

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

In the Matter of)
)
Establishing a 5G Fund for Rural America) GN Docket No. 20-32

**RURAL WIRELESS ASSOCIATION, INC. AND NTCA – THE RURAL BROADBAND
ASSOCIATION JOINT PETITION FOR RECONSIDERATION**

The Rural Wireless Association, Inc. (“RWA”)¹ and NTCA – The Rural Broadband Association (“NTCA”)² (collectively, “Petitioners”), pursuant to Section 405 of the Communications Act of 1934, as amended (“the Act”), and Section 1.429 of the Federal Communications Commission’s (“FCC” or “Commission”) rules, hereby jointly seek reconsideration of the Report and Order adopted in the above-captioned proceeding.³ Specifically, Petitioners seek reconsideration of the Commission’s decision to exclude areas from eligibility for support in the 5G Fund Phase I auction based upon where new mobile coverage data submitted in the Digital Opportunity Data Collection (“DODC”) show the existence of either unsubsidized 4G LTE or unsubsidized 5G broadband service offered by at

¹ 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 in rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. Each of RWA’s member companies serves fewer than 100,000 subscribers.

² 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 and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

³ *Establishing a 5G Fund for Rural America*, Report and Order, GN Docket No. 20-32, rel. Oct. 29, 2020 (“Order”).

least one service provider.⁴ Pursuant to the Broadband DATA Act,⁵ the FCC adopted a requirement that 4G LTE services meet a minimum expected user download speed of 5 Mbps and a user upload speed of 1 Mbps at the cell edge for purposes of determining 4G LTE coverage.⁶ Accordingly, if an unsubsidized 4G LTE service provider meets the 5/1 Mbps speed at the cell edge, the area will be ineligible for the 5G Fund.

The Commission should reconsider the definition of areas eligible for support in the 5G Fund Phase I auction. Its decision to exclude from auction eligibility those areas where new coverage data gathered in the DODC show unsubsidized 4G LTE networks have been deployed is based on erroneous assumptions and contrary to record evidence.

Notwithstanding the purpose of the 5G Fund for Rural America (“5G Fund”) – to distribute money to bring “voice and 5G broadband service to those rural areas of our country that, absent subsidies, would be unlikely to see the deployment of 5G-capable networks”⁷ – the Order concludes that denying 5G Fund support to those areas where 5G networks have not been deployed (but where unsubsidized 4G LTE networks, as defined by the Broadband DATA Act, have been deployed) is appropriate because such areas are somehow *likely* to see the deployment of 5G in the future. Specifically, the Commission concludes that “[g]iven the rapid state of competitive 5G deployment in the marketplace, combined with enforceable merger commitments from T-Mobile, we believe that subsidizing 5G deployments where unsubsidized 4G LTE

⁴ Order at par. 17.

⁵ Broadband Deployment Accuracy and Technology Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) (“Broadband DATA Act”).

⁶ See 47 C.F.R. §1.7004. See also *Establishing the Digital Opportunity Data Collection*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460 (2020) (“Digital Opportunity Data Collection Second Report and Order and Further Notice”) at par. 44.

⁷ See Order at par. 4.

networks have been deployed is unnecessary and risks preempting reasonably near-term 5G deployments we could expect in those areas.”⁸ The only support the Order provides for its conclusion that “near-term 5G deployments” can be “expect[ed]” in areas where unsubsidized 4G LTE networks have been deployed is that four Commenters support the definition of eligible areas adopted in the Order.⁹ However, none of the Comments cited by the Commission provide support for the Commission’s predictive judgment. Meanwhile, although noting the existence of *ex parte* letters¹⁰ that opposed adoption of the definition of eligible areas set forth in the Order, the Commission ignored the evidence presented therein that contradicts the Commission’s assumption that carriers are going to deploy 5G networks meeting the required performance metrics in rural and remote areas without support.

The fact that an unsubsidized 4G LTE network may be deployed in a particular area provides no guarantee or even reasonable assurance that 5G service meeting the required performance metrics will be deployed there, nor is there any basis for concluding that the deployment of 5G service to such an area is likely to occur.¹¹ To the contrary, as discussed in

⁸ Order at par. 17.

⁹ See Order at par. 18, n. 44 (*citing* Comments of Verizon, NARUC, Massachusetts Department of Telecommunications and Cable (“MDTC”), and Coalition of Rural Wireless Carriers (“CRWC”).

¹⁰ *Id.* (*citing ex parte* letters from Richard A. Ruhl, General Manager, Cellular Network Partnership d/b/a Pioneer Cellular, John Lightle, CEO, Nex-Tech Wireless LLC, Eric Woody, CTO, Union Telephone Company d/b/a Union Wireless, Justin E. Hinkle, President, Smith Bagley, Inc., W. Allen Gillum, CEO, East Kentucky Network, LLC d/b/a Appalachian Wireless, and Francis J. DiRico, President, NE Colorado Cellular d/b/a Viaero Wireless (“*Rural Carriers Letter*”), and from Carri Bennet, General Counsel, RWA (“*RWA Letter*”).

