Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
Restoring Internet Freedom	) WC Docket No. 17-108

COMMENTS
OF
WTA - ADVOCATES FOR RURAL BROADBAND

Respectfully submitted,
WTA – Advocates for Rural Broadband

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Summary

WTA – Advocates for Rural Broadband ("WTA") believes that the crucial fact in this proceeding is that the existing and evolving broadband network constitutes the "rapid, efficient, Nation-wide and world-wide" telecommunications and information services network mandated by Section 1 of the Communications Act of 1934, as amended. WTA members and other rural local exchange carriers ("RLECs") have invested billions of dollars, including substantial federal and state high-cost support and other governmental loan and grant proceeds, to deploy broadband infrastructure within their rural "last mile" (more accurately, "last 20-to-50 mile") facilities.

Whether the national broadband network is classified and regulated under Title I or Title II, it requires appropriate and economically feasible broadband interconnection and middle mile transport arrangements. Without them, much of the RLEC "last mile" investment will become impaired or useless, and the affected rural communities and customers will be deprived of the ability to access and participate in the national telecommunications and information services network. WTA therefore urges the Commission to retain and maintain a role in monitoring broadband interconnection and middle mile negotiations and arrangements, and stepping in when necessary to require good faith and timely negotiations between entities of widely varying size and bargaining power. This relatively minimal oversight will help to remove barriers to broadband infrastructure investment and to enable all Americans, including those served by small providers in rural areas, to have reasonable and affordable access to the national broadband network. WTA believes that Section 706(a) of the Telecommunications Act of 1996 and Sections 251 and 252 of the Communications Act provide the Commission and/or state commissions with the appropriate jurisdiction and remedial powers.

WTA agrees with the *NPRM* that RLECs that voluntarily elected to offer broadband transmission on a common carrier basis under the *Wireline Broadband Classification Order* should be allowed to opt into, or continue to operate under, the *Title II Order*'s forbearance framework. This will permit WTA members and other RLECs that offer broadband transmission on a common carrier basis to have greater competitive and regulatory parity with cable television operators, wireless Internet service providers and others that provide broadband on an information service or other minimally regulated basis.

Finally, WTA believes that the initial transparency rules adopted in 2010 are wholly sufficient to inform customers about network management practices, performance and commercial terms of service, and that the additional enhancements adopted in 2015 are neither necessary nor cost-effective and can be abrogated.

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WTA – Advocates for Rural Broadband ("WTA") submits its comments regarding the Notice of Proposed Rulemaking, FCC 17-60, released May 23, 2017, in this proceeding ("*NPRM*").

WTA believes that the broadband network is now the nation's public telecommunications and information network, and that it has already superseded and replaced the legacy voice network as the "rapid, efficient, Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges" that is required to be made "available, so far as possible, to all of the people of the United States" to meet the national defense, public safety, commerce and other purposes set forth in Section 1 of the Communications Act of 1934, as amended ("the Act"). WTA members and other rural local exchange carriers ("RLECs") have worked hard to participate in this network and have invested large amounts of their own financial capital and federal and state high-cost support, loans and grants to deploy broadband "last mile" (often, "last 20-to-50 mile") facilities in their rural local exchange areas.

WTA has long advocated a light-touch regulatory framework that reduces compliance burdens and costs so that RLECs can devote more of their high-cost support and other limited financial resources to broadband infrastructure investment and to the provision of higher quality broadband services to their high-cost areas. It believes that there are multiple ways that

broadband expansion and enhancement can be accomplished under various permutations of Title I and/or Title II regulation. However, there is one area where a substantial Commission presence and involvement remains necessary – namely, broadband interconnection. Particularly given the substantial efforts and amounts of federal, state and RLEC resources that have been invested to deploy broadband "last mile" infrastructure in rural areas, it is critical that the Internet traffic of rural customers get to and from Internet exchange points and backbone routes in an efficient and affordable manner. Some RLECs have already encountered difficulties in negotiating and obtaining acceptable and affordable interconnection and middle mile arrangements with larger entities. These problems are likely to grow as Internet traffic continues to increase rapidly and more and more middle mile capacity and interconnection capabilities become necessary. Whether pursuant to Section 706(a) of the Telecommunications Act of 1996, or Sections 251 and 252 of the Act, or other legal authority, WTA urges the Commission to retain a role and a mechanism for resolving broadband interconnection disputes, particularly where bargaining power is uneven and broadband service, investment and/or deployment are impaired.

