

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

In the Matter of:)	
)	
Establishing the Digital Opportunity Data Collection)	WC Docket No. 19-195
)	
Modernizing the FCC Form 477 Data Program)	WC Docket No. 11-10
)	

To: The Commission

**COMMENTS OF
THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

The National Rural Electric Cooperative Association (“NRECA”) hereby submits these Comments in response to the Second Report and Order and Third Further Notice of Proposed Rulemaking requesting comment on the establishment of the Digital Opportunity Data Collection and modernizing the FCC Form 477 Data Program.¹

INTRODUCTION

NRECA is the national service organization for more than 900 not-for-profit rural electric cooperatives that provide electric energy to approximately 42 million people in 48 states or approximately 12 percent of electric customers, including 327 of the nation's 353 "persistent poverty counties" (93%). Of the 42 million Americans served by cooperatives, an estimated 4 million live in persistent poverty counties. Rural electric cooperatives serve 88% of the counties of the United States. Rural electric cooperatives were formed to provide safe, reliable electric service to their member-owners at the lowest reasonable cost. Rural electric cooperatives are

¹ *Establishing the Digital Opportunity Data Collection; Modernizing the Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking (adopted Jul. 16, 2020) (*Second Data Collection Order and Third FNPRM*).

dedicated to improving the communities in which they serve; 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

NRECA and its members are intensely interested in the deployment of advanced telecommunications capabilities within the rural communities and areas in which electric cooperatives provide electric service.³ In many of our members' communities, incumbent service providers do not offer fixed broadband service that meets the current fixed broadband benchmark of 25 Mbps download and 3 Mbps upload. NRECA estimates about 6.3 million households in electric co-op service areas lack high-speed internet access.⁴ These rural families and businesses are fighting an uphill battle in the digital economy. Research shows that a lack of rural broadband to those unserved co-op households leads to \$68 billion in lost economic value over 20 years.⁵ This reality has prompted many electric cooperatives to undertake the investments and commit the resources to deploy fixed broadband services within these communities. Over 150 NRECA members provide fixed broadband service today, deploying fiber-based, fixed wireless or combined fiber and fixed wireless technologies. In total, thirty-two co-ops won thirty-five CAF

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.

³ NRECA and its members are focused principally on fixed broadband service.

⁴ NRECA Fact Sheet, "Electric Co-ops Part of Expanded Rural Broadband Solution," January 2019, available at https://www.cooperative.com/programs-services/government-relations/regulatory-issues/Documents/Fact%20Sheet_Broadband.pdf.

⁵ See "Unlocking the Value of Broadband for Electric Cooperative Consumer-Members," NRECA Business & Technology Report, September 2018, available at: https://www.cooperative.com/programs-services/bts/Documents/Reports/Unlocking-the-Value-of-Broadband-for-Co-op-Consumer-Members_Sept_2018.pdf (last visited Dec. 20, 2018).

II bids in fifteen states worth \$254,720,764.50 over ten years to bring broadband to 86,716 locations in 15 states.

We reasonably believe electric cooperative participation would have been higher, but for the FCC's approach to designating areas eligible for the auction. The FCC relies solely on FCC Form 477 data to determine broadband service availability, finding Census blocks with any service available as ineligible.⁶ Accordingly, NRECA has a strong interest in developing a systematic, broadband mapping approach that discloses either actual or planned broadband locations, principally in rural areas.

DISCUSSION

NRECA commends the Commission on its continued efforts to gather more granular broadband deployment data to better understand “where broadband is available, and where it is not.”⁷ As the Commission takes its next steps in establishing the processes for the Digital Opportunity Data Collection (the “Collection”), NRECA supports a thorough collection of data. NRECA also emphasizes the need for both a robust verification process and a robust challenge process. As stated in previous filings, “NRECA firmly supports all efforts made by the Commission to develop a more complete and accurate depiction of broadband availability, especially in rural areas.”⁸

⁶ See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform -- Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and/or FNPRM*).

⁷ *Second Data Collection Order and Third FNPRM*, at para. 1.

⁸ Comments of NRECA, *Establishing the Digital Opportunity Data Collection; Modernizing the Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Report and Order and Second Further Notice of Proposed Rulemaking (filed Sep. 23, 2019) (“NRECA Comments”), at 4.

Information Subject to Collection. In order to ensure that the data collection provides an accurate depiction of coverage, NRECA believes that the information collected must be granular and thorough. In the *Third FNPRM*, the Commission sought comment on “excluding from the Digital Opportunity Data Collection business-only service and instead requiring only a distinction between ‘residential-only’ and ‘business-and-residential’ services by fixed providers.”⁹ NRECA recommends the Commission require service providers to report data on residential and small business customers to which the service provider offers Broadband Internet Access Service (BIAS).¹⁰ The concept of BIAS is central to the Commission’s implementation of the Transparency Rule adopted in the *RIF Order*,¹¹ providing an established framework for broadband reporting.

Regarding Multi-Tenant Environments (MTEs), NRECA supports the approach used in the CAF context, in which a residential location is based on the definition of a housing unit.¹² NRECA supports each unit in a building being assigned a unique identifier. While it is unlikely that a provider would not offer service to all the units in an MTE, considering each unit as a unique broadband serviceable location would allow for the most granular depiction of broadband availability. Each residential unit represents a prospective broadband customer. Similarly, because it would be rare that a provider not to extend service to all units in an MTE, it is unlikely that this requirement would create an undue burden.

⁹ *Second Data Collection Order and Third FNPRM*, at para. 90.

¹⁰ BIAS is defined as a “mass-market retail service” delivered by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints. *Restoring Internet Freedom Order*, 33 FCC Rcd. 311 (2018) (*RIF Order*), para. 21. The concept of mass market pertains to services sold and marketed “on a standardized basis to residential customers, small businesses, and other end-user customers such as schools and libraries.” *Id.* at para. 21, n. 58.

