

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Protecting the Privacy of Customers of	)	WC Docket No. 16-106
Broadband and Other Telecommunications	)	
Services	)	
	)	

**COMMENTS OF  
THE RURAL WIRELESS ASSOCIATION, INC.**

**Rural Wireless Association, Inc.**

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## Summary

The Rural Wireless Association, Inc. (“RWA”) files these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking regarding broadband privacy. RWA’s carrier members are committed to protecting their subscribers’ privacy, but are concerned that a prescriptive one-size-fits-all privacy regime applicable only to broadband Internet access service (“BIAS”) providers and not to other entities in the Internet space could place untenable demands on rural BIAS providers that are already struggling to provide wireless broadband services in rural and remote areas.

A benchmark of 5,000 customers to define “Small BIAS Provider” is too low to be inclusive of all small BIAS providers. As such, any mitigating actions taken by the FCC will not have the intended effects. RWA instead urges the FCC to use the “small provider” definition it adopted in the *Open Internet Order*, and define a “Small BIAS Provider” as a provider with 100,000 or fewer subscribers, aggregated over all the providers’ affiliates.

Small and rural-based BIAS providers are not similarly situated to large and/or nationwide BIAS providers. Unlike large carriers serving rural areas, rural-based providers are located in the same rural communities that they serve, and are focused on the needs of those communities and providing excellent customer service. RWA understands the Commission’s concerns regarding customer privacy and that these concerns are the same irrespective of the carrier's size. RWA believes that, while the privacy *concerns* are the same – the actual *risks* are not. Unlike large carriers, BIAS providers like RWA’s carrier members do not go to great lengths to collect, store, analyze, and exploit Customer Proprietary Information (“customer PI”) for marketing purposes or other reasons. Rather, these companies make only very basic use of customer data.

RWA supports the need to inform subscribers about their privacy and protect their data, but is concerned about the financial burdens that the Commission's proposals will impose on small BIAS providers. These costs can be alleviated with targeted exemptions and compliance deadline extensions.

RWA recommends that the Commission harmonize its proposals with existing regulations regarding voice CPNI. RWA further recommends that the Commission adopt voluntary safe harbors and standardized materials so as to provide both flexibility and regulatory certainty. Finally, RWA strongly supports the adoption of a 24-month extended compliance deadline for small BIAS providers applicable to the Commission's proposals regarding notice, security, and breach notification. Small and rural BIAS providers would benefit from additional time to comply with the Commission's rules because such time will allow for the development of compliance processes and procedures and technical solutions.

RWA strongly supports an exemption from customer approval provisions for small BIAS providers, provided they do not share customer data with third parties. In the absence of an across-the-board exemption, the Commission should grant small BIAS providers 24 months additional compliance time as discussed above. In addition, the Commission should allow small BIAS providers who have already obtained customer approval to use a customer's proprietary information to rely on such approval in lieu of being required to obtain a new approval for BIAS. In regards to the breach notification proposals, RWA recommends that the Commission: (1) lengthen the FCC and FBI/Secret Service notification timelines to at least 30 days; and (2) require that customers be notified within the time period specified by the state data breach notification requirement or, if a specific number of days is not included in the statute, 45 days after the breach.

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**COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.**

The Rural Wireless Association, Inc. (“RWA”)<sup>1</sup> files these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking regarding broadband privacy.<sup>2</sup> RWA appreciates the opportunity to provide comments regarding the Commission’s proposed privacy requirements for broadband Internet access service (“BIAS”) providers.

RWA’s carrier members are committed to protecting their subscribers’ privacy, but are concerned that a prescriptive one-size-fits-all privacy regime applicable only to BIAS providers and not to other entities in the Internet space could place untenable demands and costs on rural wireless broadband providers that are already struggling to provide wireless broadband services in rural and remote areas. RWA is concerned that the Commission’s current proposal could result in customer confusion and fatigue, and would also require BIAS providers to

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<sup>1</sup> RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve rural consumers and those consumers traveling to rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RWA’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RWA’s member companies serves fewer than 100,000 subscribers.

