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Attached are Comments submitted by the Wireless Internet Service Providers Association (WISPA) regarding the Broadband Opportunity Council. Please contact me if you have any questions. Thank you.

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**Broadband Opportunity Council
Notice and Request for Comment**

Docket No. 1540414365-5365-01

**COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”) is pleased to file Comments in response to the Notice and Request for Comment (“Notice”) adopted by the Rural Utilities Service (“RUS”) and the National Information and Telecommunications Administration (“NTIA”) with respect to the Broadband Opportunity Council (“Council”).

As background, WISPA is the trade association that represents the interests of wireless Internet service providers (“WISPs”) that provide IP-based fixed wireless broadband services to consumers, businesses and anchor institutions across the country. WISPs use unlicensed spectrum that lowers barriers to entry so that they can provide high-quality and affordable service in unserved, underserved and competitive areas. WISPA’s members include more than 850 WISPs, equipment manufacturers, distributors, and others committed to providing affordable and competitive fixed broadband services. WISPA estimates that WISPs serve more than 3,000,000 people, many of whom reside in rural, unserved and underserved areas where wired technologies like FTTH, DSL and cable Internet access services may not be available. The vast majority of WISPs are small businesses.

Many WISPs have participated in the BTOP and BIP broadband stimulus programs and other funding programs administered by RUS. In addition, in January 2013, WISPA filed Comments in connection with RUS’s Community Connect Program.¹ WISPA regularly participates in rulemaking and other proceedings before the Federal Communications

¹ See Comments of WISPA, RIN 0572-AC30 (filed Jan. 15, 2013).

Commission (“FCC”) on issues such as open Internet regulation, spectrum availability, and universal service (“USF”) reform. WISPA’s overriding focus is on promoting opportunities for small fixed wireless broadband providers by easing onerous regulations, seeking additional spectrum resources, and ensuring a level playing field in USF and other subsidy programs.

WISPA’s Comments below correspond to the questions presented in the Notice.

A. *Overarching Questions*

1. *How can the federal government promote best practices in broadband deployment and adoption? What resources are most useful to communities? What actions would be most helpful to communities seeking to improve broadband availability and use?*

The federal government can promote best practices in several ways. First, rules must be technology agnostic and not favor any particular technology or category of broadband provider over others. The qualifications of broadband providers for funding programs should be based on a demonstrated ability to meet established criteria for speed, latency, and cost-effectiveness.

Second, best practices should favor private investment over public funding and ownership of broadband networks. Instead of allowing municipalities to use taxpayer funds to deploy broadband service, municipalities should first determine that broadband is lacking in an area, should encourage private investment through incentives and tax abatement (as they often do to attract business to a municipality), and provide assistance – financial or otherwise – to the broadband provider. Only if at least one broadband provider does not step forward should the municipality be permitted to deploy its own broadband service. Further, any municipal broadband system should be required to make its network available to privately funded broadband providers that desire interconnection. This policy would support deployment, adoption, and investment.

Third, in order to ensure that small broadband providers invest in broadband in small communities that large providers often ignore, the Council should minimize record-keeping and reporting obligations. Small providers, the ones most likely to serve unserved and underserved communities, cannot deploy cost-effective broadband service if the paperwork burdens are too burdensome. While there should of course be accountability, best practices should take into account the small staff and limited administrative resources of small broadband providers.

Fourth, the Council can convene a stakeholder group to determine best practices for broadband deployment. The issues subject to best deployment practices should include worker safety, installation techniques, and customer service standards.

2. *How can the federal government best promote the coordination and use of federally-funded broadband assets?*

The federal government controls a significant amount of buildings, parks, and other areas where vertical infrastructure for fixed and mobile wireless broadband may already exist. The federal government should develop a standard lease agreement and streamline approval processes so that broadband providers can quickly and without much negotiation obtain access to rooftops, towers, fire control towers, and other federal assets on fair terms. These documents, information, and processes should be made public through a dedicated website.

