



May 2, 2024

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

RE: *Establishing the Digital Opportunity Data Collection, WC Docket No. 19-195; Reform of the FCC Form 477 Data Program, WC Docket No. 11-10; Connect America Fund, WC Docket No. 10-90; ETC Annual Reports and Certifications, WC Docket No. 14-58; Telecommunications Carriers Eligible to Receive Universal Service Support, WC Docket No. 09-197; Connect America Fund – Alaska Plan, WC Docket No. 16-271; Expanding Broadband Service Through the A-CAM Program, RM-11868*

Dear Ms. Dortch:

On Tuesday, April 30, 2024, the undersigned on behalf of NTCA–The Rural Broadband Association (“NTCA”), together with the representatives of rural broadband providers listed in Attachment A of this letter, met separately with representatives from the offices of Chairwoman Jessica Rosenworcel and Commissioners Brendan Carr and Geoffrey Starks, as well as with staff from the Wireline Competition Bureau, Office of Economics and Analytics, and Broadband Data Task Force as indicated in Attachment A hereto. In these meetings we discussed the impacts of unreliable BDC data and “broadband overreach” on policy and funding decisions made by the Federal Communications Commission (the “Commission”) and provided a series of recommendations related to broadband availability mapping and Broadband Data Collection (“BDC”) processes. The presentations covered material further summarized in Attachment B hereto.

We began each meeting by acknowledging evolving improvements in the national broadband map over time, and explained that this discussion and our specific recommendations were intended to build upon the substantial work thus far in enhancing the accuracy of the national broadband map. This being said, we observed that lingering structural problems in collection of data continue to plague the promise and ultimate reliability of the map. We explained that the recommendations provided in our presentation had been calibrated to address these systemic issues and the ensuing chronic concerns seen in reported coverage that persist.

We also discussed the importance of timely action. Even as the map is improving iteratively, decisions are being made in short order and its consequences are felt *now*. The Commission has already made or is in the process of making significant policy and funding decisions with long-lasting implications based upon questionable data that the current rules still permit to be filed. We therefore emphasized that even as structural changes might be within the purview of the staff to enact over time, and even as certain modifications to the BDC process might require further

Commission action – and even as we urged the staff and Commission respectively to pursue such systematic and process-oriented changes – it is important for more immediate decisions that are being made using BDC data in the context of matters ranging from section 706 reports to universal service fund support adjustments that steps be taken *now* as well to ensure decisions are grounded in accurate and reliable data.

In our discussion, we first explained how the Commission or the staff upon delegated authority, as applicable, would be well positioned to make the changes that we were suggesting. For example, the Broadband Data Act enables and directs the Commission to collect data documenting where a provider “has *actually* built out” a network “such that the provider is able to provide that service” and “could provide that service” within a standard business interval if requested by the customer.¹ The law further directs the Commission to gather information on speeds and latency “with respect to broadband internet access service that the provider makes available.”²

While the Commission decided in 2021 that what a provider “makes available” would be determined by reference to a provider’s “advertised” levels of performance, and while it declined requests to take into account actual performance for fear that this would devolve into disputes over throughput,³ we explained that tying reporting to “actual” speeds by reference to robust and well-established technical standards that indicate what levels of performance might be reasonably expected from a given network technology and architecture – paired with analysis of chronic underperformance in actual results – would represent a far more reliable measure of availability than the perspectives of individual providers’ marketing departments. We also observed that not only does the Broadband DATA Act permit (and even seem to contemplate) such more reliable measures, but that the Commission itself seemed poised to head down such a path in 2019 before changing course. Specifically, when initially examining how to implement the new mapping law, the Commission talked to BDC filings that “*must* reflect the maximum download and upload speeds *actually* made available in each area,” and spoke to technical factors that would help confirm the capability to actually do so; for fixed wireless providers, for example, the Commission highlighted the need to ensure installation of “enough base stations to cover and meet reasonably anticipated customer capacity demands” in a given area.⁴

The Commission therefore has ample authority – and as explained further in the presentation, ample justification – to hearken back to its earlier perspective in 2019 by taking stock of the significance of actual capability and not mere marketing claims in determining what a provider “makes available.” Against this backdrop and using the presentation in Attachment B hereto, we discussed various case studies arising out of current reporting, highlighting concerns that range from repeated repackaging or recasting of challenged coverage claims across multiple BDC submissions to a lack of any meaningful indication of actual performance that comes close to what is advertised, and from

¹ 47 U.S.C. § 642(b)(2)(A)(i)(I) and (II) (emphasis added).

² *Id.* at § 642(b)(2)(ii).

³ *Establishing the Digital Opportunity Data Collection, et al*, WC Docket Nos. 19-195, *et al.*, Third Report and Order (rel. Jan. 19, 2021), at ¶¶ 22 and 26.

⁴ *Establishing the Digital Opportunity Data Collection, et al*, WC Docket Nos. 19-195, *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking (rel. Aug. 6, 2019), at ¶¶ 12-13 (emphasis added).