¹¹ See *Rural Carriers Letter* at p. 2 (“The Commission assumes that, because there now exists unsubsidized 4G service in a rural area, a carrier will promptly build unsubsidized 5G meeting its proposed performance standards in the same area. This is unsupported by any record evidence and, based on the experience of the undersigned carriers, is likely to be incorrect.”); *Ex parte* letter from Michael D. Rosenthal, Director of Legal & External Affairs, Southern Linc, Oct. 20, 2020 (“The presence of unsubsidized 4G LTE service in an area does not mean that the deployment of 5G is reasonably likely in the near-term, if ever. In areas where the cost of deployment would preclude 5G deployment absent support from the 5G Fund, consumers in these areas would be effectively capped at 4G service levels indefinitely.”); *RWA Letter* at p. 3 (Commission’s proposal to exclude areas served by unsubsidized 4G LTE “would deprive a large number of rural areas of the benefits of the 5G Fund since having unsubsidized 4G LTE service in a certain area does not guarantee that 5G service will be deployed by such

the *Rural Carriers Letter*, there is evidence that the further buildout anticipated by the FCC in reality typically fails to occur. For example, these rural carriers note that only *after* they constructed subsidized 3G and 4G LTE networks in their respective areas did AT&T and Verizon build out their own 3G and 4G LTE networks, and Sprint, when it was a nationwide carrier, never deployed advanced broadband networks in most of rural America.¹² Likewise, T-Mobile focused its 2G and 3G coverage in urban areas rather than high-cost rural areas. History consistently instructs that rural areas are almost never served with the latest generation of service unless and until a small rural carrier based in that area begins to provide such service. A survey of RWA's members concluded that 70 percent of the time, small rural operators are the first to deploy advanced services in rural markets. After towers and fiber backhaul facilities are deployed using universal service support, unsubsidized carriers then seek to build out and compete in the densest portion of the rural areas – most often the county seat or busiest highways. 5G deployment should be expected to follow a similar trajectory.

As explained further in the *Rural Carriers Letter*,

Because undersigned carriers often deployed first, achieving higher cell site densities in rural areas, the larger carriers were forced to build out to compete. As a result, undersigned carriers submit that the aggregate cell site density in rural areas where legacy support is available is higher than in areas where no support is being provided. In these areas, the presence of high-cost support drove competition and service quality. In the absence of subsidized carriers' aggressive buildouts seeking to gain a competitive advantage, it is possible or even likely that the big carriers would have deployed in rural areas later, if at all. If 5G support is unavailable in a remote area because a big carrier overbuilt a subsidized 4G deployment, there is a significant chance that a 5G deployment will be delayed a decade, or more.¹³

unsubsidized carriers at a later point in time. Reliance on the DODC process to determine eligible areas would thus leave many rural areas with just 4G LTE coverage at 5/1 Mbps for more than a decade.”)

¹² *Rural Carriers Letter* at p. 2.

¹³ *Id.*

Evidence contradicting the speculation that the Commission can expect reasonably near-term 5G deployments in areas where unsubsidized 4G LTE networks have been deployed was submitted in the record prior to the Commission's adoption of the Order yet nothing in the Order addresses this evidence. The failure to consider and address this evidence was arbitrary and capricious, and the Commission should accordingly now reconsider its finding.

Even if there did exist evidence in support of the Commission's belief that 5G deployments necessarily follow 4G LTE deployments in short order in deeply rural areas, the FCC further erred by speculating on future market developments rather than relying on actual factual evidence of buildout. By requiring eligible markets to be determined at the end of the DODC process, the Commission has ensured that it will have more comprehensive and accurate data regarding broadband deployment, including data that could undermine its assumption that unsubsidized 4G LTE deployment will lead to "reasonably near-term 5G deployments." RWA and NTCA therefore urge the Commission to define eligible areas as all areas shown by the DODC to be lacking unsubsidized 5G deployments. At a minimum, the Commission should reconsider its definition of eligible areas and base its ultimate determination on record evidence that is current as of the conclusion of the DODC process rather than relying upon predictive judgments now of what that process will unveil.

In reconsidering the definition, the Commission must also reconsider the speed threshold adopted in the Order. If the Commission continues to insist that 4G LTE is effectively the same as 5G for purposes of what is deemed "served" under the 5G Fund, it should at a minimum increase the threshold speed for 4G LTE deployment to be considered the equivalent of 5G for the purposes of determining an area eligible for the 5G Fund auction. Specifically, this threshold speed should be increased from 5/1 Mbps to 35/3 Mbps (with latency of 100 ms), thus rendering

any 4G LTE deployment that meets the definition much closer in speed and latency to 5G. While 5G is a technology rather than a speed the FCC has grasped on to the 35/3 Mbps with latency of 100 ms to define one aspect of 5G. To the extent that the FCC is defining a facet of 5G as a speed, then at a minimum the FCC should correlate the 4G LTE speed and latency with the 5G speed and latency and deem those 4G LTE areas that meet the 5G speed and latency ineligible rather than relying upon the much lower 5/1 Mbps speed.

For the foregoing reasons, the Commission should reconsider its definition of “geographic areas identified as eligible” pursuant to newly adopted rule section 54.1012(a) and determine that all areas shown by the DODC to be lacking unsubsidized 5G deployments will be eligible for funding in the 5G fund auction or, in the alternative, define 4G LTE service for purposes of defining eligible areas as service meeting a speed threshold of 35/3 Mbps with a latency of 100 ms.

Respectfully submitted,



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