

**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)
)

REPLY COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.

The Rural Wireless Association, Inc. (“RWA”)¹ replies to the comments filed in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking regarding broadband privacy.² Like numerous commenters in this proceeding, RWA’s carrier members are committed to protecting their subscribers’ privacy, but RWA remains concerned that an onerous, prescriptive, one-size-fits-all privacy regime could place untenable demands and costs on rural wireless broadband providers providing service in the nation’s most rural and remote areas.

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

Subjecting small wireless broadband Internet access service (“BIAS”) providers to the same one-size-fits-all broadband privacy regime imposed upon nationwide BIAS providers

¹ 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.

² *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*).

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with millions of customers is unnecessary, and could impede broadband deployment in the rural and remote locations that need it most.

a. Small and Rural-Based BIAS Providers are Not Similarly Situated to Large and Nationwide BIAS Providers.

Unlike large or nationwide BIAS providers that may serve rural areas, small and rural-based BIAS providers are located in the same communities that they serve. For that reason, they take a different business approach than large and/or nationwide providers. Small and rural-based wireless carriers' 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. RWA agrees with NTCA – The Broadband Association (“NTCA”) and the Competitive Carriers Association (“CCA”) that customer service is always a top priority for small and rural-based BIAS providers because the customers are the provider's employees' own friends, family, and neighbors.³

In addition, unlike large or nationwide BIAS providers, small and rural-based BIAS providers like RWA's carrier members do not generally collect, store, analyze, and exploit Customer Proprietary Network Information (“CPNI”). Other commenters, too, noted this difference. According to WTA – Advocates for Rural Broadband (“WTA”), “[O]nly a small

³ *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Comments of NTCA – The Rural Broadband Association, WC Docket No. 16-106, at p. 15 (May 27, 2016) (NTCA Comments) (“[S]taff of the local provider are often known personally to the customers; managers and directors are similarly known...In addition to the legal obligations to which NTCA members are already bound, deep social and community imperatives govern their respect and protection of customer information.”). *See also Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Comments of Competitive Carriers Association, WC Docket No. 16-106, at p. 33 (May 27, 2016) (CCA Comments) (“[S]maller carriers are local; employees live in the same communities as their customers, maintain close relationships with them, and therefore are already incentivized to adopt and follow reasonable privacy policies that protect their customers. Personal or customized attention and a commitment to maintaining subscriber trust are often the hallmarks of competitive carriers...”).

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minority of RLECs and their...affiliates use voice or broadband CPNI for marketing or other advertising purposes, and virtually none provide it to third-parties for such use...there is virtually no demand for most RLECs and their ISP affiliates to monitor the Internet browsing histories or online contacts of their customers to create detailed profiles for individually targeted or customized advertising purposes.”⁴ NTCA and CCA agreed, noting that, “[a]s a general matter...NTCA members do not broker their customers’ information,” and “many CCA carrier members...do not share customer information with third parties for advertising purposes.”⁵

RWA understands the Commission’s concerns regarding customer privacy and that these concerns are the same irrespective of the carrier's size.⁶ However, while the privacy *concerns* are the same, for the reasons discussed above, the actual *risks* are not. NTCA agrees, noting that “[t]o the extent that regulatory imprint is necessary when the market cannot regulate itself effectively, that concern does not attach as readily with regard to small, community-based providers.”⁷ The Wireless Internet Service Providers Association (“WISPA”) further stated that “[a]lthough ‘privacy is a concern which applies regardless of carrier size or market share,’ it does not necessarily follow that the same rules should apply across the board...”⁸ As such, the Commission should employ exemptions and compliance deadline extensions discussed *infra* to

⁴ *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Comments of WTA – Advocates for Rural Broadband, WC Docket No. 16-106, at p. 2 (May 27, 2016) (WTA Comments).

⁵ NTCA Comments at pp. 1-2; *see also* CCA Comments at p. 33.

⁶ *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.

⁷ NTCA Comments at p. 15.

⁸ *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Comments of The Wireless Internet Service Providers Association, WC Docket No. 16-106, at p. 4 (May 27, 2016) (WISPA Comments).

minimize the hardship that its proposed rules would impose on small and rural-based BIAS providers.

b. Commenters Agree That the Commission’s Proposed Definition of “Small BIAS Provider” is Too Narrow.