¹¹ 47 C.F.R. § 8.1.

¹² *Id.*, at para. 171.

NRECA believes a binary response on latency should be required. Fixed broadband services providers should be obligated to advise whether their services meet the RDOF Phase I auction low latency metric of ≤ 100 milliseconds.¹³ As the Commission reduces the low latency metric in connection with future auctions, such as the RDOF Phase II auction, that threshold should be reported either in lieu of or in addition to ≤ 100 milliseconds.

Verification. As stated in its previous comments, “NRECA strongly supports crowdsourcing information as a method of verifying data submitted by service providers. Allowing public input will result in a more accurate depiction of coverage because it ensures that the data provided by service providers is aligned with reality.”¹⁴ In the *Second Data Collection Order*, the Commission provides that it “should initiate inquiries when a ‘critical mass of’ crowdsourced filings suggest that a provider has submitted inaccurate or incomplete data.” While NRECA supports this approach, NRECA also believes that more weight should be given to certain sources when determining if a “critical mass” has been reached. For example, certain states have their own broadband availability databases.¹⁵ If a state provides information that conflicts with information submitted by a provider, this alone should constitute the “critical mass” needed to prompt an inquiry.

In addition to crowdsourced information, NRECA strongly supports requirements for providers to submit, with their broadband availability data, the basis for their data. The Commission proposes requiring mobile providers to submit a certification of the accuracy of their submissions from a qualified engineer.¹⁶ NRECA supports this proposal but recommends

¹³ *Rural Digital Opportunity Fund, Connect America Fund, Order*, 35 FCC Rcd 686, (2020), para. 29.

¹⁴ NRECA Comments, at 5.

¹⁵ See e.g., the Georgia Broadband Deployment Initiative, available at: <https://broadband.georgia.gov/maps> (last visited Sep. 3, 2020).

¹⁶ *Second Data Collection Order and Third FNPRM*, at para. 111.

requiring fixed broadband providers to include an engineer’s report regarding the methodology used to determine the providers advertised speeds. Because providers should be basing their advertised speeds on their network design and underlying technologies, providing the methodology for determining the advertised speeds should not be burdensome. Further, NRECA believes the only way to truly prove an advertised speed is through a speed test. NRECA understands that requiring a provider to submit speed test data for every location would be unduly burdensome. Instead, NRECA proposes requiring providers to submit speed test data for a sample of their service areas for the respective technologies that they rely upon. That is, separate data should be provided for their fixed wireless, fiber optic, or cable-based facilities. As the Commission explains, “[t]he Mobility Fund Phase II Investigation Staff Report recommended that the Commission require providers to ‘submit sufficient actual speed test data sampling that verifies the accuracy of the propagation model used to generate the coverage maps. Actual speed test data is critical to validating the models used to generate the maps.’”¹⁷ Requiring fixed broadband providers to submit speed test data sampling to verify advertised speeds would not be unduly burdensome.

Challenge Process. NRECA recommends adoption of a robust challenge process. NRECA supports the consumer challenge process proposed by the Commission, as well as a challenge process for governmental and other entities.¹⁸ Specifically, NRECA supports a process that allows third party entities to participate in a meaningful way. NRECA’s members have a deep knowledge of their service areas, providing them with a unique ability to contribute to the challenge process if there is reason to dispute availability data submitted by the local service provider(s). NRECA understands the need for challenges to accurately identify the locations in

¹⁷ *Id.*, at para. 105.

¹⁸ *See generally id.*, at paras. 129-164.

question, especially when decisions allocating federal funds are being made. However, NRECA does not support a requirement for challenges to provide individual location-specific data when a larger service area is at issue. In these contexts, a challenger should be able to submit aggregated data or shapefiles.

Regarding response time, NRECA recognizes the need to resolve challenges as efficiently as possible. The Commission proposes a 30-day response time for providers to respond after being notified of a challenge.¹⁹ In most cases, this should be sufficient time; however, there may be circumstances that warrant a longer response time. For example, if a provider receives a challenge that covers a significantly large number of locations or if a provider receives multiples challenges at the same time. To ensure that providers are able to respond, NRECA proposes a “sliding scale” response time, which would allow a provider more time to respond for a challenge that covers more locations.

The Commission sought comment on whether the burden of proof in the challenge process should rest on the challenger.²⁰ NRECA supports the obligation that persons filing a challenge provide a reasonable basis for the challenge. While the initial showing should rest on the challenger, the ability to submit data demonstrating its service meets the reported speeds lies uniquely with the service provider. For this reason, NRECA recommends that once a challenger raises a legitimate challenge or question regarding the reported service availability, the burden should shift to the provider to demonstrate the challenge is unfounded. This would provide the relevant information in the most efficient manner for resolution. NRECA supports the “preponderance of the evidence” standard in resolving disputes.²¹

¹⁹ *Id.*, at para. 136.

²⁰ *Id.*, at para. 138.

²¹ *Id.*

Finally, NRECA does not see merit in maintaining the Form 477 reporting obligation beyond implementation of the new reporting rules. The data derived from the Form 477 do not reflect actual broadband availability within a geographic area. Its utility, in light of the more granular data that the proposed reporting and data collection processes will generate, is not apparent.

Conclusion

NRECA respectfully requests the Commission move forward with the adoption of the proposed broadband data reporting and challenge processes consistent with the views expressed herein, thereby taking meaningful steps to provide a more accurate picture of broadband service availability, particularly fixed broadband service in rural areas.

Respectfully submitted,

National Rural Electric Cooperative Association

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