BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF POTENTIAL AMENDMENTS TO STATE RURAL UNIVERSAL SERVICE FUND RULE 17.11.10 NMAC

Docket No. 19-00286-UT

REPLY COMMENTS OF CTIA

CTIA submits these Reply Comments on proposed amendments to 17.11.10 NMAC (State Rural Universal Service Fund) (the "Proposed Rules") pursuant to the Order Issuing Notice of Proposed Rulemaking entered in the above-captioned docket on June 3, 2020 (the "Order") by the New Mexico Public Regulation Commission (the "Commission").

Many of the points raised by CTIA in initial comments were echoed by other commenters, supporting CTIA’s argument that the Commission needs to refine its Proposed Rule and justify its provisions with additional support, especially when it comes to the establishment of a benchmark rate. Accordingly, CTIA suggests specific revisions to the Proposed Rule for the Commission’s consideration herein.

I. THE COMMISSION SHOULD NOT MAKE "CONSUMER BROADBAND ONLY LOOPS" ELIGIBLE FOR SRUSF SUPPORT

As CTIA pointed out in opening comments, the Commission should reject the proposal to make "consumer broadband-only loops" eligible for State Rural Universal Service Fund ("SRUSF") support for numerous reasons, most importantly because such a proposal violates and exceeds the Commission’s authority under the Rural Telecommunications Act.¹

Apart from the New Mexico Exchange Carrier Group ("NMECG") – the only seeming beneficiary of such a change – every party filing comments strongly opposed the proposal. This

included Commission Staff, which noted that “expansion of the definition of access line in the rule to backdoor payments for broadband only loops is inappropriate given the language and effect of [Senate Bill] 308.”

Like CTIA, Smith Bagley, Inc. (“SBI”) cited a number of issues that the proposal would create, including increasing the burden on customers whose carriers do not get access replacement subsidies (such as wireless customers), and creating competitive imbalance by exempting small telecom carriers from paying into the SRUSF while allowing them to draw from it. CenturyLink also opposed the proposal, calling the change “unwise on a number of levels,” and citing to the “well-understood” and “significantly litigated” present definition of “access line” that this language would change.

Accordingly, CTIA recommends the following specific amendments for the Proposed Rules:

   i. Remove the additional text added to 17.11.10.7(A) and (I).
   ii. Delete proposed 17.11.10.7(K).
   iii. Delete proposed 17.11.10.9(A)(5).

II. THE COMMISSION SHOULD NOT INCLUDE A SET RESIDENTIAL BENCHMARK RATE WITHIN THE PROPOSED RULE

In opening comments, CTIA also noted that the Commission should not set the residential benchmark rate at $18 by rule. The rate should be addressed in a separate proceeding and revisited regularly on a set schedule. Since opening comments were filed, the Commission opened Case No. 20-00153-UT to determine the amount of the 2021 SRUSF per-connection surcharge. There

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4 Id.
6 See CTIA Comments at 3-4.
is no reason the annual docket addressing the surcharge amount cannot also assess the appropriate residential benchmark rate. Case No. 20-00153-UT relies on an assumption of $18 for the residential benchmark rate anyway\(^8\) – meaning there will be no impact on that Case if the Commission refrains from setting the residential benchmark rate by rule in this proceeding.

SBI’s comments also highlighted the value of flexibility in proposed alternative language that would not set the benchmark by rule.\(^9\) As CTIA did, SBI also noted that data suggests the benchmark rate should be higher than $18, and setting the broadband benchmark rate at the same level as voice would be inappropriate in light of the significant disparity between voice and broadband costs.\(^10\)

Accordingly, CTIA recommends the following specific amendment for the Proposed Rules: Revise 17.11.10.9(A)(1) to read “The Commission shall, on or before May 1 of each year, determine the residential benchmark rate in an evidentiary proceeding to maintain federal high cost support for the following year.”

III. OTHER RECOMMENDED REVISIONS

CTIA also recommends the following specific amendments for the Proposed Rules, in italics, with narrative justification following each:

a. Delete the proposed addition of “acquisition” and “or maintenance” in 17.11.10.31(A).

In opening comments, CTIA stated that “the Commission should make it clear that any SRUSF grants that directly fund capital projects should be treated as grants in aid of construction.

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\(^8\) See id. at 4 (the Commission instructs respondents to “assume $18.00 (eighteen dollars) as the residential affordability benchmark rate.”)

\(^9\) See SBI Comments at 6.

