

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

In the Matter of )  
 )  
 ) WC Docket No. 16-106  
Protecting the Privacy of Customers of )  
Broadband and Other Telecommunications )  
Services )

**ERRATA TO  
JOINT COMMENTS OF THE EDUCATION AND RESEARCH CONSORTIUM  
OF THE WESTERN CAROLINAS, INC., ANZA ELECTRIC COOPERATIVE, INC., AND  
NORTH GEORGIA NETWORK COOPERATIVE, INC.**

On May 27, 2016 the Education and Research Consortium of the Western Carolinas, Inc. (“ERC Broadband”), Anza Electric Cooperative, Inc., and North Georgia Network Cooperative, Inc. (collectively, “Rural Non-Profits”) filed joint comments in this docket. The description of ERC Broadband on pages 1-2 of the Rural Non-Profits’ Comments erroneously stated that ERC Broadband had received funding from the GoldenLEAF Foundation. It should have referenced the Western North Carolina Regional Economic Development Commission. The paragraph has been rewritten to correct the error in the attached version.

May 28, 2016

Respectfully submitted,



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(Errata corrections to pages 1-2 dated May 28)**

The Education and Research Consortium of the Western Carolinas, Inc. (“ERC Broadband”), Anza Electric Cooperative, Inc. (“Anza”), and North Georgia Network Cooperative, Inc. (“NGN”) (collectively, “Rural Non-Profits”) file these joint comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding. The Rural Non-Profits support the principles of customer privacy and protecting customer data. However, as further explained in this filing, due to small staff and limited budgets, some of the Commission’s proposed rules would impose significant burdens on small providers like the Rural Non-Profits that would outweigh the benefits to their customers. Therefore, the Rural Non-Profits request the Commission to adopt rule modifications and exemptions for small providers from certain of the more onerous requirements, as explained below.

**I. BACKGROUND ABOUT ERC BROADBAND, NGN AND ANZA**

**a. ERC Broadband**

ERC Broadband is a non-profit, middle-mile network owner and operator that was formed in 1997 at the behest of then Congressman Charles H. Taylor and regional college presidents in rural, western North Carolina who envisioned the need for fiber optic infrastructure to ensure public, private and non-profit concerns and community anchor institutions could obtain the same level of broadband access available in larger cities. ERC Broadband began its network via a grant from the

Library of Congress that supported the construction of 17 miles of fiber optic cable. Over the years, ERC Broadband has constructed additional fiber, expanded services and furthered its mission to bring the Internet to rural western North Carolina and to improve educational, economic, healthcare, and quality-of-life programs in the region predominately through the reinvestment of profits but also with grants from the National Telecommunications and Information Administration's Broadband Technology Opportunity Program and the Western North Carolina Regional Economic Development Commission. The fiber optic network now extends over 900-miles and serves about 175 governmental agencies, non-profit hospitals and healthcare agencies, schools, community and private colleges and universities, research institutions, non-profits, and some small businesses.

ERC Broadband operates with a 4 person board of directors and an operational staff of only 10 employees. ERC Broadband does not offer retail services to individual homes. Its customer base is largely comprised of institutions which are more sophisticated users of services than those served by the typical mass market retail provider. ERC Broadband provides an array of Internet-based services as well as dark fiber and collocation services, but only a very small portion of ERC Broadband's customer base (less than 15%) takes a standardized service offering which would appear to fit in the definition of "Broadband Internet access service" ("BIAS").

**b. North Georgia Network Cooperative**

NGN is a non-profit corporation of rural cooperatives, owned by its members: Habersham Electric Membership Corporation, Blue Ridge Mountain Electric Membership Corporation, and Georgia Communications Cooperative, Inc., dba NGN Connect. NGN began in 2007 with a vision of providing fast, reliable and affordable broadband access to rural Georgian businesses, government facilities, educational institutions, and medical centers. Representatives from the University of North Georgia along with several North Georgia counties initiated a multi-county partnership to build the high-speed infrastructure to improve the region's economic development. NGN has received grant funding from the State of Georgia's broadband investment initiatives, a OneGeorgia Authority

BRIDGE grant, and the first BTOP grant awarded nationwide in 2009 which helped fund the construction of a 1,100 mile fiber optic network across eight counties. Today, NGN owns and operates a regional fiber optic system with over 1,600 miles of fiber optic infrastructure.

While NGN focuses on network deployment and strategic partnerships with neighboring rural broadband networks to further expand the speed and capacity of its network, broadband and other services are offered through NGN's three member cooperatives and through value added service providers. Two of NGN's members, Habersham Electric Membership Corporation and Blue Ridge Mountain Electric Membership Corporation, are electric cooperatives that each serve about 34,000 electric customers, and have added fiber-to-the-home and fiber-to-the-premise services to their service offerings. The third member, NGN Connect, was formed specifically to offer services to areas not already covered by the two existing electric cooperative members.

