

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

In the Matter of)	
)	
Establishing the Digital Opportunity Data Collection)	WC Docket No. 19-195
)	
Professional Engineer Certification in the Broadband Data Collection Process)	
)	

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

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these comments in response to the Public Notice released by the Federal Communications Commission (“Commission”) in the above-captioned proceeding.²

In a Declaratory Ruling and Limited Waiver released last year,³ among other things, the Wireline Competition and Wireless Telecommunications Bureaus and the Office of Economics and Analytics waived the requirement in the Commission’s rules⁴ that broadband service providers obtain certification from a “certified professional engineer” as to the accuracy of Broadband Data

¹ NTCA–The Rural Broadband Association represents approximately 850 community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or are themselves engaged in the provision of such services.

² *Comment Sought on Petition for Extension of Waiver of the Requirement for a Certified Professional Engineer to Certify Broadband Data Collection Availability Data*, Public Notice, WC Docket No. 19-195 (rel. Aug. 11, 2023).

³ *Establishing the Digital Opportunity Data Collection; Competitive Carriers Association Petition for a Declaratory Ruling or Limited Waiver Regarding the Requirement for a Certified Professional Engineer to Certify Broadband Data Collection Maps*, WC Docket No. 19-195, Declaratory Ruling and Limited Waiver (rel. July 8, 2022) (“*Waiver Order*”).

⁴ 47 C.F.R. § 1.7004(d).

Collection (“BDC”) submissions for the first eighteen months (or three cycles) of reporting. The waiver was deemed justifiable on the grounds that such relief would “provide sufficient time for providers to become accustomed to filing data in the BDC system and to . . . obtain the necessary engineering support to certify their broadband data filings” in accordance with the new rule.⁵

USTelecom – The Broadband Association (“USTelecom”) and the Competitive Carriers Association (“CCA”) now request further extension of this “limited” waiver, which would result ultimately in deferring for at least three years and six BDC filing cycles the full implementation of the certification rule adopted in the Commission’s January 2021 mapping order.⁶ Pointing generally to workforce training challenges and their own filings seeking a potential waiver from a year earlier, USTelecom and CCA assert that “nothing has changed for the industry” in engineering workforce challenges or professional engineering licensure since the *Waiver Order* was issued. The petitioners also point to future implementation of the Broadband Equity, Access, and Deployment (“BEAD”) program as likely to exacerbate access to engineering resources. Finally, they assert that broadband providers can provide reliable broadband coverage data without professional engineering certification, and indeed that such licensed review “is neither necessary nor desirable to demonstrate RF or fixed network telecommunications engineering competence.”⁷

NTCA respectfully disagrees and, subject to a limited exception as discussed further below, urges: (a) denial of the Petition; and (b) implementation of the rule adopted by the Commission more than two years ago rather than deferring full compliance for yet another 18 months. It is true

⁵ *Waiver Order* at ¶ 13.

⁶ Petition for Extension of Waiver of CCA and USTelecom, WC Docket No. 09-195 (filed Aug. 4, 2023) (“Petition”).

⁷ *Id.* at 4-5.

that the telecommunications and broadband providers generally face workforce challenges (as do many other aspects of the U.S. economy). NTCA has actively worked on its own and with other industry stakeholders to address such challenges.⁸ But, in light of other considerations and challenges discussed herein, these generalized workforce concerns do not warrant a blanket and unqualified three-years-and-counting waiver of the rule. The Petition contains no specific evidence as to the inability to procure assistance from professional engineers in connection with network reviews and, on the balance as discussed further herein, these concerns do not provide sufficient justification by themselves to warrant the relief granted here. Furthermore, it is worth noting that the Commission’s rule already provides an alternative to obtaining professional engineering certification; providers can instead rely upon the certification of a “corporate engineering officer,” as this term was clarified in the Declaratory Ruling that was part of last year’s *Waiver Order*.

