

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

In the Matter of)
)
Establishing a 5G fund for Rural America) GN Docket No. 20-32
)

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

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these comments in response to the Further Notice of Proposed Rulemaking (“*Further Notice*”) released by the Federal Communications Commission (“Commission”) in the above-captioned proceeding.² The Commission seeks comment in the *Further Notice* regarding how to establish an effective and efficient 5G Fund for Rural America (“5G Fund”) that will bring high-speed, 5G mobile service to areas of the country currently lacking access to 5G service or, in some areas, lacking any mobile broadband service.

As discussed further below, NTCA encourages the Commission to (1) require 5G Fund recipients to deliver at least 35/3 Mbps mobile broadband service; (2) clearly establish eligible areas prior to commencing the 5G Fund auction and establish a clear and simple challenge process; (3) continue existing support through a cost model and proceed with auction only in those areas not receiving cost model support; and (4) adopt rules that will minimize the burden

¹ NTCA–The Rural Broadband Association represents approximately 850 independent, 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 *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Further Notice of Proposed Rulemaking (rel. May 19, 2023).

and protect the confidentiality of high-cost fund participants' cybersecurity and supply chain risk management plans ("C-SCRM Plans").

More specifically, NTCA supports the Commission's proposal to redefine eligible areas for the 5G Fund as areas where there is a lack of unsubsidized 5G broadband service and encourages the Commission to require 5G Fund recipients to deliver 35/3 Mbps threshold speeds. Entities seeking to deliver 5G broadband service face challenges in many locations, but in sparse rural areas where the distance between buildings is significant, the population small, and often there is not a major highway passing through the area, there is little to justify or even absorb the cost of delivering 5G broadband service. Accordingly, predicting that entities currently offering unsubsidized 4G LTE coverage in these areas might someday increase that coverage to 5G would miss the mark. Such a baseless predictive judgment would instead result in the very areas the Commission intends to support through the 5G Fund remaining on the wrong side of the digital divide. Instead, the Commission should use this opportunity to avoid detrimental results by engaging in a thoughtful roll out of the 5G Fund.

I. 35/3 Speeds and Clearly Defined Service Areas are Necessary to Deliver on the Promise of 5G Capabilities for All Areas.

In response to the question in the *Further Notice* regarding how to be fiscally responsible with limited universal service funds, NTCA encourages the Commission to require 5G Fund participants to deliver speeds of 35/3 Mbps or greater. These speeds are necessary to realize the promise of 5G capabilities and to deliver speeds that will be sustainable for the future. NTCA also encourages the Commission to clearly define the areas that are eligible for the 5G Fund *prior* to setting an auction date rather than create an expectation that the areas will become clearer through the Commission's challenge process *after* the areas have been awarded. This will

not only ensure the 5G Fund is directed to areas most in need of such funding but also provide important clarity for entities when evaluating whether to participate in the 5G Fund. Without this clarity, a number of entities would likely be deterred from participating in the 5G Fund while requiring those that do nevertheless choose to participate to undergo an expensive and time-consuming effort to “clean up” the areas “awarded” to them. This outcome could very well leave some areas unselected, and once again left on the wrong side of the digital divide, while also taking critical time and finances away from building out and delivering 5G broadband service in the areas that are selected.

II. The Commission Should Offer 5G Fund Model Support to Legacy Providers.

The Commission seeks comment in the *Further Notice* regarding whether a \$9 billion budget for the 5G Fund, which includes \$4.53 billion originally budgeted for Mobility Fund Phase II, is sufficient to accomplish the goal of efficiently and cost-effectively delivering 5G service to rural areas that are not likely otherwise to receive this service.³ To realize the greatest impact and reach from the funding available, the Commission should continue to make such support available to small “legacy” providers but reorient this support toward the provision of 5G service to their rural communities. Doing so would facilitate an efficient and cost-effective roll out of the 5G Fund that spurs deployment of 5G service in some of the most rural areas of the country.

