, 2021), p. 2.

C. Vetting Providers Seeking Funding.

A reasonable review of recent Commission broadband programs underscores the need to require not only after-the-fact compliance measures and accountability, such as reporting on deployment at a location level and performance testing, but also to articulate clear and publicly stated standards and engage in careful consideration of the technical, managerial, financial, and operational qualifications and experience of parties seeking funding. This should include standards that reveal the real-world capabilities of platforms funding recipients propose to use to deliver service *prior to* enabling their participation in such broadband programs.

In the Rural Digital Opportunity Fund (“RDOF”) auction, for example, the Commission rejected adoption of a data-driven “bright-line” bidding qualification rule that permitted would-be eligible telecommunications carriers (“ETCs”) to bid at performance levels based upon actual commercially available offerings as indicated by providers’ own claims. Instead, in the interest of promoting “competition” in bidding for support, the Commission allowed individual firms to submit confidential filings asserting the ability to deliver higher levels of performance than they offer today, or are otherwise generally seen in the broadband marketplace, using certain technologies, all without any articulation of the standards that would be used to evaluate such assertions of capability. This of course has resulted in significant questions regarding the ability of some winning bidders’ ability to perform, calling into question the success of the RDOF auction, and putting at risk the prospect for delivering on the mission of universal service in some unserved areas that had otherwise looked poised to “win” in the auction.

Developing rules that require entities to provide real world demonstrations of their technical, financial, and operational capability to offer broadband service in deeply rural markets will better balance the objectives of promoting competition and ensuring universal service. In

the end and in all cases, whether making policy or funding decisions based upon what entities say they can do or have already done, the representations need to be supported by real-world experience and vetting – including possibly actual testing – rather than taking claims on faith based upon lab tests, press releases, and marketing claims.

D. Interconnection.

Ensuring traffic between operators is seamlessly exchanged not only for traditional voice calls but also all other types of communications should be viewed as an essential mission of the Commission. There is nothing more fundamental to the Commission’s very purpose than making sure that consumers of all kinds can communicate without barriers regardless of where they live or the provider or network that serves them.¹⁵ Accordingly, to ensure a competitive and well-functioning marketplace regardless of providers’ size or customers’ location – and to ensure that communications are delivered reliably – the Commission must remain vigilant as to providers’ ability to interconnect on reasonable terms and conditions for the exchange of data of all kinds. Over the last decade, the Commission has adopted and reinforced rules to make sure calls reach rural America.¹⁶ Today, rules designed to encourage migration to an IP-enabled network migration are not necessary simply for their own sake, but precisely because IP-enabled networks are presumed to – and must – promote more affordable access to higher-quality

¹⁵ See 47 U.S.C. § 151. (charging the Commission with aiming to “make available, so far as possible, to all the people of the [United States](#), without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and [radio communication](#) service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communications”).

¹⁶ See *Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154 (2013). The rules adopted by the Commission in this Order require intermediate providers to take steps reasonably calculated to ensure that all covered voice communications traversing their networks are delivered to their destinations. Prior to these rules, in some rural areas of the country, it was estimated that nearly one in five inbound calls to landline phones were not completed or were of poor quality, the result of retail long distance providers using third parties to deliver calls at reduced rates that relied upon the least costly method of routing calls.

communications services for all Americans. Accordingly, ensuring the marketplace allows smaller entities to exchange data traffic of all kinds without new and substantial costs that drive up end-user rates (and ensuring that they can do so while also maintaining service quality) is critical to rural consumers' access to the same services as urban Americans.

With respect to voice service specifically, lingering uncertainty surrounding IP interconnection for the exchange of traffic that is otherwise subject to sections 251 and 252 of the Act in all respects hinders the deployment of IP-enabled networks. Instead, establishing an incentive-based mechanism that would allow carriers to recover costs for the exchange of communications traffic where they agree to make available IP-based interconnection in accordance with a well-defined statutory framework will provide an important economic incentive for necessary IP interconnection. This will also promote the nationwide availability of critical caller-ID authentication protocols that can protect consumers from unwanted calls;¹⁷ indeed, it is difficult to see how the Commission can ultimately achieve its mandate for nationwide call authentication in the absence of a framework that ensures seamless interconnection between networks to exchange authentication data.

E. USF Support.

Direct support from the federal USF high-cost program is essential to make the business case for investment in rural broadband and ensure the ongoing delivery of reliable and affordable services. While broadband grants can support the initial construction of facilities, in many sparsely populated areas there are often not enough residents or businesses to cover the cost of maintaining those facilities and otherwise delivering services to those customers. The high-cost

¹⁷ See Comments of NTCA – The Rural Broadband Ass'n, WC Docket No. 17-97 *et al* (May 15, 2020).

USF program is the primary, if not the only, tool in place to ensure that rural consumers can purchase supported services that are reasonably comparable in quality and price to those received by urban communities. Thus, the Commission should expressly recognize the significance of USF support in helping not only to connect Americans but to *keep them connected* after networks are built – USF does far more than merely support deployment alone. Furthermore, to ensure USF funds are used to deliver speeds that residents and businesses need and expect from a broadband connection, including online education, telehealth, and even remote work, the Commission should ensure the service level commitments for the USF programs are set at a level necessary for a sustainable, long-term future, rather than aiming for short-term measures that reflect needs now but neglect what will be demanded by users over the life of the network supported by USF.