This being said, NTCA represents some of the smallest providers in the industry – some of whom may very well be the same smaller companies cited generally by USTelecom and CCA in the Petition.⁹ With an average of fewer than 30 employees per company, NTCA members share concerns with respect to the burden of reporting requirements, and they appreciate the Commission’s frequent consideration of how best to balance accountability and potential burdens in devising reporting obligations and compliance mechanisms. To accommodate such concerns

⁸ See, e.g., *FACT SHEET: President Biden Celebrates New Commitments toward Equitable Workforce Development for Infrastructure Jobs* (available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/11/02/fact-sheet-president-biden-celebrates-new-commitments-toward-equitable-workforce-development-for-infrastructure-jobs/>) (referencing NTCA’s participation in broadband workforce development efforts as part of the administration’s Infrastructure Talent Pipeline Challenge).

⁹ Petition at 4.

and strike a reasonable balance for smaller firms that may have a harder time procuring such assistance or find it to be a relatively larger expense, NTCA would recommend that, if the waiver will be extended, such relief be afforded only to providers reporting the ability to serve fewer than 100,000 locations nationwide.¹⁰ (Of course, the rule as written already offers some degree of balance itself as noted above, giving providers a choice between leveraging qualified internal resources *or* seeking the assistance of a professional engineer.)

Moreover, and more importantly, the Petition misses the mark in dismissing the value of expert engineering certification and failing to assess the balance of factors for and against a blanket and unqualified waiver extension. Review of coverage claims made by some providers in the BDC reveal some claims that “raise eyebrows,” to say the least, and the justifications publicly available in the BDC filings for asserting such far-reaching coverage are stunning in their cursory nature.

As just a few notable examples:

- LTD Broadband, LLC (“LTD”) purports in the BDC system to offer at least 250 Mbps symmetrical broadband service using unlicensed fixed wireless spectrum to over 275,000 locations across a geography composed of what appears to be more than one-third of each of Minnesota and Iowa and sizeable portions as well of Nebraska and South Dakota. LTD’s entire explanation in the BDC system for how it determined that it could deliver this high-level of broadband to more than a quarter million locations spread across wide rural geographies of the upper Midwest using shared unlicensed spectrum appears to be “*we wrote propagation software and used conservative parameters.*”

¹⁰ In various proceedings over many years, the Commission has used a 100,000 customer, line, or connection threshold to identify smaller providers that would be subject to certain kinds of relief from otherwise applicable obligations. *See, e.g., Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1877 (2020), at ¶ 40 (providing an extension from implementation deadlines for call authentication to providers with 100,000 or fewer voice subscriber lines); *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order (rel. Mar. 12, 2015), at ¶ 173 (providing a temporary exemption from an enhanced transparency rule to broadband providers with 100,000 or fewer subscribers); *see also* 47 C.F.R. § 64.2101 (defining a covered provider for purposes of rural call completion requirements as having more than 100,000 domestic retail subscribers).

- Resound Networks (“Resound”) purports to offer at least 100/20 Mbps broadband service using unlicensed fixed wireless spectrum to over 203,000 locations across significant portions of northern Texas and other scattered areas throughout the state. Resound’s entire explanation in the BDC system for how it determined that it could deliver this high-level of broadband to slightly less than a quarter million locations spread across deeply rural parts of Texas using shared unlicensed spectrum appears to be “*Propagation model performed and homes passed extrapolated from coverage area.*”

Claims such as these, based upon explanations such as these, inspire little to no confidence in, and provide no useful indication of, the thoughtful engineering analysis that ostensibly should have gone into filing them. While these filings and abbreviated explanations may technically comport with what the BDC filing rules contemplate, the BDC rules as written *also* technically contemplate some level of meaningful engineering review and certification to back such filings up.¹¹

It is time for the Commission to apply and enforce more thoroughly the breadth of the BDC rules as written and to ensure that evidence of realistic and well-informed engineering review stands behind every claim of coverage made in the BDC system. The request to perpetuate a blanket waiver of this requirement for three years after its adoption – especially based upon arguments that the underlying requirement is unnecessary to ensure the objectives for which the rule was first adopted – is unjustified and erroneous and amounts effectively to an untimely petition