The Commission sought comment on how to define a “small provider” of broadband services, and discussed the possibility of defining a “small provider” as a BIAS provider with a network serving fewer than 5,000 customers.⁹ As RWA and other parties stated in comments, this number is too low to be inclusive of all small BIAS providers.¹⁰ RWA agrees with WTA that the Commission should avoid defining this term too narrowly, and that “[a]t a time when small rural providers are seeing decreasing federal and state universal service support while subject to increasing deployment obligations, the Commission must...consider the impact that overly restrictive privacy requirements that require carriers to implement costly compliance programs will have on broadband buildout in rural areas where such investment is critically needed.”¹¹ WISPA and CCA, too, note that a “small provider” should be defined much more broadly than the Commission’s suggested 5,000 subscriber limit “in light of the significant additional burdens [the] proposed rules would require.”¹²

⁹ *Broadband Privacy NPRM* at ¶ 151.

¹⁰ The Rural Non-Profits stated that the Commission should define a “small provider” as a BIAS provider with a network serving fewer than 15,000 customers. While increasing the definition to 15,000 is an improvement over 5,000, RWA believes that this alternative proposed definition remains too narrow. As such, the beneficial effects of any mitigating actions taken by the Commission will be insufficiently narrow. *See Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Joint Comments of the Education and Research Consortium of the Western Carolinas, Inc., Anza Electric Cooperative, Inc., and North Georgia Network Cooperative, Inc., WC Docket No. 16-106, at p. 35 (May 27, 2016) (Rural Non-Profits’ Comments).

¹¹ WTA Comments at p. 6.

¹² WISPA Comments at p. 27. *See also* CCA Comments at pp. 31-32.

RWA and several other parties urged 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.¹³ 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.¹⁴

II. THE BURDENS PLACED ON PROVIDERS BY HIGH COMPLIANCE COSTS RESULTING FROM ADOPTION OF THE COMMISSION’S PROPOSED REQUIREMENTS COULD BE ALLEVIATED WITH EXEMPTIONS AND COMPLIANCE DEADLINE EXTENSIONS FOR SMALL AND RURAL-BASED BIAS PROVIDERS.

In its initial comments, RWA expressed concern regarding the financial burden that the Commission’s proposed framework would impose on small and rural-based BIAS providers. It advocated for small BIAS provider exemptions from the most onerous requirements and a 24-

¹³ *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*”). See WTA Comments at pp. 2-3 (“[E]xemptions should apply to [BIAS providers] that serve 100,000 or fewer broadband customers, similar to the exemption provided to small providers from enhanced transparency requirements under the *Open Internet Order*.”); see also *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Comments of USTelecom, WC Docket No. 16-106, at p. 19 (May 27, 2016) (USTelecom Comments) (“[W]e propose that the Commission adopt the same definition it has with respect to the Open Internet transparency requirements.”); see also NTCA Comments at p. 55 (noting “that the Commission has previously relied upon 100,000...or fewer broadband subscribers as reported on Form 477, aggregated over all of the provider’s affiliates, when defining ‘small provider.’”).

¹⁴ 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.

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month extended compliance deadline for the remaining requirements if adopted.¹⁵ WTA, CCA, and the Rural Non-Profits joined RWA in calling for a small BIAS provider exemption from some (or all) of the Commission’s proposed rules.

RWA supports these parties’ recommendations for broader exemptions, including exemptions from the proposed new customer approval requirements, customer data security requirements and data breach notification requirements for small BIAS providers that do not collect and retain broadband usage information for marketing purposes or for sale to third parties.¹⁶ CCA “urge[d] the Commission to grant a small provider exemption that applies to any adopted Section 222 privacy regime and data security rules, as small carriers simply do not have the resources, funds or staff to affordably implement the proposed rules, particularly when compared to larger providers.”¹⁷ RWA agrees that “the Commission must adopt an exemption that avoids placing small carriers in a position of choosing between investing in a needlessly complex and onerous framework instead of investing in their networks and improving broadband service in rural and regional parts of the country.”¹⁸ RWA further agrees that “if small BIAS providers are exempt from the new privacy and data security requirements, the ultimate goals expressed by the Commission (*i.e.*, fostering transparency, choice and security) will still be supported through the transparency requirements established by the *2010 Open Internet Order*.”¹⁹

¹⁵ *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Comments of the Rural Wireless Association, Inc., WC Docket No. 16-106, at pp. 7-9 (May 27, 2016) (RWA Comments).

¹⁶ WTA Comments at pp. 2, 6; *see also* Rural Non-Profits’ Comments at pp. 6-11.

¹⁷ CCA Comments at p. 30.

¹⁸ CCA Comments at p. 31.

¹⁹ CCA Comments at p. 31.