WTA supports the *NPRM*'s suggestion that those providers that voluntarily elected to offer broadband transmission on a Title II common carrier basis under the *Wireline Broadband Classification Order*[1] framework be allowed to opt into, or continue to operate under, the *Title II Order*'s[2] forbearance framework.[3] This arrangement will allow the many WTA members and other RLECs that offer broadband transmission on a common carrier basis to have greater

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[1] *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities, et al.*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) ("*Wireline Broadband Classification Order*"), *aff'd Time Warner Telecom v. FCC*, 507 F.3d 205 (3d Cir. 2007).

[2] *In the Matter of Protecting and Promoting the Open Internet,* WC Docket No. 14-28, Report and Order on Remand, Declaratory Ruling and Order, 30 FCC Rcd 5601 (2015) ("*Title II Order*").

[3] *NPRM,* at par. 65.

regulatory parity with cable television operators, wireless Internet service providers and others that provide broadband on a Title I information service or other minimally regulated basis.

Finally, WTA believes that the initial transparency rules adopted in 2010 are wholly sufficient to inform customers about network management practices, performance and commercial terms of service, and that the additional enhancements adopted in 2015 are not necessary to promote competition, innovation, investment, end-user choice or broadband adoption.

I. WTA – Advocates for Rural Broadband

WTA is a national trade association representing more than 325 rural telecommunications providers that offer voice, broadband and video-related services in Rural America.

WTA members are generally small RLECs that serve some of the most rugged, remote and/or sparsely populated areas of the United States. They are providers of last resort to many areas and communities that are both very difficult and very expensive to serve.

The typical WTA member has 10-to-20 full-time employees, and serves fewer than 3,500 access lines in the aggregate and fewer than 500 access lines per exchange. The primary service areas of WTA members are often located far from the nearest Internet Exchange Point ("IXP"), and are comprised of sparsely populated farming and ranching regions, isolated mountain and desert communities, and Native American reservations. WTA members must construct, operate and maintain their networks under conditions of climate and terrain ranging from the deserts of Arizona to the lakes of Minnesota to the wilderness and villages of Alaska, and from the valleys of Oregon to the plains of Indiana to the hills of Tennessee to the mountains of Wyoming. The major common features of these diverse rural areas are the much longer than average distances

that must be traversed, and the much higher per-customer costs of constructing, upgrading, operating and maintaining broadband networks than in urban and suburban America.

Yet, despite these difficulties and disadvantages, WTA members and other RLECs have made significant strides in deploying broadband facilities and services within their rural service areas. Federal and state regulators have noted over the years that RLECs had done a commendable job of providing broadband to large portions of their rural customers.[4]

II. The Commission Needs to Maintain Jurisdiction and Oversight Over Broadband Interconnection

WTA members and other RLECs have invested billions of dollars of Rural Utilities Service ("RUS") and other loans, stimulus grants and loan-grants, rural broadband experiment dollars, federal and state high-cost support, and their own capital resources, to deploy broadband "last mile" and second mile facilities to serve their rural customers. However, without reasonable and efficient broadband interconnection arrangements and sufficient and affordable middle mile transport, these substantial investments will not be successful in achieving the national and world-wide telecommunications and information services network contemplated by Section 1 of the Act. Rather, many rural communities and their residents will be denied effective and affordable access to the benefits of the existing and rapidly evolving national and international broadband network.

Some RLECs have been able to connect with regional or statewide fiber networks that can aggregate Internet and other data traffic, and deliver it to or from Internet exchange points and other interconnection arrangements. Other less fortunate RLECs have had to obtain interconnection and transport on their own or in small groups. WTA is aware of members who

[4] See, e.g., *In the Matter of High-Cost Universal Service Support* and *Federal-State Joint Board on Universal Service* (Recommended Decision), WC Docket No. 05-337 and CC Docket No. 96-45, 22 FCC Rcd 20477 (released November 20, 2007), at para. 30.

have been refused Ethernet middle mile services by larger carriers, and been forced instead to use much slower and more expensive DS3 circuits. WTA is also aware of threats, heretofore not exercised, by at least one large telecommunications entity to require certain RLECs to exchange all of their Internet traffic with it at a single location in a distant large city. WTA expects that these and other types of broadband interconnection issues and disputes will increase as broadband traffic and congestion grows.

When broadband interconnection issues and disputes arise, the large disparities among the sizes of various Internet service providers and the amounts of traffic they carry will create bargaining power differences that can significantly impact and impair negotiations and the resulting interconnection arrangements. In particular, if past is prologue, RLECs that have small amounts of Internet traffic that do not rise to the level of rounding errors for the larger carriers with whom they must negotiate will be at a serious disadvantage, and will often be virtually disregarded or have little or no choice but to accept undesirable facilities, meet points and rates proffered by the larger carriers.

