

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**REPLIES TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION  
OF  
NTCA–THE RURAL BROADBAND ASSOCIATION**

**I. INTRODUCTION**

NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> hereby submits these Replies to Oppositions to Petitions of Reconsideration of the Report and Order in the above-captioned proceedings.<sup>2</sup> Specifically, NTCA supports those petitioners who requested that the Commission reconsider or clarify, as applicable: (a) its decision to use a 5 Mbps download

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<sup>1</sup> NTCA represents approximately 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 NTCA service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

<sup>2</sup> In the Matter of Connect America Fund, WC Docket No. 10-90, Universal Service Reform – Mobility Fund, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking (Rel. March 7, 2017) (“Order”).

threshold for Mobility Fund Phase II (“MF II”) eligibility;<sup>3</sup> (b) its Letter of Credit requirements;<sup>4</sup> (c) its decision to require collocation for all towers in MF II funded areas;<sup>5</sup> and (d) whether service offered by a provider collocated on a tower built by a recipient of universal service support is actually “unsubsidized” competition.<sup>6</sup>

## **II. THE COMMISSION SHOULD RECONSIDER ITS DECISION TO USE A 5 Mbps SPEED BENCHMARK FOR DETERMINING GEOGRAPHIC AREA ELIGIBILITY**

The Commission has a legal obligation to ensure that the MF II program meets its statutory objective of providing rural consumers with access to mobile wireless broadband services “that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”<sup>7</sup> But even as the Commission determined that it would compel delivery of 10/1 service to consumers by support recipients, the Commission adopted a policy to disqualify support in areas where a would-be “unsubsidized competitor” provides half that speed. The Commission justified a 5 Mbps download speed threshold for eliminating funding because “nationwide carriers . . . are generally reporting the deployment of 4G LTE reported at minimum advertised

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<sup>3</sup> See, Petitions for Reconsideration of Rural Wireless Association, Inc. (“RWA”), Blooston Rural Carriers, Rural Wireless Carriers, and Panhandle Telephone Cooperative, Inc., *et.al.*.

<sup>4</sup> See, Petitions for Reconsideration of Blooston Rural Carriers, Rural Wireless Carriers and Buffalo-Lake Erie Wireless Systems, LLC.

<sup>5</sup> See, Petitions for Reconsideration of the Blooston Rural Carriers, and Rural Wireless Association, Inc,

<sup>6</sup> See, Petition of Rural Wireless Carriers.

<sup>7</sup> 47 U.S.C. § 254(b)(3).

download speeds of at least 5 Mbps”<sup>8</sup> and because it has a limited budget that it determined should be targeted “to [areas] where it is most needed.”<sup>9</sup>

The Commission is therefore eliminating funding not because a carrier is offering reasonably comparable service – what the Commission deems the basic level of universal service – in an area, but rather because “sub-universal service levels” of service are already offered by larger providers in parts of rural America. But the whole point of this exercise – and the underlying requirement of law – is to determine which consumers and which areas already have “reasonably comparable” service and target support to those areas that do not. The Commission cannot logically on the one hand decide that a certain service is “reasonably comparable” for purposes of providing support but then on the other hand decide that the availability of a lesser service that by definition is *not* reasonably comparable is sufficient to deny support. This approach would relegate consumers and businesses across potentially wide swaths of rural America to a Commission-acknowledged and sanctioned substandard level of service, in clear defiance of statutory objectives.<sup>10</sup>

Moreover, a limited budget does not excuse the Commission from the mandates of the Communications Act. As RWA points out “this disqualification [of support in areas receiving 5Mbps] will (at best) maintain the status quo in the ineligible area and could actually reduce

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<sup>8</sup> Order at ¶ 51.

<sup>9</sup> *Id.*

<sup>10</sup> Similarly, contrary to assertions of TMobile, the Commission should retain its MF II recipient build out 10/1 Mbps and 100 ms data latency performance requirements to ensure that rural Americans have access to LTE services that are reasonably comparable to those provided in urban areas.

service choice and quality.”<sup>11</sup> It is arbitrary for the Commission to conclude that areas receiving an inferior level of service should not be eligible for support needed to upgrade networks so that consumers can receive services that are in fact reasonably comparable to those in urban areas.<sup>12</sup> In fact, just as in the wireline context, it strains, if not violates, the statutory requirement for sufficiency in high-cost universal service programs to build policies around not what is admittedly required to achieve reasonable comparability, but rather merely to squeeze support figures within an arbitrary budget. NTCA therefore agrees with Petitioners that the Commission should reconsider its 5 Mbps speed benchmark and replace it with a 10 Mbps benchmark for use in determining geographic area eligibility for MF II support.

### **III. THE COMMISSION SHOULD RECONSIDER ITS DECISION TO MAINTAIN LETTER OF CREDIT REQUIREMENTS**

NTCA supports petitioners who request that the Commission ease onerous Letter of Credit (LOC) requirements.<sup>13</sup> While the Commission expanded the number of financial institutions that can furnish a LOC, the burden of the LOC requirement still “goes against the Commission’s own goal of maximizing the amount of MF-II funding applied to actual provision

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<sup>11</sup> Petition of RWA, p. 3.

<sup>12</sup> The Commission rejected measuring mobile broadband deployment according a 5/1 speed finding that the speeds are not sufficient “for uses that require high speeds, such as video calls, streaming media and real-time educational courses,” *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Development Pursuant to section 706 of the Telecommunications Act of 1996*, 2016 Broadband Progress Report 31 FCC Rcd 699, ¶58 (2016).