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If the Commission declines to adopt these broader exemptions, RWA urges the adoption of a 24-month extended compliance deadline for small BIAS providers. WISPA agreed with the need for this extension, noting that “[a]t a minimum, small providers should be given up to two years after the effective date of any rules to meet any applicable new regulatory requirements. This additional time will enable small providers to assess their obligations, budget for lawyers, consultants, train personnel, and establish internal systems to ensure compliance.”²⁰ RWA members and other small and rural-based BIAS providers should not have to spend their limited financial and personnel resources to “create the wheel.” WISPA agreed, stating that “[s]mall providers... may be able to adopt models developed by larger providers that are required to meet an earlier compliance date.”²¹ As noted by both RWA and WISPA, it is common practice for the Commission to extend compliance periods for small businesses.”²²

III. ANY NEW BIAS PRIVACY RULES SHOULD BE HARMONIZED WITH EXISTING CPNI RULES.

To the extent that small BIAS providers are not exempted from any rules that are ultimately adopted, RWA recommends that the Commission harmonize its proposals with existing regulations regarding CPNI.²³ Harmonization provides several benefits, including allowing for increased provider efficiency, better customer understanding, and higher compliance rates. Harmonized rules can improve the customer’s experience by simplifying (and

²⁰ WISPA Comments at p. 28.

²¹ *Id.*

²² RWA Comments at p. 7; WISPA Comments at p. 29 (noting that examples of small business exemptions and relief can be found in the *2015 Open Internet Order*, the *2007 CPNI Order*, the broadcast and MVPD equal opportunity amendments, the 1992 Cable Act rate reductions and abbreviated Cost of Service filings, the Commercial Advertisement Loudness Mitigation Act waiver request process, the Twenty-First Century Communications and Video Accessibility Act implementation requirements, and the Hearing Aid Compatibility Act *de minimis* exception for small businesses).

²³ RWA Comments at pp. 6, 10, 12.

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reducing the number of) privacy notices and other information they receive. Harmonization improves provider compliance rates by simplifying (and reducing the number of) rules requiring providers' attention and resources. RWA agrees with WTA that “[s]ubstantially similar rules and procedures for the handling and use of confidential customer information both make it easier for customers to understand and enforce their rights and for [small and rural-based carrier] employees to understand and comply with their obligations...” and that “[t]o further reduce the burdens on small and community-based providers that are least likely to engage in anti-consumer conduct, the Commission should seek to harmonize the number of rules already applicable to these providers, simultaneously streamlining compliance and reducing the likelihood of violations to occur...”²⁴

While *harmonization* yields benefits to small and rural-based carriers, RWA cautions the Commission against *increasing* the requirements already in place for current services. NTCA shares RWA's concern, noting that “the Commission should refrain from increasing the scope of current CPNI rules, even where such action might be advocated in the spirit of conforming telephone rules to BIAS standards...”²⁵ RWA agrees with NTCA's view that “striving toward consistency among rules is a valuable pursuit, but should not be obtained at the expense of increasing regulatory obligations or decreasing regulatory parity.”²⁶

²⁴ WTA Comments at pp. 3, 6.

²⁵ NTCA Comments at pp 3-4.

²⁶ NTCA Comments at 56. *See also Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Comments of INCOMPAS, WC Docket No. 16-106, at p. 3 (May 27, 2016) (INCOMPAS Comments) (“Any harmonization of the CPNI rules with those proposed in the [*Broadband Privacy*] NPRM should balance the Commission's goals in this proceeding with the practical experience these carriers already have in protecting customer PI.”).

IV. RWA URGES THE COMMISSION TO ADOPT ITS RECOMMENDATIONS REGARDING TRANSPARENCY, CHOICE, AND SECURITY.

As discussed above, RWA and others recommend broad exemptions from the Commission’s proposed rules for small BIAS providers. In the absence of such exemptions, RWA and others urge the Commission to adopt a 24-month extended compliance deadline for small BIAS providers. In addition, RWA recommends specific changes to the Commission’s proposed requirements regarding notice of privacy policies, customer approval for the use and disclosure of information, security measures, and data breach notification.

a. RWA Recommends Changes to the Commission’s Proposed Requirements Regarding Notice of Privacy Policies.

