



February 19, 2015

***Ex Parte Notice***

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**RE: *Protecting and Promoting the Open Internet, GN Docket No. 14-28; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Universal Service Contribution Methodology, WC Docket No. 06-122***

Dear Ms. Dortch:

On Thursday, February 19, 2015, Shirley Bloomfield, Chief Executive Officer of NTCA–The Rural Broadband Association (“NTCA”), together with the undersigned, met separately with: (1) Jonathan Sallet, General Counsel of the Federal Communications Commission (the “Commission”) and Jennifer Tatel, Associate General Counsel; and (2) Gigi Sohn and Daniel Alvarez from the Office of Chairman Tom Wheeler and Eric Feigenbaum, Director of Outreach and Strategy, to discuss certain issues of importance to smaller rural service providers in the above-referenced proceedings.

**Interconnection Across the Broadband Ecosystem.** Although NTCA recognizes that much of the focus of the Commission has been on “last-mile” Internet Service Providers (“ISPs”), the record of this proceeding makes clear that fault lines and disputes throughout the broader broadband network ecosystem are just as important to consumer experiences and essential to address if the goal is truly to protect an “Open Internet.” Specifically, as NTCA has noted in many prior filings in urging a focus on network transmission functionality rather than services, *see, e.g., Ex Parte* Letter from Michael R. Romano, Sr. Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Commission, GN Docket No. 14-28, *et al.* (filed Jan. 8, 2015), interconnection by definition takes two parties and is not a “one-way street.” Even if certain last-mile ISPs may possess bargaining power such that the Commission is concerned that they may extract concessions from interconnecting parties, the same is true of so-called “middle mile” providers, transit providers, and others upon whom many smaller operators such as those in NTCA’s membership depend to ensure that consumer broadband traffic can be carried back and forth to distant gateways. To the extent that these other transmission operators can foist unreasonable terms or unjust costs on rural telcos and smaller last-mile ISPs (or even engage in their own denial or throttling of service), this is just as much a threat to the objectives of an open Internet – and to universally available and affordable broadband – as anything a large last-mile ISP might do to an interconnecting operator.

Indeed, NTCA observes once again that the Commission should not and cannot legally or logically distinguish between kinds of broadband transmission (*e.g.*, last-mile, middle-mile, etc.) in classifying broadband as a telecommunications service. If data are conveyed from points A to Z or exchanged between networks of any kind, those functions are broadband transmission – and the mere location of that transmission at a given point in the network ecosystem is irrelevant by itself to regulatory classification.

Thus, to the extent it will reclassify broadband in this proceeding, the Commission should classify *all* network services involved in the transmission of data to and from end users as telecommunications services regardless of their location in the interconnection topology – and then adopt reasonable interconnection provisions applicable to *all* providers of such network services – rather than focusing on one narrow piece of that network ecosystem and erecting a lopsided, “one-way” interconnection regime. In the alternative and at a minimum, the Commission should expressly note that Open Internet principles depend upon just and reasonable conduct by all operators in the “multi-stakeholder” broadband ecosystem, and that it intends to monitor and consider further the degree to which interconnection obligations should attach to other operators beyond last-mile ISPs offering retail broadband Internet access services.

**Universal Service.** NTCA also expressed its support for the explicit recognition of the importance of sustaining universal service principles, policies, and programs as shown in the recent “Fact Sheet” published by Chairman Wheeler. As NTCA has observed in prior filings, *see id.*, if the Commission were to forbear from applying Section 254 to broadband, this would call into question the Commission’s prior and still-ongoing efforts to update each of the universal service programs to reflect increasing consumer use of and demand for broadband, as the Commission’s efforts to impose broadband-related conditions in connection with the *distribution* of universal service support would appear firmly at odds with a decision then to forbear from applying Section 254 to broadband.

Moreover, while NTCA wholeheartedly supports the Commission finally resolving in this proceeding the decade-long logjam to expand the universal service *contribution* base to include broadband – the apparent soon-to-be-telecommunications service that universal service programs now increasingly support – NTCA urges the Commission at a minimum to ensure that any limited partial forbearance from Section 254 with respect to broadband contributions does not foreclose or prejudge continuing work with respect to contributions reform. In particular, it is important that any reference to partial forbearance from Section 254 be carefully stated to recognize simply the ongoing debate with respect to contributions reform, rather than intimating that forbearance is presumed to be permanent unless a contrary finding is reached in the contributions docket or otherwise including any negative judgments with respect to potential assessment of broadband for contributions purposes as part of any possible temporary forbearance.

Furthermore, as part of any statements with respect to classification of broadband in the order, NTCA urged the Commission to ensure that small rural telcos such as those within their respective memberships can continue to avail themselves of the option to tariff broadband-capable transmission services that underpin retail broadband Internet access services. This voluntary option was specifically preserved when the Commission last examined the classification of wireline broadband Internet access services, and many small carriers continue to rely on this option to help enable the deployment of networks capable of providing quality voice and broadband services in rural America. *See In the Matter of Appropriate Frameworks for Broadband Access to the Internet over Wireline Facilities*, CC Docket 02-33, *et al.* FCC 05-150 (rel. Sept. 23, 2005), at ¶¶ 89-95. There is no reason for the Commission to remove or preclude this purely voluntary option as part of any modifications that will be made in an order in this proceeding.

**Other Obligations.** NTCA finally discussed the applicability of “enhanced” transparency requirements to smaller operators such as those within its membership. Consistent with its comments regarding regulatory flexibility issues earlier in this proceeding, NTCA recommends that the Commission not apply any such expanded or enhanced requirements to ISPs that qualify as small businesses. As noted specifically in NTCA’s prior comments:

In asking how to measure even just the effectiveness of the current rule, the *Open Internet NPRM* effectively confirms that the benefits of potential expansion are unknown and unknowable at the present time; one cannot tell what the benefits of an “enhanced” rule can be if one is unable to capture the benefits of the current rule. Moreover, there is no indication that increased transparency is necessary to address any specific shortcoming or gap in the existing rule, thus making the Commission’s regulatory proposals premature. By contrast, the potential burdens are quite clear. While NTCA supports the Commission’s transparency goal, the proposed expanded transparency rules would be more burdensome for small entities than the current rules without a demonstrable need. Reply Comments of NTCA, GN Docket No. 14-28 (filed Sept. 15, 2014), at 18-20.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS.

Sincerely,

/s/ Michael R. Romano  
Michael R. Romano  
Senior Vice President – Policy

cc: Jonathan Sallet  
Jennifer Tatel  
Gigi Sohn  
Daniel Alvarez  
Eric Feigenbaum