As described more fully below, as an initial matter, the Commission should make funding available to wireless providers currently receiving legacy support in some of the most rural parts of the country in exchange for a commitment to upgrade their existing networks to minimum

³ *Further Notice* at ¶¶ 27-28.

speeds of 35/3 Mbps. In particular, the Commission can extend to legacy small providers who operate in U.S. Department of Agriculture’s Rural-Urban Commuting Area (“RUCA”) Codes an offer of cost model support in exchange for a commitment to build 5G in those areas specifically. Paired with this immediate infusion of support to enable 5G deployment in the most deeply rural areas, the Commission could then work separately on developing accurate wireless coverage maps by a date certain, including a well-defined challenge process, to fund rural areas currently lacking 5G service.

Specifically, NTCA supports making up to \$1.5 billion of the proposed \$9 billion 5G Fund budget available over a ten-year period to current recipients of frozen support that have 500,000 or fewer subscribers in the aggregate in RUCAs 5-10. This “5G Small Carrier Fund” would only be available to serve RUCA’s 5-10 and carriers would be required to identify where they are targeting their support by census tract.⁴ In exchange for 5G funding, 5G Small Carrier Fund recipients would commit to deploying 35/3 Mbps 5G service throughout their census tract. Census tracts for which a legacy small provider declines 5G Small Carrier Fund support would be made available for inclusion in the 5G Fund reverse auction and the corresponding frozen identical support would phase out two years after the conclusion of the auction for those areas.

The course of universal service program administration over the past decade supports an approach of using auctions only in truly unserved areas while seeking to leverage and upgrade existing networks in areas where providers are already receiving legacy support. As an initial matter with respect to auctions, despite best efforts by the Commission and enforcement

⁴ To the extent a carrier receives legacy support in an area not eligible for the 5G Small Carrier Fund (*i.e.*, census tracts in RUCAs 1-4) or proposes to upgrade only some of its currently served census tracts within RUCAs 5-10, available support would be reduced proportionately, based on a measure such as the number of POPs or geography covered.

penalties for withdrawn bids and failure to meet requirements spelled out prior to the auction, the Rural Digital Opportunity Fund (“RDOF”) auction demonstrated there is no guarantee that (1) all locations in a reverse auction will be awarded; or (2) that entities who are awarded areas through a reverse auction will in fact deliver the service. While the Commission has taken steps in the *Further Notice* to help ensure 5G Fund auction participants are familiar with the Commission’s auction rules as well as “any requirements, terms, and conditions associated with receipt of 5G Fund support” prior to the auction start date,⁵ even in the best case scenario, areas could be left unawarded when the auction concludes and winning bidders could discover the costs and challenges of delivering 5G service in some or all of their awarded areas are higher than anticipated and default on their winning bids. Moreover, even as auctions may help spur initial deployment, whether these auctions result in long-term sustainable and affordable services remains to be seen.

The Commission also has precedent for offering voluntary cost model support for the upgrade of existing networks within the universal service context. Specifically, under both the Alternative Connect America Model (“A-CAM”) program and the Alaska Plan, legacy support recipients were provided an opportunity to elect funding for a defined term in exchange for renewed and expanded deployment commitments.⁶ The effectiveness of such an approach in advancing and sustaining broadband can be seen in sources ranging from the High-Cost Universal Service Broadband portal to NTCA’s annual Broadband/Internet Availability Survey

⁵ *Further Notice* at ¶ 49.

⁶ See, e.g., *Wireline Competition Bureau Announces Enhanced Alternative Connect America Cost Model Support Amount Offered to Rate-of-Return Carriers to Expand Rural Broadband*, Public Notice, WC Docket No 10-90 (Aug. 30, 2023); *Connect America Fund*, WC Docket No. 10-90, *Alaska Connect Fund*, WC Docket No. 23-328 *et al*, Notice of Proposed Rulemaking and Report and Order (Oct. 20, 2023).

Report.⁷ Similar to the mechanisms established by the Commission for continuing cost model support for A-CAM and the Alaska Plan, a 5G Small Carrier Fund would leverage existing support with reinitialized buildout and speed obligations to modernize the program and help promote the availability of high-speed 5G service throughout the country.