¹¹ Similar concerns about coverage claims have been reported by others. For example, a detailed report submitted by the Missouri Association of Councils of Government (“Missouri Governments”) highlighted substantial discrepancies between speed tests and BDC-reported coverage by providers using licensed spectrum to deliver fixed wireless services. *See Ex Parte* Letter from Tom Reid, President, Reid Consulting Group (on behalf of the Missouri Governments), to Marlene H. Dortch, Secretary, Commission, WC Docket Nos. 19-195, *et al.* (filed Aug. 15, 2023). While individual speed tests should not and cannot be relied upon alone as an indication of actual coverage, NTCA has also noted that a material amalgamation of such tests can be used as a kind of “heat map” to discern where problems exist in BDC reports. The Missouri filing certainly presents a compelling case in this regard and reinforces these data points with engineering analysis as to propagation and topographical challenges. Indeed, the engineering analysis included with this challenge filing appears far more detailed than anything in the publicly available BDC reports noted herein, further underscoring why engineering certification is important in the absence of any published details to back up BDC filings.

for reconsideration. The Petition should therefore be denied subject to the limited exception noted above by NTCA – and the Commission should move forward with more meaningful investigation of concerns raised about overstated coverage and imposition of forfeitures where providers report coverage that is not borne out by reasonable engineering analysis and facts on the ground.

Finally, to the extent that the Petition is nonetheless granted in whole or in part, such relief should be conditioned upon the submission of alternative information that serves a comparable purpose as the waived engineering certification by providing greater assurance of the reliability of the reports submitted. In particular, where an entity seeks to avail itself of relief from providing the certification of a professional engineer, the Commission should require more detailed information with respect to network topology and engineering assumptions than mere “tweet-length” descriptions of propagation efforts and modeling of coverage like those noted above. For example, as a condition of leveraging the waiver,¹² those providers taking advantage of such a waiver should in the alternative be required to file data showing:

¹² Various bureaus have in other contexts granted waivers with respect to the provision of certain information conditioned upon the submission of other information instead. *See, e.g., Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 12-107, Memorandum Opinion and Order, (MB May 26, 2023), at ¶¶ 1 and 10 (extending waiver of the requirement for television broadcasters to aurally describe non-textual emergency information, conditioned on the National Association of Broadcasters providing a quarterly report of certain information, including an assessment of broadcasters need for the waiver, for example, by monitoring a representative sample); *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order (WTB Aug. 30, 2023), at ¶¶ 1 and 6 (waiving requirement for Environmental Sensing Capabilities (ESC) to sense federal incumbents in the 3.5 GHz band in areas impacted by Hurricane Idalia, conditioned on providing confirmation to the FCC and others of restoration of power to ESC sensors and backhaul service); *Misuse of Internet Protocol (IP) Captioned Telephone Service, et al.* CG Docket Nos. 13-24 and 03-123, Order, 30 FCC Rcd 1093, 1098 (CGB 2015), at ¶¶ 1 and 13 (waiving requirement for IP CTS providers to obtain the social security number of new and existing users where the user does not

- The locations (*i.e.*, latitude and longitude) of relevant towers and antennas and their types and heights;
- Indication of the locations that are purported to be served by a given tower or antenna;
- The type (*i.e.*, frequency band) and total capacity of spectrum available for the locations served by that tower or antenna; and
- The oversubscription ratio employed to determine that services can be delivered at the levels of performance indicated in the BDC submission.

In short, a provider availing itself of any waiver granted here should be required to submit information otherwise sufficient to justify the claims of coverage it is making in its BDC report in the absence of a professional engineer certification – and such information should be publicly available for third-party review to help evaluate whether the coverage claims are indeed reasonable in light of the network and engineering assumptions utilized. Given the significance of BDC data to the development of a map that is the primary resource for targeting of broadband funding and a fundamental touchstone for informed decision-making with respect to broadband policy, the Commission should not allow providers to submit filings that contain opaque explanations and are subject to lesser levels of review. The stakes are too high and the decisions too important to put the accuracy and integrity of this information at risk, especially as unprecedented investments in broadband deployment and other policy judgments turn upon the data submitted here.

have a social security number, subject to condition that IP CTS providers collect alternative documentation or information to verify user identity).

Respectfully submitted,



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