

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Possible Revision or Elimination of Rules) CB Docket No. BO 16-251
Under the Regulatory Flexibility Act, 5)
U.S.C. Section 601)

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

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these Comments in response to the Public Notice in the above captioned proceeding.² Pursuant to the Regulatory Flexibility Act (“RFA”),³ the Federal Communications Commission (the “Commission”) is tasked with reviewing rules it adopted in calendar years 2001-2004, to determine whether rules that have, or might have, a significant economic impact on a substantial number of small entities should be amended or rescinded. The Commission indicated that it will consider the following factors as part of its review: (1) the continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules and, to the

¹ NTCA represents nearly 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All of NTCA’s service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers. Approximately 75 percent serve as multichannel video programming distributors (“MVPDs”) using a variety of technologies in sparsely populated, high-cost rural markets.

² FCC Seeks Comment Regarding Possible Revision or Elimination of Rules Under the Regulatory Flexibility Act, 5 U.S.C. § 601, Public Notice, CB Docket No. BO 16-251, DA 16-792.

³ 5 U.S. C. § 601.

extent feasible, with state and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.⁴

NTCA supports reducing administrative and economic burdens whenever possible and welcomes the Commission's thoughtful evaluation of rules and obligations that have outlived their utility or require modification to remain relevant. This exercise is important insofar as it forces the Commission and the industry to take a fresh look at specific rule sections and confirm their continuing relevance. For example, there are a series of rules that represent "low-hanging fruit" for elimination in that they clearly refer to periods of time long since lapsed; eliminating such rules would simply represent "good housekeeping" within the Code of Federal Regulations.⁵

At the same time, although certain rules are clearly outdated on their face, it is important to ensure that the need for and impacts of other rules are considered individually, rather than in a contextual vacuum created only because of the time period in which they were originally adopted. Pulling at certain loose threads that look outdated and frayed at first glance may have unintended consequences and create problems elsewhere in other rules that remain operative; for example, a number of the rules slated for review in the Public Notice are referenced elsewhere in the Code of Federal Register. For this reason, substantial rule changes should not be examined in isolation, but rather as part of a holistic, substantive review of the individual rules in question, making sure to capture all rule sections and the practical and policy implications of any change.

As an example, the Commission specifically seeks on comment on Part 32 of its rules which implements section 220 of the Communications Act of 1934, as amended, which requires

⁴ Public Notice, p. 1.

⁵ *E.g.*, 47 C.F.R. §§ 69 (various subparts).

the Commission to “prescribe a uniform system of accounts for use by telephone companies.”⁶ Part 32 specifies the asset, revenue and expense accounts that must be maintained. As the Commission notes, it initiated a rulemaking in 2014 to determine whether Part 32 rules should be streamlined to reduce regulatory burdens.⁷ The Commission should consider changes to this Part of the rules within that proceeding and in consideration of its already developed record. In comments responsive to that rulemaking, NTCA joined rural partners WTA – Advocates for Rural Broadband, Eastern Rural Telecom Association, and National Exchange Carrier Association, Inc., expressing no objection to the Commission’s proposal to consolidated account systems, or to more fully align the Uniform System of Accounts (“USOA”) with Generally Accepted Accounting Principles (“GAAP”) for price cap carriers. But it was noted that full adoption of GAAP for RLECs may result in unpredictable changes in rural carriers’ rates and Universal Service Fund (“USF”) high cost mechanisms. Given the uncertainties at that time surrounding USF reform and the potential impacts on rural investments, operations and costs, NTCA and its partners recommended the Commission focus on revising the USF rules and then turn to implementing account reforms.⁸ Although substantial reforms of the USF mechanisms that support RLECs were adopted in 2016, significant implementation and reconsideration questions remain outstanding,⁹ a further notice of proposed rulemaking that posed substantial

⁶ 47 U.S.C. § 220.

⁷ Public Notice, p. 12, Citing *Comprehensive Review of the Part 32 Uniform System of Accounts*, 29 FCC Rcd 10638 (2014).

⁸ See, Joint Comments of NTCA, WTA – Advocates for Rural Broadband, Eastern Rural Telecom Association and National Exchange Carrier Association, Inc., WC Docket No. 14-130 (filed Nov. 14, 2014).

⁹ See, NTCA Petition for Reconsideration and/or Clarification, Connect America Fund, *et.al.*, WC Docket No. 10-90, *et al.* (filed May 25, 2016). With certain RLECs having elected model-based support, it is also worth considering a comprehensive approach to reform that provides these carriers with a clear but voluntary path to price cap regulation if they so desire; this too would entail substantial consideration of changes to cost accounting and recovery rules.

questions about remaking cost allocation rules likewise remains open,¹⁰ and a separate but related comprehensive examination of separations rules is just getting underway.¹¹ Aligning the implementation and fine-tuning of USF reforms with a consideration of these other cost allocation, cost accounting, and cost recovery rules is necessary and essential as a matter of good and thoughtful public policy. The interrelated nature of all of these dockets requires careful and comprehensive coordination.

