February 6, 2023

Dear Members of the 118th Congress:

As you begin work on the many important issues facing our nation, NTCA–The Rural Broadband Association ("NTCA") hopes that you will see broadband access as a key component to enhancing and sustaining our nation's economic and civic well-being. From telehealth to telework, from distance learning to precision agriculture, and from streaming entertainment to complex financial transactions, reliable and affordable connectivity is critical to ensure every American can participate in today's online world.

NTCA represents more than 850 small community-based businesses that have made substantial investments to deliver world-class broadband to rural America. Despite averaging fewer than 30 employees per company and serving on average more than 2,000 square miles, these entrepreneurs have delivered ever-improving connectivity for decades. Today, even as they serve areas where the average density is fewer than six customers per square mile, these small businesses have deployed robust fiber connections to almost 80% of those customers on average and can deliver speeds in excess of 100 Mbps.

Yet, for all this progress, more must be done to reach others lacking sufficient access and to fulfill the ongoing mission of delivering universal service. To this end, we offer here a policy blueprint for achieving and sustaining universal broadband access in rural America. These four overarching areas of focus – which arise out of decades of real-world experience in serving deeply rural areas, low-income consumers, and community schools and libraries and in working with various governmental connectivity initiatives – represent a proven and effective roadmap for ensuring that every American, regardless of circumstance, can get and stay connected.

1. ***Promote Universal Service Programs and Related Initiatives to Ensure Sustainable and Affordable Connectivity***

There has been understandable focus in recent years on connecting the unconnected, resulting in the creation of new grant programs to provide capital for network construction. These new initiatives should be critical in helping to overcome the remaining digital divide if implemented properly; NTCA members are active participants in grant programs that have already launched and are eager to participate in those still being implemented. Nonetheless, the essential nature of long-standing universal service fund ("USF") programs overseen by the Federal Communications Commission ("FCC") must not be overlooked in the justifiable excitement surrounding newer programs. For several decades, pursuant to mandates established by Congress, the FCC's USF programs have been critical to making the business case for investment and ongoing operation of rural networks, keeping service rates more affordable, and connecting schools, libraries, and rural health care facilities.

NTCA therefore urges Congress to continue to recognize the significance of the USF programs in the comprehensive ongoing mission of universal service. To ensure these USF programs continue to fulfill long-standing statutory mandates in a rapidly evolving broadband world, <u>NTCA highlights three specific policy recommendations for consideration by Congress</u>:

- *Update Key High-Cost USF Mechanisms* – Several dozen members of Congress have written to the FCC in recent months urging prompt action to update key USF mechanisms that support the availability *and* affordability of higher-speed broadband services in rural America. **Congress should direct the FCC to complete this work and implement the high-cost USF enhancements currently under consideration.**

- *Sustain Affordability Measures* – The Affordable Connectivity Program ("ACP") created by Congress and the FCC's Lifeline USF program provide significant support for lower-income consumers who cannot afford to adopt and retain critical communications services. **Congress should make the ACP permanent and continue to support the FCC's Lifeline efforts as a complement to the efforts of the ACP.**

- *Expand the Base of Contributors that Support USF Initiatives* – Even as their primary purpose is to support access to and affordability of broadband, the USF programs are paid for through assessments on a declining base of legacy telecommunications service revenues pursuant to rules established 25 years ago. **Congress should work with the FCC to update the USF contribution mechanism, ensuring that all that use or benefit from improved nationwide broadband access and affordability support this goal. Moreover, Congress must be prepared to undertake such work on an emergency basis to the extent that recent judicial challenges to the long-standing contribution framework prevail and put the essential USF programs (and those that rely upon these programs) at risk.**

2. ***Ensure Effective and Efficient Use of Broadband Infrastructure Grant Funding***