<sup>13</sup> See, Petitions of Blooston Rural Carriers, Rural Wireless Carriers.

of service.”<sup>14</sup> In particular, Petitioners accurately point out that the costs of complying with the LOC requirement can be extraordinary. The Rural Wireless Carriers state that it cost U.S. Cellular over \$1 million to obtain conforming LOCs for its 27 winning bids in Auction 901.<sup>15</sup> Indeed, according to Buffalo-Lake Erie Wireless Systems, LLC, small carriers are required to put a significant capital, up to 100 percent of the guarantee, to obtain a LOC.”<sup>16</sup> NTCA acknowledges that the Commission is correct in asserting bidders can incorporate the LOC costs when determining their bids,<sup>17</sup> but the requirement requires small providers to artificially inflate their bids, which in turn further limits the reach of limited MF II funding and hinders small providers’ ability to compete and succeed as low bidders.

While it is important to hold winners accountable in their use of support, petitioners are aware of no instance in which the Commission was required to resort to drawing upon a letter of credit in any auction. As the Blooston Rural Carriers point out, “rural telephone companies have a decades long record of successfully using Federal support to implement telecommunications services in difficult-to-serve, low population density areas, without default.”<sup>18</sup> The Commission should therefore modify the LOC requirements as requested by Petitioners, or in the alternative, exempt established rural telephone companies from the LOC requirement

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<sup>14</sup> Petition of Blooston Rural Carriers at 5.

<sup>15</sup> Petition of Rural Wireless Carriers, p. 22.

<sup>16</sup> Petition of Buffalo-Lake Erie Wireless, p. 2.

<sup>17</sup> Order at ¶ 167

<sup>18</sup> Petition of Blooston Rural Carriers at 6.

#### **IV. THE COMMISSION SHOULD RECONSIDER OR CLARIFY THE COLLOCATION RULE**

The Commission should reconsider its decision or otherwise clarify that the MF II collocation requirement applies only to newly constructed towers in the funding area.<sup>19</sup> In the Order, the Commission asserted that it adopted the same collocation requirement for MF II recipients as it did for the Mobility Fund Phase I (“MF I”), with certain minor, non-substantive changes.<sup>20</sup> However, the collocation rule in the MF I program expressly required collocation for “all newly constructed towers that the recipient owns or manages” in the area it receives support.<sup>21</sup> By contrast, in the Order, the Commission expanded this requirement, declaring that collocation is required for *all* towers that the support recipient owns or manages.<sup>22</sup>

Requiring collocation for all towers, rather than just newly constructed towers is not a minor, non-substantive change. It would extend collocation obligations for the first time to towers that were built and maintained without support. The rule adopted in the Order was substantially different from what was proposed, and no interested party could have anticipated that the Commission was considering a substantial change to the collocation requirements – even the Commission appears by its claim that the change was non-substantive does not appear to have intended a broader change. Petitioners point out the procedural and legal deficiencies in the

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<sup>19</sup> See, Petitions of RWA and Blooston Rural Carriers.

<sup>20</sup> Order at ¶102.

<sup>21</sup> 47 C.F.R. §54.1006(d).

<sup>22</sup> Order at ¶99.

Commission's action.<sup>23</sup> The Commission should reconsider its decision or clarify that it did not intend to substantially expand the collocation requirement and the collocation requirement only applies to newly constructed towers.

**V. THE COMMISSION SHOULD CLARIFY THAT SERVICE OFFERED BY A PROVIDER COLLOCATED ON A TOWER BUILT BY A RECIPIENT OF UNIVERSAL SERVICE SUPPORT IS NOT “UNSUBSIDIZED COMPETITION”**

NTCA supports reconsideration or clarification to confirm that unsubsidized competition does not exist where a would-be unsubsidized provider offers service to subscribers via collocation on a subsidized provider's tower. As the Rural Wireless Carriers explain, constructing a tower in a remote location is time consuming and expensive.<sup>24</sup> Another provider collocating an antenna on that tower may rent space on the tower, but it incurs none of the substantial construction costs. The Commission's apparent rationale for denying support for an area where another provider can construct facilities in an area without support fails if the other provider has not, in fact, constructed facilities.

Competitive entry by collocation is, as the Rural Wireless Carriers accurately describe it, “subsidized competition, because the newcomer would probably never go through what the subsidized carrier went through to initiate service without support”<sup>25</sup> The Commission should make clear that only when a competitor builds a tower that provides overlapping coverage without support for doing so should an area be declared competitive and ineligible for MF II.

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<sup>23</sup> Petitions of Blooston Rural Carriers, pp. 8-9, and RWA, pp 15-19.

<sup>24</sup> See Petition of Rural Wireless Carriers, p. 20 (“the costs sometimes run as high as \$1 million”).

<sup>25</sup> *Id.* pp 20-12.

## VI. CONCLUSION

NTCA supports petitioners who requested that the Commission reconsider or clarify, as applicable: (a) its decision to use a 5 Mbps download threshold for Mobility Fund Phase II (“MF II”) eligibility; (b) its Letter of Credit requirements (c) its decision to require collocation for all towers in MF II funded areas; and (d) whether service offered by a provider collocated on a tower built by a recipient of universal service support is actually “unsubsidized” competition.

Respectfully submitted,



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