3. *What federal regulations and/or statutes could be modernized or adapted to promote broadband deployment and adoption?*

WISPA recommends the following. First, Congress should continue its efforts to modernize the Communications Act so that it is consumer focused, technologically neutral, and responsive to new technologies. WISPA has filed comments in response to white papers issued by the House Energy & Commerce Committee making specific recommendations on spectrum and competition policy.²

Second, WISPA has urged the FCC to exempt small broadband providers from new disclosure obligations and its Title II rules. The FCC approved a temporary exemption of its new disclosure obligations for providers with 100,000 or fewer subscribers that filed FCC Form 477. That exemption expires in December, and the FCC is expected to invite further comment on the extent to which that exemption should continue. With respect to Title II and the “general Internet conduct standard” the FCC adopted, WISPA has petitioned the District of Columbia Court of Appeals for a stay and has sought review of the FCC’s decision. WISPA believes that a legislative solution would be the best alternative for small broadband providers.

Third, the FCC is considering procedures for competitive bidding for Phase II of the Connect America Fund. WISPA believes that the procedures must be fair, technology neutral, and encourage robust participation by qualified applicants. Financial and other gating requirements should not foreclose participation by small businesses, which are often best able to quickly deploy broadband facilities in small, rural communities.

Fourth, RUS should streamline the process and request additional funding for the broadband loan program. This program has proven very effective with low default

² See Email from L. Elizabeth Bowles, WISPA Legislative Chair, to CommLawUpdate (submitted Jan. 31, 2014) (Communications Act modernization); Letter from L. Elizabeth Bowles, WISPA Legislative Chair, to the Hon. Fred Upton and the Hon. Greg Walden (submitted Apr. 25, 2014) (spectrum policy); Letter from L. Elizabeth Bowles, WISPA Legislative Chair, to the Hon. Fred Upton and the Hon. Greg Walden (submitted June 13, 2014) (competition policy and the role of the FCC).

rates. The program could be further improved by allowing consideration of in-kind equity contributions and by giving special allowances for deferred grant revenue for previous BIP and BTOP awardees during equity calculations.

4. *As the federal government transitions to delivering more services online, what should government do to provide information and training to those who have not adopted broadband? What should the federal government do to make reasonable accommodations to those without access to broadband?*

Information and training needs in regards to broadband are found in low-income neighborhoods and communities. One example of what should be done can be found in Estella's Brilliant Bus program.³ Estella Mims Pyfrom took a bus and transformed it into a computer lab where she gives children and adults one-on-one time, teaching them about computers and extending their education. This approach has allowed Ms. Pyfrom to help to approximately 500 students.⁴ More programs like this one are needed throughout the country. This could be part of E-rate funding or another grant opportunity through RUS.

Additionally, libraries and community centers need to be equipped with computers and ongoing funding for upgrades.

5. *How can the federal government best collaborate with stakeholders (state, local, and tribal governments, philanthropic entities, industry, trade associations, consumer organizations, etc.) to promote broadband adoption and deployment?*

The federal government should convene multi-stakeholder groups to develop best practices, standardized lease agreements, and standardized metrics to define and measure broadband speed, deployment, and adoption. In addition, the federal government can obtain information from established councils and committees. The Federal Government should communicate with state-established organizations like these in each state.

B. Addressing Regulatory Barriers

6. *What regulatory barriers exist within the agencies of the Executive Branch to the deployment of broadband infrastructure?*

In recent years, NTIA and the Department of Defense, working with the FCC, have reduced barriers to spectrum availability by becoming more engaged in the process of enabling commercial use of federal spectrum, either through sharing or through the transfer of spectrum for commercial use. These efforts should continue as spectrum

³ Information about Estella Mims Pyfrom can be found here: <http://estellasbrilliantbus.org/>

⁴ "Brilliant Bus' shrinking digital divide" by Danielle Berger, CNN
<http://www.cnn.com/2013/04/04/us/cnnheroes-pyfrom-brilliant-bus/index.html>

sharing techniques evolve and use (or non-use) of spectrum by federal agencies is better understood and assessed.