<sup>2</sup> *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Notice of Proposed Rulemaking, WC Docket No. 16-106, FCC 16-39 (rel. Apr. 1, 2016) (*Broadband Privacy NPRM*).

comply with far more onerous requirements than those imposed on large online Internet content providers and other entities in the online space that have access to a tremendous amount of user information.

**I. A ONE-SIZE-FITS-ALL APPROACH TO REGULATING CONSUMER BROADBAND PRIVACY IS NOT WARRANTED.**

**a. A “Small BIAS Provider” Should Include Those Providers With 100,000 Subscribers or Fewer.**

The Commission seeks comment on what constitutes a “small provider” of broadband services,<sup>3</sup> and requests input as to how its proposals may impact these entities and how to alleviate such impact. The Commission floats “5,000 customers” as a baseline for small providers.<sup>4</sup> RWA believes that this number is too low to be inclusive of all small BIAS providers. As such, any mitigating actions taken by the Commission will not have the intended effects. RWA instead urges the Commission to use the “small provider” definition it adopted in the *Open Internet Order*, and define a “Small BIAS Provider” as a provider with 100,000 or fewer subscribers as per their most recent Form 477, aggregated over all the providers’ affiliates.<sup>5</sup> The Commission used this definition in its decision to grant a temporary exemption from the enhanced transparency rule for these broadband providers in the *Open Internet Order*. The Commission also used this metric in its 2013 *Rural Call Completion Order*, which exempted providers with 100,000 or fewer subscriber lines, aggregated across all affiliates, from certain recordkeeping, retention, and reporting rules.<sup>6</sup>

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<sup>3</sup> *Broadband Privacy NPRM* at ¶ 151.

<sup>4</sup> *Id.*; *Appendix B – Initial Regulatory Flexibility Analysis* at ¶ 59.

<sup>5</sup> *Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order*, FCC 15-24, GN Docket No. 14-28 (rel. Mar. 12, 2015), at ¶ 24 (“*Open Internet Order*”).

<sup>6</sup> *See Rural Call Completion*, WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, 16164 (2013), at ¶ 19.

**b. Small and Rural-Based Broadband Internet Access Service Providers are Not Similarly Situated to Large and/or Nationwide Broadband Providers.**

Subjecting small wireless BIAS providers to the same one-size-fits-all broadband privacy regime imposed upon nationwide BIAS providers with millions of customers is unnecessary, and could impede broadband deployment in the rural and remote locations that need it most. Small and rural-based BIAS providers are not similarly situated to large and/or nationwide broadband providers because they take a different business approach than large and/or nationwide broadband providers. Unlike large or nationwide BIAS providers who may serve rural areas, rural-based providers are located in the same rural communities that they serve. Their business decisions are directly influenced by community need, and not solely by profit. Their mission is to offer vital communications links to consumers who live, work and travel in rural and remote areas that other providers often do not serve. Customer service is always a top priority because the customers are the BIAS provider's employees' own friends, family, and neighbors.

RWA understands the Commission's concerns regarding customer privacy and that these concerns are the same irrespective of the carrier's size.<sup>7</sup> However, while the privacy *concerns* are the same – the actual *risks* are not. Unlike large carriers, small and rural-based BIAS providers like RWA's carrier members do not go to great lengths to collect, store, analyze, and exploit Customer Proprietary Network Information ("CPNI") or Personally Identifiable Information ("PII") (together, "Customer Proprietary Information" or "customer PI") for

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<sup>7</sup> See, e.g., *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998), at ¶ 134.

marketing purposes or other reasons. Rather, these companies make only very basic use of customer data.

