

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

In the Matter of)	
)	
Implementing the Infrastructure Investment)	GN Docket No. 22-69
and Jobs Act: Prevention and Elimination)	
of Digital Discrimination)	

**REPLY COMMENTS OF
THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION
IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING**

The National Rural Electric Cooperative Association (“NRECA”) submits these Reply Comments in response to the November 20, 2023 Further Notice of Proposed Rulemaking relating to implementation of digital discrimination rules (“*Further Notice*”).¹

I. INTRODUCTION

A. About NRECA

NRECA is the national service organization for more than 900 not-for-profit rural electric cooperatives that provide electric power to 56% of the nation’s landmass, approximately 42 million people in 48 states, or approximately 12 percent of electric customers. Rural electric cooperatives serve 327 of the nation’s 353 persistent poverty counties, which is 92% of these persistent poverty counties.

Rural electric cooperatives were formed to provide safe, reliable electric service to their member-owners at the lowest reasonable cost. They are dedicated to improving the communities

¹ *In the Matter of 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, rel. November 20, 2023.

in which they serve, and the management and staff of rural electric cooperatives are active in rural economic development efforts. Electric cooperatives are private, not-for-profit entities that are owned and governed by the members to whom they deliver electricity. Electric cooperatives are democratically governed and operate according to the seven Cooperative Principles.²

B. Electric Cooperatives Are Deeply Committed to Promoting Broadband

America’s rural electric cooperatives are deeply committed to promoting the deployment of advanced telecommunications capabilities within the rural communities and areas in which they serve and often play a crucial role in the development of broadband infrastructure to serve rural unserved and underserved locations. Over 200 rural electric cooperative broadband projects are already underway across the country, and NRECA estimates that another 100 or so are currently exploring the feasibility of providing broadband. NRECA members are providing (or will provide) these broadband services either by themselves or through partnerships of some kind with affiliated or unaffiliated ISPs.

II. REPLY COMMENTS

A. The Proposed Rules Would Impose a Substantial Burden on Small and Rural Providers.

The *Further Notice* proposes to impose two sets of affirmative obligations on broadband providers: (1) submit an annual, publicly-available report, as a supplement to the BDC, describing any “large-scale broadband deployment, upgrade, and maintenance projects that were completed or substantially completed during the preceding calendar year and the communities served by such projects”; and (2) establish an internal compliance program requiring “regular

² The seven Cooperative Principles are: Voluntary and Open Membership, Democratic Member Control, Members’ Economic Participation, Autonomy and Independence, Education, Training, and Information, Cooperation Among Cooperatives, and Concern for Community.

internal assessment” of what communities are served by “recent, pending, and planned large-scale projects” and whether the provider’s policies might differentially impact consumers’ access to broadband without adequate technical or economic justification.³

The *Further Notice* seeks comment on whether the Commission should exempt providers that primarily serve consumers at the rural level,⁴ and whether the Commission should adopt exemptions applicable to “small entities.”⁵ NRECA appreciates the Commission’s recognition that small providers may be unduly burdened by the proposed regulations, which would require smaller and rural broadband service providers to undertake a major compliance initiative on an annual basis. Such compliance requirements would impose a significant and costly burden on such smaller and rural providers that promise to play a key role in addressing the digital divide, and whose scarce resources are better put elsewhere.

B. Rural Electric Cooperatives Are Already Fully Committed to Nondiscrimination and Merit an Exemption.

NRECA respectfully submits that the *Further Notice* does not adequately justify this burden as applied to smaller and rural providers, for which digital discrimination problems are not at all evident. The inherent lack of discrimination in rural electric cooperatives is noteworthy.

From their inception nearly 100 years ago, rural electric cooperatives have operated on the premise that their utility services will be provided universally, to all members within the cooperative footprint. Rural electric cooperatives are not driven by profit, but by the obligation to provide necessary services to all cooperative members no matter where they are located, at a

³ *Further Notice*, ¶180.

⁴ *Further Notice*, ¶ 198.

⁵ IRFA, *Further Notice* Appendix C, ¶ 25.

reasonable cost. Cooperatives are governed by boards of directors elected by member customers, who themselves can directly participate in decisions relating to the service, providing an important means of recourse and local control over the utility services.

In short, NRECA members that provide broadband service generally do so on a universal basis already. The cooperative model itself protects against the digital discrimination concerns raised in the *Further Notice*.