Services offered include mass market broadband that would fall within the definition of BIAS, as well as other services such as dark fiber, wavelengths, Ethernet, and collocation. Today NGN's three members collectively provide fiber optic services to approximately 6,000 residential customers and 2,000 schools, hospitals, government institutions and businesses customers. NGN and each of its members has its own board of directors, and small staff, in some instances with the same persons serving multiple roles within the various organizations. NGN operates with a staff of about 25, while the electric cooperatives each has a staff about 100 persons who have learned new skill sets and taken on new responsibilities in order to manage and operate the fiber optic services business.

**c. Anza Electric Cooperative**

Anza was established in 1951 to provide electric distribution service with about 700 miles of electric lines in a 500 square mile rural and mountainous area of southern California where it serves several small and dispersed unincorporated communities and the Cahuilla Band of Mission Indians, the Ramona Band of Cahuilla Indians, and the Santa Rosa Band of Mission Indians, comprising approximately 3,900 homes, schools, and businesses and 20 irrigation loads. In 2015, the cooperative

members voted overwhelmingly to expand Anza's mission to construct a fiber optic network and provide fiber optic services, including residential and business broadband that would fall within the definition of BIAS, Voice Over IP service and other similar services in its service territory. Anza is now in the process of rapidly deploying a state-of-the-art fiber optic network with significant financial support coming from a California Advanced Services Fund grant awarded by the California Public Utilities Commission to fund the deployment of broadband infrastructure in unserved and underserved areas, as well as reinvested profits from the electric service business. While most customers will be served with fiber-to-the-premises, Anza deploys some hybrid fiber and wireless solutions to reach customers in some more remote areas. Anza currently has approximately 100 broadband customers and anticipates upon full build out being able to offer services to all homes, businesses, and institutions within its existing service area footprint. Anza operates with a 7 person board of directors, and an operational staff of 21 employees, of which about 3 employees are allocated to work exclusively on the fiber optic business.

**II. The Rural Non-Profits Support Reasonable Rules for Protection of Customer Privacy and Data Security with Appropriate Exemptions for Small Providers**

The Rural Non-Profits strongly support the principles of customer privacy and protecting customer data. We know these issues are important to our customers. As local non-profit providers with close ties to the community (for the cooperatives their customers are their owners), being sensitive to customer needs and concerns is an integral part of our management culture. We strive to provide dependable, affordable, and secure services and to give the community an overarching confidence in our ability to serve them well.

However, as small entities with limited staff and budgets, we are also sensitive to controlling costs because significant potential costs required to comply with certain proposed rules would be passed onto our customers, which would hamper our mission to provide services at a low cost to rural communities. The Commission has recognized that some of the rules may be burdensome to

small providers and has expressed a willingness to consider some exemptions, but the proposed rules contain only one actual exemption (Proposed Rule 64.7006(c) which exempts all providers from reporting certain smaller security breaches to the FBI and Secret Service). Thus, our comments and suggestions focus on how the Commission might craft the rules in ways that exempt small providers from more burdensome requirements without compromising the overall goal of establishing adequate rules to protect customer privacy and customer PI. We also comment on what would be an appropriate definition of small provider.

### **III. The Rural Non-Profits Generally Support Commission Efforts to Harmonize Rules, Establish Standard Disclosures and Create Safe Harbors**

Different privacy-related rules have developed over time for discrete services (e.g., for cable, for telephone including VOIP, and now in this rulemaking for broadband), and for discrete activities such as the CAN-SPAM Act for marketing messages, and the Telephone Consumer Protection Act (TCPA) for telemarketing calls. Compliance with multiple, different regulatory requirements can be challenging for small providers who lack full-time, in-house regulatory and legal compliance staff. Thus, the Rural Non-Profits urge the Commission to look for ways to harmonize its proposed rules with existing regulations, provided that harmonized rules are not unduly burdensome and contain appropriate exemptions for small providers. To the extent the Commission can develop small entity compliance guides and template notices to assist with staff training and implementation, that would also be very valuable to small providers such as the Rural Non-Profits.

### **IV. The Rural Non-Profits Believe “Small Provider” Should be Defined as BIAS Providers Serving Less Than 15,000 Customers**

For purposes of the proposed rules, the Commission should define a “small provider” as a BIAS provider with a network serving less than 15,000 customers. This proposed standard is similar to the Commission’s definition of a “small system” which is a cable system serving 15,000 or fewer

subscribers.<sup>1</sup> We think this is an appropriate benchmark and we note it is a significantly lower threshold than the 400,000 customer benchmark established by the Commission for a “small cable company” and which it applied to exempt providers from compliance with the “enhanced transparency requirements” under the Commission’s Open Internet Order.<sup>2</sup> Wherever we discuss small provider exemptions in the remainder of this filing, we are referring to the 15,000 customer threshold.

