

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Reform of the FCC Form 477 Data Program)	WC Docket No. 11-10
)	
Establishing the Digital Opportunity Data Collection)	WC Docket No. 19-195
)	

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

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these reply comments addressing responses to the Public Notice issued by the Federal Communications Commission’s (“Commission”) Broadband Data Task Force, the Wireless Telecommunications and Wireline Competition Bureaus, and the Office of Economics and Analytics (collectively “the BDTF”).² The Public Notice solicits feedback for a Commission report to Congress that will evaluate Broadband Data Collection (“BDC”) challenge processes.³ In response to the Public Notice, several parties joined NTCA in proposing additional tools for those participating in the bulk availability challenge process.

As the record indicates, particularly with respect to fixed wireless operators’ BDC submissions, the bulk availability challenge process is not properly calibrated to produce a more accurate National Broadband Map (“NBM”). Poka Lambro and Totalcom sum up the situation

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 *Broadband Data Task Force Seeks Comment on the Broadband Data Collection Challenge Processes*, WC Docket Nos. 11-10, 19-195, Public Notice, DA 24-64 (rel. Jan. 19, 2024) (“Public Notice”).

³ *Id.*, p. 1.

well when stating that “[w]hile the Public Notice focuses on the process and the consumer experience, the BDTF Public Notice ignores the most glaring omission in the fixed challenge process -- the lack of technological information available for providers to effectively challenge against overstated fixed wireless coverage.”⁴ As NTCA stated in initial comments,⁵ this is because neither the Commission nor challengers have access to certain technical and network data that could be used to assess fixed wireless providers’ ability to meet claimed service levels.⁶ Poka Lambro and Totalcom provide a window into this “guess what is behind the curtain” process, describing an evaluation of fixed wireless coverage claims in areas that Totalcom “knows, through a routine engineering analysis, cannot reasonably be served by fixed wireless to **all** locations claimed in the BDC.”⁷ While “knowledge of infrastructure” can be used as a basis to initiate a challenge, they rightly note that “the challenge process falls short because...collecting all the infrastructure information on a fixed wireless provider is extremely difficult given that not all facilities require permitting (especially in rural areas and especially when unlicensed spectrum is being used).”⁸ But if, as NTCA and others note,⁹ challengers had

⁴ Comments of Poka Lambro Telecommunications, Ltd. and Totalcom Communications, LLC (“Poka Lambro and Totalcom”), WC Docket Nos. 11-10, 19-195 (fil. Feb. 19, 2024), p. 3.

⁵ Comments of NTCA–The Rural Broadband Association, WC Docket Nos. 11-10, 19-195 (fil. Feb. 19, 2024), p. 4.

⁶ Data such as “Propagation Model Details,” “Fixed Wireless Base Station Location and Height” and “Fixed Wireless Link Budget Parameters” are only available to the Commission, and even worse, only for those fixed wireless providers that choose to file a coverage map instead of a list of locations. *Broadband Data Collection, Data Specifications for Biannual Submission of Subscription, Availability, and Supporting Data* (March 30, 2023) (“BDC Specifications”), Section 7, pp. 32-49.

⁷ Poka Lambro and Totalcom, p. 4.

⁸ *Id.*

⁹ NTCA, pp. 5-6; Poka Lambro and Totalcom, p. 3; Comments of the Accurate Broadband Data Alliance (“ABDA”), WC Docket Nos. 11-10, 19-195 (fil. Feb. 19, 2024), p. 13 (stating that “[a]llowing

access to data such as “Propagation Model Details,” etc., that is currently only available to the Commission (and even then only if the challenged entity elects to submit shapefiles rather than location lists),¹⁰ challenges filed would be far more efficient, with the Commission and challengers having on hand the technical network specifications that form the basis of coverage claims. NTCA recognizes that certain of this information will be confidential and/or proprietary, and that public review of commercially sensitive data could have competitive implications. Such confidentiality concerns could however be mitigated through use of the agency’s time-tested and well-established protective order processes.

The record also supports further calibration of the “challenge codes” to account for the circumstances that often prompt the filing of a challenge. First, the ABDA joins NTCA in asking the Commission to amend “Challenge Code 8” to clarify that challengers can use “technical information such as signal frequency, tower locations, equipment height, signal power, customer equipment details or wireless technology used”¹¹ as supporting evidence for a challenge filed pursuant to this code.

In addition, the record supports addressing the limitations of “Challenge Code 6.” Like NTCA, the ABDA notes that the data that challengers can include with challenge code 6 are

challengers access to this network information would greatly expedite the challenge process, while also making challenges more robust and precise.”); Comments of the ACAM Broadband Coalition, WC Docket Nos. 11-10, 19-195 (fil. Feb. 19, 2024), p. 8 (“The current BDC rules detailing the data specifications for the biannual submission of subscription, availability, and supporting data by fixed wireless broadband providers do not require fixed wireless providers to make public the technical information regarding their networks that is needed by challengers to develop the evidence the current rules call for. In the absence of that information, it is extremely difficult, if not impossible, for carriers to produce sufficient evidence to support their Bulk Challenge Code 8 submissions.”).

¹⁰ See fn. 6, *infra*.