Similarly, the Commission seeks comment on potentially outdated rules within Part 54. As one obvious example of a problematic rule cited in the notice, NTCA has supported the Commission's review of the "parent trap" rule for several years apart from this proceeding.¹² While this rule impacts only a small number of rural carriers today, it creates expensive and unnecessary challenges that can and should be summarily eliminated. Section 54.305(b) of the Commission's rules governs how high-cost USF is handled when exchanges are sold or transferred.¹³ This section of the rules was designed to "discourage carriers from transferring

¹⁰ Further Notice of Proposed Rulemaking, Connect America Fund, *et. al.*, WC Docket 10-90, *et. al.* (rel. March 30, 2016).

¹¹ Federal-State Joint Board on Separations Seeks Comment on Referral for Recommendations of Rule Changes to Part 36 as a Result of Commission Revisions to Part 32 Accounting Rules, WC Docket No. 14-130, CC Docket No. 80-286, Public Notice (Rel. April 24, 2017) . NTCA and its rural partners also commented that a change to the Part 32 rules could create unintended administrative burdens on small carriers due to different standards required by federal and state regulations. As was stated, "[t]houghtful, proactive coordination with state regulations should . . . be a critical component of any plan to reduce or streamline accounting requirements and other historical obligations." Joint Comments, WC Docket No. 14-130, p. 7 (filed Nov. 14, 2014).

¹² *See, e.g.*, Shirley Bloomfield Chief Executive Officer NTCA – The rural Broadband Association (formerly National Telecommunications Cooperative Association), On behalf of the NTCA National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, Western Telecommunications Alliance, Before the United States House of Representatives Committee on Energy and Commerce's Subcommittee on Communications, Technology, and the Internet In the Matter of H.R. 5828, The "Universal Service Reform Act of 2010" September 16, 2010.

¹³ 47 C.F.R. 54.305(b).

exchanges merely to increase their share of universal service support.”¹⁴ There are numerous petitions and *ex parte* summaries filed over a series of years that justify eliminating the rule.¹⁵ There is no potential harm in eliminating this rule and it would not increase the overall size of the fund since it concerns capped high cost loop support. There is a full and complete record to support eliminating the “parent trap rule” separate and apart from this RFA review. In its current form, the rule is harmful because it denies high-cost support to rural exchanges in need of high cost support. The Commission should therefore use the opportunity presented by this RFA analysis to finally address the outstanding petitions regarding section 54.305(b).¹⁶ Beyond this “low hanging fruit” any comprehensive changes to Part 54 rules should be examined as part of the comprehensive docket on Universal Service reform.

There are numerous open proceedings and other opportunities to address rule sections that require modification or elimination due to changed circumstances or regulatory reform. While the RFA requires the Commission to specifically consider rules adopted during a specific

¹⁴ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8942-43 (1997) (subsequent history omitted).

¹⁵ See, e.g., Petition for Reconsideration of Madison Telephone Company, Connect America Fund, *et. al.*, WC Docket No. 10-90, *et. al.* (filed May 25, 2016), Letter from John Kuykendall, JSI on behalf of Dickey Rural Networks to Marlene H. Dortch, Secretary, FCC, Notice of *Ex Parte* Presentation, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337 (June 17, 2010) (Dickey Rural Networks discussing filing a petition to seek forbearance from the parent trap rule which would enable the unserved areas in the two acquired exchanges to receive broadband); Letter from Kenneth C. Johnson, Herman & Whiteaker, LLC on behalf of Partner Communications Cooperative (“Partner”) to Marlene H. Dortch, Secretary, FCC, Notice of *Ex Parte* Presentation, WC Docket No. 10-90 (June 1, 2015) (“Partner June 1, 2015 Ex Parte”) (“Partner has consistently argued that the parent trap rule no longer serves its original purpose (discouraging the sale of exchanges and controlling high-cost fund growth) and that it would be in the public interest to eliminate the outdated rule”).

¹⁶ See also, WTA – Advocates for Rural Broadband, Petition for Reconsideration, Connect America Fund, *et. al.*, WC Docket 10-90, *et. al.* (filed May 25, 2016) (WTA seeks guidance regarding the treatment of exchange sales, transfers of control and mergers after the separate Alternative Connect America Cost Model and Rate of Return paths are implemented).

period of time, and while there may be certain rules that on their face are obvious candidates for “housekeeping” and elimination, a more holistic and surgical analysis of all rules and regulations is necessary to fully consider the practical and policy ramifications of changes to specific rule sections.

Respectfully submitted,



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