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

In the Matter of	)	
	)	
In Re: Delete, Delete, Delete	)	GN Docket No. 25-133

NTCA THE RURAL BROADBAND ASSOCIATION

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April 11, 2025

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EXECUTIVE SUMMARY

NTCA–The Rural Broadband Association (NTCA) addresses several sets of rules in the instant comments, recommending to varying extents the elimination, pruning, or streamlining of regulations that are outdated, unnecessary, unduly burdensome, or inconsistent with their governing statutory authority. NTCA's primary interest as expressed in these comments is to ensure that regulatory mandates facilitate, rather than frustrate, the efficient operation of network operators and the effective delivery of services in a rapidly evolving market. Representing companies and cooperatives that on average have approximately 30 employees while serving hundreds or even thousands of sparsely populated miles, NTCA moreover maintains a particular focus on the impact of regulatory burdens on smaller providers serving largely rural and remote spaces. NTCA accordingly advocates regulatory reforms across multiple areas of telecommunications and broadband policy as summarized below.

Cost Accounting Rules: NTCA urges a thoughtful review of historic cost accounting rules focused upon outdated rules. A number of existing regulations are no longer relevant in the face of market evolutions and new technologies. To be clear, Parts 32, 36, 65, and 69 of the Code of Federal Regulations contain many rules that are essential to the ongoing provision of universal service consistent with statutory mandates and national goals, but certain of these provisions reference obsolete technologies, services, and procedures. Reopening these rules for major overhauls would impose unnecessary burdens on smaller providers while yielding minimal benefits. Instead, NTCA recommends careful review and modifications that reflect market transitions while preserving essential frameworks for universal service and accountability.

Digital Discrimination: NTCA recommends the elimination of rules adopted in November 2023 and proposes a more modest expression of regulatory engagement to fulfill the statutory mandate issued to the Federal Communications Commission (Commission). Existing regulations already sufficiently address discrimination concerns, and the new rules could discourage investment and impose excessive administrative burdens on small providers. The proposed rules are overly broad and seek to address problems that to the Commission's acknowledgment have not occurred and/or are not expected to arise. At the very least, the Commission should not proceed to adopt further rules as proposed pending litigation related to the rules previously adopted.

Broadband Labels: NTCA seeks modification of certain current requirements and opposes additional proposed requirements, including multilingual and interactive labels. NTCA urges regulatory simplicity while reducing administrative costs for providers, especially smaller companies with limited resources.

Disaster Information Reporting System (DIRS): Daily infrastructure reporting requirements during emergencies are counterproductive, as they divert critical resources away from service restoration efforts. Alternative reporting mechanisms would be less burdensome for small providers while still ensuring necessary communication during emergencies.

Cybersecurity: NTCA recommends replacing detailed plan submissions with simple certification processes to prevent the potential exposure of confidential information and the creation of unnecessary administrative overhead for telecommunications providers.

Data Breach Notifications: NTCA suggests limiting reporting to instances of likely financial harm and recommends raising the reporting threshold to breaches affecting 1,000 or more customers. This approach will focus provider resources on more significant security incidents while reducing reporting fatigue.

Multichannel Video Programming Distributors (MVPDs): NTCA recommends a comprehensive review and potential elimination of outdated regulations that reflect a marketplace that has not existed in decades and visit disproportionately impacts on smaller providers.

Ultimately, these changes are intended to reduce regulatory burdens and administrative costs while promoting technological advancement and consumer protection.

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COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION

I. INTRODUCTION.

NTCA–The Rural Broadband Association (NTCA) hereby submits comments in the above-captioned proceeding. NTCA members are small broadband providers serving the most rural parts of the United States. On average, members' service areas constitute more than 2,600 square miles. However, this figure belies the diversity of their operations: While nearly half serve fewer than 500 square miles, about 25% serve areas of 500-1,999 square miles and more than one-quarter of NTCA members serve areas that are 2,000 square miles or larger. Moreover, on average, NTCA members have fewer than 30 employees. Accordingly, their ability to deploy and maintain cutting edge, high-capacity networks must be balanced against regulatory and administrative obligations. This dynamic informs these comments.

NTCA recognizes the usefulness of common standards and regulatory frameworks that support the efficient operation and interconnectivity of critical communications networks. At the same time, NTCA welcomes the current inquiry by the Federal Communications Commission (Commission) to understand which of the rules to which operators are subject may be out-of-date, unduly burdensome, or entirely unnecessary in today's competitive communications marketplace. More to the point, certain of the regulations described below may actually discourage investment and disrupt positive market forces. Accordingly, and as described more fully below, the Commission should streamline or eliminate regulations whose costs exceed their benefits in today's dynamic marketplace and to ensure outcomes that drive efficiency and innovation.

II. <u>DISCUSSION.</u>

A. HISTORIC COST ACCOUNTING RULES (47 CFR PARTS 32, 36, 65, AND 69).

A wide array of historic cost accounting rules can be found in various parts of Title 47 of the Code of Federal Regulations (CFR), including Parts 32, 36, 65, and 69. Some of these rules appear ripe for either elimination or material adjustment to reflect current services, competitive developments, technological evolutions, or other marketplace realities. NTCA suggests below initial areas for examination for such pruning, and welcomes further discussion of these matters in subsequent proceedings. A careful review of these parts is necessary, however, in any such follow-on dedicated proceedings to make appropriate modifications without disrupting rules that continue to play an effective and critical role in the achievement and sustainability of universal service in high-cost rural and remote areas.

1. <u>Part 32.</u>

Part 32 of the Commission’s rules establishes a historical financial accounting system for tracking costs that may be eligible for cost recovery through regulated rates or universal service support. Although rules of this kind are generally important to ensure efficiency and accountability in delivery of services subject to such regulation, certain of these requirements relate to accounts and subaccounts that are highly unlikely to arise in today’s communications marketplace.[1] Accordingly, the Commission should examine the extent to which a material amount of costs exist in the various accounts and subaccounts set forth in Part 32, and to streamline those rules accordingly.