Offering model support to legacy providers is thus an important complement to awarding 5G Fund support via reverse auction given legacy providers' ability to expand their existing service areas and increase available speeds. These existing providers have been responsible and effective stewards of universal service funds and should be encouraged to continue the work of bringing advanced mobile services to rural areas. Leveraging these existing networks will also ensure the Commission's universal service funds are used to provide long-term services to rural areas and create efficiencies by building upon existing assets that can be upgraded or expanded for higher speeds more quickly and cost-effectively than could be done by entities not already offering service in these areas.

III. The Commission's Proposed Timeline for 5G Fund Providers to File Updated C-SCRM Plans is Burdensome and Would Detract from Rather than Enhance Cybersecurity.

The Commission seeks comment in the *Further Notice* on whether to require 5G Fund recipients to implement C-SCRM Plans that reflect the latest version of the NIST Framework for Improving Critical Infrastructure Cybersecurity, an established set of cybersecurity best practices such as the Cybersecurity & Infrastructure Security Agency ("CISA") Cybersecurity Cross-

⁷ See Connect America Fund Broadband Map, available at <https://data.usac.org/publicreports/caf-map/> (last visited Oct. 23, 2023). See also NTCA Broadband/Internet Availability Survey Report, Dec. 2022, available at <https://www.ntca.org/sites/default/files/documents/2022-12/2022%20Broadband%20Survey%20Report%20%28FINAL%2011-28-22%29.pdf> (last visited Oct. 23, 2023), demonstrating that with just under half of survey respondents receiving cost-based support, 21.4% receiving A-CAM 1 support, 31.7% receiving A-CAM 2 support, and 1.3% receiving Alaska Plan support, these providers increased their fiber-to-the-home deployments over the previous year to an average of nearly 80% of customers.

sector Performance Goals and Objectives (“CPGs”) or the Center for Internet Security Critical Security Controls, as well as NISTIR 8276, Key Practices in Supply Chain Risk Management Observations from Industry and NIST 800-161.⁸ NTCA and its members understand the importance of good cyber practices and do not take issue with the Commission’s proposal to require 5G Fund recipients to adopt and implement C-SCRM Plans; however, the *Further Notice* also proposes to require 5G Fund recipients to submit updated C-SCRM Plans within 30 days following the date on which any of the above-referenced guidelines are modified.⁹

Walking this through each step to the natural conclusion means that providers must: (1) become aware that one or more of the guidelines required to be used as a foundation for their C-SCRM Plans has been updated; (2) review the updated guidelines; (3) evaluate how the updated guidelines affect their company; (4) identify and make changes to their C-SCRM Plan(s) to reflect the updated guidelines; (5) obtain executive sign off on the revised C-SCRM Plan(s); and (6) file the updated C-SCRM Plan(s) – all within 30 days. This process could very well need to be repeated multiple times per year as CISA has stated that the agency not only intends to “regularly update” the CPGs,¹⁰ but also create sector-specific goals.¹¹

Requiring providers, many of whom are small businesses with 30 or fewer employees, including only one or two IT professionals, to undertake all of the steps described above within

⁸ *Further Notice* at ¶ 52.

⁹ See *Further Notice* at n. 109 (“Defining a ‘substantive modification to a cybersecurity or supply chain risk management plan as when at least one among certain conditions apply. See *Enhanced ACAM Order*, FCC 23-60 at 48, para. 112.”).

¹⁰ See <https://www.cisa.gov/cross-sector-cybersecurity-performance-goals/frequently-asked-questions> (last visited Oct. 23, 2023).

¹¹ See <https://www.cisa.gov/news-events/news/cybersecurity-performance-goals-sector-specific-goals> (last visited Oct. 23, 2023).