RWA understands the need for a requirement that BIAS providers inform subscribers of their data security and privacy policies, but remains concerned about the financial burdens that the proposed privacy notice framework will impose on small providers. In particular, RWA joins WTA and NTCA in opposing any rule requiring the creation of a consumer-facing privacy dashboard. As WTA stated, “[T]he Commission should not adopt a new requirement that carriers develop a ‘privacy dashboard.’ If it does, the Commission should entirely exempt small providers from such a requirement...[M]any small providers do not currently have online portals through which consumers may change their privacy preferences and lack web development staff that would make development of such a tool more affordable and practicable.”²⁷ 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 – particularly for small and rural-based providers.

²⁷ WTA Comments at pp. 11-12; *see also* NTCA Comments at 42 (“For small providers, particularly, the creation of such a[n] interface would require significant resources...”).

Though RWA opposes the imposition of a customer dashboard requirement, RWA recommends that the Commission adopt a standardized privacy disclosure as a voluntary safe harbor. NTCA and the Rural Non-Profits agree, noting that a standard form that could be used as a safe harbor could provide an “accessible, low-cost format for small providers,”²⁸ and that “[t]o the extent the Commission can develop small entity compliance guides and template notices to assist with staff training and implementation, that would also be very valuable to small providers...”²⁹ WTA underscored the need for a *voluntary* safe harbor, stating “[t]he Commission should make a standardized template available for those providers that want to use a standardized notice but should continue to permit providers to customize privacy policies to account for their unique circumstances.”³⁰

b. RWA Recommends Changes to the Commission’s Proposed Requirements Regarding Customer Approval for the Use and Disclosure of Information.

RWA supports the broadly applicable exemptions discussed above, but *in particular* supports an exemption from customer approval provisions for small BIAS providers that do not share customer data with third parties, as discussed in the *Broadband Privacy NPRM*.³¹ While privacy concerns apply to consumers regardless of which BIAS provider they use, the collection and use of customer information (and therefore the risks) differ greatly among BIAS providers. Further, the burdens associated with the Commission’s customer approval proposals disproportionately impact small BIAS providers, because these providers have *far* fewer subscribers with which to absorb the costs of developing and implementing appropriate

²⁸ NTCA Comments at p. 41.

²⁹ Rural Non-Profits’ Comments at p. 5.

³⁰ WTA Comments at p. 10.

³¹ RWA Comments at p. 9.

procedures. In the absence of such an exemption, there is broad support in favor of allowing small BIAS providers to grandfather existing opt-out approvals and RWA supports such action.³²

c. RWA Recommends Changes to the Commission’s Proposed Security Requirements.

There is wide agreement that, if the Commission ultimately codifies a security requirement, it should take a BIAS provider’s size and resources into consideration and that enforcement should be based on a reasonability standard. RWA agrees with NTCA that the FCC should “allow each BIAS provider to determine the particulars of and design its own risk management program, taking into account the probability and criticality of threats and vulnerabilities, as well as the nature and scope of a provider’s business activities and the sensitivity of the underlying data. The final rule adopted by the Commission must also expressly take into account the entity’s size and the cost of implementation of security measures as factors for consideration.”³³ RWA also agrees that any rules adopted “must reflect the reality that no firm or individual is immune from cyber threats and under no circumstance should the

³² See WTA Comments at p. 16 (“To reduce the burdens on providers and to prevent consumer frustration or fatigue, the Commission should grandfather existing opt-out approvals, at least for small providers already subject to the CPNI rules.”); WISPA Comments at p. 31 (“[S]mall providers should be permitted to grandfather existing customer approvals for the use and disclosure of proprietary information.”); USTelecom Comments at p. 19 (stating its support for “allowing small providers who have already obtained customer approval to use their customers’ proprietary information to grandfather in those approvals for first and third party uses”); NTCA Comments at p. 55 (stating its support for “permitting small providers who have already obtained customer approval to use their customers’ proprietary information to grandfather in those approvals, and to allow that authorization to apply to all uses contemplated in the original authorization”); CCA Comments at p. 31 (“[T]he FCC must allow small providers who have already obtained customer approval to use customer PI, under their own privacy policies, to grandfather in those approvals, and be deemed in compliance with the new privacy regime.”); and Rural Non-Profits’ Comments at p. 8 (urging “the Commission to allow small providers to grandfather in approvals they have already obtained from customers”).

³³ WTA Comments at p. 21.