2. Part 36.

Part 36 addresses the separation of costs between the interstate and intrastate jurisdictions for purposes of regulatory ratemaking. Twenty-five years ago, the Federal-State Joint Board on Separations recommended that the Commission freeze the category relationships and jurisdictional allocation factors pending consideration of comprehensive reform.[2] A year later, the Commission adopted this recommendation, freezing all carriers' jurisdictional allocation factors and permitting rate-of-return carriers to voluntarily elect a freeze of their category relationships.[3] With only slight modifications, the Commission has since extended this freeze *nine times* over 24 years, including most recently late last year for another six years.[4]

Against this historical backdrop, it should be clear that the costs and burdens (and potential confusion) of jump-starting significant reforms of the separations regime would outweigh any benefits. As NTCA explained in comments supporting the most recent freeze

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[1] *See, e.g.*, 47 C.F.R. § 32.2000 (related to filing of certain property records), 32.2211 and 32.8211 (related to analog switching), 32.2220 (related to operator systems), 32.2232 (requiring subaccounts for digital and analog circuits), and 32.2310 and 32.6310 (related to information origination/termination equipment).

[2] *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Recommended Decision, 15 FCC Rcd 13160 (Fed.-State Jt. Bd. 2000).

[3] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382 (2001).

[4] *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, FCC 24-118 (rel. Nov. 13, 2024) (*2024 Separations Reform Order*).

extension, the Commission should instead view the separations regime as "a steadily declining part of a transitional framework in an evolving marketplace," and any potential reforms should be considered accordingly.[5] The communications marketplace has evolved in myriad ways since separations rules were adopted decades ago. The transition to Internet Protocol-enabled services fueled by an expanding foundation of broadband-capable networks continues apace, and customers in turn are migrating rapidly from legacy telephony services to broadband-only connections for use of over-the-top communication tools and other applications. This complementary evolution in technologies and consumer choice moots the need for, and undermines the value of, reopening the separations rules to initiate sweeping reform. Indeed, the Commission itself noted this dynamic in its most recent request for comment on yet again extending the freeze, remarking upon the "declining relevance of jurisdictional separations"[6] as they apply to fewer carriers, fewer services, and a shrinking pool of costs.[7] NTCA therefore applauds the Commission's recent referral to the Federal-State Joint Board for assessment of a permanent freeze and whether comprehensive reform is warranted or of value at this point,[8] and

[5] Comments of NTCA, CC Docket No. 80-286 (fil. Aug. 19, 2024), at 1-5.

[6] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Further Notice of Proposed Rulemaking and Order, 39 FCC Rcd 7341 (2024), at ¶ 9.

[7] As just a few examples that speak to the dated nature of certain rules, the Part 36 rules include procedures for apportioning the costs of operator services equipment, information origination/termination equipment, rural telephone bank stock, and telephone operator services. *See* 47 C.F.R. §§ 36.123, 36.141, 36.172, and 36.374. Other provisions of the rules reference network elements such as local dial office switchboards and open-end foreign exchange services. A dedicated follow-on proceeding could take comment on which Part 36 rules are no longer relevant to telecommunications networks and operations today.

[8] *2024 Separations Reform Order* at ¶2; *Federal-State Joint Board on Separations Seeks Comment on Part 36 Separations Rules in Response to Commission Referrals*, CC Docket No. 80-286, FCC 25J-1 (rel. Feb. 14, 2025).

the association looks forward to further assessment in the wake of this referral regarding how the rules might be streamlined accordingly and updated on a targeted basis.

3. **Part 65.**

Part 65 contains rules addressing the interstate rate of return that certain telecommunications carriers can realize on various telecommunications services. These rules are worthy of examination for possible streamlining, as the types of carriers and services to which they apply have changed in some respects since the rules were adopted more than 30 years ago.[9] Moreover, given that the only instance of re-prescription over the past three decades did *not* follow the procedures specified in Part 65 (even as the Commission may have incorporated discrete elements of certain Part 65 rules in its analysis),[10] the Commission's procedural rules for prescription likewise represent candidates for closer examination.

4. **Part 69.**

Part 69 of the Commission's rules governs access charges that may be assessed by regulated carriers. Although reforms over the past two decades-plus have already reduced the scope of these rules considerably, Part 69 retains certain references and provisions worthy of review for possible pruning or deletion. For example, scattered throughout Part 69 are mentions of common line cost recovery measures that are likely of limited effect (if any) in the wake of the

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[9] *See, e.g.*, 47 C.F.R. subparts E and F (outlining various reports to be filed by different classes of carriers to monitor the rate of return and the standards to be employed by the Commission in such review).

[10] *Connect America Fund*, et al., WC Docket No. 10-90, et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016), at ¶¶ 226-326; *see also* 47 C.F.R. §§ 65.100 and 65.102-65.450 (setting forth procedures for prescription that were for the most part not utilized in represcribing the interstate rate of return in 2016).

aforementioned reforms.[11] Moreover, as with other parts discussed above, Part 69 contains references to outdated equipment, services, and associated expenses that likely have little relevance in today's communications marketplace or material impact on the establishment of any charges.[12] Still other provisions are inoperative and lapsed on their face, such as the subsection of one rule setting the deadline for a telephone company electing to file a tariff for 1984 access charges to notify AT&T.[13] A surgical review of Part 69 could help to identify a number of rules that are no longer applicable or relevant to today's communications marketplace and services.

B. CERTAIN ELIGIBLE TELECOMMUNICATIONS CARRIER REPORTS.

Accountability is a hallmark of the Commission's distribution of universal service support. To mitigate the potential for waste, fraud, or abuse, the Commission requires sufficient visibility into how universal service funds are used to advance the statutory goals of the programs. It is important, however, to evaluate whether specific reporting requirements and systems advance this objective or whether they instead impose unnecessary burdens that yield little meaningful benefit in assessing compliance. Against this backdrop, the Commission should consider several reports that must be filed by eligible telecommunications carriers (ETCs) for potential streamlining or elimination.