\(^10\) See id.
As such, only capital costs in excess of funded amounts should be includable in an ETC’s rate base to the extent any prospective funding is established on a cost-based, need-based basis.\textsuperscript{11}

Other commenters agreed. Staff noted that the new language creates the assumption that builders should also operate and maintain the network, and that the addition of “acquisition” would “put the Commission in the position of interfering in a competitive market for voice and broadband services” impermissibly.\textsuperscript{12} SBI cautioned the Commission that “once the fund can be used for operating expenses/maintenance, uses of support to build new facilities are reduced, as carriers will naturally build such expenditures into their projects.”\textsuperscript{13} Adoption of this proposal will create a cycle that weakens the SRUSF every year – as more is built, more maintenance costs are necessary, and eventually there will be no funding left for construction. And CenturyLink opposed the changes as well, noting that “it is impossible to reconcile maintenance with ‘unserved’ or ‘underserved’ areas.”\textsuperscript{14}

Adoption of this proposal will create a cycle that weakens the SRUSF every year – as more is built, more maintenance costs are necessary, and eventually there will be no funding left for construction. Accordingly, the Commission should reject it.

\begin{itemize}
  \item b. Delete the clause “Such third-party funding shall not include loan funds, federal high cost fund legacy support, Connect America fund support or other sources that are not directly tied to the proposed project” in 17.11.10.31(A).
\end{itemize}

As explained in CTIA’s initial comments, the definition of “third-party funds” within the Proposed Rule is so broad as to render meaningless this restriction, increasing the possibility that

\textsuperscript{11} CTIA Comments at 7.
\textsuperscript{12} See Staff Comments at 23.
\textsuperscript{13} SBI Comments at 8.
\textsuperscript{14} CenturyLink Comments at 12.
limited, public SRUSF funds will be used inefficiently on projects already being funded by other methods.\textsuperscript{15}

c. \textit{Delete 17.11.10.31 (I)}. Proposed Rule 17.11.10.31 (I) would allow applicants to sidestep the more fulsome review process for SRUSF broadband applications that would be established by the Proposed Rule, reducing transparency and contravening the purpose of the grant program, which is to incentivize new projects in unserved areas that need the funding, not rebate projects that were going to be built regardless.\textsuperscript{16}

Other commenters agreed with CTIA that the proposal should be deleted. Staff called the proposal “yet another slippery slope that will open the door for carriers to be paid for network projects they actually have the wherewithal to complete on their own.”\textsuperscript{17} SBI stated that the proposal would “defeat the entire purpose of having an application window” and “may prove to be destructive to the broadband fund mechanism” by “allowing carriers to end run the competitive process.”\textsuperscript{18} CenturyLink believes the proposal “would introduce the possibility for error, unfair treatment, and awards without fair notice or participation by the broadband stakeholders at large.”\textsuperscript{19}

The Proposed Rule establishes a yearly application review cycle that is more than sufficient to ensure that SRUSF funding for broadband is disbursed appropriately. An “off-season” grant program is unnecessary and ill-advised, and the Commission should reject it.

d. \textit{Strike the deletion of “including commercial mobile radio services carriers as determined by the commission” in 17.11.10.6}. 

\textsuperscript{15} See CTIA Comments at 5-6.  
\textsuperscript{16} See CTIA Comments at 7.  
\textsuperscript{17} Staff Comments at 25.  
\textsuperscript{18} SBI Comments at 14.  
\textsuperscript{19} CenturyLink Comments at 16.
Clarifying that wireless carriers may participate in the program will only help ensure that SRUSF goals are met in a competitively and technologically neutral fashion that will benefit all New Mexicans.\textsuperscript{20} SBI agreed, noting that “the term ‘telecommunications carriers’ is not a defined term, and there should be certainty that” wireless carriers are eligible.\textsuperscript{21}

CTIA respectfully disagrees with Staff’s assertion that the statement is redundant in the rule because the rule, by statute, must be technologically neutral.\textsuperscript{22} The explicit statement provides clarity, especially considering other state universal service funds have requirements for technological neutrality but do not allow wireless providers to draw from their funds. In fact, the statute itself includes an explicit mention of wireless providers when assessing the surcharge, despite also having the “technologically neutral” language mentioned, suggesting a legislative intent that it was important to reinforce their inclusion.\textsuperscript{23} Further, even if interpreted as redundant, no harm is done by maintaining this clause within the rule.

Accordingly, the deletion should be struck.

IV. CONCLUSION

CTIA’s concerns with the Proposed Rules, as expressed in initial comments and further noted above, found broad agreement among parties to the proceeding. Accordingly, CTIA respectfully requests that the Commission amend the Proposed Rules as set forth above.

\textsuperscript{20} \textit{See} CTIA Comments at 6-7.
\textsuperscript{21} \textit{See} SBI Comments at 2.
\textsuperscript{22} \textit{See} Staff Comments at 4.
\textsuperscript{23} \textit{See} NM Stat. §63-9H-6(B).
Respectfully Submitted,

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Dated: August 17, 2020
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IN THE MATTER OF POTENTIAL AMENDMENTS TO STATE RURAL UNIVERSAL SERVICE FUND RULE 17.11.10 NMAC

Docket No. 19-00286-UT

I HEREBY CERTIFY that a true and correct copy of Reply Comments of CTIA, was sent via e-mail for filing to prc.records@state.nm.us, along to the following parties on August 17, 2020:

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