

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Establishing the Digital Opportunity Data Collection)	WC Docket No. 19-195
)	
Professional Engineer Certification in the Broadband Data Collection Process)	

**REPLY COMMENTS OF
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION
(NRECA)**

The National Rural Electric Cooperative Association (NRECA) submits these Reply Comments in support of the Petition for Extension of Waiver (“Petition”) jointly submitted by the Competitive Carriers Association (“CCA”) and USTelecom – The Broadband Association (“USTelecom”) in the above-captioned docket.¹ In a Declaratory Ruling and Limited Waiver released in July 2022, the Commission temporarily waived “the requirement that Broadband Data Collection (BDC) filings be verified by a licensed Professional Engineer (PE), thus allowing BDC submissions to be certified by an otherwise qualified engineer who does not hold the PE credential.”² The Petition seeks extension of the waiver for three additional BDC data filing cycles.

¹ Petition for Extension of Waiver of Competitive Carriers Association and USTelecom – The Broadband Association, WC Docket No. 19-195 (filed August 4, 2023)(“Petition”); *Comments Sought on Petition for Extension of Waiver of the Requirement for a Certified Professional Engineer to Certify Broadband Data Collection Availability Data*, Public Notice, WC Docket No. 19-195 (rel. August 11, 2023) (“Public Notice”).

² *Establishing the Digital Opportunity Data Collection; Competitive Carriers Association Petition for Declaratory Ruling or Limited Waiver Regarding the Requirement for a Certified Professional Engineer to*

I. INTRODUCTION

The certified PE requirement is unnecessary, and creates a significant hardship for smaller ISPs in particular. NRECA supports the Comments of Rural Electric Cooperatives Providing Broadband, and urges the Commission to grant the Petition to extend the waiver, if not adopt a permanent waiver.³ NRECA also supports the Comments of NTCA—The Rural Broadband Association, urging the Commission to adopt a waiver applicable to smaller ISPs (those reporting the ability to serve fewer than 100,000 locations nationwide).⁴

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 88% of the counties of the United States, including 327 of the nation’s 353 “persistent poverty counties,” which is 92% of these persistent poverty counties. All of NRECA’s member distribution cooperatives are small business entities as classified by the Small Business Administration.

NRECA and our member electric cooperatives fully support efforts to improve the granularity, accuracy, and veracity of the Broadband Data Collection (“BDC”) process. Faulty and misrepresented data impairs the ability of the Commission and other policymakers to address the digital divide, with potentially longstanding detrimental effects for locations improperly represented. It is imperative that the data be as accurate as possible.

Certify Broadband Data Collection Maps, WC Docket No. 19-195, Declaratory Ruling and Limited Waiver, DA 22-733 (July 8, 2022) (“*BDC Limited Waiver*”).

³ See Comments of Rural Electric Cooperatives Providing Broadband, WC Docket No. 19-195, September 1, 2023.

⁴ See Comments of NTCA—The Rural Broadband Association, WC Docket No 19-195, September 1, 2023, at p.4.

NRECA recognizes the FCC’s desire to protect the integrity of the BDC process by requiring the data to be certified by a certified PE. As further explained below, however, it is not clear that involvement of a certified PE – as opposed to a “qualified” PE – will meaningfully improve the accuracy of BDC data. It is certain, though, that a certified PE requirement will impose a burdensome expense on many, particularly smaller, ISPs by requiring them to procure a PE stamp for each of their semi-annual BDC filings, apparently forever. Without the waiver, an ISP whose qualified network engineer (or team) has diligently and accurately produced BDC data about the network they know and live with every day, would need to (a) locate and (b) pay for, a certified PE to look over their shoulder and stamp their BDC submission every six months.

Accordingly, NRECA urges the Commission to consider the following action in response to the Petition:

- Make permanent the current waiver of the requirement in Section 1.7004(d) that BDC data must be certified by a “certified PE,” and enable certification by a “qualified engineer.”
- If a general permanent waiver is infeasible, adopt a permanent waiver applicable to smaller ISPs (those with fewer than 100,000 subscribers).⁵
- Alternatively, grant the waiver extension request for the next three BDC filing cycles, as requested in the Petition.

Regardless of the Commission’s action to extend or make the waiver permanent, the Commission should continue to implement other measures to improve the accuracy of BDC data. NRECA suggests that the Commission should focus on periodic audits, along with increased scrutiny of ISPs with high rates of inaccuracy. Increased monitoring by the Commission, followed by prompt and direct enforcement against bad actors, will be far more effective to ensure BDC accuracy than relying on assurances associated with a certified PE stamp.

⁵ Comments of NTCA—The Rural Broadband Association, *supra*, at p. 4.