First, the Commission should examine Form 555, the annual report by which ETCs indicate National Verifier or state recertification results and non-usage de-enrollments. This

[11] *See, e.g.*, 47 C.F.R. §§ 69.1(c), 69.2(t)-(w) and (ii), 69.3(e), 69.4, 69.104(c) through (e), 69.105, and 69.154.

[12] *See, e.g.*, *id*. at §§ 69.2 (kk) and (mm) (providing definitions of WATS access lines and basic service elements by reference to a 1991 Commission order addressing enhanced services) and 69.113 (discussing charges for MTS-WATS equivalent services).

[13] *Id*. at § 69.3(e)(5).

three-page form itself requires a 16-page set of filing instructions. And, yet, in most cases, Form 555 provides the Commission with no meaningful information whatsoever, as the Universal Service Administrative Company (USAC) handles recertification directly for ETCs in all but a few states. This means that nearly every Lifeline provider is required to submit an identical form to the Commission, to USAC, and to the relevant state commission. Setting aside the irony of providers submitting Form 555 to USAC itself, the state commissions appear to take no substantive action in response to these forms while the Commission has already received the relevant information directly from USAC. The Commission should therefore eliminate or substantially modify Form 555 and eliminate the requirement to file the form with multiple receiving offices.

The Commission should also take a fresh look at both the systems and the requirements for submission of various high-cost universal service reports and certifications. Although systems and forms have evolved over time to incorporate new initiatives and obligations, it would be useful for the Commission and USAC to conduct a holistic view of how, when, and what ETCs are obligated to submit and to consider the reduction, if not altogether elimination, of redundancies borne of multiple filings containing the same data.[14]

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[14] In addition to the need to examine certain substantive reporting requirements such as FCC Form 481 and the requirements of Section 54.313 of the Commission's rules, NTCA also notes that certain reporting processes invite instances of inadvertent error that have far-reaching adverse impacts for regulated entities. By way of example, providers subject to performance test measurement requirements must enter the results of their testing at a USAC portal. However, the portal permits those entities to enter the relevant information and then exit the portal without an indication or warning that they must navigate to a separate certification requirement. Providers can accordingly properly enter test results but, with no notice or warning from the portal, leave without certifying the results. *See, e.g*, Emergency Request for Expedited Treatment, Petition for Waiver, WC Docket No. 10-90 (fil. Mar. 7, 2025); Request for Waiver of Waitsfield-Fayston Telephone Co., Inc. d/b/a Waitsfield and Champlain Valley Telecom, WC Docket No. 10-90 (fil. Mar. 5, 2025).

Finally, building upon prior efforts,[15] the Commission should consider how it can relieve burdens by reconciling reporting of broadband availability data as between the Broadband Data Collection (BDC) and the High-Cost Universal Broadband (HUBB) portal. As a matter of law and public policy, the National Broadband Map (NBM) generated through the BDC will ultimately become "the system of record" when it comes to determining broadband availability. As such, this system can presumably be used to track progress toward broadband deployment objectives and reduce the need for duplicative entry of data through both the BDC and the HUBB. To facilitate this transition, two steps should be considered:

1. For high-cost programs like the enhanced Alternative Connect America Cost Model (Enhanced A-CAM) that have prospective deployment obligations already directly tied to the fabric underlying the NBM, the Commission should consider whether data that recipients of such support file through the BDC can "count" toward measurements of compliance without the need to re-enter all such data in the HUBB; and

2. For other high-cost programs where deployment obligations are not yet explicitly tied to the NBM, whether (and how) recipients of other universal service support might be given *the option* to cease entering service availability data in the HUBB and to instead demonstrate compliance with applicable obligations by reference to the NBM.

C. DIGITAL DISCRIMINATION (47 CFR §16 *et seq*.).

The Commission should eliminate the rules arising out of the "Digital Discrimination" proceeding, specifically the Report and Order adopted November 20, 2023.[16] An appeal of the

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[15] *See, i.e.*, Comments of NTCA, et al., WC Docket No. 10-90, et al., (fil. Mar. 15, 2024) (addressing burdens of reconciliation of HUBB data as it is migrated to the Fabric).

[16] *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Report and Order and Further Notice of Proposed Rulemaking, 38 FCC Rcd 11440 (2023) ("*Digital Discrimination Report and Order*").

order is currently pending in the U.S. Court of Appeals for the Eighth Circuit.[17] However, should the court not vacate the order, the Commission should set aside the rules and, in any event, it should further decline to adopt any additional requirements as proposed in the Further Notice of Proposed Rulemaking.

Beyond the legal questions being considered on appeal, as a substantive matter, the rules are unnecessary and impose needless and excessive burdens, particularly on small providers. The Commission itself has noted that numerous statutes and regulations already proscribe discrimination and foster extensive network deployments.[18] Additionally, the Commission itself

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[17] *Minn. Telecom Alliance v. FCC*, No. 24-1179 (8th Cir.).

[18] *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination,* GN Docket No. 22-69, Notice of Proposed Rulemaking, 37 FCC Rcd 15274 (2022), at ¶ 4 (pointing to several sections of the Communications Act that give the Commission "Pre-Existing Commission Authority to Address Discrimination and Promote Access."). For example, Section 202 of the Communications Act, as amended, prohibits "unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service," as well as giving "any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage" (47 U.S.C. § 202); recipients of Universal Service Fund (USF) support are bound to specific broadband deployment and service level commitments throughout specified areas (47 C.F.R. § 54.201(d)) ("A common carrier designated as an eligible telecommunications carrier . . . shall throughout the service area for which the designation is received (1) Offer the services that supported by federal universal service support mechanisms . . . ."); recipients of high-cost USF support are required to engage actively with distinct communities, with rules governing Tribal engagement obligations in connection with their service to on Tribal lands (*See, generally, Connect America Fund,* et al., WC Docket No. 10-90, et al*.,* Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17633 (2011), *aff'd sub nom, In re: FCC 11-161,* 753 F.3d 1015 (10th Cir. 2014) (the requirements are set forth in 47 CFR § 54.313(a)(5), (j)) as well as advertising the availability of Lifeline services for eligible low-income consumers (47 C.F.R. § 54.405(b)).

acknowledged an absence of marketplace behavior that would purportedly necessitate the regulations,[19] creating the proverbial “solution in search of a problem.”

