

Written Testimony of **Tim Johnson**

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On behalf of the National Rural Electric Cooperative Association

U.S. House Small Business Committee Field Hearing

Closing the Digital Divide: Connecting Rural Americans to Reliable Internet Service

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Thank you for this opportunity to testify about broadband and its importance to rural areas. I am Tim Johnson, Chief Executive Officer at Otsego Electric Cooperative (OEC), headquartered in Hartwick, New York (near Cooperstown). Otsego Electric Cooperative, Inc. is a member-owned and democratically controlled tax exempt non-profit organization under IRC Section 501(c)(12).

OEC, serving ~4,500 meter locations, provides electricity to rural consumers that investor-owned utilities bypassed, partially due to our sparse population. In early 2017, OEC announced its plans to begin offering high-speed, affordable broadband after being awarded grant dollars that helped make the business case to build critical infrastructure to enable our consumer members to fully participate in our 21st century economy. Ultimately, OEC plans to make service available to all of its consumer members¹ with fiber at speeds up to 1 Gbps of service with no data caps. By the end of this year, OEC will have service available to over 5,000 locations over an 800-mile fiber network. Everyone will be offered Fiber to the Home service. To date we have activated fiber to the home (FTTH) broadband service to over 365 consumer members with many more on our waiting list. While we are off to a great start, we have also faced some policy-related challenges and we believe public policymakers can continue to play an important role in helping to support broadband in rural areas.

OEC is part of a broader electric cooperative industry, represented by the National Rural Electric Cooperative Association (NRECA) that serves one in eight Americans and covers 56% of the

¹ Final plans include nearly 1,000 more locations than the original OEC footprint due to the way the program rules worked in the funding programs through which the cooperative has been awarded funding.

U.S. landmass. Electric cooperatives are owned by the members they serve and they are uniquely suited to best understand and serve their members' and rural residents' needs. Most electric cooperatives are small businesses; they don't have investors or access to significant capital to help defray the costs of building and maintaining their infrastructure. These costs are borne directly by the farmers, ranchers, small businesses and other residents of the nation's rural communities – including those in 93 percent of the nation's persistent poverty counties.

Electric cooperatives play a vital role in transforming communities.

While our first priority at OEC is to provide reliable, clean and affordable electricity to our members, our commitment to our communities extends well beyond that service. We also provide services that empower local communities to improve their quality of life. As mentioned, that includes participating in efforts to make sure they have access to a robust communications infrastructure including access to quality and affordable broadband that enables rural communities to thrive and compete in an increasingly connected, global marketplace. Economic development, the education of our students to compete with children from urban areas, agriculture, and healthcare all require robust broadband access in the 21st Century.

Many comparisons are drawn between the lack of access to robust broadband service today and the need for electrification in rural America 80 years ago - with the urban areas of the country well-served, and rural areas being left behind. In part because cooperatives are led by, and belong to, the communities they serve, there is an increasing number of electric cooperatives studying whether they should be part of the solution to close the digital divide. More than 100 electric co-ops, including my own, are currently working toward meaningful and diverse solutions to bridge the digital divide and jump-start local economies. This cooperative commitment is vital for the one-quarter of all rural Americans who still lack access to broadband, compared to less than 2 percent in urban areas.

Key Policy Principles for Broadband Infrastructure

Mapping:

More granular and accurate maps showing broadband availability are a key part of reaching all rural Americans with high-speed broadband service. This will enable us to clarify existing gaps

in coverage and harmonize the diverse solutions that will be required to help rural Americans keep pace with their urban counterparts. Several steps are critical to improving the nation's broadband maps:

- More granular data is needed to allow the maps to reflect actual coverage rather than classifying entire census blocks—which are often geographically large in rural areas—as served or unserved.
- Inclusion of broadband service performance characteristics such as latency and monthly usage limits would provide important insight to the quality of service which broadband consumers experience. This is an especially important point given the large number of rural New Yorkers at over 70,000 locations who only have access to satellite broadband. These people should have better service, in terms of speed, reliability and affordability, available to them.
- Data accuracy including standardization of data is critical to ensure all providers must adhere to specific guidelines when reporting what areas they can serve. This will allow for a true apples-to-apples comparison, instead of providers submitting the required information several different ways.
- Further data accuracy components should incorporate crowdsourcing and, perhaps most importantly, an easily accessible challenge process to flag issues and further verify the accuracy of maps.

Fortunately, the FCC has recently taken steps on some of these items and we believe that our Members of Congress have a role to play in providing further guidance.