As permitted under the FCC's existing rules, RWA members use CPNI to advertise enhancements to services to which a customer already subscribes. In other instances, they may also use CPNI internally or share it with affiliates, pursuant to opt-in/opt-out requirements, to market services. Small and rural mobile BIAS providers simply do not have the resources to develop and implement complex marketing strategies using customer PI or to hire outside agencies to perform such tasks. Furthermore, RWA's members do not typically sell customer PI to outside third-parties, including advertising companies. In comparison to practices that the largest mobile broadband providers have used in recent years,<sup>8</sup> small and rural BIAS providers make very basic use of customer PI. Small and rural mobile BIAS providers' processes pose less risk for unauthorized disclosure than do those of large/nationwide BIAS providers.

Small mobile broadband providers will generally share customer PI with third parties in cases where a collections action has been initiated for failure to make a required payment for service, or in connection with other services that third party entities provide. For example, certain customer information is shared with billing system vendors, workforce management system vendors, consultants that assist with certain projects, help desk providers, and system monitoring solutions providers. Unlike large BIAS providers, these small BIAS providers *do not*

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<sup>8</sup> *Cellco Partnership, d/b/a Verizon Wireless*, [Order](#), File No.: EB-TCD-14-00017601 (Enforcement Bureau, Mar. 7, 2016); *see also* Letter from Thomas Wheeler, Chairman, Fed. Comm'n Comm'n, to Senator Edward J. Markey (Mar. 23, 2015) (discussing "the use by Verizon of a mobile tracking technology and its reported exploitation by a third-party advertising company") (*Verizon Order and Consent Decree*); *see also* Emily Steel & Sidney Ember, [Verizon's Deal for AOL is a Push Into the Technology of Advertising](#), New York Times (May 13, 2015) ("with Verizon, AOL would gain access to a wealth of data on consumers that it could use to personalize and target marketing messages"). At least one other wireless company, AT&T, has experimented with a similar subscriber tracking program. *See* Kashmir Hill, [AT&T Says It's 'Testing' Unique Tracker on Customers' Smartphones](#), Forbes (Oct. 28, 2014).



generally share such information with advertising partners or use such information to deliver targeted advertising to their subscribers.<sup>9</sup>

Small mobile broadband providers like RWA's members collect information from customers when they subscribe to service. Generally, these providers collect a subscriber's name, social security number, residential address, telephone number, and email address during the service enrollment process. Additionally, RWA's members have access to certain customer PI based on a subscriber's use of their networks.<sup>10</sup> In general, a network operator has access to unencrypted communications that traverse the network. But certain equipment must be in place to gain access to such information. Further, a network operator must devote time and financial resources to retain this information for any period of time. Unlike large BIAS providers, small BIAS providers generally do not actively monitor, collect, or store such information because there is not a business case to do so.<sup>11</sup> In fact, a small BIAS provider has stated in the record it does not currently, and has no plans to, retain customer Internet browsing histories and related information because doing so would constitute a substantial undertaking with respect to data storage and management. The cost of this data storage and management would significantly

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<sup>9</sup> *Verizon Order* at ¶¶ 1, 4 (stating that “Verizon Wireless’s targeted advertising programs (Verizon Selects and Relevant Mobile Advertising (RMA)) associate UIDH with Verizon Wireless customer proprietary information as well as other customer demographic and interest information to create profiles in order to serve targeted advertisements...at least one of Verizon Wireless’s advertising partners used UIDH for unauthorized purposes to circumvent consumers’ privacy choices by restoring deleted cookies.”).

<sup>10</sup> For example, RWA members gather and maintain CPNI related to cell site location because such information can be subject to subpoena.