To exacerbate matters, the Commission’s narrow reading of what constitutes technical and economic infeasibility provides little meaningful relief to smaller and rural providers. The Commission explains that it will base its standards on whether there was a “less discriminatory alternative to the challenged policy or practice,”[20] and render judgment in hindsight on whether there is “evidence[] [of] prior success by covered entities under similar circumstances . . . clearly indicating that the policy in question may reasonably be adopted, implemented, and utilized.”[21] However, this approach is problematic:

1. Business decisions involve factors unique to each company.
2. The Commission should not dictate risk tolerance to corporate boards.
3. Companies cannot reasonably have access to competitors’ proprietary business plans.
4. Small providers face unique challenges that make such comparisons impractical.

For these reasons, if the pending court proceeding does not vacate the "Digital Discrimination" rules, then the Commission should set them aside, and also reject proposals of the pending *Digital Discrimination FNPRM*. The proposed rules would create substantial and unnecessary burdens for small providers without furthering the Commission's goals.

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[19] *Digital Discrimination Report and Order*, at ¶ 38.

[20] *Id.*, at ¶ 63.

[21] *Id.*, at ¶ 66.

D. BROADBAND LABELS (47 CFR § 8.1 *et seq*.).

NTCA appreciates the reasonable restraint exercised by the Commission to mitigate costs in the creation and display of the broadband label,[22] hewing generally to the simplicity Congress envisioned when it adopted Section 60504 of the IIJA.[23] Nonetheless, certain of the current rules create uncertainty and the potential for significant burden, and the *Broadband Labels FNPRM* proposes costly, unnecessary, and burdensome requirements. Accordingly, NTCA commends the Commission to modify certain of the existing rules and decline to adopt any additional rules as proposed.

Section 8.1(a)(2) of the Commission's rules requires broadband providers to "display the label . . . at each point of sale," and further defines "point of sale" to include "over the phone."[24] The *Broadband Labels Report and Order* elucidates this requirement by explaining that the providers must read the label over the phone absent a customer service representative being assured a caller can access the label in another manner.[25] This creates a burdensome and potentially confusing interaction as ISP representatives could be required to read the label

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[22] *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 13686 (2022) ("*Broadband Labels Report and Order*" or "*Broadband Labels FNPRM*" as appropriate).

[23] IIJA, § 60504.

[24] 47 C.F.R. § 8.1(a)(2).

[25] *Broadband Labels Report and Order*, at ¶ 95 (stating that "in the case of alternate sales channels, while a provider may satisfy the label requirement by providing a hard copy of the label, we find it may do so through other means. This could include directing the consumer to the specific web page on which the label appears by, for example, providing Internet access in the retail location or giving the customer a card with the printed URL or a QR or orally providing information from the label to the consumer over the phone."). Footnote 214 of paragraph 95 states that "[i]n such circumstances, the provider must read the entire label to the consumer over the phone.").

verbatim while consumers may interrupt to ask questions or seek clarification. However, in that conversation, an ISP representative may determine that certain of the information on the label is not of interest to the consumer, and the consumer may indeed inform the customer service representative that s/he is not interested in hearing those parts of the label. These situations implicate the possibility that a broadband provider who seeks to comply fully with the Commission's rules may well *violate* those rules simply by acceding to the wishes of the consumer *in whose purported interest* the rules were crafted. The rules also require that labels be provided in English and "any other languages in which the broadband internet access service provider markets its services in the United States"[26] opening a question as to whether providers complying with Section 8.1(a)(2) (to read labels over the phone) must accordingly have translators on hand to read non-English labels over the phone. The Commission should eliminate each of these requirements, and instead direct that ISP representatives may simply inform callers as to where labels may be located on the company website or in other materials.

Turning to the *Broadband Labels FNPRM*, the proposals depart from the simplicity sought by Congress and would instead impose additional substantial burdens that outweigh any potential consumer benefits. The Commission should decline to impose additional website accessibility requirements; for small providers in particular, recommendations like those of the City of New York to display labels in Braille or via a QR code with a tactile indicator[27] would impose staggering and significant costs on small providers. The Commission should reject proposals to require the label be made available in languages other than those in which ISPs

[26] 47 CFR § 8.1(a)(4).

[27] *See* Comments of the City of New York, CG Docket No. 22-2 (fil. Mar. 9, 2022), at 4.

market their services. Mandatory multilingual labels beyond the languages used in service marketing would impose unnecessary and costly burdens, especially on small providers. Broadband providers already make strategic language marketing decisions based on careful market analysis, choosing to market in languages prevalent in their community. The proposed mandate would create significant ongoing expenses, including hiring translation experts, reformatting marketing materials, and adapting technical language for different linguistic contexts. As these requirements would recur with each label change, they could potentially stall market-driven pricing adjustments due to additional multilingual publication expenses.[28] The proposal would create unwarranted, unforeseeable, and undesired continuing costs that are not justified by marketplace dynamics.

Other aspects of the *Broadband Labels FNPRM* engender similar inefficiencies, including proposals to require labels for discounted[29] or bundled services[30] and disclosure of cybersecurity,[31] network management,[32] and privacy practices.[33] These proposals should be rejected. Discounts and taxes can vary widely, and providers may offer student or senior citizen

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[28] According to Translators Without Borders, there are between 380 and 450 spoken languages in the United States; the 2018 ACS reports that approximately 78% of U.S. households speak only English at home. A requirement to translate labels into other languages upon request would be simply unmanageable even if it were limited to the top ten non-English languages (including Spanish, numerous varieties of Chinese, Tagalog (including Filipino), Vietnamese, Arabic, and French).