WTA is aware of the *NPRM*'s position that Internet traffic exchange is premised on privately negotiated agreements or a case-by-case basis, and is not a telecommunications service. *NPRM* at par. 42. Private agreements may continue to work effectively for the peering or other negotiated interconnection of the large networks comprising much of the "network of networks" that has become the Internet. However, unless the Commission or state commissions retain the jurisdiction, mechanisms and capabilities to serve as traffic cops when necessary, communities and customers served by RLECs and other small service providers having little or no bargaining power can be excluded from much or all of the benefit of the Internet.

The Commission can use a very limited and light-touch regulatory approach to deter and minimize broadband interconnection problems. For example, Section 706(a) of the 1996 Telecommunications Act requires that the Commission:

> . . . shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulatory methods that remove barriers to infrastructure investment. 47 U.S.C. §157 nt.

Inability to negotiate and obtain a satisfactory broadband interconnection arrangement and/or sufficient and reasonably priced middle mile transport will constitute a crippling barrier to current and future broadband infrastructure investment (as well as impairing the value of prior broadband infrastructure investment), and will discourage or preclude the deployment on a reasonable and timely basis of advanced telecommunications capability to the American communities and customers affected. Section 706(a) does not require the Commission to involve itself in private broadband interconnection negotiations or middle mile transport arrangements unless and until substantial impasses, delays or failures occur, and broadband services and deployments are threatened. However, if an RLEC or other small entity is denied, or effectively denied by the absence of *bona fide* and timely negotiations, reasonable broadband interconnection and/or middle mile transport arrangements, Section 706(a) gives the Commission a choice of a broad range of regulatory mechanisms that it can utilize to remove the investment barriers and achieve timely broadband deployment.

In addition, WTA believes that Sections 251 and 252 of the Act, including the state commission arbitration process for failed or prolonged interconnection negotiations, apply to the interconnection of Internet Protocol ("IP") and other broadband networks as well as Time Division Multiplexing ("TDM") networks. In particular, Internet backbone and transport

providers (including middle mile transport providers, which often employ special access services) meet the definition of "telecommunications carriers" in that they offer for a fee directly to the public or classes thereof, transmission services for information of the users' own choosing between or among points specified by the users without change in the form or content of the information. Whether or not the Commission subjects retail Internet access services to Title II common carrier regulation, the Internet backbone providers and transport providers that connect service providers to the emerging public broadband network are telecommunications carriers subject to Title II of the Act, including Sections 251 and 252.

WTA is aware that some argue that Sections 251 and 252 do not apply to IP interconnection. This interpretation disregards the actual operations of Internet backbone and transport providers, as well as the clear purposes of Sections 1, 2 and 201 of the Communications Act to establish and maintain a nationwide public communications network (whether a switched telecommunications network or a broadband network) that is available to all Americans on a just and reasonable basis. Moreover, it poses real and substantial dangers that the Internet will become the exclusive or near-exclusive domain of large peering entities, and that RLECs and other smaller broadband service providers and their customers will be unable to obtain the technically feasible broadband interconnection necessary to provide their customers with sufficient and affordable access to the information, services and people that should be available to all Americans over the public network. WTA members are also concerned that they will be unable to obtain middle mile transport of sufficient quality and capacity to meet the latency needs of their customers as well as the Commission's latency standards, or that such middle mile transport will become so expensive that significant numbers of their rural customers will be unable to afford Internet access service. In fact, in the absence of Section 706(a), 251 and/or 252

protections, many WTA members fear that they are so small relative to most Internet backbone and transport providers that they may be unable to get the larger providers even to participate in *bona fide* negotiations to establish reasonable interconnection and transport arrangements with them.

WTA believes that the Commission either can use the Section 706(a) process to deal directly with significant broadband interconnection problems and disputes, or can indicate that the state commission arbitration procedures of Sections 251 and 252 remain applicable to broadband interconnect disputes, or can declare that both options for relief are available. Whereas WTA agrees that privately negotiated broadband interconnection and middle mile arrangements are preferable, retention of the Section 706(a) and/or Section 251 and 252 options for regulatory intervention and relief will help to ensure that negotiations are conducted equitably and that the communities, that customers served by small carriers are able to obtain high quality and affordable access to the public broadband network, and that the substantial public and private dollars invested in RLEC broadband networks are not impaired..

