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

In the Matter of	)	
	)	
Implementing the Infrastructure Investment and Jobs Act:	)	GN Docket No. 22-69
Prevention and Elimination of Digital Discrimination	)	
	)	

COMMENTS
OF
WTA – ADVOCATES FOR RURAL BROADBAND

WTA – Advocates for Rural Broadband ("WTA") hereby submits its comments with respect to the Further Notice of Proposed Rulemaking portion ("*FNPRM")* of the Commission's *Report and Order and Further Notice of Proposed Rulemaking,* FCC 23-100, released November 20, 2023 in the captioned proceeding.

WTA is a national trade association that represents approximately 400 rural local exchange carriers ("RLECs") that provide voice and broadband services to some of the most rural, remote, rugged, sparsely populated and expensive-to-serve areas of the United States. WTA members have long constructed and operated rural voice and broadband networks – very often as providers of last resort – in high-cost farming, ranching, mining, mountain, forest and desert areas, as well as on Native American reservations and other Tribal Lands. The typical WTA member company serves fewer than 5,000 customers per service area and has fewer than 50 employees.

There is no evidence that RLECs have engaged in "redlining" or any other policies or practices that would directly or indirectly constitute discriminatory refusals to provide equal access to broadband services to any class or group of their potential customers, much less to the protected classes of customers (income level, race, ethnicity, color, religion or national origin) that are the focus of this proceeding. Rather, the relatively small populations of RLEC service areas have long provided strong and persuasive incentives for RLECs to provide first voice service and then both

voice and broadband services to all actual and potential customer locations that are technically and economically feasible for their networks to reach. In addition to these powerful economic and service incentives, RLECs are subject to universal service support obligations and other federal legal requirements that require them to provide nondiscriminatory services to all entities that reasonably request them.

In light of the long nondiscriminatory service record of RLECs and the established legal restraints ensuring the continuation of this excellent record, WTA proposes that RLECs be exempted conditionally from the Annual Report and Compliance Program requirements proposed in the *FNPRM*. Specifically, WTA proposes that each individual RLEC be exempted from preparing and filing the contemplated Annual Report and from adopting, implementing and conducting the contemplated formal Compliance Program unless and until such individual RLEC is found by the Commission to have violated its rules against "digital discrimination of access" under circumstances where the policies and practices held to be discriminatory were not justified by genuine issues of technical or economic feasibility. In such instances which are expected to be extremely rare, the individual offending RLECs could, *inter alia*, be required to file the Annual Report and implement an acceptable Compliance Program for a period of years specified by the Commission.

Historical Record of Non-Discriminatory Access to RLEC Service

WTA commenced operations on January 1, 2004 as a merger of two rural telecommunications carrier trade associations -- Rocky Mountain Telephone Association ("RMTA," founded in 1948) and Western Rural Telephone Association ("WRTA," founded in 1953). During its more than twenty (20) years of representing RLECs, WTA is aware of no instances where its members or other RLECs have engaged in redlining or other policies and

practices that would discriminate or otherwise have the effect of denying equal access to broadband services to any class or group of their potential customers (including the protected classes that are the subject of this proceeding). In addition, WTA is aware of no instances of RLEC discrimination against certain customer classes, including digital discrimination during the early stages of broadband deployment, that took place during the tenures of its RMTA and WRTA predecessors.

Historically, most RLECs began as small local companies (often family-owned commercial companies or cooperatives) that were formed to provide voice telephone service in high-cost rural areas that the Bell System and other large independent telephone companies did not find to be sufficiently populous or otherwise economically attractive to serve. Many of these RLEC areas were characterized by rugged and remote mountain, forest or desert terrain; others were sparsely populated farming, ranching and mining areas. Virtually all lacked substantial numbers and concentrations of potential customers.

As a result, RLECs have a long tradition of serving all of the customers and customer locations in their telephone service areas that they could reasonably reach, including many very remote locations that required major and expensive network extensions via wire and rural radiotelephone facilities. By the mid-1990s, approximately 94 percent of households in the United States had voice telephone service with many RLECs exceeding that national average in their rural service areas. A major reason was that with small potential customer bases and minimal economies of scale, RLECs needed to serve every possible customer in order to generate the customer and universal service support revenues necessary to become and remain economically viable. A second major reason is that RLECs serve small communities and their environs where people know and communicate with each other regularly, and where it would be uncomfortably conspicuous and unsustainable to exclude certain groups or to treat them differently.

The explosive growth of broadband adoption and broadband speeds since the mid-1990s has transformed the voice-centric telecommunications network into a broadband-centric network. Whereas it has become more expensive to deploy the scalable fiber-to-the-home ("FTTH") facilities capable of providing 100/20 Mbps and greater future speeds, RLECs continue to have both economic incentives and legal obligations to serve all or virtually all of their potential broadband customers. Those RLECs that have elected Enhanced Alternative Connect America Cost Model ("Enhanced A-CAM") support have the ultimate obligation to serve ALL of the customer locations required by the Commission – a requirement which leaves no room whatsoever for digital discrimination. Those RLECs that have remained on other Commission universal service support programs (ACAM I, ACAM II, Connect America Fund – Broadband Loop Support, High Cost Loop Support and the Alaska Plan) also have very substantial broadband deployment and service obligations that leave little or no margins for error and hence make it undesirable, unprofitable and generally impossible to deny or restrict access to broadband service to groups of customers on the basis of income level, race, ethnicity, skin color, religion or national origin.