In the immediate term, the FCC is moving forward with having providers submit polygon or “shape files” of where their service areas are. This will provide a clearer picture of where coverage is and isn't than the current method of identifying whole census blocks as served or unserved. While the FCC is continuing their proceeding on data collection, Congress has also been active in this space. In July the Senate Commerce Committee passed a broadband mapping bill through committee that includes several of the aforementioned components and is supported by electric cooperatives. Additionally, the House Energy & Commerce Subcommittee on

Communications & Technology held a legislative hearing in September to discuss potential legislative solutions to improve our nation's broadband maps. Several pieces of mapping-focused legislation have also been introduced in the House, including companion bills to the Senate's committee-passed bill. We encourage Congress to continue moving these pieces of legislation through the legislative process.

85/15 Income Rule to Maintain Federal Tax Exempt Status:

We desperately need help fixing our federal tax code before the end of 2019. As community-focused, member organizations, electric cooperatives must comply with the 85-15 income test. No more than 15% of gross income may come from non-member sources in order to remain tax-exempt under federal law. Due to an unintended consequence created by changes to the Internal Revenue Code in the 2017 Tax Cuts and Jobs Act, OEC and other cooperatives across the country are facing a crisis related to this required income ratio that puts our federal tax-exempt status in jeopardy. The 2017 law contains a provision that counts federal, state and local grants to co-ops as non-member income. Before the law change, grants were defined as a contribution to capital and did not count toward 85-15 calculations.

Historically, electric cooperatives have received grants from a variety of federal, state and local governments to assist in providing services to their members for purposes such as storm restoration (FEMA), renewable energy development, energy efficiency and conservation, economic development, or rural broadband initiatives. Now that grants are counted as income, several co-ops are facing difficulty in maintaining their tax-exempt status if they take government grants to restore power after a natural disaster, bring broadband service to rural residents, boost economic development in local communities or create energy efficiency programs.

OEC is choosing to use the state broadband grants we have been awarded but we are risking our tax-exempt status in the process. For OEC, the train had already left the station when the tax bill arrived. Prior to the enactment of the new law and the discovery of its unintended consequences on our tax-exempt status, our cooperative was awarded \$10 million from New York's state broadband program plus nearly \$4.3 million in federal funds over the next decade to extend broadband to well over two thousand rural homes and businesses. After finding out about the

threat to our tax-exempt status, our cooperative board made the decision to forge ahead on our planned broadband buildout to all co-op consumer members because we view access to reliable broadband as an essential basis for quality of life and economic development in our entire cooperative community.

However, we also have a contractual obligation with New York State to follow through on our broadband project as awarded. That promise has been made much more difficult to fulfill due to having these tax rules changed on us in the middle of the project; creating wide-reaching unintended consequences and needlessly driving up costs. To delay tripping the 85-15 test, OEC slowed down grant reimbursement requests for most of 2018. In 2019, due to increasing interest costs, we were forced to apply for and receive grant funds that far exceeded our 15% threshold. Slowing down reimbursements to a point where incoming grant dollars would never trip the 85-15 test isn't a valid option, so we will have to turn to additional loans to cover the unexpected taxes and any advisory, organizational, and accounting costs that the tax law change will cause for us.

If a federal legislative fix is not passed by the end of 2019, we will lose our tax-exempt status. What's more, as much as 21 percent of the grant money received could be lost to taxes. The combined penalties of paying income tax on grant funds and the loss of tax-exempt status will significantly reduce our ability to build broadband to as many locations as we originally projected, depriving many households of the intended and direct benefits of public grant funding for the broadband project. This is clearly not good public policy and the inadvertent mistake that has caused this situation must be fixed.

Fortunately, a bipartisan legislative solution to this issue has been introduced in the House and Senate. The Revitalizing Underdeveloped Rural Areas and Lands (RURAL) Act (S. 1032/H.R. 2147) was introduced by Senators Rob Portman and Tina Smith and Representatives Terry Sewell and Adrian Smith in April. The Senate bill has 28 cosponsors, while the House bill has 209 cosponsors with more signing on weekly. The legislation will allow co-ops to accept grants without jeopardizing their tax status, but the bill has not yet been scheduled for a vote in the House or Senate. OEC, along with the entire rural electric cooperative family and various rural

focused organizations such as Farm Bureau and the National Cooperative Business Association are urging Congress to pass this legislation.

Building Broadband Networks for the Future

Broadband is as needed in rural America as other infrastructure systems to support a healthy economy and community. Policymakers in Washington, D.C., have recognized the importance of rural broadband networks by including increased funding and new programs to promote rural broadband infrastructure.

One of the key objectives for consideration with respect to using the limited resources made available is that any broadband funding plans should include clear expectations for whomever receives federal or state support. Recipients should be required to construct networks capable of meeting growing consumer demand over the long-term. In other words, resources should be used to build networks which will be useful for decades. Spending federal or state dollars on broadband networks that will be obsolete in a few years doesn't make financial sense and will leave rural areas behind again. Any areas that are not currently being served, or being built out to, with robust, reliable broadband of at least 25/3 Mbps should be eligible for broadband funds in any state and federal broadband program. In addition, the highest speed and capacity solutions such as GPON gigabit speed Fiber to the Home projects should be given preference over other less robust technologies. Other considerations affecting the end-user experience, such as latency and data cap limits which lead to a higher cost and diminished ability to utilize the service, should also be considered in all broadband funding programs.