7. *What federal programs should allow the use of funding for the deployment of broadband infrastructure or promotion of broadband adoption but do not do so now?*

As two examples, the Department of Transportation should encourage the deployment of fiber as new roads are constructed to promote cost-effective “dig once” programs that can extend broadband to new areas. The Housing and Urban Development agency can work with programs like Habitat for Humanity and low-income multi-tenant projects to make broadband available in HUD projects.

8. *What inconsistencies exist in federal interpretation and application of procedures, requirements, and policies by Executive Branch agencies related to broadband deployment and/or adoption, and how could these be reconciled? One example is the variance in broadband speed definitions.*

As the Notice acknowledges, the FCC and RUS use different definitions of “broadband.” The agencies also use different definitions of other relevant terms, such as “rural area,” and measure broadband differently. For instance, the FCC looks at upload and download speeds separately, while RUS uses a combined threshold.

Conforming definitions would help avoid situations where an “unserved” area eligible for funding or other benefits with one agency would be ineligible for funding with the other agency. In other circumstances, a lack of common definitions could lead to cases where an area is eligible for funding by both the FCC and RUS, which if uncoordinated could create multiple taxpayer-funded broadband projects in the same geographic area.

In addition, RUS rules treat fixed and mobile broadband as if they were the same for purposes of the Community Connect program.⁵ In some cases, areas that are deemed served by mobile broadband will be ineligible for grants or loans even if there is no fixed broadband service provided to residences in that area. Fixed and mobile technologies serve different markets and perform different functions, and funding programs should recognize this distinction (as the FCC does with its separate Mobility Fund to support mobile broadband and the Connect America Fund to support fixed broadband). This problem can be easily fixed by establishing separate funding programs for fixed and mobile broadband.

9. *Are there specific regulations within the agencies of the Executive Branch that impede or restrict competition for broadband service, where residents have either no option or just one option? If so, what modifications could agencies make to promote competition in the broadband marketplace?*

⁵ 78 Fed.Reg. 25791 (May 3, 2013).

As discussed in the response to #8, RUS regulations for the Community Connect program fail to distinguish between fixed and mobile, leaving many residences ineligible for funding because mobile – but not fixed – service is offered.

10. *Are there federal policies or regulations within the Executive Branch that create barriers for communities or entities to share federally-funded broadband assets or networks with other non-federally funded networks?*

Please see responses to #8 and #9 above.

11. *Should the federal government promote the implementation of federally-funded broadband projects to coincide with other federally-funded infrastructure projects? For example, coordinating a broadband construction project funded by USDA with a road excavation funded by DOT?*

WISPA believes that the federal government should promote programs like this.

C. Promoting Public and Private Investment in Broadband

12. *How can communities/regions incentivize service providers to offer broadband services, either wired or wireless, in rural and remote areas? What can the federal government do to help encourage providers to serve rural areas?*

Please see responses to #1 and #2 above.

13. *What changes in Executive Branch agency regulations or program requirements could incentivize last mile investments in rural areas and sparsely populated, remote parts of the country?*

Please see responses to #8 and #9 above.

14. *What changes in Executive Branch agency regulations or program requirements would improve coordination of federal programs that help communities leverage the economic benefits offered by broadband?*

Please see responses to #8 and #9 above.

15. *How can Executive Branch agencies incentivize new entrants into the market by lowering regulatory or policy barriers?*

Please see responses to #1, #2, #8 and #9 above.

D. Promoting Broadband Adoption

16. *What federal programs within the Executive Branch should allow the use of funding for broadband adoption, but do not do so now?*

WISPA does not respond to this question.

17. *Typical barriers to broadband adoption include cost, relevance, and training. How can these be addressed by regulatory changes by Executive Branch agencies?*

Executive Branch agencies can incorporate programs that provide tax exemptions for businesses that invest in broadband deployment and adoption programs in rural, unserved and underserved areas.