<sup>11</sup> *See Verizon Consent Decree* at ¶ 6 (“Verizon Selects uses a variety of customer information to develop profiles of participating customers in order to deliver targeted advertising to those customers. Verizon Wireless asserts that its program Verizon Selects uses the following customer information: (a) addresses of websites visited; (b) device location; (c) apps and device features used; (d) postal and e-mail addresses; (e) information about Verizon Wireless products and services usage, including customer proprietary network information (CPNI); and (f) demographic and interest information provided by third parties, such as gender, age range, and interests (e.g. sports fan, frequent diner, or pet owner”).

outweigh the potential monetary benefit derived from the information relating to the small subscriber bases of small BIAS providers.<sup>12</sup>

**II. THE COMMISSION’S PROPOSED REQUIREMENTS WOULD IMPOSE HIGH COSTS ON SMALL AND RURAL BROADBAND INTERNET ACCESS SERVICE PROVIDERS. THE BURDENS ASSOCIATED WITH THESE COSTS CAN BE ALLEVIATED WITH TARGETED EXEMPTIONS AND COMPLIANCE DEADLINE EXTENSIONS.**

**a. Proposed Requirements Regarding Notice of Privacy Policies.**

The Commission proposes to require BIAS providers to provide customers with clear and conspicuous notice of their privacy policies at the point of sale and on an on-going basis through a link on the provider’s homepage, mobile application, and any functional equivalent.<sup>13</sup> The Commission further proposes to provide specific direction about what information must be provided in BIAS providers’ privacy notices, and to require BIAS providers to provide existing customers with advanced notice of material changes in their privacy policies.<sup>14</sup>

RWA and its membership support the need to inform subscribers as to their data security and privacy, but are concerned about the financial burdens that the proposed privacy notice framework will impose on small providers. The internal information audits, project management and external legal and consultant services that will be necessary to comply with the Commission’s proposals will require significant personnel and financial resources – resources that are already in short supply for small and rural wireless broadband carriers. In order to alleviate these burdens, RWA recommends that the Commission harmonize its notice proposals with existing regulations regarding voice CPNI – regulations with which RWA members and

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<sup>12</sup> See *Ex Parte* Letter from Patricia Cave, Director, Government Affairs, WTA – Advocates for Rural Broadband to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 16-106, at pp. 1-2 (Apr. 25, 2016) (*WTA Ex Parte*).

<sup>13</sup> *Broadband Privacy NPRM* at ¶ 82; *Appendix B – Initial Regulatory Flexibility Analysis*, ¶ 48.

<sup>14</sup> *Broadband Privacy NPRM* at ¶ 82.

other small BIAS providers are already familiar and compliant.<sup>15</sup> RWA further recommends that the Commission adopt a standardized privacy disclosure as a voluntary safe harbor. Such action would help to reduce the costs associated with developing an entirely new privacy disclosure from scratch, and would also help to remove some of the regulatory uncertainty that stems from new regulations.

RWA agrees with the Commission that, because BIAS providers would have easy-to-access links to their privacy notices that are persistently available, it is not necessary for BIAS providers to periodically provide their privacy notices to customers.<sup>16</sup> Further, RWA agrees with the FCC that there is no need for it to mandate the creation of a consumer-facing privacy dashboard.<sup>17</sup> While the creation of a dashboard may offer some carriers an effective way to meet the notice requirements, it will be expensive and time consuming for others.<sup>18</sup>

RWA strongly supports the adoption of extended compliance deadlines for small BIAS providers applicable to the Commission's proposals regarding notice, customer approval, security, and breach notification. The Commission has historically given small carriers more time to comply with its rules.<sup>19</sup> Small and rural BIAS providers would benefit from additional

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<sup>15</sup> See *WTA Ex Parte* (noting that small BIAS providers have aligned their BIAS policies and procedures with policies and procedures for complying with the Commission's voice CPNI rules, that doing so results in administrative efficiencies, and that if the Commission moves forward in adopting privacy rules for BIAS providers it should harmonize them in order to reduce complexity and minimize burdens on small providers).

<sup>16</sup> *Broadband Privacy NPRM* at ¶ 88.

<sup>17</sup> *Id.* at ¶¶ 92, 95.

<sup>18</sup> *WTA Ex Parte* at p. 1 (noting that developing a web-portal for customer opt-in/opt-out could pose data risks and additional cost for small providers that have to seek third-party assistance to develop such a portal).

