

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

In the Matter of:)
)
Universal Service Contribution Methodology) **WC Docket No. 06-122**

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

The National Rural Electric Cooperative Association (“NRECA”) hereby submits its Comments in response to the Notice of Proposed Rulemaking (“NPRM”) adopted by the Commission in the above referenced proceeding¹ in which an overall cap on Universal Service Fund (“USF”) program funding is proposed. As discussed below, NRECA believes setting an overall cap on USF expenditures is premature due to the lack of reasonably verifiable data on residential and small business locations at which fixed broadband service is not available at the 25Mbps/3Mbps benchmark (“unserved locations”).

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

¹ *In the Matter of Universal Service Contribution Methodology*, Notice of Proposed Rulemaking, WC Docket No. 06-122, released May 31, 2019 (“NPRM”). The date for filing Comments was extended to July 29, 2019. *In the Matter of Universal Service Contribution Methodology*, Order, WC Docket No. 06-122, DA-19-628 (rel. July 5, 2019).

service to their member-owners at the lowest reasonable cost. Rural electric cooperatives are 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 communities and areas in which electric cooperatives provide electric service because in many instances local service providers are not meeting the broadband service needs of their communities. This interest is shared by almost every generation and transmission (“G&T”) and distribution cooperative in the country. Many cooperatives are considering, planning or have already made investments and committed the resources to deploy fixed broadband networks and to provide broadband service within their electric service territories.³

DISCUSSION

A. It is Premature to Set a High Cost Program or Overall USF Budget Cap When the Demand for High Cost Support Is Not Reasonably Established Due to Flaws in Existing Data Collection Methodologies

The NPRM appropriately identifies the importance of balancing the impact of USF

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 “FCC Approves \$225 million for 35 Electric Cooperatives to Provide Rural Broadband,” August 28, 2018, <https://www.electric.coop/fcc-approves-220-million-33-electric-cooperatives-provide-rural-broadband/> (thirty-five electric cooperatives submitted winning bids in the FCC’s CAF II reverse auction).

contribution obligations of telecommunications providers and, indirectly, their end-user customers, and meeting the Commission’s public interest obligations associated with the four USF programs: High Cost, Lifeline, Schools and Libraries Fund (E-rate), and Rural Health Care. On the other hand, the NPRM frames the discussion of the USF programs’ revenue requirements in terms of USAC budget projections without regard to whether the projected funding requirements for the four USF programs have been appropriately developed, vetted, and adopted by the Commission. For the High Cost program, the Commission, the National Telecommunications Information Administration (NTIA), and Congress recognize that the Commission’s current methodology for determining unserved locations is seriously flawed and requires substantial revision. Preliminary assessments by industry groups and leading technology companies underscore the likelihood that the extent of unserved locations (residences and small businesses not obtaining fixed broadband at the 25/3 Mbps benchmark) is much higher than those upon which the current High Cost program are based.

The manner in which the NPRM frames the balancing of reasonable contribution obligations and USF program expenditures is too limiting. In recent years, the Commission has expressed its commitment to “bridging the digital divide” in countless decisions and reports.⁴ While it is not realistic to argue there should be no limit on USF funding to accomplish this goal, it is equally unrealistic to begin to assess a High Cost program funding cap when the data on unserved locations is so very incomplete.

The substantial understatement of unserved locations is widely recognized. In the Consolidated Appropriations Act of 2018, Congress directed NITA “to update the national

⁴ See e.g., *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2018 Broadband Deployment Report, GN Docket No. 17-199, FCC 18-10, para 79 (rel. Feb. 2, 2018) (“While more Americans than ever before have access to advanced telecommunications capability, we remain committed to closing the digital divide.”)

broadband availability map in connection with the FCC and state resources,” so that there could be an agreed upon basis for determining the extent of unserved areas. In initiating these efforts, NTIA properly observed that the existing broadband reporting mechanism—the FCC Form 477—elicited responses from services providers that inevitably resulted in overstatements of broadband availability based on the reporting requirement that if one location in a Census block is served, the entire Census block is deemed served.⁵ This flaw in the Form 477 data was built into and provided the basis for including and excluding census blocks from the CAF II reverse auction.⁶

In summarizing the recent Georgia Broadband Deployment Initiative study that focused on three rural counties in Georgia, USTelecom provides current data demonstrating how the Form 477 data substantially overstates broadband availability:⁷ summing results for small census blocks and larger census blocks (2+ miles), “the overall average percent of the locations actually unserved in CBs marked as “served” was 36%.”⁸ This conclusion corresponds to reports from local media in other rural areas that reported Form 477 data on broadband availability do not reflect the reality of fixed broadband speeds available in rural communities.⁹

⁵ Request for Public Comment on Actions to be Taken to Improve the Quality and Accuracy of Broadband Availability Data, Particularly in Rural Areas. 83 Fed. Reg. 24747, 24748 (May 30, 2018). (“A provider offering service to any homes or businesses in a Census block is instructed to report that block as served in its Form 477 filing, even though it may not offer broadband services throughout most of the block. This can lead to overstatements in the level of broadband availability, especially in rural areas where Census blocks are large.”)