¹¹ ABDA, p. 9.

often not available to them.¹² This requires that a challenger resort to “secret shopper” efforts or even subscribing to the service of a provider they wish to challenge. This is not only a time-consuming process, but this also fails to get at potential overstatements of coverage across a larger number of locations because it involves repetitive location-by-location efforts. Thus, as NTCA proposed “the Commission should amend the process to allow for a ‘sampling’ of data to trigger a broader agency inquiry.”¹³ Pursuant to this process, “once a threshold number of locations (or perhaps a defined statistically significant sample) are challenged using the methods referenced above within a particular geographic area, that should serve as prime facie evidence of a potentially larger overstatement of coverage across the broader geographic area.”¹⁴

Finally, the record supports NTCA’s proposal to allow, for the purposes of “Challenge Code 7,” speed test submissions currently permitted as evidentiary submissions only through the “crowdsourcing” process.¹⁵ As noted above, using “secret shopper” and “subscription to the challenged provider’s service” efforts to obtain relevant data have severe limitations, and a number of commenters support allowing those entities participating in the bulk availability challenge process to turn to speed tests as an alternative. To be sure, speed test data have their limitations as well – broadband service as experienced by the consumer (or a challenger performing a speed test using an application made for that purpose) can be influenced by modems, routers, and other consumer-installed customer premises equipment or other things beyond the providers’ control. Moreover, there would be a clear burden associated with

¹² *Id.*, pp. 7-8.

¹³ NTCA, p. 8.

¹⁴ *Id.*, p. 8.

¹⁵ ACAM Broadband Coalition, p. 8; ABDA, p. 10.

responding to hundreds or thousands of individual tests. Yet such concerns can be cared for with the use of a “sampling” technique, that is, a defined, statistically significant sample of speed tests indicating a potential coverage overstatement and within a particular geographic area that operates as *prime facie* evidence of a potentially larger problem. This could in turn trigger a Commission investigation of the potential for overstated coverage claims across the broader geographic area, meaning that the speed test data alone would not be dispositive.

Additional suggestions to bolster the efficacy of the bulk availability challenge process found in the record should be pursued as well. Matthey Consulting proposes shifting the “burden of proof when a challenger provides credible evidence that service is lacking for some defined percentage of locations in a given geographic area.”¹⁶ Not only would this ease the burden challengers already face,¹⁷ but it would ensure that those parties with the best knowledge as to the actual capabilities of their own networks substantiate those capabilities. In addition, NTCA supports USTelecom’s proposal for “additional transparency into how challenges are adjudicated.”¹⁸ This would better enable challenged entities to “provide adequate evidence when they receive a challenge”¹⁹ and ultimately improve the speed with which the Commission can adjudicate challenges and order corrections to the NBM if necessary.

Finally, the consequences for consumers of overstated coverage claims cannot be overlooked. As the Minnesota Telecom Alliance (“MTA”) highlights, the potential loss of High-

¹⁶ Comments of Matthey Consulting LLC, WC Docket Nos. 11-10, 19-195 (fil. Feb. 19, 2024), p. 3.

¹⁷ *Id.*

¹⁸ Comments of USTelecom – The Broadband Association, WC Docket Nos. 11-10, 19-195 (fil. Feb. 19, 2024), p. 3.

¹⁹ *Id.*

Cost Universal Service Fund support due to overstated presence of “unsubsidized competition” as reported on the NBM risks real harm to the consumers who face higher prices or loss of service because the supported provider is unable to challenge effectively such overstated claims.²⁰ Even worse, as NTCA noted in response²¹ to the *Enhanced A-CAM Order*,²² the Commission has so far declined to establish a process to determine comprehensively the competitive presence that could reduce these providers’ support amounts going forward, failing for example to take into account the use of subsidized last-mile infrastructure to “compete.” Thus, at the very least, as MTA suggests, the Commission should establish a process by which those wishing to benefit from “unsubsidized competitor status,” thus reducing support to their competitors in the area in question, would submit additional evidence (similar to that proposed above) to better enable interested parties to assess coverage claims.²³ Whether the Commission chooses this more targeted approach – or takes a broader approach that adopts the proposals

²⁰ Comments of the Minnesota Telecom Alliance (“MTA”), WC Docket Nos. 11-10, 19-195 (fil. Feb. 19, 2024), p. 3. (“The polygon coverage maps are general and theoretical, and do not provide concrete and reliable evidence of the actual availability or service speed and quality of service at specific individual locations within the relevant service area. The result has become an inequitable skewed process whereby an alleged unsubsidized fixed wireless competitor can reduce the number of locations for which an RLEC is eligible to receive USF support simply by filing a polygon coverage map that depicts the broadband speeds and services that it claims to provide within a general area without providing any concrete evidence of the actual service and speed that it can provide to specific locations within the area. In stark contrast, the impacted RLEC is saddled with the burden of proving that the fixed wireless ‘competitor’ does not provide the requisite service to some or all of the multiple locations where the RLEC’s USF support is threatened with denial or reduction.”).

²¹ *Connect America Fund*, et al., WC Docket No. 10-90, et al., Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry (rel. July 24, 2023) (“*Enhanced A-CAM Order*”).

²² NTCA–The Rural Broadband Association, Petition for Reconsideration and/or Clarification, WC Docket No. 10-90, et al. (fil. Sep. 15, 2023), pp. 3-14.

²³ MTA, pp. 4-5.

made herein by NTCA and supported by multiple other parties – it should be mindful that, for rural consumers, the stakes are real.²⁴

Respectfully submitted,



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²⁴ While not strictly a BDC issue, it should be noted that a number of members have reported cases in which a recipient of Rural Digital Opportunity Fund support deploys antennas that not only provide service within the “price cap” area for which such support was awarded but also bleed over into areas that may be subject to enhanced A-CAM support. That competitor does use high-cost support in providing that service, and thus would not qualify as an unsubsidized competitor. Support recipients must be afforded an opportunity to challenge where the BDC ostensibly indicates “unsubsidized” competition on such facts.