With several new grant programs created in recent years and the largest of all – the Broadband Equity, Access, and Deployment ("BEAD") program overseen by the National Telecommunications and Information Administration ("NTIA") – now under development, our nation has a once-in-a-generation opportunity to connect every American to networks capable of keeping pace with user demand for decades. Implementation and execution will be critical, however, to ensuring that such generational change is realized and that these funds are not wasted. To help achieve lasting results from these efforts, <u>NTCA highlights four specific policy recommendations for consideration by Congress</u>:

- *Take No Short-Cuts in Broadband Mapping* – Even if allocations to individual states of BEAD grant funding will be made based upon preliminary maps of serviceable locations and broadband coverage, it is essential that actual funding decisions by the states in turn be made based upon better-vetted data. Consistent with the vision and framework it outlined originally in the Broadband DATA Act, **Congress should make clear that NTIA and the states should only use a broadband map to award BEAD funding *after:* (i) the "fabric" of locations to be served has been properly challenged, vetted, and "settled;" (ii) broadband service providers have had the opportunity to file coverage data with respect specifically to that "settled" fabric of locations; and (iii) NTIA and the states have conducted further challenge processes with respect to these coverage data claims submitted by providers.** It is only through these steps, taken thoughtfully and with discipline in this order, that broadband funding will be directed to areas where it needed.

- *Coordinate Among Broadband Programs Thoughtfully* – Broadband programs at various federal agencies and in various states offer great promise to help overcome remaining digital divides, but only if coordinated carefully. Whereas, for example, the FCC's USF programs and capital programs administered by the U.S. Department of Agriculture have worked in concert rather than conflict for decades, more recent grant programs and awards appear to be working at cross-purposes at times and leading to the potential deployment of competing networks in areas that could not sustain a single network without governmental support. **To address these concerns and ensure coordination among programs going forward, NTCA recommends: (i) the development of a tool that identifies all enforceable commitments under various federal and state programs to deliver broadband services meeting certain parameters; and (ii) a requirement that all agencies (including the states to the extent they are using federal funds) consult this tool (or that this tool be incorporated into the national broadband map) prior to making broadband awards so as to respect other agencies' awards.**

- *Leverage Proven Networks and Providers of all Kinds* – Recent failures in certain broadband programs make clear that agencies should avoid gambles on speculative claims regarding technological capabilities or providers with no history of serving rural markets. **To ensure the promise of new programs will be fulfilled and to avoid waste of funds and loss of opportunity, broadband initiatives should leverage proven technologies and proven providers. It is important as well that preferences be afforded in funding awards not based upon corporate or organizational form, but instead based upon demonstrated community presence and commitment and a history of investment and operation in rural areas for years or even decades.**

- *Ensure Grant Program Requirements are Tailored and Reasonable* – Transparency and accountability are essential to ensure broadband programs perform as promised. It is important, however, to avoid imposing unrelated provisions on broadband deployment that, at best, may make construction more time-consuming and expensive or, at worst, deter program participation altogether. Particularly at a time when supply chains remain tight and challenges persist in finding skilled workers, regulations that increase the time and/or cost it will take to procure these resources are likely only to frustrate the broadband-specific goals of these programs. **Examples of potential program requirements that should be examined more closely for relief or relaxation include strict Build American/Buy American provisions, other governmental contracting procurement obligations, and wage-related duties that do not reflect the marketplace in rural areas specifically.** It is also important that program requirements are defined carefully and do not impose undue burdens on providers. **Well-intentioned provisions to ensure services are affordable for consumers must strike a reasonable balance and avoid undermining the sustainability of broadband projects or even specifically prescribe the rates that providers charge for services.**

3. ***Align Tax Policies with Incentives and Goals for Broadband Investment***

To make effective use of broadband grant dollars, **Congress should reintroduce and pass the Broadband Grant Tax Treatment Act, which was introduced as S. 5021 and H.R. 9449 in the 117th Congress.** Even as Congress has appropriated billions of dollars to make robust broadband service to unserved and underserved areas, this grant funding is unfortunately *taxable* for most provider recipients. This extracts a cost from those receiving a grant before a dollar has been used to put facilities in the ground or serve even a single customer and could reduce the number of consumers obtaining a connection they have long been without.