II. DISCUSSION

A. Allowing Otherwise-Qualified Engineers to Certify BDC Data Will Satisfy the Policy Objectives of Section 1.7004(d)

Section 1.7004(d) provides, in pertinent part:

All providers also shall submit a certification of the accuracy of its submissions by a qualified engineer. The engineering certification shall state that the certified professional engineer or corporate engineering officer is employed by the provider and has direct knowledge of, or responsibility for, the generation of the provider's Digital Opportunity Data Collection filing. If a corporate officer is also an engineer and has the requisite knowledge required under the Broadband DATA Act, a provider may submit a single certification that fulfills both requirements. The certified professional engineer or corporate engineering officer shall certify that he or she has examined the information contained in the submission....⁶

Section 1.7004(d)'s requirement that all BDC submissions must be certified by a certified PE was adopted "to ensure that filers have engaged in the analysis necessary to meet Congress's objective of developing more accurate broadband coverage data."⁷ It is worth noting that this requirement was created by the Commission, not Congress: the Broadband DATA Act only required certification by a "corporate officer." The Commission's rule goes well beyond the requirements of the statute, and implicitly assumes that only the involvement of a certified professional engineer, or an engineer who is also a corporate officer, will ensure the accuracy of reported mapping data.

The rule also states that a corporate officer who is also an engineer can file a single corporate officer certification and engineering certification. Tellingly, the *BDC Limited Waiver* clarified that a corporate engineering officer may certify the submission even if they are not a

⁶ 47 CFR § 1.7004(d).

⁷ *Public Notice; Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Third Report and Order, 36 FCC Rcd 1126, 1145, para. 45 (2021) (*Third Order*).

certified PE.⁸ That determination suggests that the certified PE requirement is not that important after all, and that there is little reason to maintain it.

While a certified PE does have an increased level of professional responsibility and accountability to the state licensing board, it does not follow that the data will be more accurate, especially in the case of an ISP that is forced to retain an outside certified PE because they do not have one on staff. Issues with BDC data accuracy stem from a variety of causes, but so far, at least, a lack of engineering skill has not proven to be a meaningful problem.

The Commission properly determined in the *BDC Limited Waiver* that a BDC filing could be certified by an engineer meeting certain qualifications, if not licensed by the state as a PE.⁹ Allowing otherwise-qualified engineers to certify BDC filings ensures that the filer has “engaged in the analysis necessary to meet Congress’s objective of developing more accurate broadband coverage data,”¹⁰ while also acknowledging the real-world challenges associated with procuring the services of a certified PE for such a specialized exercise as broadband mapping.

B. A Certified PE Requirement is Overly Burdensome for Smaller ISPs

Certified PEs that have experience relevant to broadband network mapping are not readily found. Smaller ISPs in particular might not employ a certified PE, and may not have a qualified corporate engineering officer. As the Rural Electric Cooperative Group noted, “PE certification may be commonplace for engineering projects concerning health and safety, [but] it is not commonplace in the broadband industry, and licensed PEs are not readily available to rural America.”¹¹ The Commission correctly granted the BDC Limited Waiver in part because of “the

⁸ *BDC Limited Waiver*, at para. 6.

⁹ *Id.*, at para. 19.

¹⁰ *Third Order*, para. 45.

¹¹ *See* Comments of Rural Electric Cooperative Group, p. 4.

extent and degree to which there are an insufficient number of certified PEs with relevant experience.”¹²

It is common for a broadband network engineering professional to have acquired a broad range of certifications and qualifications over their career, but licensure as a “professional engineer” by the state licensing board may well not be among them. Without the waiver, many smaller ISPs will be required to retain the services of an outside certified professional engineer to stamp the work of the ISP’s in-house professionals, on a semi-annual basis, with no end in sight. Locating such certified engineers is challenging, and their services are costly.

The significant challenges and added expense borne by ISPs would perhaps be justifiable if there were no other option to ensure a requisite level of analysis for BDC filings, but the waiver period has proven that a reasonable alternative exists: ISPs should be permitted to file BDC data that is certified by an otherwise-qualified engineer.

NRECA urges the Commission to clarify that, for purposes of Section 1.7004(d), “certified engineer” includes an “otherwise qualified engineer,” and to otherwise cause the 2022 limited waiver to be universal and permanent. At a minimum, however, the Commission should apply the waiver to smaller ISPs.

C. Other Means Exist to Ensure BDC Accuracy

As noted, NRECA strongly supports the Commission’s efforts to ensure the accuracy of BDC data filings. Requiring the involvement of a certified PE is of marginal value, but the Commission has other much more effective tools by which to ensure BDC data accuracy.

¹² *BDC Limited Waiver*, at para. 15.

The most obvious of the checks and balances in the BDC process is the fact that BDC data can be challenged. If the provider is unable to substantiate their claim against a credible challenge, the data is corrected.

The Commission could also institute a random or periodic audit requirement, subjecting a sample BDC filers to independent verification from time to time. ISPs that report highly inaccurate BDC data (perhaps a 20% deviation from the independent audit), could be subject to closer scrutiny for a period of time, along with other disincentives. In the event of willfully false or reckless reporting, the Commission can and should refer the filer to the Enforcement Bureau.

III. CONCLUSION

For the foregoing reasons, the Commission should grant CCA and USTelecom's Petition, and should consider granting a permanent waiver of its requirement that BDC submissions be certified by a state-licensed professional engineer. Alternatively, the Commission should grant a permanent waiver applicable only to smaller ISPs.

/s/ Brian M. O'Hara
Brian M. O'Hara
Senior Director Regulatory Issues Broadband &
Telecommunications
National Rural Electric Cooperative Association
4301 Wilson Blvd. Arlington, VA 22203
703-907-5798
brian.ohara@nreca.coop

Filed: September 11, 2023