[29] *Broadband Labels FNPRM*, at ¶ 135.

[30] *Id*., at ¶ 136.

[31] *Id*., at ¶ 143.

[32] *Id.*

[33] *See id.*

discounts, special pricing for not-for-profits, or packages for customers who opt-in to family or other group plans. Disclosing cybersecurity practices could divulge the nature of precise defenses and invite cybercriminals to adversarial action; providers' cybersecurity practices should remain proprietary to the provider. Likewise, the Commission should decline proposals to require interactive options or expanded labels with additional information.[34] Collectively, these suggestions go far beyond basic transparency. The Commission has authority under the IIJA to require broadband labels,[35] and has clearly exercised its regulatory imprint to promulgate Truth in Billing requirements for regulated common carrier services.[36] – but nowhere can authority be found for the Commission to adopt the type of intensive, costly, and burdensome interactivity the Commission suggests. For these reasons, onerous current and prospective rules should be set aside.

E. MANDATORY DISASTER INFORMATION REPORTING SYSTEM (DIRS) REPORTING (47 C.F.R. § 4.18).

The Commission should revise the Disaster Information Reporting System (DIRS) reporting rules adopted in 2024.[37] The obligation to submit daily infrastructure reports is burdensome, particularly for small businesses during an emergency in which DIRS would be

[34] *Id*., at ¶ 148.

[35] IIJA, § 60504(a).

[36] 47 C.F.R. § 64.2401.

[37] *Resilient Networks; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket Nos. 21-346, 15-80; ET Docket No. 04-35, Second Report and Order and Second Further Notice of Proposed Rulemaking, 39 FCC Rcd 623 (2024) ("*Resilient Networks Second Report and Order*").

activated. The Commission can accomplish its goal of obtaining relevant information in a less burdensome manner that does not divert resources from the job of restoring service.

In January 2024, the Commission adopted an order mandating that cable communications, wireless, wireline and interconnected VoIP providers submit daily infrastructure status reports through DIRS when the Commission activates the system in their service areas, even if there are no changes from the previous day's report.[38] Additionally, providers must submit a final report to the Commission within 24 hours of a DIRS deactivation.[39] The Commission typically activates DIRS in anticipation of, or immediately following, a major emergency, such as a hurricane, large-scale wildfire, or other disaster.

The Commission justified the new mandatory reporting by declaring that, "[t]he size of the provider a consumer uses should not affect a consumer's right to public safety and potentially life-saving information, nor should small rural communities be less entitled to functioning networks that provide alerts and 911 capability than communities served by large providers."[40] NTCA agrees; however, requiring daily infrastructure reports does not hasten repair or restoration of service to consumers and, in fact, compelling time-consuming reporting amid response to a disaster or other outage is more likely to divert resources from the very job of restoring service. Tellingly, the Commission failed to point to any instance in which additional mandated reporting would be helpful to maintain or restore communications.

[38] *Id.*, at ¶ 4.

[39] *Id.*

[40] *Id.*, at ¶ 11.

NTCA and its members are committed to the reliability and resiliency of networks that serve their rural areas. However, unlike their larger counterparts, small rural companies are typically situated in the communities they serve with only a few dozen employees on average (including those responsible for filing DIRS reports, assessing damage, and working to restore service). In the immediate aftermath of a disaster, these small companies are immersed in the business of assessing damage and restoring service and often must operate in the face of direct impacts on employees and offices that have been damaged as well. Obligations to collect and report information *on an ongoing basis* during an emergency impose tremendous costs and burdens on small providers – and represent at bottom a counterproductive distraction from more pressing responsibilities. Filing a report during a disaster is not a simple matter of logging in and undertaking "initial entry of contact information of 0.1 hours, for initial entry of critical information of 0.5 hours, and 0.1 hours for updates of critical information."[41] A provider's ability to comply depends on technical feasibility, the scope of an emergency and its impacts, and the needs of consumers and staff. There is also an opportunity cost in that reporting may consume the time of an employee who would otherwise be engaged in restoration efforts; this is especially true for smaller providers.

The Commission claimed to minimize the burden on small providers, pointing out that it waives the Network Outage Reporting (NORS) requirements for providers while they are obligated to report in DIRS. But it failed to acknowledge that the threshold below which NORS

[41] *Id.,* Final Regulatory Flexibility Analysis, Appendix B, at ¶ 71.

reporting is not required is rarely met by small providers;[42] that NORS reports are not daily reports; and that final NORS reports are required 30 days after discovery of the event, not within 24 hours of an agency determination that a disaster is controlled.

In the *Resilient Networks Second Report and Order*, the Commission indicated that it would use the daily reports to "determine whether the outages likely could have been prevented or mitigated had the service providers involved followed certain network reliability best practices, and whether such practices are employed broadly in the industry."[43] Such assessments are important, but they take place after the fact of a disaster and likely after service restoration efforts are complete. Although the Commission may be frustrated when it does not have daily information about a company's challenges and restoration efforts, a daily report does little to inform the Commission and is less informative than a more detailed and thoughtful report completed by the provider within a reasonable period after service is restored. The Commission should revise Section 4.18 of its rules[44] to encourage providers who seek the agency's assistance during a disaster to file according to a schedule that meets their needs and abilities and does not take staff time away from service restoration. It could also mandate a more detailed report from providers within a reasonable period after the provider has addressed the immediate needs of a disaster and restored service. This effort would enable the Commission to collect relevant

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[42] NORS reporting thresholds vary by provider type but are generally required if an outage lasts at least 30 minutes and potentially affects at least 900,000 customers or user minutes, or a 911 facility. 47 C.F.R. § 4.9.

[43] *Resilient Networks Second Report and Order*, at ¶ 6.

[44] 47 C.F.R. § 4.18.

information for a thoughtful analysis, while simultaneously reducing the burden on small providers during an emergency.