30 days would be challenging at best and, at worst, detract from these providers' ability to focus on daily cyber threats due to the need to redirect employees engaged in guarding against cyber and supply chain threats to immediately assess how updated cybersecurity and/or supply chain risk management guidelines should be incorporated into the provider's operations and C-SCRM Plans. This is not to suggest providers should not review and implement updated cybersecurity and supply chain risk management guidelines but rather, that doing so within the timeline suggested by the Commission could create a window of increased vulnerability for these providers and the individuals and businesses that rely upon their networks and conceivably result in a cursory inclusion of the updated guidelines to meet the deadline. Both are contradictory to the Commission's goal of enhancing the security of broadband services.

Furthermore, the Commission's proposed timeline for providers to file updated C-SCRM Plans is inconsistent with the Broadband Equity Access and Deployment ("BEAD") cybersecurity and supply chain requirements. Specifically, BEAD requires subgrantees to submit updated plans within 30 days of making "any substantive changes" to the plan(s) – not within 30 days of referenced guidelines being updated.¹² Thus, BEAD does not specify a timeline by which subgrantees must update their C-SCRM Plans to account for any changes to the guidelines addressed in the plans, instead trusting subgrantees to "reevaluate and update [their plans] on a periodic basis and as events warrant" and to submit any revisions within 30 days of making substantive changes to their plan(s).¹³

¹² *Notice of Funding Opportunity*, Broadband Equity, Access, and Deployment Program, p. 70 available at <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf> (last visited Oct. 23, 2023).

¹³ *Id.*

To minimize the burden that filing updated C-SCRM Plans in a very short timeframe, conceivably multiple times per year, would place on small providers, NTCA recommends the Commission instead require providers to file any updates to their C-SCRM Plans simultaneous with their annual FCC Form 481. This would eliminate the need for entities to file modified C-SCRM Plans every time one of the identified cybersecurity or supply chain risk management guidelines is updated – perhaps in addition to an update to reflect another “substantive modification” consistent with the Commission’s rules – while also allowing the Commission to identify more readily that providers are updating their C-SCRM Plans to account for updated guidelines.¹⁴

NTCA also encourages the Commission to treat C-SCRM Plans as confidential in accordance with Section 0.457 of the Commission’s rules.¹⁵ The plans can contain sensitive information regarding providers’ operations and networks, which could be used to target these companies for cyber-attacks. The Commission’s rules allow carriers to seek confidentiality for “materials contain[ing] trade secrets or privileged or confidential ... technical data.”¹⁶ Thus, while providers would have the ability to request that their C-SCRM Plans be treated as confidential simultaneous with filing such plans, there is no question that the plans will contain

¹⁴ In the *Enhanced A-CAM Order*, the Commission adopted a rule requiring carriers to include in their annual 481 filing a statement identifying the date(s) the provider made any update to their C-SCRM Plans and the date(s) such update(s) was/were filed with USAC. Thus, while the Commission recognizes in this rule the importance of the Commission being able to readily identify on a set date when updates were made to providers’ C-SCRM Plans, requiring the updated plans to instead be filed on that date would be far less burdensome on providers and quite conceivably result in more robust inclusion of the updates, while at the same time accomplishing the need for the Commission to readily identify that providers are updating their C-SCRM Plans to account for updated guidelines. *Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support*, WC Docket No. 10-90 *et al*, Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry (July 24, 2023) at ¶ 112.

¹⁵ 47 C.F.R. § 0.457.

¹⁶ 47 C.F.R. § 0.457(d)(2).

privileged or confidential data. Accordingly, the Commission can minimize the burden on providers and Commission staff by adopting a rule that grants confidentiality to all C-SCRM Plans pursuant to Commission rules instead of requiring providers to file, and Commission staff to review and act on, individual confidentiality requests.

IV. Conclusion

Providers seeking to offer 5G service in remote areas require certainty and stability to invest in such networks and offer such service. The Commission can best encourage existing and new providers to offer this service, at speeds customers will need, by adopting rules that establish a 35/3 Mbps speed threshold, ensure the areas to be included are clearly established prior to commencing a reverse auction, maximize investments already made by providers leveraging the universal service fund by offering cost model support to legacy providers, and minimizing the reporting burden for providers' C-SCRM Plans and treating such plans as confidential.

Respectfully submitted,



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