⁶ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5959, 5969, para. 59 (“Certified Form 477 data that indicate an area is served or unserved will supersede the conclusions reached in the Phase II challenge process that the Bureau conducted for the offer of model-based support”).

⁷ Letter from Mike Saperstein, Vice President, Public Policy and Advocacy, USTelecom, to Marlene Dortch, Secretary, FCC, WC 19-126, June 24, 2019.

⁸ *Id.* at p. 2.

⁹ See e.g., Sam Bloch, *The FCC says all of Iowa has access to broadband internet. Speed tests tell a different story*, New Food Economy, June 20, 2018 <https://newfoodeconomy.org/rural-iowa-broadband-data-fcc/> (analysis of

More granular, accurate data and mapping also should better depict the extent of network redundancy in rural areas that is routinely “built into” urban area and major interstate networks. This data subset could and should be evaluated to determine the extent to which supplemental support for network redundancy should be made available for rural areas.

Recognizing these challenges, the Commission instituted a proceeding to improve the collection of data for purposes of updating and improving information its data collection processes for determining served and unserved locations for targeting USF support.¹⁰ There is widespread recognition regarding the drawbacks of the current FCC Form 477 data and significant improvements in the data collection and verification process are long overdue and warranted.¹¹ Achievable improvements in broadband mapping, focused on identifying unserved locations supported by a crowdsourced-based challenge process were presented to the Commission.¹² Consistent with the “voluminous amount” of recommendations and data submitted in response to the *Modernizing Form 477 FNPRM*, the Chairman circulated a draft item for consideration at the Commission’s August 1, 2019, Open Meeting to substantially update the broadband service reporting and mapping obligations of broadband services providers and proposing crowdsourcing to verify reported data noting “[i]t has become increasingly clear

internet speeds in some rural Iowa counties were well below what the FCC’s broadband map released in December 2017 and updated in February 2018 foreclosing these areas from the CAF II auction).

¹⁰ *Modernizing the Form 477 Data Program*, WC Docket no. 11-10, Further Notice of Proposed Rulemaking, 32 FCC Red 6329 (2017). (“*Form 477 Modernization FNPRM*”).

¹¹ See e.g., Letter from Michael R. Romano, Senior Vice President-Industry Affairs and Business Development, NTCA; The Rural Broadband Association, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90; WC Docket No. 11-10, April 30, 2019 (emphasizing the need for granularity and accuracy and importance of a well-conceived challenge process to improve data on unserved locations upon which USF support should be based);

¹² Letter from B. Lynn Follansbee, Vice President, Public Policy and Advocacy, USTelecom on behalf of the Broadband Mapping Coalition, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90; WC Docket No. 11-10, WC 19-126, July 1, 2019 (preliminary results from a pilot project in the State of Missouri indicate that compared the 2011 census bureau data of residential structure counts used in the Connect America cost model for price carriers and units identified in the Broadband Serviceable Location Fabric (BSLF) (developed by the Broadband Mapping Coalition) disclosed that the 2011 structure/location counts used for CAF are now likely incorrect as compared to the 2019 BSLF count in more than 60% of the census blocks under the limited results in the Missouri pilot project).

that the fixed mobile and data collected on the Form 477 are not sufficient to support the specific imperative [of targeted support for USF programs] of our USF policy goals.”¹³

Independent studies support the view that the extent of unserved locations may noticeably exceed estimates derived from the Form 477 Reports. Relying on the FCC’s Industry Analysis Subscription Data, Pew Research data, and its analyses of broadband connections in the United States, Microsoft Corporation concludes that 162.8 million people are not using the Internet at broadband speeds, noting significant discrepancies in almost all counties in all states between its data and the FCC’s reported data from the December 2016 Form 477 Reports.¹⁴ A recent study on broadband speeds in rural Pennsylvania counties conducted by Pennsylvania State University, relying on 11 million broadband speed tests, concluded that Commission maps depicting the availability of fixed broadband at 25/3 Mbps likely substantially overstates broadband availability in Pennsylvania’s rural counties.¹⁵

Even if the Microsoft Assessment does not account for winning bids in the CAF II auction and the Penn State Study questions whether the high latency in ViaSat’s satellite-based broadband services is a viable broadband option,¹⁶ these reports, the virtually unanimous agreement among parties responding to the *Form 477 Modernization FNPRM*, and the *Draft Data Collection R&O* confirm the current Form 477 data overstates broadband availability in rural America. If an improved data collection program reveals the digital divide to be broader

¹³ Draft *Digital Opportunity Data Collection*, Report and Order and Second Further Notice of Proposed Rulemaking, FCCCIRC 1908-02 at para.10 available at <https://www.fcc.gov/document/fcc-announces-tentative-agenda-august-open-meeting-5> (*Draft Data Collection R&O*).

¹⁴ John Kahan, Chief Data Analytics Officer, *It’s Time for a New Approach for Mapping Broadband Data to Better Serve Americas*, Microsoft on the Issues, (April 8, 2019) (“Microsoft Assessment”).