<sup>19</sup> See, e.g., *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 07-250, First Report and Order, FCC 08-68 at ¶ 27 (2008) (extending hearing aid compliance deadlines for service providers other than Tier I carriers in recognition of their difficulty in obtaining the newest offerings); see also 47 C.F.R. § 20.18(i) (providing non-

time to comply with the Commission’s rules because such time will allow for the development of compliance processes and procedures and technical solutions. RWA members and other small and rural BIAS providers should not have to spend their limited financial and personnel resources to “create the wheel.” Once marketplace best practices and compliance mechanisms have been created, small BIAS provider adherence to the Commission’s rules will be easier and less of a drain on resources. A 24-month compliance deadline extension would allow small and rural BIAS providers to comply with the Commission’s rules without unnecessarily expending resources on preparing and prosecuting a waiver request, while allowing them to continue to focus their resources on providing the affordable, high-quality broadband that is necessary for economic development and public safety in rural areas.

**b. Proposed Requirements Regarding Customer Approval for the Use and Disclosure of Information.**

The Commission proposes to require BIAS providers to obtain customer approval in order to use, access, or disclose customer proprietary information.<sup>20</sup> Specifically, the Commission proposes to require BIAS providers to give a customer the opportunity to *opt out* of the use or sharing of her customer PI prior to the BIAS provider (1) using the customer’s PI to market other communications related services to the customer; or (2) sharing the customer’s PI with affiliates that provide communications-related services, in order to market those communications-related services to the customer. It also proposes to require BIAS providers to solicit and receive *opt-in* approval from a customer before using customer PI for other purposes

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nationwide CMRS carriers additional time to submit plans for meeting the indoor location accuracy requirements).

<sup>20</sup> *Broadband Privacy NPRM* Part III.C; *Appendix B – Initial Regulatory Flexibility Analysis*, ¶ 49.

and before disclosing customer PI to (1) affiliates that do not provide communications-related services and (2) all non-affiliate third parties.<sup>21</sup>

The Commission seeks comment on how it can minimize the burden of its proposals regarding customer approval of the use/disclosure of information place on small BIAS providers.<sup>22</sup> RWA strongly supports an exemption from customer approval provisions for small BIAS providers, provided they do not share customer data with third parties.<sup>23</sup> As discussed above, while privacy concerns apply to consumers regardless of which BIAS provider they use, the collection and use of customer PI (and therefore the risk of abuse) differ greatly amongst BIAS providers. Further, the burdens associated with the Commission's customer approval proposals disproportionately impact small BIAS providers, because these providers have only a few thousand (and, in many cases, a few hundred) subscribers – rather than a few million – with which to absorb the costs of developing and implementing appropriate procedures. As such, RWA believes that the benefit of such an exemption to small BIAS providers (and the resulting cost savings to subscribers) outweighs any potential negative impact of such an exemption on the privacy interests of small BIAS provider customers.

In the absence of an across-the-board exemption, the Commission should grant small BIAS providers additional compliance time as discussed *supra*.<sup>24</sup> In addition, the Commission should allow small BIAS providers who have already obtained customer approval to use their customers' proprietary information to rely on such approval in lieu of being required to obtain a

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<sup>21</sup> *Broadband Privacy NPRM* at ¶ 107.

<sup>22</sup> *Id.* at ¶¶ 107, 151.

<sup>23</sup> *Id.* at ¶ 151.

<sup>24</sup> Section III.a.

new approval for BIAS.<sup>25</sup> Finally, RWA recommends that the customer approval proposals should be harmonized with existing regulations regarding voice CPNI.

