

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

In the Matter of)	
)	
Universal Service Gigabit Communities)	RM No. 11703
Race-to-the-Top Program)	
)	
Connect America Fund)	WC Docket No. 10-90

**STATEMENT OF NTCA–THE RURAL BROADBAND ASSOCIATION
REGARDING THE FIBER-TO-THE-HOME COUNCIL PETITION FOR
RULEMAKING**

September 11, 2013

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I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits this statement regarding the Petition for Rulemaking (“Petition”)² filed by the Fiber-to-the-Home Council Americas (“FTTH Council”) in the above-captioned proceeding. The Petition seeks a rulemaking proceeding to establish and implement the Gigabit Communities Race-to-the-Top Program (“Race-to-the-Top Program” or “Program”). The objectives of the Petition are laudable, particularly in highlighting the benefits that future-proof, fiber-based broadband can deliver for communities large and small across the country. If the Program were to proceed, however, its primary focus should be reconfigured to encourage the deployment of sustainable

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.

² *Fiber-to-the-Home Council Americas’ Petition for Rulemaking to Establish a Gigabit Communities Race-to-the-Top Program*, WC Docket No. 10-90, RM 11703 (filed Jul. 23, 2013).

infrastructure that keeps pace with future consumer and business demand, rather than target speeds to be delivered in the short-term.

As context, NTCA members have deployed high-quality broadband services to the vast majority of consumers in their rural service areas. And, yet, much more needs to be done in order to ensure that these networks can evolve at a pace that is reasonably comparable to that which urban area networks will follow. In this regard, the Petition's focus on promoting the availability of high-capacity broadband connections is well-placed and much appreciated.

As presently proposed, however, the Race-to-the-Top Program could generate unintended consequences that undermine the sustainability of broadband networks and potentially undercut the broader success of the operation of the Universal Service Fund ("USF") in high-cost areas. Rather than focus on the specific, short-term delivery of Gigabit-speed *service* without reference to consumer demand or ability to pay, scarce resources would be better aimed at the deployment of Gigabit-*capable* infrastructure that can support evolving broadband demands. As such, NTCA submits the Program, while well-intentioned, would require significant modification before being adopted and undertaken.

Finally, the Petition is incorrect in its assertion that high-cost universal service support may be distributed to entities that have not been designated Eligible Telecommunications Carriers ("ETCs"). Although NTCA agrees that universal service support should be directed toward networks that provide advanced services as well as voice services, Sections 254(b)(7) and 706 cannot contravene the plain language of Section 254(e) which limits support to designated ETCs. Also, both Section 254(e) and Commission precedent are explicit about the role of states in determining and maintaining the eligibility of high-cost support recipients. The Petition does

not demonstrate why states' role in public interest determinations regarding the designation of ETCs, as well as their role in certifying that high-cost support is used as intended, should be eliminated or compromised.

II. THE FIBER-TO-THE-HOME COUNCIL'S FOCUS ON THE NEED FOR ROBUST, FUTURE-PROOF WIRED BROADBAND NETWORKS IS WELCOME AND APPROPRIATE.

NTCA applauds the Petition's focus on high-capacity, wired broadband networks. The Petition notes correctly that "broadband networks are the roads, ports, and highways of the 21st century."³ High-capacity broadband networks – and "future proof" fiber networks that support cutting-edge applications as well as wireless broadband networks – are a catalyst for economic growth and integral to improved healthcare, educational and other opportunities for all Americans.

In rural areas, in particular, fiber-based broadband offers unparalleled opportunities to "conquer distance" by fostering new businesses in remote areas of the nation and creating jobs that might not otherwise materialize.⁴ Broadband can make it possible for rural Americans to take advantage of medical specialists that would otherwise be hours away, improving health and even saving lives.⁵ It can also deliver educational opportunities for K-12, college, continuing education and vocational training students.

³ *Id.*, p. 5.

⁴ See, <http://businessclimate.com/blog/2013/08/broadband-connectivity-and-rural-job-gains/> (stating that broadband connectivity in many rural areas has created a "technology advantage that has allowed a number of entrepreneurial companies to flourish in communities well outside major population centers.").