**V. The Rural Non-Profits Support the Following Rule Changes and Exemptions for Small Providers**

a. The Commission Should Adopt a Small Provider Limited Exemption from the Requirement to Advise of and Provide Customers With Opt In and Opt Out Mechanisms in Proposed Rule 64.7001

The Rural Non-Profits support the principle that BIAS providers should have a privacy policy and notify customers of changes to it. However, we urge the Commission to adopt a small provider exemption from the requirement in Proposed Rule 64.7001(a)(2) to advise customers of opt-out and opt-in rights to the extent an exemption is needed consistent with our request below that small providers be exempt from the opt-out and opt-in requirements in Proposed Rule 64.7002. We also believe that it should be adequate to make the privacy notice available on the BIAS provider’s homepage, and that the point of sale requirements in Proposed Rule 64.7001(b)(1) should be optional for small providers.

b. The Commission Should Broaden What is Covered by “Inferred” Consent for Customers of Small Providers; Adopt a Small Provider Exemption from Corresponding Customer Opt Out/Opt In Requirements, and An Exemption for Aggregate Customer PI Requirements in Proposed Rule 64.7002

This proposed rule would limit the way providers use customer information by requiring customer opt-in and opt-out approvals for use and disclosure of such information for certain purposes. The proposed rule also specifies certain “inferred” purposes for which customer

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<sup>1</sup> 47 C.F.R. § 76.901(c).

<sup>2</sup> *In the Matter of Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (FCC 2015).

information may be used by providers that do not require any affirmative customer approval. It would also allow BIAS providers to use, disclose, and permit access to aggregate customer PI, other than for the purpose of providing BIAS and for services necessary to, or used in, the provision of BIAS, if providers satisfy a four-prong test.

The Rural Non-Profits are not set up for the type of detailed tracking and managing of customer opt-out and opt-in approvals being proposed, and without an exemption, would likely have to make investments in software and systems that could impose substantial costs on them which would far outweigh the benefit to customers. The benefit to customers of an elaborate opt-out and opt-in tracking system would be limited for several reasons. First, the Rural Non-Profits' use and disclosure of customer data typically falls within the purposes for which customer approval is "inferred" under the proposed rules. This means their customers would not benefit from having to bear the costs of setting up an administrative infrastructure of opt-ins and opt-outs for something that they don't do.

Second, when small providers such as the Rural Non-Profits do use, disclose or provide access to third parties that goes beyond what the Commission has proposed to define as covered by "inferred" consent, it is usually for the limited purpose of allowing third parties, including affiliates and strategic partners, to provide *communications-related services* that add value for customers and information about those communications-related services. In other words, it tends to be disclosures and uses that would be covered by the opt-out requirements. In some instances the opt-in requirements may also be triggered such as when the disclosure is to a non-affiliate strategic partner who provides communications-related services. Information about value-added communications-related services is particularly beneficial to rural customers whose options for services and providers are typically limited. Thus, the Rural Non-Profits believe it would be reasonable and appropriate to assume that customers of small providers have provided "inferred" approval for small providers to

use themselves, and to disclose, or provide access to customer data to affiliates and strategic partners for the purposes of marketing or provision of any communications-related service.

To the extent customers do not want these marketing activities, small providers and others already must comply with certain opt-out requirements for commercial messages due to the CAN-SPAM Act and must comply with telemarketing laws. These laws would provide adequate protection and thus creating a separate opt-out requirement and mechanism for small providers' customers for marketing communications-related services, to the extent it is different than existing regulatory obligations, would seem an unnecessary burden on small providers of little practical benefit to their customers.

Hence, the Rural Non-Profits encourage the Commission to modify the definitions and adopt an exemption so that a small provider's use, disclosure, or provision of access to customer data for the purpose of marketing or providing *any communications-related service* by the small provider, its affiliates or any third party strategic partner, is an activity for which customer consent is "inferred" under Proposed Rule 64.7002(a). And further, the Rural Non-Profits urge the Commission to adopt a small provider exemption from the opt-out and opt-in requirements in Proposed Rule 64.7002(e) and (f) to the extent consistent with the change in the definition of inferred consent. Related to this adjustment/exemption, we request the Commission to exempt small providers from the requirement in Proposed Rule 64.7001 to advise of and provide customers with opt-in and opt-out mechanisms, so long as the small provider is not doing anything beyond what is covered by the customers' inferred consent (such as disclosing customer information to third parties for marketing non-communications-related services or for other purposes that are unrelated to communications services). For purposes of efficiency, we also urge the Commission to allow small providers to grandfather in approvals they have already obtained from customers.