F. UNIVERSAL SERVICE/ENHANCED A-CAM CYBERSECURITY AND SUPPLY CHAIN RISK MANAGEMENT REQUIREMENTS (47 C.F.R. § 54.308(e)).

The Commission should eliminate the requirement contained in section 54.308 of its rules that requires Enhanced A-CAM providers to submit their cybersecurity and supply chain risk management (C-SCRM) plans, including "substantive modifications" to such plans, to the Commission.[45] The Commission can accomplish the objective of ensuring Enhanced A-CAM carriers mitigate risks in the delivery of broadband service[46] by requiring these carriers to make a certification to the Commission that they implemented, or made a substantive modification to, their C-SCRM plans.

NTCA recognizes the importance of C-SCRM plans as part of a provider's overall cybersecurity practice;[47] however, guidelines for risk management plans, including the National Institute of Standards and Technology (NIST) Cybersecurity Framework (CSF), are designed to

[45] 47 C.F.R. § 54.308.

[46] *Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support*, et al., WC Docket No. 10-90, et al., Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry*,* 38 FCC Rcd 7040 (2023), at ¶ 109.

[47] NTCA acknowledges the recent clarification by the Wireline Competition Bureau with respect to the content of these plans and understands that Enhanced A-CAM providers must adopt and implement C-SCRM plans that meet the requirements contained in the Commission's rules. *See Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support*, et al., WC Docket No. 10-90, et al., Order on Reconsideration*,* DA 25-39 (rel. Apr. 4, 2025), at fn. 7. The discussion here does not seek to address further the standards applicable to such plans; rather, the focus here is on relative value, burdens, and risks arising out of the specific obligation that such initial plans or substantive modifications to the plans *be filed* in full with the Commission or USAC.

be flexible and scalable to meet company needs, rather than prescriptive requirements. The Commission has no familiarity with a provider's business or even other cybersecurity measures undertaken when reviewing C-SCRM plans and, as a result, would be unable to identify whether a company's plans were sufficient to meet the Commission's objective. Companies likewise would not have the ability to know whether the Commission would deem their plans adequate, as the guidelines the Commission's rules require in the plans are expressly designed to be adaptable to individual companies' needs and capabilities. The NIST CSF, for example, states, "the CSF does not embrace a one-size-fits-all approach. Each organization has both common and unique risks, as well as varying risk appetites and tolerances, specific missions, and objectives to achieve those missions. By necessity, the way organizations implement the CSF will vary."[48] Accordingly, carriers risk the Commission concluding that they failed "to sufficiently develop or implement" C-SCRM plans without any notification from the Commission identifying what is or is not sufficient. This places small providers in particular at a significant disadvantage as their C-SCRM plans could appear "insufficient" when compared to a larger carrier with more technical experts and financial capabilities. Furthermore, a Commission finding of "negligence" or "failure to sufficiently develop or implement" C-SCRM plans could have significant economic consequences and repercussions on any carrier.

Requiring C-SCRM plans to be filed with the Commission also risks exposing confidential provider information. Although the Commission's rules provide for confidential treatment of such filings, a database containing numerous U.S. telecommunications providers' C-SCRM plans might provide an enticing target. Finally, requiring Enhanced A-CAM providers to

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[48] The NIST Cybersecurity Framework (CSF) 2.0, p. iv (Feb. 26, 2024), available at https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.29.pdf.

file initial C-SCRM plans, including "substantive modifications" to such plans, imposes unnecessary administrative and cost burdens that can be readily eliminated without any impact on the security of Enhanced A-CAM recipients' networks or the ability of the Commission to monitor recipients' plans to mitigate risks.

G. MISCELLANEOUS RULES PERTAINING TO COMMON CARRIERS – NOTIFICATION OF SECURITY BREACHES (47 C.F.R. § 64.2011).

Although NTCA recognizes the rules adopted in the *Data Breach Report and Order*[49] are the subject of a pending court challenge,[50] the Commission should undertake the following changes to the rules adopted therein should they not be vacated. Specifically, NTCA recommends the Commission to: (1) Forgo requiring notification of breaches to the Commission, law enforcement or customers in instances where a carrier determines that no financial harm is reasonably likely to occur as a result of the breach; and (2) Require notification to the Commission and law enforcement only for breaches that affect 1,000 or more customers.

With respect to the recommendation that no notification is required absent a carrier's reasonable determination of financial harm, the data breach rules' expansive notification requirements that include many types of harm beyond financial or physical harm can be subjective as applied to individual customers. This makes those potential impacts indiscernible to the carrier in any given circumstance, leaving the providers alone to determine whether "harm" has occurred. To avoid confusion and unnecessary reports, the Commission must provide a clear, tangible and consistent definition of harm to allow carriers, the Commission and law

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[49] *Data Breach Reporting Requirements*, WC Docket No. 22-21, Report and Order, 38 FCC Rcd 12523 (2023) ("*Data Breach Report and Order*").

[50] *Ohio Telecom Ass'n v. FCC*, No. 24-3133 (6th Cir.).

enforcement to focus on assisting customers in recovering from any damage that may have resulted from the breach. Thus, emotional harm, for instance, should not qualify as a harm-based trigger due to the substantial difficulty of defining such harm and the likelihood that carriers would be unaware of whether emotional harm occurred prior to the deadline for reporting a breach. Instead, a data breach notification requirement should be limited to breaches in which a carrier has reasonably determined that financial harm may occur as a result of the breach.