Moreover, Congress should sustain favorable tax treatment for accelerated or "bonus" depreciation. Although bonus depreciation has helped unleash deployment of infrastructure and operational assets in a variety of industries (including broadband) for decades, it is scheduled to decrease to 80% this year and then steadily decline until it expires in 2027. At a time when Congress is calling for providers to invest in broadband infrastructure, the loss of this tax treatment may delay or deter such deployment efforts and undermine the use of resources to focus upon service delivery and further upgrades and expansion. **Congress should reintroduce and pass the Accelerate Long-Term Investment Growth Now (ALIGN) Act, which was introduced as S. 1166 and H.R. 2558 in the 117th Congress to extend permanently bonus depreciation by allowing businesses to fully expense assets in the year acquired.**

4. *Promote Right-Sized Regulation Targeted to Market Needs and Market Failures*

Regulatory intervention is appropriate where shortcomings in markets warrant it – and such intervention should then be tailored surgically to address those shortcomings. For example, measures seeking to regulate the provision of broadband should take stock of consumer needs and provider capabilities, considering where concentrated market power or specific market failures warrant surgical action to address such concerns. Congress has a significant role to play in identifying where such concerns exist and giving specific direction on how to address them, with a recent example being the clear mandate for the FCC to provide simple but meaningful consumer disclosures through "broadband nutrition labels." **Similarly, given the evolving nature of challenges in areas like privacy and cybersecurity, NTCA recommends a collaborative approach that allows industry to "stay ahead of" such matters while ensuring proper incentives for and support for such efforts from the federal government** – with the model NIST Cybersecurity Framework offering a pertinent example. Finally, proper account must be taken of the size and scope of each provider in crafting regulations. Smaller providers have historically been afforded longer lead times or tailored exemptions for compliance with new rules, and this practice should continue. Moreover, laws and regulations should be periodically reviewed and revised where they impose undue burdens on smaller businesses (such as the extension of Sarbanes-Oxley reporting requirements). **Congress should reintroduce and pass the "ACCESS Rural America Act" introduced as S. 4689 and H.R. 9445 in the 117th Congress.**

Congress and various agencies can play an important role as well in streamlining regulations that delay, hinder, or increase the cost of broadband deployment. Working with federal agencies to navigate the environmental, historic preservation, and Tribal consultation processes and receive the permits necessary to begin network construction can be a major impediment to deploying broadband infrastructure in rural America. NTCA members recount delays of a year or more in obtaining necessary permission for construction of such infrastructure. **Key congressional priorities to streamline deployment efforts should include ensuring that:**

- **Agencies are properly staffed to process applications;**
- **Processes for reviewing applications are consistent across agencies;**
- **Agency fees are invested back into the people and systems necessary for such review;**
- **Clear "goalposts" exist for counting "shot clocks" on application reviews;**
- **Environmental reviews can be streamlined when installing facilities in previously disturbed rights-of-way; and**
- **Addressing obstacles presented by railroad crossings and pole attachments in rural deployments.**

A final area worth monitoring for potential intervention is the content marketplace. As consumers access and view content in evolving ways, outdated regulations should be revisited – rules developed to reflect a 1990s-era video marketplace today hold distributors (and ultimately consumers) hostage to the profit whims of broadcasters who have increased demands for compensation exponentially in the decades since. Meanwhile, the evolution of online content bears watching as well to ensure that "gatekeeping" does not result in the creeping of similar economics and dynamics into that marketplace as well.

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NTCA and its community-based broadband provider members look forward to working with you to achieve a shared vision of ensuring that every American has access to robust, affordable, and reliable broadband as soon as possible and for decades to come. We believe the policy blueprint articulated herein, with its focus on four overarching themes and several specific recommendations for action under each, charts a course to realize this vision.

Sincerely,

Shirley Bloomfield
Chief Executive Officer