⁵ See, <http://www.prweb.com/releases/2013/8/prweb11012776.htm> (discussing a University of California at Davis study that found the quality of emergency room pediatric care in rural areas improved

Although NTCA members have made broadband available to the vast majority of their high cost service areas, their task is far from complete. Substantial investment is yet necessary to ensure that broadband networks in rural areas can support evolving bandwidth-intensive applications and services at rates and capacities that are reasonably comparable to those available in urban areas,

The FCC's Household Broadband Speed Guide⁶ reports that speeds of more than 15 Mbps are necessary for advanced applications such as streaming high-definition video and video conferencing for business and telemedicine.. Consumers are adopting these applications at a rapid pace, placing even greater demand on broadband networks.⁷ Therefore, the Commission must ensure that its broadband policies promote the efficient and effective use of universal service support that enables broadband deployment in rural areas.

The Petition's focus on future-proof wireline broadband networks is consistent with the Commission's recognition of limitations that attend mobile wireless broadband services.⁸

when pediatric specialists, which are scarce in rural areas, were able to consult with patients via videoconferencing.).

⁶ Federal Communications Commission, *Household Broadband Speed Guide*, available at <http://www.fcc.gov/guides/household-broadband-guide>.

⁷ See, <http://variety.com/2013/digital/news/netflix-puts-even-more-strain-on-the-internet-1200480561/> (noting that “[a]s streaming video services from Netflix and others push broadband usage through the roof, cable and telco broadband providers are scrambling to add more capacity to their networks to try to stay ahead of demand that shows no sign of slowing. See also, <http://www.usatoday.com/story/tech/personal/2013/01/30/streaming-video-netflix-rebound/1876643/> (noting that “research...shows Netflix in 25% of all homes, up from 20% a year ago.”).

⁸ See, Federal Communications Commission, OBI Technical Paper No. 4: Broadband Performance, pp. 19-21.

Moreover, mobile services rely heavily upon access to the nearest available wireline backhaul.⁹

Robust wireline broadband networks are critical to achieving the Commission’s universal broadband goals, and they likely represent the only way that rural consumers in particular can participate meaningfully in critical aspects of an increasingly Internet Protocol (“IP”)-enabled world. Ensuring that such networks become available and remain viable in rural America cannot, however, be achieved without universal service policies that take careful account of the need for long-term sustainability and affordability of services as offered over those networks.

III. THE NEED TO PROMOTE DEPLOYMENT OF MORE ROBUST FUTURE-PROOF BROADBAND NETWORKS SHOULD NOT BE DISTRACTED BY A NEAR-SINGULAR FOCUS ON “GIGABIT” SPEEDS.

A. The FTTH Petition Does Not Distinguish Between “Services” and “Networks” in Proposing its New Program.

As discussed above, rural areas need robust, high-capacity wireline broadband networks, and the FTTH Council’s efforts to address this imperative are both welcome and appropriate. And, yet, however well-intentioned, the solution suggested by the Petition is not sufficiently tailored to address that problem.

In particular, the Race-to-the-Top Program as proposed would conflate the presence of fiber-optic data transmission facilities within a broadband network with the availability of a Gigabit per second broadband speed at the service level (*i.e.*, to end users). Deploying a Gigabit service to end users, however, requires investment in equipment and electronics (both in the network and often at the consumer premises) above and beyond fiber deployment at the

⁹ In this regard, the Commission must be cautious to recognize the interdependence that wireless carriers have on wireline networks. The mobility provider depends on the wireline provider in its call completion architecture. *Wireless Needs Wires: The Vital Role of Rural Networks in Completing the Call*, Foundation for Rural Service (Mar. 2006).

network level. Whether this additional investment can be justified in any particular instance requires examination of a number of factors, including consumer demand, usage patterns and affordability . The proposed Program, however, does not appear to consider these factors or account fully for the critical distinction between speed at the service level and fiber at the network level.