III. The Existing Title II Forbearance Options Should Be Retained

In the *Title II Order*, the Commission granted extensive forbearance from approximately 27 statutory provisions and their associated implementing regulations in order to establish a ”light-touch regulatory framework” that would “minimize[e] the burdens on broadband providers while still adequately protecting the public.”[5]

Among the Title II statutory provisions and associated regulations from which the Commission forbore were: (a) Sections 203 and 204 of the Act regarding the tariffing of rates, charges and regulations; (b) Section 205 regarding the prescription of rates by the Commission; (c) Section 212 regarding interlocking directorates; (d) Section 211 regarding the filing of carrier

[5] *Title II Order*, at par. 51.

contracts; (e) Section 213 regarding inventories and valuations of carrier property; (f) Section 214 regarding Commission approval of service discontinuations and transfers of control; (g) Section 215 regarding carrier service and equipment transactions; (h) Section 218 regarding inquiries into carrier management; (i) Section 219 regarding carrier annual reports; (j) Section 220 regarding carrier accounts, records and depreciation charges; (k) Section 225(d) regarding Telecommunications Relay Service ("TRS") contributions; (l) Sections 251, 252 and 258 regarding interconnection; (m) Section 254(d) regarding Universal Service Fund ("USF") contributions; and (n) Section 258 regarding slamming.

Many WTA members offer wholesale broadband transmission on a common carrier basis under the voluntary framework of the *Wireline Broadband Classification Order*. They made the choice for a variety of business and regulatory reasons in 2005, including maintaining the eligibility of their multiple use voice/broadband facilities for federal high-cost support, and many wish to continue operating as common carriers under Title II regulation rather than becoming private carriers. However, the regulatory costs and contribution obligations of common carriers put them and their retail broadband Internet access service ("BIAS") affiliates at a significant competitive disadvantage in the BIAS marketplace against cable television companies, fixed wireless Internet service providers ("WISPs") and others who are not subject to any Title II regulation and costs.

Allowing those RLECs that voluntarily elected in 2005 or thereafter to offer broadband transmission service on a common carrier basis to operate pursuant to the *Title II Order* forbearance framework will encourage and enable a much more level competitive playing field in the retail BIAS marketplace. The subject RLECs will still have to comply with the basic just, reasonable and non-discriminatory rates, terms and practices provisions of Sections 201 and 202

of the Act, and will still be answerable to the Section 208 complaint process. However, their ability to obtain forbearance from other pricing, reporting, recordkeeping and contribution requirements will reduce or eliminate significant costs that ultimately have to be recovered from or passed through to BIAS customers, will permit them to offer their customers lower rates and will enable them to compete more effectively with other service providers that do not incur such costs and obligations.

Hence, WTA urges the Commission to allow RLECs and others that voluntarily offer broadband transmission on a common carrier basis to opt into, or continue operating under, the *Title II Order*'s forbearance framework.

IV. The Commission Should Retain Only the 2010 Transparency Rule

WTA members have supported and complied with the Commission's 2010 transparency rule. They or their Internet service provider affiliates have posted on their websites or otherwise publicly disclosed the network management practices, performance and commercial terms of their Internet access services so that their customers and other interested parties can make informed choices regarding their use of such services.

The managers and employees of WTA members generally live in the same rural communities as their customers, and have frequent contact with such customers as they go about their day-to-day activities both during and after business hours. These constant customer interactions enable WTA members to find out quickly and directly from their customers if there have been reliability, congestion, quality or other problems with their Internet access and other services. If relatives, friends and neighbors are complaining about service issues, WTA members have the clear ability and incentive to investigate and address such problems expeditiously.

In contrast, WTA is aware of no reported instances of inquiries by content, application, service or device providers to its members regarding their posted network management practices, performance and commercial terms. The likely explanation for this silence is that virtually all edge providers are focusing upon larger markets, and have not yet seen fit to explore use of the services of WTA members and other small Internet access providers. WTA members want their rural customers to be able to use the services of Google, Amazon and other edge providers, and believe that they are currently able to do so. However, until there is some evidence that these edge providers actually research and make decisions on the basis of the posted network management practices, performance and commercial terms of RLEC-affiliated Internet service providers, it makes no sense to require these small providers to bear any additional expense of providing additional information or performance monitoring for edge providers.