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Commission take the position that existence of a breach is indicative of poor data security practices.”³⁴

As stated in its initial comments, RWA opposes any FCC-imposed requirements regarding BIAS providers’ senior management officials’ specific qualifications.³⁵ Other parties agree, noting that “the Commission must remain mindful of the high demand and low supply of sufficiently qualified cybersecurity professionals,” that “requiring management-level hiring of specialized security experts in order to comply with new regulations would be particularly unreasonable for small [providers],” and “[i]n light of these considerations, the Commission should provide an exemption for small providers of [any] requirement to have senior management specialized in cybersecurity.”³⁶

RWA remains very concerned about the Commission’s proposal wherein a BIAS provider would be liable for the use of information by third parties with whom a BIAS provider shares such information. NTCA and CCA share this concern, noting “[p]roviders that effect proper contractual agreements with third parties should not be liable for the failings of those third parties. The proposal that BIAS providers be held accountable for third party recipients’ handling of ‘customer proprietary information’ for the entire lifecycle of the data, or even any duration of it once it properly leaves the hands of the provider, should be rejected.”³⁷ “Rules of this nature uniquely burden small and competitive carriers, which already have a difficult time attracting the attention of device manufacturers and other major players in the telecom industry,

³⁴ WTA Comments at p. 18.

³⁵ RWA Comments at p. 12.

³⁶ WTA Comments at p. 23; *see also* Rural Non-Profits’ Comments at p. 10 (“[S]mall providers have limited staff, budgets and resources and each of their employees often is called upon to perform multiple types of tasks that in larger organizations would be handled by separate employees or even separate departments. Small providers also do not have multiple layers of management and would have few ‘senior management officials.’”).

³⁷ NTCA Comments at p. 65.

and further discouraging those actors from dealing with small carriers is bad public policy. Furthermore, small carriers do not have the litigation resources to enforce control they supposedly must exercise over consumer data, making oversight agreements hollow and [sic] merely threatens litigation and exorbitant legal fees.”³⁸

d. RWA Recommends Changes to the Commission’s Proposed Data Breach Notification Requirements.

There is broad consensus that the breach notification deadlines as proposed are too stringent. RWA agrees with INCOMPAS that “the proposed rules do not provide enough time for carriers to make data breach determinations, conduct an appropriate investigation, identify affected customers, put remedies in place, and send notifications. Most telecommunications services are unlikely to be in a position after seven or even 10 days to have finished a forensic analysis and have the facts regarding a data breach in place to contact the Commission and the affected customers...”³⁹ If the Commission chooses to adopt a timeline for breach notifications, RWA and other parties urge that such a timeline be flexible to allow for thorough, timely breach investigations.⁴⁰ RWA also recommends that such a timeline align with the vast majority of state privacy and data breach laws.

³⁸ CCA Comments at p. 40; *see also* Rural Non-Profits’ Comments at p. 10 (urging the Commission not to “require small providers to ‘take responsibility’ for the use of customer data by third parties with whom they share such information”).

³⁹ INCOMPAS Comments at p. 18; *see also* WTA Comments at p. 13 (arguing that “It is paramount that these providers are able to investigate and resolve a breach prior to notification because providing their customers with incomplete or inaccurate information could leave the customer leery and could lead to a lack of trust in their provider”); NTCA Comments at p. 68 (“Providers should have a reasonable and appropriate amount of time to conduct investigations, and the duration of those periods will depend upon the particular circumstances of any event.”); CCA Comments at 45 (“[As a result of] rapid timeframes for notifications, the BIAS provider may not have a full understanding of the extent of the breach, possibly resulting in misleading, unnecessary incomplete notifications, and consumer confusion.”).

⁴⁰ WISPA Comments at p. 32 (“[S]mall providers should be required to provide notice of data breaches as soon as practicable under the circumstances, again taking into account the size of the

V. CONCLUSION

RWA respectfully requests that the Commission alleviate the regulatory and financial burdens that the proposed privacy rules would impose on small BIAS providers by adopting the specific recommendations proposed by RWA, including the small BIAS provider exemptions, or alternatively adopt an extended 24-month compliance deadline. RWA urges the Commission to take these mitigating actions so that RWA members and other small and rural-based BIAS providers will be able to continue using their limited resources to deploy affordable, high quality broadband services in rural areas.

Respectfully submitted,

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provider and the resources it has available to it to detect data breaches”); CCA Comments at pp. 45-46 (arguing that “the FCC should adopt a flexible standard such as ‘expeditiously as possible.’ This will clearly indicate liability for providers who are lackadaisical in their response to a breach while affording the flexibility to effectively respond, and may account for failures to receive notice outside of carriers’ control.”); Rural Non-Profits’ Comments at p. 11 (“[S]mall providers should be exempt from the additional burden of providing notice of breaches to the Commission, FBI, and Secret Service, considering the fact that [their] members have limited budgets and staff and a small customer bases [sic]”).