More appropriate than a focus on speed alone would be an effort aimed at efficient investment in a future-proof (*i.e.*, fiber) networks capable of fulfilling *whatever* speed consumers may demand *both today and then over the life of the network in question* – be that 10 Mbps, 100 Mbps, or a Gig. In straightforward network planning terms, the goal should be to promote construction of the networks that are capable of scaling to meet service demands as they evolve over the next twenty to thirty years, and to then enable deployment of electronics on those future-proof networks as needed to respond to evolving consumer demand for increased speeds. NTCA therefore submits that what is needed is to “get ready for a Gig” by promoting efficient investment in the underlying networks that enable it rather than to “race” to Gigabit services out of the gate.

Indeed, NTCA’s RLEC members report that residential and business customers are demanding greater broadband speeds and industry analysts report that average speeds in use are increasing nationwide. Since universal service policy in an IP-enabled world dictates “reasonable comparability” in broadband services, rural consumers should be able to keep pace with both speed and price as demands evolve. As the FTTH Council highlights, fiber networks provide the most efficient means of achieving these objectives, and their “future-proof” nature also provides the best means of “getting ready for a Gig.” But, at present, there is little demand

among consumers – urban or rural – specifically for Gigabit levels of service, and as the national analyses show, consumers’ actual data usage falls far below such a requirement.¹⁰ Therefore, a more proper focus should be on promoting reasonable and measured investments in fiber (deploying fiber deeper into networks nearer and to customer premises) so that networks stand ready to meet the demand for greater speed as it evolves over time.

Accordingly, while fiber broadband networks should be properly viewed as the most “future-proof” means of responding to evolving consumer demand, this should not be the basis to rush ahead full-steam with “Gigabit networks” at the service level. While a “Gigabit Community” is an impressive headline (and in fact a laudable goal over time), the real goal should be promoting Gigabit *capability* in the underlying networks that can enable this ongoing “natural” evolution to Gigabit communities.

B. USF Programs Should Focus on Leveraging Existing Broadband Networks Where Possible and Promoting Sustainable Network Deployments: Universal Service Policy Should Be Focused Not Just On *Getting* Broadband to Rural Areas, But on *Keeping* it There

As noted above, RLECs have done a commendable job of responding to the needs of their communities, including community anchor institutions (“CAIs”), and have done so in part through the responsible use of high-cost universal service support. The Petition, however, proposes changes that could risk the work that some of these carriers have undertaken to connect residences, businesses and CAIs throughout their sparsely-populated service areas. For example,

¹⁰ Some will inevitably point to Google Fiber as evidence of an unquenchable thirst for Gigabit services. But the “laboratory conditions” under which the Google initiative is being offered – selectively chosen deployments in relatively densely populated areas where concessions are obtained from local governments and only where sufficient numbers of consumers prospectively sign up for the service – hardly counter the fact that consumers otherwise are *evolving* to demand for higher-speed services, rather than “racing to Gigs.”

precisely because it conflates “services” and “networks,” the Program could potentially provide an awardee with funds to “overbuild” existing networks that may already be providing service of 10Mbps or more – some of these existing networks may indeed be all-fiber already, and capable (with a change of electronics) of delivering more than 100 Mbps or even a Gig.

Such overbuilding risks undermining existing service providers, many of whom may have relied upon high-cost USF to support fiber deployments that deliver high-speed broadband already. For example, if a “Race-to-the-Top” awardee can deploy a Gig network in an area where an RLEC is already offering very high-speed broadband, CAIs and their surrounding neighborhoods would be removed from that RLEC’s already limited rural customer base. Such a result would only undermine the sustainability of the RLEC’s operations for its remaining customers and likely increase the RLEC’s reliance on high-cost USF as a result of the loss of customers. In fact, this is not only likely, but the Program as proposed actively promotes it.¹¹ An awardee would thus be free to construct a Gigabit network that serves *only* CAIs (often located in or near small, but densely populated town centers in rural areas) and their surrounding neighborhoods, leaving less profitable sparsely populated areas outside of town centers to the RLEC. This further undermines existing supported networks, and potentially creates rural/rural divides, as those customers furthest from town centers may be relegated to inferior service.