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a lack of any meaningful subscription or evidence of real competition in given areas where coverage is claimed to cases in which a provider may very well have the ability to serve *anyone* in a given area but almost certainly lacks the capacity to serve *everyone* in an area – even as that provider’s reported coverage is cited as the basis for reductions in universal service funding across the entire area in question.

Following the discussion of these case studies, we highlighted eight solutions set forth in Attachment B to address concerns about broadband overreach and realize the promise of the BDC. These suggestions include solutions that could likely be taken up in relatively short order (including the creation of public heat maps, updates to BDC challenge codes,⁵ making successful challenges more “sticky,”⁶ strengthening verification efforts, further updates to technical standards, and closing the loophole that permits certain providers to avoid submitting technical explanations for propagation assumptions), as well as issues that require more careful consideration in the context of other decision-making (such as ensuring that a provider’s ability to serve *some* in a given geography does not become the basis for deeming that provider a substitute for *universal* service in that geography).

In closing, we noted once again the importance of timely action given the immediacy of certain decisions being made and the long-lasting impacts of these decisions. In particular, in addition to broader consideration of proper enforcement measures in the case of chronic overreporting of coverage, we discussed the need for steps to be taken now to ensure that overreach in coverage claims does not result in misguided adjustments to universal service support or other policy decisions that could leave rural customers facing the prospect of lost service or higher rates for voice or broadband based upon “false positives” in coverage claims. For example, even as it considers policy changes within the BDC framework, we suggest that the Commission could disregard the coverage claims of a given provider altogether when it comes to determining who qualifies as an “unsubsidized competitor” for universal service fund purposes where a provider has engaged in clear and chronic overreach in reporting.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS.

Sincerely,

/s/ Michael R. Romano
Michael R. Romano
Executive Vice President

⁵ We noted that the Commission has already sought comment and received input on a variety of updates in this regard. *See Broadband Data Task Force*, WC Docket Nos. 19-195, *et al.* Public Notice, DA 24-64 (rel. Jan. 19, 2024).

⁶ We acknowledged the staff’s work already in seeking to address this concern, but raised additional thoughts as described in Attachment B hereto.

**ATTACHMENT A
PARTICIPANTS IN MEETINGS**

Meeting with WCB/BDTF Staff

Rural broadband representatives

Bill Eckles, BEVCOMM
Tracy Bandemer, Interstate Telecommunications Cooperative
Monty Morrow, Nuvera
Mark Thoma, Winnebago Cooperative Telecom Association
Devin Weis, WTC Fiber
Jeff Roiland, Breda Telephone Corp.
Patrick Sherrill, Poka Lambro Tel. Coop.
Barry Adair, Wabash
Jennifer Prather, Totelcom
Dee Herman, Herman & Whiteaker
Jeff Smith, Vantage Point
Zach Cochran, Olsen Thielen
Catherine Moyer, Pioneer Communications
Mike Romano, NTCA

FCC Staff

Mohammad Ahmad
Eduard Bartholme
Ted Burmeister
Nathan Eagan
Chelsea Fallon
Jesse Jachman
Steve Rosenberg
Suzanne Yelen

Meeting with Carr Office

Rural broadband representatives

Bill Eckles, BEVCOMM
Tracy Bandemer, Interstate Telecommunications Cooperative
Devin Weis, WTC Fiber
Jeff Roiland, Breda Telephone Corp.
Barry Adair, Wabash
Jennifer Prather, Totelcom
Dee Herman, Herman & Whiteaker
Jeff Smith, Vantage Point
Mike Romano, NTCA

Carr Office

Lauren Garry

Meeting with Starks Office

Rural broadband representatives

Bill Eckles, BEVCOMM
Tracy Bandemer, Interstate Telecommunications Cooperative
Devin Weis, WTC Fiber
Jeff Roiland, Breda Telephone Corp.
Patrick Sherrill, Poka Lambro Tel. Coop.
Barry Adair, Wabash
Jennifer Prather, Totelcom
Dee Herman, Herman & Whiteaker
Jeff Smith, Vantage Point
Zach Cochran, Olsen Thielen
Mike Romano, NTCA

Starks Office

Justin Faulb
Jesse Frankel

Meeting with Rosenworcel Office

Rural broadband representatives

Bill Eckles, BEVCOMM
Tracy Bandemer, Interstate Telecommunications Cooperative
Devin Weis, WTC Fiber
Jeff Roiland, Breda Telephone Corp.
Patrick Sherrill, Poka Lambro Tel. Coop.
Jennifer Prather, Totelcom
Dee Herman, Herman & Whiteaker
Jeff Smith, Vantage Point
Zach Cochran, Olsen Thielen
Mike Romano, NTCA

Rosenworcel Office

Rashann Duvall
Elizabeth Cuttner

**ATTACHMENT B
MEETING MATERIALS**