III. VOICE.

The Commission also requests comment on whether laws, regulations, regulatory practices, or demonstrated marketplace practices pose a barrier to facilities-based competitive entry into the marketplace for the provision of voice services, including the impact of such laws, regulations, and practices on small businesses.¹⁸ With respect to voice service, the Commission should consider whether existing rules enable all consumers, regardless of income level, to obtain the communications service they want and need. While the Commission has correctly recognized in other proceedings that although broadband “is now the dominant technology used to communicate, educate, inform, and entertain,” a reliable and affordable voice service is and will remain critical for many consumers for the foreseeable future, particularly with respect to

¹⁸ Public Notice, sec. IV.

public safety.¹⁹ Thus, while well-intentioned, the Commission’s requirement that Lifeline voice support not only be bundled with broadband, but that the broadband bundle evolve with increasing minimum service speeds, is effectively driving up the cost of communications for the most price-sensitive customers.

With respect to the minimum service speed standards, NTCA has repeatedly sought a carefully targeted waiver from strict application of this provision.²⁰ As NTCA described in these requests for relief, rates for broadband service typically increase as the speed provided increases – as a result, the value of the Lifeline subsidy to the consumer is eroding year after year. This forced escalation hinders consumer choice because they can no longer apply the Lifeline subsidy to the affordable service they previously purchased.

The phase-out of support for standalone voice service that is scheduled to become effective in December 2022 merits revisiting as well.²¹ The Commission recognized when pausing the phase-out of this support for one year that “recent data ... shows that a persistent percentage of Lifeline subscribers still rely on voice-only support for their connectivity needs.”²² While the Commission’s Affordable Connectivity Program likely provides some much-needed reduction in the cost of broadband service for some low-income subscribers, not only are there areas of the country that remain without broadband service at any price but also individuals who

¹⁹ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016) at ¶ 12.

²⁰ See NTCA Petition for Temporary Waiver, WC Docket No. 11-42 *et al* (filed Oct. 20, 2017); NTCA Petition for Temporary Waiver, WC Docket No. 11-42, *et al* (filed July 23, 2018); NTCA Petition for Temporary Waiver, WC Docket No. 11-42, *et al* (fil. Jul. 29, 2019).

²¹ Comments of the Massachusetts Department of Telecommunications and Cable, WC Docket No. 11-42 (Apr. 19, 2021), p. 2; Comments of the Michigan Public Service Commission, WC Docket No. 11-42 (Apr. 19, 2021), p. 2; Comments of Next Century Cities, WC Docket No. 11-42 (Apr. 19, 2021), pp. 4-7.

²² *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42 *et al*, Order (Nov. 5, 2021).

continue to use “plain old telephone service” – and not broadband – to keep in touch with family members or to make calls in the event of an emergency or power outage. Accordingly, quality, affordable voice service remains an important part of the communications marketplace and is incumbent upon the Commission to maintain rules that protect consumers’ access to such service.

IV. VIDEO.

The Commission also sought comment in the Public Notice on the issues and trends affecting competition in the market to deliver video programming services.²³ The substantial and ongoing increases in retransmission consent fees have resulted in a number of multichannel video programming distributors (“MVPDs”) being forced to discontinue offering video service, to the detriment of not only the video providers but also to the public through the loss of local programming. Notably, NTCA’s Broadband Survey found that for 20% of members that responded to the survey, more than 75% of households in their service area cannot receive over-the-air broadcast signals,²⁴ and thus these consumers have little choice but to pay ever-increasing rates to access broadcast channels and will lose access to this programming if their local video provider cannot remain viable.

NTCA’s Broadband Survey also found that nearly all of the respondents that are considering discontinuing their video service or have definite plans to discontinue the service are doing so due to increased programming costs, while more than half are doing so due to difficulty negotiating retransmission consent agreements. These same members noted that on average, 35% of total operating expenditures went toward retransmission consent fees in 2021, while

²³ Public Notice, sec. V.

²⁴ See NTCA Broadband Survey at p. 29.

retransmission consent fees increased by an average of \$63,609 in the most recent consent agreement.²⁵

The ability of NTCA members' MVPD operations to offer an affordable video service to their voice and/or broadband subscribers is vital to competition in the video space and drives the adoption of broadband service. For all NTCA members, the ability to offer quality video services is an essential component of the business case for broadband deployment (including upgrading of existing broadband plant) and can serve as a driver of broadband adoption in rural areas.

V. CONCLUSION.

Two of the largest challenges providers face in deploying broadband service in rural areas are: (1) permitting delays and fees, especially the costs and process associated with traversing railroad crossings and federal lands; and (2) long delays in the availability of equipment, including but not limited to fiber and consumer premises equipment. The Commission should consider what efforts it can undertake on its own and in collaboration with other agencies to address these issues as an essential part of comprehensive universal service policies.

Moreover, sound policies are needed to overcome remaining digital divides through funding where the marketplace cannot justify delivery of service on its own. To identify those areas where broadband is lacking and which providers are best positioned to address these divides, the Commission should set clear standards and thoroughly evaluate the capabilities of providers and the platforms they propose to use to deliver services prior to deciding to award

²⁵ *Id.* at p. 31.

funding. In addition, to promote competition and put consumers first, the Commission should reinforce providers' ability to interconnect on reasonable terms and conditions for the exchange of data.

With respect to USF policy, the Commission should ensure support can be used not only for the initial construction of broadband services but also for the ongoing maintenance of those services, and recognize as well the public safety and public interest benefits that flow from ongoing support and subsidies for voice services using Lifeline and other mechanisms. Finally, in the context of video services, the Commission should re-evaluate those policies that help enable ongoing and significant rate increases charged by programmers in retransmission consent agreements.

Respectfully submitted,



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