¹⁵ Sascha D. Meinrath, Palmer Chair in Telecommunications, Pennsylvania State University, *Broadband Availability and Access in Rural Pennsylvania*, Center for Rural Pennsylvania (June 2019) https://www.rural.palegislature.us/broadband/Broadband_Availability_and_Access_in_Rural_Pennsylvania_2019_Report.pdf. (“Penn State Study”).

¹⁶ *Id.*, at pp. 25-27.

than current estimates in the future, as is generally expected, a cap based on current Form 477 data could limit funding available to the FCC to adequately address the rural broadband access gap. At this time, capping the High Cost program directly or indirectly through an overall cap on USF program expenditures is woefully premature, if not arbitrary and capricious.

B. Members of Congress Are Concerned Broadband Availability in Rural Areas is Significantly Overstated

Members of Congress have been vocal about the need to improve broadband availability data, placing their positions on the record through legislation, hearings, and proposed amendments to legislation. Senator Roger Wicker (R-MS), Chair of the Senate Commerce Committee, introduced the Broadband Deployment Accuracy and Technological Availability (“DATA”) Act.¹⁷ If enacted, this bill would require the FCC to issue rules that would allow for the collection of “granular data” relating to broadband availability “that the Commission shall use to compile maps that depict the availability[.]”¹⁸ Additionally, this bill proposes a challenge process “through which consumers, State, local, and Tribal governmental entities, and other entities may submit coverage data to the Commission to challenge the coverage maps.”¹⁹

In the House of Representatives, the Leading Infrastructure For Tomorrow’s (“LIFT”) America Act, a comprehensive infrastructure bill, contains provisions requiring the Commission to implement a process for making an “initial determination” on whether an area or anchor institution is served or unserved based on the National Broadband Availability Map and other data available to the Commission.²⁰ In making the initial determination, the bill specifically

¹⁷ Broadband Deployment Accuracy and Technological Availability Act, S. 1822, 116th Congress (2019).

¹⁸ *Id.*, at § 3(a).

¹⁹ *Id.*, at § 3(b)(4).

²⁰ *See* Leading Infrastructure for Tomorrow’s America Act, H.R. 2741, 116th Congress (2019), at § 14(c)(3).

states that the Commission shall “not determine an area is not an unserved area or an underserved area on the basis that one location within such area does not meet the definition of an unserved area or an underserved area.”²¹ Similar to the Broadband DATA Act, the LIFT America Act contains a process for challenging initial determinations.

On May 22, 2019, the House Energy and Commerce Committee held a hearing to consider the LIFT America Act. At the Hearing, Committee Members agreed that broadband funding was needed, but many called for more accurate broadband mapping to determine how to allocate funding.²² In her testimony at the hearing, former FCC Commissioner Mignon Clyburn emphasized the importance of updating the FCC Form 477 to reform broadband availability maps.²³ Similar calls were made at the Senate Commerce Committee’s FCC Oversight Hearing held on June 12, 2019. In his Opening Statement, Chairman Wicker stated: “In previous hearings, we have discussed how inaccurate maps have contributed to the persistent broadband gap.”²⁴ Both hearings show that the Members of the Committees with jurisdiction over the Commission have significant concerns with current broadband availability reporting and the resulting coverage maps.

The concerns with current broadband reporting and the possibility of a cap on USF were a major point of emphasis in the amendment process for H.R. 3351, the comprehensive appropriations bill, which passed the House of Representatives on June 26, 2019. The first

²¹ *Id.*, at §14(c)(3)

²² Lift America: Modernizing Our Infrastructure For The Future: Hearing Before the Full Committee On Energy and Commerce (2019) (available at: <https://energycommerce.house.gov/committee-activity/hearings/full-committee-hearing-on-lift-america-modernizing-our-infrastructure>).

²³ *Id.* (Testimony of Ms. Mignon Clyburn).

²⁴ Oversight of the Federal Communications Commission: Hearing Before the Committee on Commerce, Science, and Transportation (2019) (available at: <https://www.commerce.senate.gov/public/index.cfm/hearings?ID=AE64FD09-95B1-407D-8A87-8CBEE10665A4>) (Statement of Senator Roger Wicker).

amendment offered, which was adopted by Voice Vote, “Prohibits the Federal Communications Committee from finalizing the proposed rule ‘Universal Service Contribution Methodology,’ which would impose a cap on the Universal Service Fund and allow the sub-caps of USF programs to be combined.”²⁵ The bill has been referred to the Senate, and if it passes with no changes to this language, the Commission will be prohibited from placing a budget cap on USF expenditures.

²⁵ Fiscal Year 2020 Financial Services & General Government Appropriations Bill, H.R. 3351, 116th Congress (2019), Section 901.

CONCLUSION

With so many open questions regarding the extent of unserved locations, the higher potential demand or requirements for USF support to accomplish the national goal of universal broadband access cannot be reasonably determined for at least several years. Any decision to cap the High Cost program or USF expenditures generally should be deferred until the revised reporting and mapping obligations outlined in the *Draft Data Collection R&O* take effect and the reported data are compiled, establishing a far more accurate and granular description of the unserved locations in rural areas.

Respectfully submitted,
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