In addition to these Universal Service Fund ("USF") deployment and service obligations, RLECs as common carriers that provide telecommunications services or mixed telecommunications and information services to the public have long had the obligation to serve all individuals and entities that agree to pay their listed or tariffed prices and to accept their listed or tariffed terms and conditions of service. Section 202(a) of the Communications Act of 1934, as amended ("the Act") strictly prohibits RLECs and other telecommunications carriers from directly or indirectly making any unjust or unreasonable discriminations in charges, practices, classifications, regulations, facilities or services, or from giving any undue or unreasonable

preferences or advantages. Section 201(a) of the Act requires RLECs as common carriers to furnish interstate and foreign telecommunications services upon reasonable request therefor, while Section 201(b) requires all charges, practices, classifications and regulations for and in connection with telecommunications services to be just and reasonable. Whether or not these Title II provisions will ultimately apply to all of the broadband services offered by RLECs and their affiliates, they have long constituted an integral part of RLEC operations and are followed by RLECs and their staffs with respect to both mixed voice/broadband and consumer broadband-only loop ("CBOL") services.

Given the lack of any record of RLEC digital discrimination, as well as the absence of economic incentives and the presence of established legal and regulatory restrictions, there is no digital discrimination problem nor any material benefit to customers or protected groups that would require imposition of the proposed Annual Report and Compliance Program requirements upon RLECs. Rather, these obligations would achieve no significant benefits while adding to the already substantial regulatory and reporting burdens and expenses of RLECs.[1]

A Conditional RLEC Exemption Would
Efficiently Advance the Commission's Anti-Digital Discrimination Goals

Therefore, WTA proposes that RLECs be exempted conditionally from the Annual Report and Compliance Program requirements proposed in the *FNPRM*. Specifically, WTA proposes that each individual RLEC be exempted from preparing and filing the contemplated Annual Report and from adopting, implementing and conducting the contemplated formal Compliance Program unless and until such individual RLEC is found by the Commission to have violated its rules against "digital discrimination of access" under circumstances where the policies and practices

[1] For example, RLECs already have substantial regulatory and reporting obligations, including use of universal service support, broadband deployment, broadband performance testing, 911 services, cybersecurity and data breaches, and robocall mitigation.

held to be discriminatory were not justified by genuine issues of technical or economic feasibility. In such an instance which is expected to be extremely rare, the individual offending RLEC could, *inter alia*, be required to file the Annual Report and implement an acceptable Compliance Program for a period of years specified by the Commission.

Given that RLECs have no history of digital discrimination, have no incentives to engage in digital discrimination in their sparsely populated service areas, and are subject to regulatory and legal restrictions that preclude digital discrimination, consumers belonging to protected groups will not be harmed by the proposed RLEC exemption. In fact, protected consumer groups will be better served because the Commission staff will not need to review almost 1,000 RLEC annual reports, and instead will be able to more efficiently and effectively focus its monitoring and enforcement efforts on service providers and service areas where digital discrimination is subject to fewer economic and regulatory restrictions and consequently more likely to occur. Meanwhile, the relatively small staffs of innocent RLECs will be able to focus their time and financial resources more efficiently upon critical broadband extensions and upgrades, rural network maintenance, cybersecurity, robocall mitigation and other operational and regulatory matters.

WTA does not believe that any RLECs will have the incentive or ability to intentionally or inadvertently adopt and implement policies or practices that result in the denial or limitation of equal access to broadband services with respect to any class or group of protected customers or potential customers. However, in the unlikely event that an RLEC is found – as the result of a customer complaint and/or a Commission investigation – to have engaged in digital discrimination that was not justified by genuine issues of technical or economic feasibility, the proposed RLEC exemption is conditional and can be revoked and/or terminated for the offending RLEC. During recent years, it has been common for the Commission's Enforcement Bureau to require annual

compliance filings to be submitted to it for a period of years as part of the resolution of proceedings regarding alleged violations of Customer Proprietary Network Information ("CPNI"), 911 and E911, and other requirements and reporting rules. A requirement for an offending RLEC to file the contemplated Annual Report and implement the contemplated formal Compliance Program for a reasonable and appropriate period of years would enable the Commission to address and resolve any actual digital discrimination problems without burdening or penalizing the vast majority of innocent and non-discriminatory RLECs. Moreover, the potential for revocation or termination of its RLEC exemption would constitute an additional and effective deterrent against the willful or inadvertent adoption of discriminatory policies and practices by the rare RLEC that might do so.

Conclusion

Given the lack of any history or evidence of RLEC digital discrimination, as well as the absence of economic incentives and the presence of established regulatory and statutory restrictions, there is no digital discrimination problem nor any material benefit to customers or protected groups that would require imposition of the proposed Annual Report and Compliance Program requirements upon RLECs. Rather, the Commission should conditionally exempt RLECs from the proposed Annual Report and Compliance Program requirements except in those very rare cases where an individual RLEC is found to have violated the rules against "digital discrimination of access" without justification based upon genuine issues of technical or economic feasibility.

Respectfully submitted,
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