NRECA therefore submits that there is no justifiable reason to impose new annual reporting or internal compliance obligations on rural electric cooperatives and their broadband subsidiaries. In light of this, NRECA respectfully requests that the Commission adopt a specific exemption applicable to rural electric cooperatives (and potentially other cooperative entities).

C. There Should Be a “Small Entity” Exemption for Entities with Fewer Than 100,000 Broadband Customers, Rather Than the Much Larger Size Threshold Set Forth in the IRFA.

NRECA also urges the Commission to exempt “small entity” providers from any new rules stemming from the *Further Notice*.

Historically, providers of regulated “telecommunication service” have tended to be relatively large – often very large – companies. They entered the market with full knowledge of the regulatory burdens associated with providing a fully regulated service, and have installed dedicated staff, if not entire departments, to monitor and manage the regulatory tasks.

Today’s modern ecosystem of broadband providers, however, includes not only incumbent and competitive telecommunications carriers, but also a large and growing number of small, entrepreneurial, competitive, and innovative broadband providers. Subjecting these small providers to burdensome new regulatory obligations will cause inordinate hardship as compared

to larger broadband providers and telecommunications companies that have significant staff and resources to devote to regulatory compliance.

A recent poll of NRECA members that provide broadband service (or that are considering it) revealed that most have fewer than one (1) full-time equivalent employee assigned to manage regulatory compliance issues. Many small broadband providers do not have sufficient staff or in-house expertise to manage an extensive new set of regulatory obligations. While a larger company may be able to absorb such new regulatory commitments as a familiar, incremental cost of doing business, the costs and burden of compliance with the Commission's proposed rules present a more daunting prospect for small entities, and newer entrants.

Unfortunately, while NRECA urges the Commission should take steps to reduce adverse impacts of the *Further Notice* on small providers, the Initial Regulatory Flexibility Analysis (IRFA) references current Small Business Administration size thresholds applicable to the "Wired Telecommunications Carriers" industry which, if adopted by the Commission, would qualify BIAS providers with *as many as 1,500 employees* as "small entities."⁶ Based on this threshold, the IRFA concludes that the term "small entities" would include "most" wired telecommunications carriers,⁷ "the majority" of incumbent LECs,⁸ "most" competitive LECs,⁹ and the "majority" of interexchange carriers.¹⁰ Such a 1,500-employee "small entity" threshold would thus create a situation where a small-entity exception would swallow the general rule, and

⁶ IRFA, *Further Notice* Appendix C, ¶ 9.

⁷ *Id.*, ¶ 9.

⁸ *Id.*, ¶ 11.

⁹ *Id.*, ¶ 12.

¹⁰*Id.*, ¶ 14.

would limit the Commission’s ability to implement small-entity exceptions that would be meaningful for truly small entities.

NRECA urges the Commission instead to adopt a more appropriate size threshold applicable to broadband providers subject to the *Further Notice*, including rural electric cooperative broadband providers. NRECA respectfully proposes that the Commission should adopt a size threshold of 100,000 broadband customers (all broadband affiliates included) for a broadband provider to be considered a “small entity” for purposes of the *Further Notice*.¹¹

III. CONCLUSION

The new obligations would impose a significant and costly regulatory burden on electric cooperative and other small providers which promise to play a key role in addressing the digital divide, and whose scarce resources are better put elsewhere. If such obligations are adopted, NRECA urges the Commission to exempt “small entity” broadband providers from the proposed requirements, and to exempt rural electric cooperatives which are inherently nondiscriminatory by their very nature.

Respectfully submitted,

National Rural Electric Cooperative Association

By: /s/ Greg Orlando

Greg Orlando
Regulatory Affairs Director | Broadband and
Telecommunications
National Rural Electric Cooperative Association
4301 Wilson Blvd.

¹¹ Virtually all rural electric cooperatives would fall within the “small entity” threshold NRECA proposes above (*i.e.*, fewer than 100,000 subscribers). Such a small entity exemption thus would address NRECA’s concerns similar to an exemption specific to electric cooperatives.

Arlington, VA 22203
703-907-6531
greg.orlando@nreca.coop

Of Counsel:
Casey Lide
Thomas B. Magee
Keller and Heckman LLP
1001 G Street NW, Suite 500 West
Washington, DC 20001
202-434-4100
lide@khlaw.com
magee@khlaw.com

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