WTA also does not see where the 2015 enhancements provide useful information, particularly information having benefits that are justified by the costs of compiling and monitoring it. For example, WTA members do not understand how they could calculate "packet loss" on their broadband networks or what value these calculations would have for either their customers or edge providers. WTA notes that broadband network designs involve trade-offs between packet loss and transmission speeds, and that packet loss varies substantially in importance with respect to different types of communications (for example, a missing number may significantly change the meaning of a message, while a missing word or letter may be readily spotted and corrected). More importantly, most data communications originating or terminating on RLEC broadband networks also transit the networks of one or more unrelated carriers, often passing through multiple routers and lengthy middle mile facilities operated by these unrelated entities. WTA believes that the only packet loss data that might be relevant to

customers and edge providers is packet loss information along the entire route of a message. However, neither WTA members nor most other broadband providers have the capability to measure packet loss on the other side of their points of interconnection with adjacent networks. Measuring "intra-network" packet loss on RLEC broadband networks is likely to constitute a futile endeavor that would not provide information of significant value to customers or edge providers, while involving significant effort and unjustified expense for the RLECs.

Similarly, monitoring and reporting network performance during peak usage periods in sparsely populated rural service areas is unlikely to create value that exceeds its costs. In some rural areas, there may be more than one peak usage period – for example, peak usage periods may differ somewhat between towns and outlying areas. While the differences may not be huge, the time and resources of a small rural BIAS provider's limited staff are not likely to be efficiently and effectively used to monitor multiple sets of usage patterns during different peak periods – for example, a peak period for several thousand town customers (*e.g.*, 7-to-10 PM) and a separate and slightly different peak period for several thousand customers in outlying areas (*e.g.*, 6-to-9 PM). This is particularly true if there is no significant demand by customers or edge providers for usage pattern information for small groups of rural customers.

Finally, detailed disclosures of network practices addressing traffic associated with a particular user or user group (including the purposes of the practice, which users or data plans may be affected, the triggers that activate use of the practice, the types of traffic that are subject to the practice, and the likely effects of the practice on the experiences of end users) will require RLECs and other small rural service providers to expend substantial scarce resources on attorneys and consultants. During the immediately foreseeable future, the relevant network practices are likely to involve the streaming of video, but few small rural BIAS providers have

the expertise to accurately describe in detail the likely effects of a particular practice on the experience of end users, or to devise activating triggers that will be certain to be deemed lawful by the Commission. Rather, such small providers will need to spend tens or hundreds of thousands of scarce dollars on lawyers and consultants to develop and describe such network practices – dollars that would be much better spent extending and upgrading their broadband networks to meet growing consumer bandwidth needs and demands.

WTA is aware that the Commission has granted a five-year waiver from the 2015 enhancements to small BIAS providers with 250,000 or fewer broadband connections.[6] That exemption was very helpful and much appreciated. However, WTA believes that a Commission decision in this proceeding to retain the 2010 transparency rule and eliminate the unnecessary 2015 enhancements would solve the transparency issue going forward for all large and small BIAS providers, and would avoid the need for further proceedings in five years to extend, modify or terminate the small provider exemption. WTA urges the Commission to adopt that course of action and rescind the 2015 enhancements for all service providers..

V. Conclusion

Whether classified and regulated under Title I or Title II, the current and future broadband network is the ubiquitous national telecommunications and information network contemplated by Section 1 of the Act. WTA members and other RLECs have invested billions of dollars, including substantial federal and state high-cost support and other governmental loan and grant proceeds, to deploy broadband infrastructure within their rural "last mile" areas.

However, without appropriate and economically feasible interconnection and middle mile arrangements, much of this investment will become impaired or useless, and the affected rural

[6] *In the Matter of Small Business Exemption From Open Internet Enhanced Transparency Requirements*, Order, GN Docket No. 14-28, FCC 17-17, released March 2, 2017.

communities and customers will be deprived of the ability to access and participate in the national telecommunications and information network. WTA therefore urges the Commission to retain and maintain a role in monitoring broadband interconnection and middle mile negotiations and arrangements, and stepping in when necessary to require good faith and timely negotiations, to remove barriers to broadband infrastructure investment and to enable all Americans, including those in rural areas, to have reasonable and affordable access to the broadband network. WTA believes that Section 706(a) of the 1996 Act and Sections 251/252 of the Act provide the Commission and/or state commissions with the appropriate jurisdiction and remedial powers.

WTA supports the *NPRM*'s suggestion that RLECs that voluntarily elected to offer broadband transmission on a common carrier basis under the *Wireline Broadband Classification Order* be allowed to opt into, or continue to operate under, the *Title II Order*'s forbearance framework. This will allow WTA members and other RLECs that offer broadband transmission on a common carrier basis to have greater competitive and regulatory parity with cable television operators, wireless Internet service providers and others that provide broadband on an information service or other lightly regulated basis.

Finally, WTA believes that the initial transparency rules adopted in 2010 are wholly sufficient to inform customers about network management practices, performance and commercial terms of service, and that the additional enhancements adopted in 2015 are neither necessary nor cost-effective and should be eliminated.

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