**c. Proposed Security Measure Requirements.**

For the purpose of protecting the confidentiality of customer PI, the Commission “propose[s] both a general data security requirement for BIAS providers and specific types of practices they must engage in to comply with the overarching requirement.”<sup>26</sup> The Commission’s proposals include requiring BIAS providers to protect against unauthorized use or disclosure of customer PI by: (1) conducting risk management assessments; (2) training employees to protect against reasonably anticipated unauthorized use or disclosure of customer PI; (3) ensuring reasonable due diligence and corporate accountability; (4) requiring customer authentication for access to customer proprietary information, notification of account changes, and the right to access and correct customer data; and (5) taking responsibility for the use of customer PI by third parties with whom they share such information.<sup>27</sup>

If the Commission ultimately codifies a security requirement, it should take a BIAS provider’s size and resources into consideration.<sup>28</sup> When enforcing the rule, the Commission should apply a reasonability standard. Recent, high-profile breaches have shown that, if sophisticated criminals want to illegally access a network, chances are good that they will be successful in doing so. RWA appreciates the Commission’s desire to adopt a “flexib[le]”<sup>29</sup> regulatory approach, given the wide disparity among BIAS providers in both financial and

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<sup>25</sup> See *Broadband Privacy NPRM* at ¶ 151.

<sup>26</sup> *Id.* at ¶ 167.

<sup>27</sup> *Appendix B – Initial Regulatory Flexibility Analysis* at ¶ 51.

<sup>28</sup> *WTA Ex Parte* at p. 2 (noting that any rules adopted by the Commission must account for small BIAS providers’ limited resources, and that “risk management” means making tough decisions regarding what risks are reasonably acceptable in light of an organization’s activities, size, and resources).

<sup>29</sup> *Broadband Privacy NPRM* at ¶ 176.

personnel resources. RWA's members agree that customer data security is of the utmost importance, and are well-acquainted with Section 222 of the Act as it applies to voice service. Small BIAS providers like RWA's carrier members already employ numerous risk management assessment tools. Further, they protect sensitive information in a number of ways – and retain customer PI only for as long as it is needed. They also already train their employees on data security practices.

The Commission seeks comment regarding the proposed required security measures, and any costs or burdens unique to small entities.<sup>30</sup> As to the first four security prongs listed above, RWA recommends the Commission grant small BIAS providers additional compliance time as discussed *supra* in the Notice section.<sup>31</sup> Though small BIAS provider *do* engage in risk management, data protection, and employee training, specific new requirements in this area may be costly for these providers to implement initially. A 24-month compliance deadline extension for small BIAS providers will allow for the development of best practices and procedures that can then be adopted at lower cost to the providers and their subscribers. In addition, the Commission should establish voluntary safe harbors and best practices regarding its required security measures so as to provide small BIAS providers with both the regulatory certainty and

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<sup>30</sup> *Broadband Privacy NPRM* at ¶¶ 174, 176, 177.

<sup>31</sup> Section III.a. If the Commission imposes a rule requiring consumer notification of account changes as proposed in *Broadband Privacy NPRM* at ¶ 202, extra compliance time for small BIAS providers would be particularly helpful. Initially, compliance with such a rule would be costly for small BIAS providers because billing and accounting systems would have to be updated. The development of automated and effective systems to accomplish this requirement will be expensive. Extra time will benefit small BIAS providers so that they will not need to create such systems, but only purchase them after they are developed.

flexibility that they need.<sup>32</sup> Further, RWA recommends that the first four proposals be harmonized with existing regulations for voice CPNI.<sup>33</sup>

The Commission sought comment as to whether it should specify qualifications that a senior management official should or must have to be the individual charged with a BIAS provider's information security program.<sup>34</sup> RWA opposes any FCC-imposed requirements regarding BIAS providers' senior management officials' specific qualifications.

Historically, rural-based carriers have pioneered communications service provision in the most rural and remote areas of the country. With hard work and perseverance, these companies built out and operated rural networks where other carriers refused to do so, and often did this work without the specialized educational and technical resources that were much more readily available in urban areas. Saddling small carrier employees with qualification requirements in rural markets (where workforce demands are often already difficult to meet) is counterproductive and may force small rural carriers into unnecessary additional hires, solely for the purpose of meeting such requirements. Core competencies can be gained by various means, and RWA cautions the Commission against choosing one of these means (such as classroom education) over another (like knowledge gained through work place experience and on-the-job training).