Moreover, the Program as suggested in the Petition may create incentives for potentially unsustainable deployments. In short, the costs of offering Gigabit service may not be

¹¹ Petition, p. 4. (stating that “Under the Program, facilities and service providers, working with local governments, community anchor institutions, and their associated neighborhoods, would apply for Catalyst Funds through proposals to deploy gigabit networks in Tier II and Tier III markets and to provide voice, other telecommunications, and broadband services at reasonable prices *to anchor institutions and surrounding neighborhoods.*”) (emphasis added).

recoverable from end-user customers not in need of, and consequently not willing, or able, to pay for, such capacity. As NTCA has noted time and again, universal service must be about more than “*getting broadband out there,*” it needs to be about “*keeping it there.*” Affordability, which in turn promotes broadband adoption and thus the sustainability of network investments, is a key component of universal service. “Keeping it there” requires a focus on universal service policies that simultaneously serve the goals of both “reasonably comparable” service *and* rates. By contrast, a focus on delivering higher speeds *now* to the near-exclusion of all other considerations could undermine the broader goals of universal service.

The “right of first refusal” contained in the Petition does not cure this flaw. More specifically, the Petition states that it “would enable an incumbent provider in an area to respond when a project application is submitted and give a commitment to...undertake the same or substantially similar project within one year.”¹² This commitment would be unmatched, however, by the universal service support necessary to make that happen. Although a well-intended safeguard, this may create incentives for unsustainable network builds by existing RLECs or cable providers that see little or no option but to “race to a Gig” even if they are already otherwise offering very high-speed services over fiber or DOCSIS systems to end users in the area. Thus, by promoting network builds without keeping in mind whether the costs can be recovered from a limited customer base (due to the rates that must be charged and/or the demand for a Gig), the Program could threaten to leave large number of rural consumers without access to affordable broadband service or could put existing providers in the position of needing to undertake unsustainable, unsupported network deployments just to avoid being overbuilt by a

¹² *Id.*, p. 19.

“Race-To-The-Top” awardee. Accordingly, if the Commission were to choose to move forward with something comparable to this program, it could reconfigure the program as a pilot aimed at leveraging existing networks – that is, helping to “finish fiber” already partway there or helping to upgrade electronics on fiber that is already to the premises – rather than facilitating the potential deployment of new networks that overbuild existing high-capacity networks.

IV. RECIPIENTS OF HIGH-COST USF SUPPORT MUST BE ETCS

The Petition asserts incorrectly that, contrary to the requirements of Section 254(e),¹³ high-cost universal service support may be distributed to entities that have not been designated as ETCS.¹⁴ The Petition points to the USF Transformation Order’s “new principle pursuant to Section 254(b)(7) ‘that universal service support should be directed where possible to networks that provide advanced services, as well as voice services.’”¹⁵ The Petition also attempts to argue that the ancillary authority conveyed in Section 706 contravenes the directive found in Section 254(e).¹⁶

Although NTCA agrees that universal service support should be directed to networks that provide advanced services as well as voice services,¹⁷ Sections 254(b)(7) and 706 cannot contravene the plain language of Section 254(e). Rather, they are designed to function in conjunction with the requirement that support be limited to designated ETCS. As the

¹³ 47 U.S.C. § 254(e).

¹⁴ Petition, p. 30.

¹⁵ *Id.*, p. 35, citing USF Transformation Order, ¶65.

¹⁶ *Id.*, pp. 40-42.

¹⁷ *See*, Rural Associations’ Comments, WC Docket No. 10-90 (fil. June 17, 2013).