Consistent with the above, the Rural Non-Profits also urge the Commission to provide an exemption from Proposed Rule 64.7002(g) that would allow small providers to disclose aggregate

customer proprietary information for the purpose of providing or marketing any communications-related service. Small providers would face significant burdens if they had to continually monitor contracts and verify that aggregated customer proprietary information is not reasonably linkable to a specific individual. Simply put, these requirements are too onerous on small providers who do not have the staff, resources, or institutional capacity to comply with them.

c. The Commission Should Adopt a Small Provider Exemption from Certain Written Notice and Recordkeeping Requirements in Proposed Rule 64.7003

This proposed rule would require providers to implement a system to document and track the status of customer approvals, and train personnel regarding the use or disclosure of customer information.

As described earlier in these comments, today the Rural Non-Profits do not disclose to third parties or allow third parties to access their customers' Customer PI except in very limited circumstances which we have asked to be included in an expanded category of disclosures for which small providers have "inferred consent" from their customers. Therefore, rather than requiring small providers to implement elaborate recordkeeping procedures and mechanisms, the Rural Non-Profits request that the Commission adopt a small provider exemption from recordkeeping requirements in Proposed Rule 64.7003 for disclosures which only involve information for which the small provider has inferred consent.

Consistent with the requests for modifications/exemptions to the opt-in and opt-out requirements noted earlier, the Rural Non-Profits also request the Commission to adopt a small provider exemption from the requirement in Proposed Rule 64.7003(e), to provide written notice to the Commission within five days of the discovery of improperly-working opt-out mechanisms, or the use, disclosure, or permission of access to customer data subject to opt-in approval requirements without first obtaining opt-in approval.

d. The Commission Should Adopt a Small Provider Exemption from Certain Data Security Requirements in Proposed Rule 64.7005 and Should Not Require Small Providers to Take Responsibility for a Third Party's Misuse of Customer Data

This proposed rule would require providers to protect the security and confidentiality of customer proprietary information by adopting security practices calibrated to the nature and scope of the provider's activities, the sensitivity of the underlying data, and technical feasibility, including risk assessments, training personnel, and establishing customer authentication procedures.

The Rural Non-Profits seek clarification regarding whether Proposed Rule 64.7005(a)(3) would require providers to hire a senior manager to serve that specific role or whether the requirement can be satisfied simply by designating an appropriate person with that responsibility. Clarification is needed because small providers have limited staff, budgets and resources and each of their employees often is called upon to perform multiple types of tasks that in larger organizations would be handled by separate employees or even separate departments. Small providers also do not have multiple layers of management and would have few "senior management officials".

The Rural Non-Profits also urge the Commission not to require small providers to "take responsibility" for the use of customer data by third parties with whom they share such information. Requiring small providers to take responsibility would place a significant burden on small providers, given their limited resources and budgets and the significant damages that could result from a third party's misuse of information (at no fault of the small provider). Imposing this type of risk on small providers who cannot afford to take on the added costs and potential liability may force small providers to stop sharing information with third parties, which would be harmful to their customers as it would potentially slow the spread of broadband and other communications-related services that can benefit their customers.

- e. The Commission Should Exempt Small Providers from Certain Breach Notification Requirements to the Commission, FBI, and Secret Service Under Proposed Rule 64.7006

This proposed rule would require providers to notify customers and the Commission within specified time periods after discovering a breach of customer proprietary information and to keep records of all breaches for at least 2 years. The rule also requires notification of the FBI and the U.S. Secret Service whenever a breach is reasonably believed to have compromised the customer proprietary information of more than 5,000 customers.

The Rural Non-Profits agree it would be advisable to provide some type of notification to their customers of breaches of security and urge the Commission to develop templates for these types of notice requirements. However, the Rural Non-Profits believe that small providers should be exempt from the additional burden of providing notice of breaches to the Commission, FBI, and Secret Service, considering the fact that its members have limited budgets and staff and a small customer bases. Thus we urge the Commission to adopt a small provider exemption from the requirements in Proposed Rule 64.7006(b) and (c).

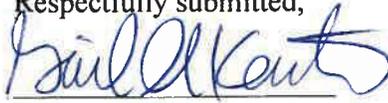
### **CONCLUSION**

The Rural Non-Profits support the need to protect customer privacy and keep customer data secure. However, it is extremely important that the Commission consider the impact of its proposed rules on small providers as many of these providers are the ones driving improved broadband to rural parts of the country. Requiring the Rural Non-Profits to comply with the proposed rules without the requested modifications and exemptions, would divert their limited budgets and small staffs from their principal missions and hamper their ability to continue to make a positive impact in the economic, healthcare, educational, and development of the rural communities they serve in North Carolina, Georgia, and southern California, while providing a negligible benefit to their small, rural customer base.

For these reasons, the Rural Non-Profits respectfully request the Commission to adopt rule modifications and small provider exemptions as explained above.

May 27, 2016

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