E. Issues Related to State, Local, and Tribal Governments

18. *What barriers exist at the state, local, and/or tribal level to broadband deployment and adoption? How can the federal government work with and incentivize state, local, and tribal governments to remove these barriers?*

The FCC took important action in October 2014 to implement Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 and improve access to wireless facilities for collocation of equipment. These rules should expedite access to towers and other infrastructure for both fixed and mobile broadband, although it is believed that many communities are unaware of the new rules. Efforts to educate local governments should continue.

19. *What federal barriers do state, local, and tribal governments confront as they seek to promote broadband deployment and adoption in their communities?*

WISPA does not respond to this question.

20. *What can the federal government do to make it easier for state, local, and tribal governments or organizations to access funding for broadband?*

WISPA does not respond to this question.

21. *How can the federal government support state, local, and tribal efforts to promote and/or invest in broadband networks and promote broadband adoption? For example, what type of capacity-building or technical assistance is needed?*

WISPA does not respond to this question.

F. Issues Related to Vulnerable Communities and Communities With Limited or No Broadband

22. *How can specific regulatory policies within the Executive Branch agencies be altered to remove or reduce barriers that prevent vulnerable populations from accessing and using broadband technologies? Vulnerable populations might include, but are not limited to, veterans, seniors, minorities, people with disabilities, at-risk youth, low-income individuals and families, and the unemployed.*

WISPA does not respond to this question.

23. *How can the federal government make broadband technologies more available and relevant for vulnerable populations?*

WISPA does not respond to this question.

G. Issues Specific to Rural Areas

24. *What federal regulatory barriers can Executive Branch agencies alter to improve broadband access and adoption in rural areas?*

Please see responses to #1, #2, #8 and #9 above.

25. *Would spurring competition to offer broadband service in rural areas expand availability and, if so, what specific actions could Executive Branch agencies take in furtherance of this goal?*

As discussed in the response to #1, municipalities that deploy their own broadband systems should be required to allow privately funded broadband providers to interconnect to those networks on fair and non-discriminatory terms.

26. *Because the predominant areas with limited or no broadband service tend to be rural, what specific provisions should Executive Branch agencies consider to facilitate broadband deployment and adoption in such rural areas?*

Executive Branch agencies should consider what other federally-funded projects are available in rural communities and tag broadband funding opportunities to those projects. Additionally, Executive Branch agencies can provide additional funding to rural community programs to be used on broadband initiatives within those communities.

H. Measuring Broadband Availability, Adoption, and Speeds

27. *What information about existing broadband services should the Executive Branch collect to inform decisions about broadband investment, deployment, and adoption? How often should this information be updated?*

Broadband providers should be required to report to one agency and on one form. They should not be required to provide reports to the FCC, RUS, NTIA or another federal agency. Common reporting will reduce administrative burdens and lead to standardized metrics. Information and statistics should be updated every six months and reporting should be aggregated to ensure confidentiality of certain competitive information.

Categories of information would include the following:

- Broadband speeds, latency, and usage
- Pricing tiers
- Areas served (by census block or other granular metric)

28. *Are there gaps in the level or reliability of broadband-related information gathered by other entities that need to be filled by Executive Branch data collection efforts?*

WISPA has noted that, while rigorous, the FCC's determination of "unserved" and "served" areas does not always reflect reality. While some of the data deficiency results from a failure of broadband providers to file FCC Form 477, the FCC should work to ensure greater compliance and accuracy.

29. *What additional research should the government conduct to promote broadband deployment, adoption, and competition?*

The federal government should conduct research on new technologies and how other countries are successfully providing broadband to their citizens.

30. *How might the federal government encourage innovation in broadband deployment, adoption, and competition?*

In these Comments, WISPA has described a number of initiatives that the federal government can take to promote technology-neutral broadband deployment. These include the following:

- Exempting small businesses from open Internet rules
- Requiring municipalities to undertake a detailed analysis before spending taxpayer money on deploying service
- Requiring municipalities to make their facilities available for interconnection
- Tax exemptions

- Defining fixed and mobile broadband separately for Community Connect grant program eligibility
- Standardizing definitions and metrics
- Reducing reporting obligations for small businesses

Respectfully submitted,

**WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION**

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