Putting aside the significant question of the Commission's authority with respect to administration of Personally Identifiable Information – in the context of a statutory framework that defines and governs Customer Proprietary Network Information (CPNI) specifically[51] – the risk of reporting "fatigue" for all parties involved is very real. This is especially the case should the more expansive definition of "harm" be retained along with the requirement that carriers report all breaches to the Commission, the Federal Bureau of Investigation and the Secret Service unless the carrier can "conclusively" determine that fewer than 500 customers were affected.[52] Indeed, the Commission does acknowledge that over-notification to customers would result in "notice fatigue,"[53] and it permits carriers filing an annual summary of breaches for "smaller, less risky" breaches.[54] Yet the rules inexplicably germinate the very "notice fatigue" the Commission recognizes and claims it wishes to avoid, undermining the Commission's

[51] Section 222(a) of the Communications Act imposes a duty to protect CPNI; Section 222(c) defines the information that is included in the definition of CPNI. The new data breach rules include information that is beyond that which is enumerated in Section 222(c), violating the canon of surplusage that governs the limits of statutory language.

[52] 47 C.F.R. § 64.2011(c) and corresponding § 64.2011(d).

[53] *Data Breach Report and Order*, at ¶ 49.

[54] *Id.*, at ¶ 51.

separate conclusion that "[a] harm-based trigger for notification to customers also allows carriers, particularly small and rural providers, to focus their resources on data security and mitigating any harms caused by breaches rather than generating notifications where harm was unlikely."[55] This is of particular interest and concern to NTCA members, who on average have approximately 30 employees and would face significant challenges in even just determining when there is a need to comply with these rules, in addition to then preparing and issuing the required reports and notifications.

Moreover, carriers should be compelled to submit breach reports to the Commission and law enforcement *only* in instances where a carrier determines that the breach has resulted in the access, use or disclosure of at least 1,000 customers' CPNI. This will allow the Commission and law enforcement to focus on instances where they can work together to help carriers guard against similar breaches and take action against the perpetrator of the breach. Requiring carriers to maintain records of any additional breaches that do not meet these definitions will place an unnecessary burden on carriers.

H. TRUTH IN BILLING AND ADVERTISING (47 C.F.R. § 76.310).

The Commission should modify the truth in billing rules to allow (but not require) video service providers to list, in addition to an aggregate price on consumers' bills and promotional materials, a line-by-line breakdown of the aggregate price charged for the video service that is attributable to retransmission fees paid by the video service provider for the channels offered.

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[55] *Id.*

The 1992 Cable Act requires cable operators to offer a "basic" tier that includes broadcast channels to every subscriber.[56] Broadcast channels are only offered to Multichannel Video Programming Distributors (MVPDs) for a fee through retransmission consent agreements which, at least for small video programmers, are “take it or leave it” documents that do not allow any option for negotiating or agreeing upon the terms. The fees charged in these “agreements” have increased dramatically since the Commission initially adopted rules allowing broadcasters to elect to have their programming available through retransmission consent agreements. Further adding to the cost, programming distributors bundle broadcast channels with other programming.[57] As context, the latest NTCA Broadband/Internet Availability Survey Report found, on average, that of those respondents offering linear video service to customers, 37.2% of respondents’ total operating expenditures went toward retransmission consent fees in 2024, up from 27.9% in 2023.[58] Similarly, in these survey respondents’ most recent retransmission consent agreements, retransmission consent fees increased by an average of $104,020.[59] Finally, 81% of these respondents indicated that they passed the increase in retransmission consent fees on to their subscribers.[60]

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[56] 1992 Cable Act, available at https://www.congress.gov/bill/102nd-congress/house-bill/4850.

[57] This is a long-standing issue. *See, e.g.*, Comments of NTCA, MB Docket No. 17-214 (fil. Oct. 10, 2017).

[58] *NTCA Broadband/Internet Availability Survey Report*, Dec. 2024, at p. 29 (available at https://www.ntca.org/sites/default/files/documents/2025-01/2024-broadband-internet-availability-report.pdf).

[59] *Id*.

[60] *Id*.

These fees make up a significant portion of consumers' bills. Listing the fees on promotional materials and billing statements would provide consumers with a transparent and accurate reflection of the cost of video service. Increased programming costs and retransmission costs imposed by broadcasters have consistently driven up prices for rural consumers, and the concept of transparency, which is the basis underlying the requirement that cable and DBS providers disclose the aggregate price for the programming, dictates that consumers be aware of the true source of the consistent upward pressure on the prices they pay for video programming.

For these reasons, the Commission should modify section 76.310 of its rules to allow video service providers to identify the amount these retransmission fees constitute with respect to the total price of service; MVPDs should be able to list, beneath the all-in price, the amount that is attributable to the channels included in the subscription. Such a measure would allow video service providers to make consumers aware of the cost attributable to the different channels offered based upon the retransmission fees paid by the provider and thereby allow consumers to compare the cost of receiving the channels they are interested in across different platforms. Allowing video service providers to include such information is consistent with the Television Viewer Protection Act of 2019 which requires "an itemized statement that breaks down the total amount charged for or relating to the provision of the covered service by the amount charged for the provision of the service itself and the amount of all related taxes, administrative fees, equipment fees, or other charges."[61] Allowing providers to have one or more additional line items identifying the cost per channel or for programming in general would be no different as the cost(s) would also be included in the all-in price – and, importantly, the Commission can make

[61] *See* 47 U.S.C. § 562(b).

clear that these programming/retransmission consent fees cannot be listed as government mandated fees but rather must be clearly identified as fees incurred by the video service provider and passed on to the end-user.

I. EXCLUSIVITY AND NON-DUPLICATION RULES (47 C.F.R. §§ 76.92-76.94 AND 76.101-76.105).

The Commission's Part 76 exclusivity and non-duplication rules drive up rural consumers' rates for video services and limit their access to desired programming; these rules also fail to promote "localism" as intended. The Commission should amend its Part 76 rules that prevent small, rural MVPDs from including within their video packages broadcaster content from neighboring Designated Market Areas (DMAs). This would allow small rural MVPDs to access content from a neighboring DMA to the extent that it is available at a lower rate or to otherwise respond to consumer demand for more relevant broadcast content.

