

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

In the Matter of )  
 )  
Data Caps in Consumer Broadband Plans ) WC Docket No. 23-199  
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 )

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

NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> hereby submits reply comments discussing the response to the Notice of Inquiry (“NOI”) issued by the Federal Communications Commission (“Commission”) in the above-captioned proceeding.<sup>2</sup> The NOI seeks comment on the use of data caps by Broadband Internet Access Service (“BIAS”) providers and the impact on consumers and competition.<sup>3</sup>

The record in this proceeding does not support further regulation of, or intrusion by the Commission, into the offering of usage-based BIAS plans. While providers relying heavily upon certain technologies to provide broadband services or those who serve highly dense areas may see a greater need to use such caps, most NTCA members’ networks can meet increasing consumer demand in the rural areas they serve without the need to impose data caps.<sup>4</sup> However,

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<sup>1</sup> NTCA is an industry association composed of approximately 850 community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or themselves are engaged in the provision of such services.

<sup>2</sup> *Data Caps in Consumer Broadband Plans*, WC Docket No. 23-199, Notice of Inquiry, (rel. Oct. 14, 2024) (“NOI” as applicable).

<sup>3</sup> *Id.*, ¶ 2.

<sup>4</sup> Rural Innovation Initiative, *Beyond Connectivity: Broadband as a Tool for Rural Economic Growth* (2024), (“[Fiber] offers exceptional scalable, symmetrical performance, ensuring smoother online experiences for uses like video calls and 4K/8K streaming”).

the Commission should refrain from further exploring regulation in this area. Broadband consumer labels<sup>5</sup> are adequate to inform consumers about data limits at the point of sale and anything beyond disclosure is rate regulation, which the Commission lacks legal authority to regulate in BIAS plans.

## **I. EXISTING TRANSPARENCY RULES ARE ADEQUATE TO INFORM CONSUMERS ABOUT DATA LIMITS**

The Commission already has transparency requirements in place that ensure consumers have the information needed to make informed decisions about the wide variety of BIAS plans available, as noted by Commenters in this proceeding.<sup>6</sup> Broadband consumer labels require providers to disclose data caps, throttling policies, and any overage charges.<sup>7</sup> Even as there may be room for improvement in how the labels are structured, NTCA is generally supportive of such measures that help to highlight distinctions in the performance capabilities of various offerings and providers. Regulated disclosure beyond these labels, however, would be redundant and impose an unnecessary regulatory burden with little to no corresponding consumer benefit, and it is unclear why any further investigation or consideration of the use of such caps would be warranted at this time.

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<sup>5</sup> *Empowering Broadband Consumers Through Transparency*, 37 FCC Rcd 13686, 13696, ¶ 35 (2022).

<sup>6</sup> *See, e.g.*, Comments of CTIA, WC Docket No. 23-199, (fil. Nov. 14, 2024), p. 5 (“Industry practices, along with Commission transparency requirements and broadband consumer labels, ensure that consumers have all the information they need to make informed decisions regarding the wide variety of options available.”).

<sup>7</sup> *Empowering Broadband Consumers Through Transparency*, 37 FCC Rcd 13686, 13696, ¶ 35 (2022).

## II. THE COMMISSION LACKS LEGAL AUTHORITY TO REGULATE USAGE-BASED BIAS PLANS

When adopting the 2024 Title II Order, the Commission forbore from applying sections of the Communications Act that would allow the adoption of BIAS rate regulation in the future.<sup>8</sup> In contrast with this previously adopted policy stance, the Commission now appears to be considering through the instant Notice the prospect of regulations related to the rates charged for broadband data.<sup>9</sup> Further, with the Sixth Circuit panel’s stay of the *2024 Title II Order*<sup>10</sup>, the Commission has reverted to Title I legal authority and is now pursuing action that exceeds the scope of that authority.<sup>11</sup> When the Sixth Circuit enjoined the Commission’s classification of broadband as a Title II service, it noted the reclassification constitutes “a major question requiring clear congressional authorization.”<sup>12</sup> As the U.S. Chamber of Commerce correctly notes, “just as classifying broadband as a Title II service is a major question, so too is rate regulation—the defining feature of Title II.”<sup>13</sup>

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<sup>8</sup> See *Safeguarding and Securing the Open Internet*, Declaratory Ruling, Order, Report and Order, and Order on Reconsideration, WC Docket Nos. 23-320 & 17-108, FCC 24-52, at 242 (¶386) (“we find it in the public interest to forbear from applying sections 201 and 202 insofar as they would permit the adoption of such rate regulations for BIAS in the future”) (“Title II Order”).