Commission has recognized, Section 254(e) of the Act clearly provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support” that shall be “only for the provision, maintenance, and upgrading of facilities and services for which support is intended.”¹⁸ In the USF Transformation Order, the Commission expanded upon its ETC requirements,¹⁹ confirming that “[a] uniform national framework for accountability, including unified reporting and certification procedures, is critical to ensure appropriate use of high-cost support and to allow the Commission to determine whether it is achieving its goals efficiently and effectively.”²⁰ Indeed, based on the plain language of Section 254(e), several parties have already expressed their opposition to the Petition’s attempt to eliminate the ETC designation requirement.²¹

The desirable prospect of making high-cost USF support available to further the deployment of broadband-capable networks does not eliminate the need for, or the reasoning behind, Section 254(e)’s requirement that scarce USF funding be available only to those entities designated as ETCs. The 2005 ETC Order outlined a variety of criteria that an ETC must demonstrate that it can fulfill in order to qualify. Specifically, to receive high-cost support an entity must in the first instance be a “telecommunications carrier” and then must address at least

¹⁸ Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (rel. March 17, 2005), FCC 05-46 (2005 ETC Order), ¶85, citing 47 U.S.C. § 254(e).

¹⁹ See, USF Transformation Order, Section VIII: Accountability and Oversight, ¶¶568-635.

²⁰ *Id.*, ¶573.

²¹ See, e.g., Letter from Laurens Municipal Power & Communications (Sept. 3, 2013), p. 1; Letter from The Community Agency (Aug. 29, 2013), p. 2.

six items: (1) its commitment and ability to provide the supported services;²² (2) its ability to remain functional in emergency situations;²³ (3) consumer protection;²⁴ (4) local usage²⁵ (5) equal access;²⁶ and (6) adequate financial resources.²⁷

The seven conditions proposed by the Petition²⁸ for eligibility mirror these requirements to some extent. However, these conditions do not include the threshold requirement that the entity be a “telecommunications carrier” as ordered by the statute. Moreover, the 2005 ETC Order goes further, and describes three important public interest determinations, specifically related to (1) cost-benefit analyses;²⁹ (2) potential for cream-skimming effects;³⁰ and (3) the impact on the Fund.³¹ The Petition may attempt to address some of these determinations, but the negative consequences of cream-skimming at least merit further consideration.

As the Commission has previously recognized,

[b]ecause line density is a significant cost driver, it is reasonable to assume that the highest-density wire centers are the least costly to serve, on a per-subscriber basis. The

²² 2005 ETC Order, ¶¶21-24.

²³ *Id.*, ¶¶25-27.

²⁴ *Id.*, ¶¶28-31.

²⁵ *Id.*, ¶¶32-34.

²⁶ *Id.*, ¶¶35-36.

²⁷ *Id.*, ¶¶37-39.

²⁸ Petition, ¶¶22-27.

²⁹ 2005 ETC Order, ¶¶44-47.

³⁰ *Id.*, ¶¶48-53.

³¹ *Id.*, ¶54-57.

effects of cream-skimming also would unfairly affect the incumbent LEC's ability to provide service throughout the area since it would be obligated to serve the remaining high-cost wire centers in the rural service area . . .³²

Others would not incur the costs of this obligation. For this reason, the Commission “strongly encourages states to examine the potential for cream-skimming” and to examine “the degree of population density disparities among wire centers within rural service areas” and the extent to which a new provider “would be serving only the most densely concentrated areas within a rural service area.”³³ The Petition does not address how all of the important public interest obligations, including guarding against cream-skimming, would be served by sidestepping the ETC designation requirement.

A. The Petition Does Not Justify Eliminating or Minimizing the Role of States in Determining High-Cost Eligibility

The Petition's attempt to sidestep the ETC requirement appears to eliminate (or at best minimize)³⁴ the role of the states. Sections 214 and 254, however, are clear: both federal and state governments share jurisdiction over universal service. Congress specifically granted ETC designation authority to the states, partially on the grounds that state governments are most familiar with local market conditions, needs and impacts on the public interest. The Commission has also recognized that both it *and* state governments have the right to consider additional factors when making public interest determinations, stating: “Beyond the principles detailed in the Act, the Commission and state commissions have used additional factors to analyze whether

³² *Id.*, ¶49.