RWA is very concerned about the Commission's fifth security proposal – namely, the assumption of liability by the BIAS provider for the use of customer PI by third parties with whom a BIAS provider shares such information. Small and rural BIAS providers, including RWA members, lack the market power enjoyed by the largest broadband providers and, in many

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<sup>32</sup> *Broadband Privacy NPRM* at ¶ 178.

<sup>33</sup> *Appendix B – Initial Regulatory Flexibility Analysis* at ¶ 51

<sup>34</sup> *Broadband Privacy NPRM* at ¶ 190.



cases, may not be able to dictate contractual privacy terms to the extent the Commission deems necessary. Further, third parties with which small BIAS providers contract are subject to state and federal consumer protection laws. These regimes should be sufficient, without placing additional liability and regulatory/legal uncertainty on small BIAS providers going forward.

**d. Proposed Data Breach Notification Requirements.**

The Commission’s data breach notification proposals include: (1) requiring broadband providers to notify customers within ten days after the discovery of a data breach, subject to law enforcement needs, under circumstances enumerated by the Commission; (2) requiring such notifications to include specific content; (3) requiring broadband providers to notify the Commission within seven days, and to notify the Federal Bureau of Investigation and the U.S. Secret Service, in the event of a data breach affecting more than 5,000 customers, within seven days; and (4) requiring the retention for two years of certain records related to data breaches.<sup>35</sup>

The breach notification deadlines as proposed are too stringent. Seven to ten days is a very short period of time in which to take action. Small BIAS providers need additional time to determine the extent of any breach, as well as to consult with counsel as to the appropriate next steps. Further, small BIAS providers are already subject to individual state data breach notification requirements.<sup>36</sup> RWA recommends that the Commission: (1) lengthen the FCC and

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<sup>35</sup> *Appendix B – Initial Regulatory Flexibility Analysis* at ¶ 52.

<sup>36</sup> *See e.g.*, Alaska Stat. § 45.48.010 *et seq.* (“An information collector shall make the disclosure required by (a) of this section in the most expeditious time possible and without unreasonable delay...”); Ariz. Rev. Stat. § 44-7501 (“The notice shall be made in the most expedient manner possible and without unreasonable delay subject to the needs of law enforcement...”); Ark. Code § 4-110-101 *et seq.* (“The disclosure shall be made in the most expedient time and manner possible and without unreasonable delay...”); Colo. Rev. Stat. § 6-1-716 (“Notice shall be made in the most expedient time possible and without unreasonable delay...”), Idaho Stat. §§ 28-51-104 to -107 (“[T]he agency, individual or the commercial entity shall give notice as soon as

FBI/Secret Service notification timelines to at least 30 days; (2) require that customers be notified within the time period specified by the state data breach notification requirement or, if a specific number of days is not included in the statute, 45 days after the breach; and (3) grant small BIAS providers additional compliance time as discussed *supra* before any new rules take effect to allow for the creation and implementation of the processes and procedures necessary to comply with these breach notification requirements.<sup>37</sup>

Respectfully submitted,

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possible to the affected Idaho resident. Notice must be made in the most expedient time possible and without unreasonable delay..."); Kan. Stat. § 50-7a01 *et seq.* (“[T]he person or government, governmental subdivision or agency shall give notice as soon as possible to the affected Kansas resident. Notice must be made in the most expedient time possible and without unreasonable delay..."); Wis. Stat. § 134.98 (“an entity shall provide the notice required...within a reasonable time, not to exceed 45 days..."); Wyo. Stat. § 40-12-501 *et seq.* (“[T]he commercial entity shall give notice as soon as possible to the affected Wyoming resident. Notice shall be made in the most expedient time possible and without unreasonable delay...”).

<sup>37</sup> Section III.a.