

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Protecting and Promoting the Open Internet ) GN Docket No. 14-28

**REPLY COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.**

The Rural Wireless Association, Inc. (“RWA”),<sup>1</sup> hereby replies to the comments filed in response to the Consumer and Governmental Affairs Bureau’s (“Bureau”) *Public Notice*<sup>2</sup> requesting comment on whether the enhancements to the transparency rule adopted by the Federal Communications Commission (“FCC” or “Commission”) in its *2015 Open Internet Order*<sup>3</sup> raise compliance burden concerns that warrant making permanent the temporary exemption for providers “with 100,000 or fewer broadband subscribers as per their most recent Form 477, aggregated over all the providers’ affiliates.”<sup>4</sup> RWA strongly supports the unanimous record supporting a permanent exemption for small businesses of 100,000 or fewer broadband connections. Specifically, RWA agrees with other commenters that the new

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<sup>1</sup> RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve rural consumers and those consumers traveling to rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RWA’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RWA’s member companies serves fewer than 100,000 subscribers.

<sup>2</sup> *Consumer and Governmental Affairs Bureau Seeks Comment on Small Business Exemption from Open Internet Enhanced Transparency Requirements*, GN Docket No. 14-28, Public Notice, DA 15-731 (rel. June 22, 2015) (“*Public Notice*”).

<sup>3</sup> *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015) (“*2015 Open Internet Order*”).

<sup>4</sup> See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, paras. 154-181 (rel. Mar. 12, 2015) (*2015 Open Internet Order*) (emphasizing that all providers of broadband Internet access service, including small providers, remain subject to the transparency rule adopted in 2010).

disclosure requirements are in no respect “modest in nature,”<sup>5</sup> but rather impose significant cost burdens on mobile broadband providers that outweigh any benefits to customers of smaller providers.<sup>6</sup>

## DISCUSSION

Like many commenters, RWA’s members support the principles of the open Internet in their provision of broadband service to all of their customers.<sup>7</sup> However, as the record demonstrates, small and rural mobile broadband providers, like RWA’s members, face significant constraints and serve small numbers of customers spread over large service territories using very limited resources. Accordingly, the Commission should not subject all broadband providers to the full magnitude of the enhanced transparency rule. RWA shares concerns raised by several commenters about the cost and resource burdens related to Commission’s enhanced requirements pertaining to network performance characteristics, network management practices, and means of disclosure.<sup>8</sup> RWA maintains that these cost and resource concerns are constant and warrant making the temporary exemption for small businesses permanent.

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<sup>5</sup> *2015 Open Internet Order* at 5678.

<sup>6</sup> See e.g., *In the Matter of Protecting and Promoting the Open Internet*, Comments of The Wireless Internet Service Providers Association, GN Docket No. 14-28, at pp. iii, 3-4 (Aug. 5, 2015) (“*WISPA Comments*”).

<sup>7</sup> *In the Matter of Protecting and Promoting the Open Internet*, Comments of CTIA – The Wireless Association, GN Docket No. 14-28, at p. 2 (“*CTIA Comments*”); see also *In the Matter of Protecting and Promoting the Open Internet*, Comments of WTA – Advocates for Rural Broadband, GN Docket No. 14-28, at p. 2; *In the Matter of Protecting and Promoting the Open Internet*, Comments of The Rural Broadband Provider Coalition, GN Docket No. 14-28, at p. 8 (“*Rural Broadband Provider Coalition Comments*”).

<sup>8</sup> *Rural Broadband Provider Coalition Comments* at pp. 6-10; *WISPA Comments* at pp. 3-5, 9; see also *In the Matter of Protecting and Promoting the Open Internet*, Comments of The Small Rural Carriers, GN Docket No. 14-28, at pp. 4-6 (“*Small Rural Carrier Comments*”); *In the Matter of Protecting and Promoting the Open Internet*, Comments of The United States Telecom Association, GN Docket No. 14-28, at pp. 6-8.

**I. Small and Rural Broadband Providers are Not Similarly Situated to Large and/or Nationwide Broadband Providers and are Constrained by Limited Resources.**

RWA agrees with the Rural Broadband Provider Coalition’s point that small and rural broadband providers take a different business approach than large and/or nationwide broadband providers.<sup>9</sup> Unlike large or national broadband providers, rural providers are located in the very same communities that they serve, and their business decisions are directly influenced by community need, not solely by profit. Customer service is always a top priority. Small and rural broadband providers like RWA’s members are primarily focused on overcoming challenging terrain and fierce weather conditions to serve small pockets of customers that are spread out in rural and remote areas. Their mission is to offer vital communications links to consumers who live, work and travel in rural and remote areas that other providers decline to serve.

Further, RWA members lack the market power enjoyed by the largest broadband providers and simply would be unable to frustrate the open Internet experience on their networks. The Open Internet record has established that small and rural providers lack the leverage to interfere with edge providers such as Netflix, Amazon or Hulu.<sup>10</sup> RWA agrees with the Rural Broadband Provider Coalition that it is simply “not in the interest of small and rural providers that are seeking to grow their businesses and compete against larger providers to block, throttle or otherwise degrade their customers’ broadband connections for any purpose beyond reasonable network management.”<sup>11</sup>

Most significantly, small and rural providers have very limited financial and personnel

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<sup>9</sup> *Rural Broadband Provider Coalition Comments* at pp. 4-5.