³³ *Id.*

³⁴ *Id.*, p. 32, fn. 68.

the designation of an additional ETC is in the public interest.”³⁵ The Commission further affirmed the function of states in the USF Transformation Order, declaring that:

states should play an integral role in assisting the Commission in monitoring compliance, consistent with an overarching uniform national framework. States will continue to certify to the Commission that support is used by state-designated ETCs for the intended purpose, which is modified to include the provision, maintenance, and upgrading of facilities capable of delivering voice and broadband services to homes, businesses and community anchor institutions.³⁶

The Commission also recognized the role of states in protecting consumers and the public interest when it issued rules implementing Sections 214 and 254. As the ETC Order notes, the Commission adopted an annual certification requirement:

Specifically, sections 54.313 and 54.314 of the Commission’s rules provide that state commissions must file an annual certification with [the Universal Service Administrative Company] and with the Commission stating that all high-cost support received by carriers within the state will be used “only for the provision, maintenance, and upgrading of facilities and services for which support is intended.”³⁷

In furtherance of these goals, the Commission also established guidelines for states in the ETC designation process;³⁸ set administrative requirements;³⁹ and set annual certification and reporting requirements that include outage and complaint reporting rules that apply to all

³⁵ 2005 ETC Order, ¶40.

³⁶ USF Transformation Order, ¶610.

³⁷ 2005 ETC Order, ¶88.

³⁸ *Id.*, ¶¶58-64.

³⁹ *Id.*, ¶¶65-67.

ETCs.⁴⁰ Again, the Commission expanded the role of states in the USF Transformation Order, requiring states to:

certify that all federal high-cost and CAF support was used in the preceding calendar year and will be used in the new calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, regardless of the rule under which that support is provided.⁴¹

Both Section 254(e) and Commission precedent are explicit about the role of states in determining and maintaining the eligibility of high-cost support recipients. The Petition does not demonstrate why the role of states should be eliminated or compromised.

B. Forbearance Is Not Appropriate

The Petition argues that, should the Commission find that the requirements of Section 254(e) are intact, the Commission should use its authority under Section 10 to forbear from enforcing the ETC designation requirements.⁴² The Petition states that such forbearance would meet Section 10's requirements that (1) enforcement of the provision or regulation is not necessary to ensure that the telecommunications carrier's charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the provision or regulation is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.⁴³

As demonstrated above, the Petition's request for forbearance does not meet these criteria. If high-cost funding can be supplied to entities that lack the obligations of ETCs, then

⁴⁰ *Id.*, ¶¶68-72.

⁴¹ USF Transformation Order, ¶609 (emphasis in the original).

⁴² Petition, pp. 30-32.

⁴³ *Id.*, p. 31.

not only will ETCs be subject to discriminatory treatment, but the public interest is damaged by the inefficient use of scarce USF resources. Consequently, forbearance is not appropriate.

The Petition's request to eliminate the ETC designation requirement contradicts the plain language of Section 254(e). Other provisions of the Act may complement, but do not contravene, this mandate. The Petition's secondary argument to forbear from enforcement of Section 254(e) similarly fails, as doing so would discriminate against existing ETCs, place the public interest at risk, and unnecessarily eliminate or minimize the role of states in determining eligibility for receipt of high-cost USF funding.

V. CONCLUSION

The FTTH Petition highlights the necessity of investing in high-capacity, wireline broadband networks. It will, hopefully, spur a larger dialogue on how to make these networks available to each and every American. While well-intentioned, achievement of the goals sought by the Petition must start by recognizing the critical distinction between fiber within a broadband network and that network's ability to deliver gigabit service to consumers. Failure to draw that distinction would introduce troubling incentives into the USF that would only undermine its ability to faithfully adhere to the principles of Section 254 of the Communications Act. The FCC should continue to work towards making a robust fiber-based broadband network a reality for all rural Americans.

Respectfully submitted,



By: /s/ Michael R. Romano
Michael R. Romano
Senior Vice President – Policy
mromano@ntca.org

By: /s/ Brian Ford
Brian Ford
Regulatory Counsel
bford@ntca.org

Its Attorneys

4121 Wilson Blvd, 10th Floor
Arlington, VA 22203
(703) 351-2000

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