

to their broadband deployment obligations as adopted in the *Rate-of-Return Reform Order*,⁵ the Public Notice puts forward several explicit categorical exclusions to the term “location” that are inconsistent with the goals of the order and will result in a failure to take full account of broadband-capable connections delivered across rural America leveraging High-Cost Universal Service Funds (“USF”). NTCA therefore requests Commission reconsideration and modification, or clarification as applicable, of the definition of “location” as detailed further below in three specific respects to ensure that the full breadth and coverage of those networks enabled by and deployed pursuant to the reforms adopted in the *Rate-of-Return Reform Order* will be captured and accurately represented.

With respect first to the identification and counting of “business locations” generally, the Commission should reject the overly narrow definition of such locations as suggested by the Public Notice. In particular, NTCA urges the Commission to review and reject the “siloes” approach employed by the Public Notice pursuant to which a network connection built to a business location would be artificially counted or disregarded based solely upon the type of service that might be purchased by the customer over that connection. At a time when regulation generally and High-Cost USF specifically are moving away from service-specific designations, it is incongruous to define locations served by a USF-supported network via references to what service the consumer chooses to take. Yet the Public Notice explicitly limits “business locations” for reporting purposes to only those connections to business customers that a carrier expects will subscribe to “consumer-grade broadband service.”⁶

⁵ Connect America Fund, et al., WC Docket No. 10-90, et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking (rel. March 30, 2016) (“*Rate-of-Return Reform Order*”).

⁶ Public Notice, p. 4.

Presuming that the goal of the reforms adopted in the *Rate-of-Return Reform Order* is to preserve and advance universal service as called for by the Act,⁷ this goal is undermined by such a deterministic focus on the type of service that a user *might* take over a USF-supported network; rather, the Commission’s universal service policies should encourage rate-of-return carriers to make high-quality, high-capacity broadband-capable network connections available *throughout their service areas to as many potential customers as possible*, regardless of how a given consumer might then choose to purchase service. For example, whether a given customer might be expected to choose a “dedicated high-capacity transmission service[], such as business data services”⁸ instead of retail broadband Internet access using a broadband-capable connection should be immaterial in determining whether a carrier has used USF in the first instance to advance the cause of universal service by giving that consumer the opportunity to procure broadband.

Second, in a similar manner, the explicit exclusion by the Public Notice of connections to wireless infrastructure sites (such as cell towers) from the definition of a “location” is likely to undermine national wireless broadband deployment goals.⁹ As the Commission well knows, fiber backhaul facilities are a key input into feeding consumers’ increasing appetite for mobile wireless data, and ensuring the increased availability and performance of 4G wireless broadband will require the extension of fiber facilities to thousands of towers. Moreover, the emergence of 5G wireless service will increase, perhaps exponentially in rural areas, the number of fiber connections to towers/small cell sites necessary to make this technology a reality for consumers.

⁷ 47 C.F.R. § 254(b)(5).

⁸ Public Notice, p. 5 (excluding such locations from the definition of “business location”).

⁹ *Id.*, p. 7.

As such, the Commission should take every opportunity to encourage rate-of-return carriers to extend their USF-supported broadband-capable networks to as many towers/small cell sites as possible. Thus, the Commission should modify the Public Notice definition of location to permit the inclusion of towers and small cells sites as reportable “locations” as well.

Finally, parsing yet another kind of “business” customer as a final categorical exclusion, the Public Notice states that rate-of-return carriers should not include any community anchor institutions in the reporting of locations served.¹⁰ This conclusion overlooks the fact that many rural schools, libraries, and healthcare institutions are customers to whom “broadband” may be deployed – and that such consumers may even specifically choose to procure retail broadband Internet access in lieu of other kinds of dedicated services. Indeed, many smaller rural schools, libraries, small healthcare facilities and medical clinics may only have a need (or budget) for broadband services on par with that utilized by residential users – or that may be of a higher speed and capacity, but still are in effect “best-efforts” broadband.¹¹ Such broadband services (and certainly the underlying network connections) are largely indistinguishable from those provided to many residential or other business customers, and their provider’s systems and product definitions may not treat them any differently. Yet the Public Notice definition of “location” would exclude them all. The Commission should at every turn seek to incent the deployment of broadband-capable networks to every rural school, library and medical facility, but the explicit exclusion of such locations by the Public Notice may unintentionally have the

¹⁰ *Id.*

¹¹ This is particularly true for certain kinds of community anchors, such as “community support organizations that facilitate greater use of broadband by vulnerable populations, including low-income, the unemployed, and the aged” that the Public Notice excludes from the definition of location by way of example. *Id.*

opposite effect – carriers may fail to deploy to certain schools, libraries, or other community anchors to the extent there is no “credit” to be obtained for such in terms of reporting locations reached or achieving compliance with buildout obligations.

At bottom, if the goal is to “Connect America,” NTCA urges the Commission to treat connections as connections without arbitrary distinction or explicit exclusion for purposes of counting customers served. If a broadband-capable connection is delivered to a business location, a school, a library, a community center, or a cell tower, each such connection should be counted as a “location” to which the High-Cost USF reforms have advanced the cause of universal service. Just because a business *might* choose to buy a different service on that broadband-capable connection at some point in the future, or just because the location in question is a school or a cell tower, that should not lead to an absolute and explicit categorical exclusion as set up by the Public Notice. To the contrary, the High-Cost USF reforms adopted by the Commission will have played an important role in making those connections possible, and if they are broadband-capable, they should be counted as part and parcel of the success of those reforms rather than excluded categorically and arbitrarily by the Public Notice.

For the foregoing reasons, the Commission should review and revise three of the categorical exclusions included as part of the guidance provided in the Public Notice to: (1) ensure that business locations can be counted as “locations” served where the connections to them are broadband-capable and regardless of what service any given business customer may then choose to take; (2) ensure that wireless infrastructure sites can be counted as “locations” served where the connections to them are broadband-capable; and (3) ensure that community anchor institutions can be counted as “locations” served where the connections to them are broadband-capable.

Respectfully submitted,

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