<sup>10</sup> Matthew M. Polka, American Cable Association, *FCC Must Address Harm to Small and Medium-Sized ISPs from Title II Regulation* (Feb. 9, 2015), <http://americancable.org/node/5189>; Letter from Barbara S. Esbin, Counsel to American Cable Association, to Marlene H. Dortch, FCC, GN Docket Nos. 14-28 & 10-127 at 3-4 (filed Feb. 2, 2015), <http://apps.fcc.gov/ecfs/document/view?id=60001025667>.

<sup>11</sup> *Rural Broadband Provider Coalition Comments* at p. 5.

resources at their disposal. RWA agrees with the Rural Broadband Provider Coalition that, if small and rural providers are subject to the enhanced transparency disclosure requirements, “then their already-strained resources would be devoted to new regulatory and administrative costs in the form of new equipment and software, additional staff and/or staff training for new monitoring and reporting capabilities, and legal and consulting fees, among other things.”<sup>12</sup> Customers in the rural and remote areas served by these providers would benefit most if those resources were instead expended toward deploying new broadband facilities to bring service to unserved locations or to upgrading facilities in underserved locations.

In particular, RWA agrees with the Small Rural Carriers that requiring small and rural providers to provide disclosures as they relate to geographic area is an untenable and costly endeavor.<sup>13</sup> Small and rural broadband service providers cover large areas characterized by difficult terrain and low population density, and these areas are hardly uniform. The requirement to disclose performance characteristic data “reasonably related to the performance the consumer would likely experience in the geographic area in which the consumer is purchasing service” could potentially require these small carriers to analyze network performance on a far more granular level than currently required – and at significant cost.

RWA agrees with CTIA that a lack of personnel resources is a serious issue.<sup>14</sup> RWA’s members each have a limited number of employees that already manage heavy and diverse workloads. Collecting additional data is a technically difficult and time-consuming process, requiring significant resources that smaller providers simply do not have. Adding to their already substantial workload could divert important resources that would otherwise be used to

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<sup>12</sup> *Id.*

<sup>13</sup> *Small Rural Carrier Comments* at pp. 4-6.

<sup>14</sup> *CTIA Comments* at p. 11.

ensure the optimum performance of providers' networks. The enhanced disclosure requirements would further constrain these limited resources or force small and rural providers to add new staff to their payrolls with no corresponding revenues.

## **II. A Permanent Exemption Would Eliminate Regulatory Uncertainty and Promote More Beneficial Uses of Limited Resources.**

RWA agrees with the overwhelming majority of commenters that the small business exemption should be made permanent. In particular, RWA agrees with NTCA that the low threshold of benefits, coupled with the increased costs, supports making the exemption permanent.<sup>15</sup> RWA supports the Rural Broadband Provider Coalition's conclusion that "[w]ithout a permanent small business exemption, the enhanced transparency rule will require small and rural broadband providers to invest significant money, time, resources, and personnel (including engineers, network and IT managers, consultants, attorneys, and marketing and customer service staff, among others) toward the development and implementation of costly new programs and systems."<sup>16</sup>

RWA agrees with CTIA that the enhanced disclosures place significant burdens on smaller providers that will not be eased over time.<sup>17</sup> The need for additional staff and associated expenses will not be eliminated or reduced because the enhanced transparency requirements include ongoing obligations; compliance cannot be completed at a specific point in time. Similarly, there will be continuing costs for inspecting, maintaining, and recalibrating test equipment. No amount of time or transition period will allow smaller providers to efficiently absorb the burdens of the enhanced disclosures. RWA agrees that a one-time, temporary

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<sup>15</sup> *In the Matter of Protecting and Promoting the Open Internet*, Comments of NTCA – The Rural Broadband Association, GN Docket No. 14-28, at pp. 12-13

<sup>16</sup> *Rural Broadband Provider Coalition Comments* at pp. 10.

<sup>17</sup> *CTIA Comments* at 16-17.

extension of the exemption would only promote regulatory uncertainty and postpone the inevitable burden unless it is accompanied by an influx of revenue to implement necessary systems and infrastructure.<sup>18</sup>

Finally, RWA agrees with the Small Rural Carriers that making the exemption permanent will allow small and rural broadband providers to focus their resources on providing the high-quality broadband that is so necessary for economic development and public safety in rural areas. In the *Public Notice*, the Bureau asks whether the reduction of compliance burdens for small carriers will benefit consumers in the areas they serve. RWA urges the Commission to make the exemption permanent so that RWA members and other small and rural carriers will be able to continue using their limited resources on what really matters: deploying affordable, high quality broadband services in rural areas.

Respectfully submitted,

**RURAL WIRELESS ASSOCIATION, INC.**

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<sup>18</sup> *Rural Broadband Provider Coalition Comments* at pp. 10.