As background, NTCA member surveys consistently indicate that access to reasonably priced programming is a significant barrier to the provision of affordable video services in rural communities n fact, in a recent survey 94% of respondents indicating they are considering leaving the MVPD market altogether cited rising programming costs as the reason.[62] Chief among the barriers to obtaining reasonably priced content is the constantly escalating costs associated with retransmission consent.[63] As NTCA has repeatedly noted, broadcasters' use of "tying" and "tiering" arrangements,[64] as well as the use of mandatory non-disclosure

[62] *See id*., at fn. 58.

[63] *Id*.

[64] *See, e.g.*, Comments of NTCA, MB Docket No. 15-158 (fil. Aug. 21, 2015).

agreements,[65] drives up the cost of broadcast content that are passed on to rural end-users. Critically, broadcasters' chokehold over programming – namely, their ability to present "take it or leave it" offers to MVPDs that include many of these provisions – is not a function of "the marketplace" but rather one of government fiat.

These antiquated exclusivity and non-duplication rules are detrimental to rural consumers for several reasons. First, they prevent MVPDs from looking to alternative sources for obtaining programming demanded by consumers. An MVPD that is able to find broadcast content at a more affordable rate should be able to do so. These rules also come into play for consumers who live in DMAs that are centered in neighboring states, as it impairs the ability of their local MVPD to obtain content from a neighboring DMA and allow these consumers to receive in-state news or other *local* content that may be more relevant to them. One NTCA member in this situation reports that its subscribers are only able to view news and weather for a major metropolitan area several hours away in a neighboring state, and they have no access to "local" content that informs them as to news emerging from their state capital.

While these rules were intended to promote "localism,"[66] yet these rules are failing to achieve their intended purpose when they *prevent* access to local content. Moreover, there is no evidence that broadcasters have invested the gains they have realized, through ever-escalating retransmission consent fees, in enhancing or adding to local news operations.[67] And when rising

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[65] *See, e.g.,* Comments of NTCA, MB Docket No. 23-427 (fil. Feb. 26, 2024).

[66] *See, e.g.,* Reply Comments of the National Association of Broadcasters, GN Docket No. 24-119 (fil. Jul. 8, 2024); Reply Comments of the National Association of Broadcasters, MB Docket Nos. 20-73, 17-105 (fil. Jun. 15, 2020).

[67] In fact, retransmission consent fees may in some cases have become part of an effort to support local content development, but rather a vehicle to extract funds from local communities

retransmission consent fees drive small MVPDs from the market – or where consumers can no longer afford to absorb constant rate increases – the time has come to inject market forces into the process and allow small MVPDs to "shop around for a better deal."

J. REGULATORY PARITY IN THE MVPD MARKETPLACE.

The Commission should engage in a thorough examination of its Part 76 rules applicable to MVPDs and with an eye towards a level playing field in what is an increasingly evolving and competitive video market. This review should aim to remove unnecessary regulatory requirements where possible such that consumer behavior is driven by choice and not a lack of regulatory parity.

NTCA members today utilize a wide variety of technologies to provide video programming, including traditional cable TV and Internet Protocol television (IPTV) systems. At present, "traditional" MVPD operators (cable/IPTV) are subject to a breathtaking set of regulatory requirements,[68] and the fees and compliance costs incurred by these operators can

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and local operators for the benefit of nationwide/multinational firms. *See, e.g.,* Letter from Brendan Carr, Commissioner, FCC, to Robert A. Iger, Chief Executive, The Walt Disney Company (dated Dec. 21, 2024), at 3 ("For example, it appears that ABC is attempting to use something commonly called 'reverse retrans' fees—where the national programming network takes a percentage of the retransmission consent fees negotiated in good faith by local broadcast TV stations—to siphon more and more money away from local broadcast TV stations for, in ABC's case it appears, the purpose of underwriting investment in ABC's direct-to-consumer subscription streaming services.")

[68] Regulatory obligations include must carry (47 CFR § 76.62), franchising (47 CFR § 76.41), regulatory fees (47 CFR § 1.1155), emergency alert (47 CFR § 11.11), children's television commercial limits (47 CFR § 76.225), program exclusivity rules (47 CFR § 76.101-110), notice and reporting requirements (*e.g.*, 47 CFR § 76.1600), rules relating to political programming (47 CFR § 76.205-206), sponsorship identification (47 CFR § 76.1615), public inspection file requirements (47 CFR § 76.1700-1716), commercial leased access (47 CFR § 76.970-977), ownership rules and restrictions (47 CFR § 76.501), subscribership limits (47 CFR § 76.503), limits on carriage of vertically integrated programming (47 CFR § 76.1301-1302), regulation of

translate to large sums annually, with these costs necessarily passed on to end-users. By contrast, virtual MVPDs not subject to these requirements can offer service at reduced rates. For example, Google's YouTube TV service competes directly with NTCA members' linear offerings – and has far greater scale and reach with millions of subscribers nationwide – but is unfettered by all the burdensome requirements that apply to "legacy" operators. This asymmetric regulatory scheme makes no sense as practical matter, and as a competitive matter effectively rewards the largest operators based upon nothing more than how and when they entered the market.

To be sure, "legacy" regulations should not become a drag on the transition within the video market, and nothing herein should be taken as advocating for a more regulatory approach for any entity. The Commission should look instead at its regulatory regime for MVPDs and examine what has worked to protect consumers and/or advance statutory requirements set forth by Congress, and what has not, and then consider what should be kept, discarded, or modified. NTCA members operating in what is a competitive and low-margin (if not unprofitable altogether) business yet attempting to meet the demands of their communities are disadvantaged by a lack of regulatory parity, and are saddled with staggering compliance costs that the Commission should look to eliminate where possible. Releasing legacy providers from unnecessary and outdated regulations would go a long way towards enabling them to compete on an even playing field and serve their rural communities.

III. <u>CONCLUSION.</u>

For the reasons stated herein, the Commission should assess the relative costs and benefits of the identified rules and promote outcomes that drive efficiencies and innovation.

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services, facilities, and equipment (47 CFR § 76.601-640), technical standards (47 CFR § 76.605), and customer service rules (47 CFR § 76.309).

Respectfully submitted,

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