<sup>9</sup> See Comments of WISPA, WC Docket No. 23-199, (fil Nov. 14, 2024), p. 3 (“Chairwoman Rosenworcel implicitly acknowledges that this is the case by noting that some consumers express the belief that “caps are costly and unfair.” It follows from this language that any ultimate determination in this proceeding claiming to validate the notion that caps are inequitable and overly expensive would lead directly to regulation of the rates charged for broadband data.”).

<sup>10</sup> Sixth Circuit *Title II Order* Stay.

<sup>11</sup> NOI at 22, Dissenting Statement of Commissioner Brendan Carr, (“Today’s NOI is legally infirm, too, for want of statutory authority. Indeed, the Sixth Circuit has stayed the FCC’s Title II decision, which is based on the same claims of authority that the FCC invokes today.”).

<sup>12</sup> *In re MCP No. 185*, No. 24-7000, 2024 WL 3650468, at \*3 (6th Cir. Aug. 1, 2024) (per curiam).

<sup>13</sup> Comments of U.S. Chamber of Commerce, WC Docket No. 23-199, (fil Nov. 14, 2024), p. 2.

As others have correctly noted, the Commission cites several other unrelated provisions to assert statutory authority, none of which provides a basis for the Commission to regulate usage-based plans.<sup>14</sup> For example, the Commission suggests further authority under Section 257 of the Communications Act and Section 706 of the Telecommunications Act of 1996.<sup>15</sup> But Section 257 merely tasks the Commission with a “statutory responsibility to issue a report to Congress” about market barriers.<sup>16</sup> As others have noted, this section offers no authority for the Commission to proceed with rulemaking regarding broadband rates beyond disclosure.<sup>17</sup> As for Section 706, USTelecom correctly notes, “the requirement that the Commission ‘encourage the deployment’ of ‘advanced telecommunications capability’ [does not] confer authority to regulate usage-based BIAS plans.”<sup>18</sup>

While NTCA shares the Commission’s interest in ensuring consumers have meaningful access to broadband services and to clear information with respect to the terms and capabilities of those offerings, the Commission should refrain from pursuing additional disclosure or

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<sup>14</sup> Comments of WISPA, WC Docket No. 23-199, (fil. Nov. 14, 2024), p. 4 (“In the NOI, the Commission provides – in lieu of a direct and unambiguous assertion of statutory authority to adopt a possible limitation on data caps – a laundry list of provisions of the Communications Act that might possibly afford such authority, and it asks that commenters fill in the blanks regarding which, if any, might provide it a leg to stand on if it ultimately seeks to impose such restrictions. . . . none of the other statutory provisions cited in the NOI remotely offers a basis for the Commission to regulate data caps that may be part of BIAS providers’ service plans.”).

<sup>15</sup> NOI ¶ 45.

<sup>16</sup> Comcast Corp. v. FCC, 600 F.3d 642, 659 (D.C. Cir. 2010).

<sup>17</sup> Comments of U.S. Chamber of Commerce, WC Docket No. 23-199, (fil. Nov. 14, 2024), p. 3. “The outer limits of authority ancillary to carry out that provision would be “disclosure requirements . . . to gather data needed for such a report.” But any “attempt to dictate the operation” or prices “of an unregulated service based on nothing more than [the FCC’s] obligation to issue a report defies any plausible notion of ‘ancillariness.’ Confirming that section 257 itself offers no substantive authority, Congress expressly provided that any action under that section must be “pursuant to [the Commission’s] authority under this chapter (other than this section).”).

<sup>18</sup> Comments of USTelecom, WC Docket No. 23-199, (fil. Nov. 14, 2024), p. 6.

regulation of usage-based BIAS plans. Such actions would be unnecessary and exceed the Commission's clear legal authority.

Respectfully submitted,



By:

/s/ Jill Canfield

General Counsel and Vice President - Policy

[jcanfield@ntca.org](mailto:jcanfield@ntca.org)

/s/ Lorna Gilmore

Policy Analyst

[lgilmore@ntca.org](mailto:lgilmore@ntca.org)

4121 Wilson Boulevard  
Suite 1000  
Arlington, VA 22203  
703-351-2000 (Tel)

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