The Role of Public Investment in Reliable Rural Broadband Service

As a non-profit cooperative, we operate at cost and our access to capital is limited by what we ask our consumer member-owners to contribute through the rates they pay. Additionally, our rural nature lends itself to sparse population densities which means we have smaller groups of consumers to spread the costs of deploying service. Because OEC, similar to other electric cooperatives across the country, is a small non-profit that operates at cost, we entered this business with no extra cash to spend on the project. This means we financed our portion of the broadband infrastructure investment with borrowed funds. We had resources to invest - mostly

human, infrastructure, and equipment - but we would not have been able to proceed with the project without public funds. We also will not be able to extend our service area to reach additional rural Americans who don't yet have robust service without public funds. Therefore, continued government funding to reduce the upfront capital investment and help make the business case to deploy robust broadband is necessary to achieve wide-spread expansion of high-speed access throughout rural America.

There are currently federal funding programs geared toward this purpose at the United States Department of Agriculture's (USDA) Rural Utilities Service (RUS) and at the Federal Communications Commission. Programs at these agencies are complementary and equally important. Electric cooperatives have witnessed both success stories and challenges within these programs in pursuit of bridging the digital divide throughout rural America. When Congress reauthorized the Farm Bill in 2018, electric cooperatives participated in and appreciated the efforts taken to learn from some of those challenges by reshaping the USDA RUS Farm Bill Broadband Loan and Grant program. The updated program represents a bi-partisan, bi-cameral and industry compromise and we urge Congress to utilize this consensus approach by directing funding to the program soon.

There are several important Universal Service Fund programs at the FCC, one of which is the upcoming Rural Development Opportunity Fund (RDOF) which intends to distribute \$20 billion dollars over a period of 10 years via reverse auction to provide broadband service of at least 25/3 Mbps to large swaths of rural America that don't currently have that level of service. The lack of density in the areas to be included in the RDOF makes the business model for service in these areas—sans direct public investment—inevitable. We believe a reverse auction is the most efficient way to go about this effort so the most efficient bidders will get the awards, but care must be taken to prioritize participants utilizing technologies that are most prepared to stand the test of time and keep pace with increased consumer demand for speed and quality including latency and potential data cap considerations. OEC believes priority should be given to those who are ready to provide at least 100/100 Mbps service in a GPON Fiber to the Home project.

Rural electric cooperatives, through NRECA, have filed initial comments² in the FCC’s RDOF proceeding to provide detailed feedback on the FCC’s proposal. In addition to the items noted above, particularly noteworthy comments this committee should be aware of include support for moving forward expeditiously with Phase I of the auction to known unserved locations and then proceed with Phase II once the FCC obtains more granular data on served and unserved locations within partially served census blocks. Electric cooperatives also support and underscore the importance of adopting a challenge process that applicants can utilize as eligible areas are determined and finalized. Lastly, several recommendations related to the proposed performance tiers and latency levels—that aim to bolster bids delivering faster speeds and fiber dense network builds—are made to further the FCC’s goal to “make the necessary long-term investments to build robust future-proof networks” in rural areas.

Rural electric cooperatives are uniquely suited to partner with the government for these projects because of the existing infrastructure we have in place throughout our service areas. As member-owned, locally operated, and democratically controlled entities we feel we can best determine the needs of our local service areas because our consumer-members have a direct say in the services we provide, and we will continue serving these areas we call home long after other companies have reduced the quality of their service or ceased investment altogether. Rural electric cooperatives will continue to be active in the FCC proceeding to recommend how those investments should be made to have the most lasting impact.

CONCLUSION

As I have described, broadband is vital to the survival and growth of both the communities OEC serves and all of rural America. Much progress on broadband deployment has been made over the last few years and it’s important that we address the public policy challenges I’ve shared to ensure that progress may continue. Electric cooperatives, in particular, are particularly well suited for this task and we are committed to deploying broadband in rural America and investing in these difficult to serve areas where other providers are not willing to serve.

² NRECA Comments on Proposed Rules for the FCC Rural Digital Opportunity Fund; September 23, 2019; [https://www.cooperative.com/programs-services/government-relations/regulatory-issues/Documents/Final%20NRECA%20RDOF%20Comments\(02\)%2009.20.2019.pdf](https://www.cooperative.com/programs-services/government-relations/regulatory-issues/Documents/Final%20NRECA%20RDOF%20Comments(02)%2009.20.2019.pdf)

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National and state broadband programs offer an opportunity to promote broadband development. As part of this effort, our cooperative is ready and willing to continue the conversation about broadband programs and we look forward to working with you to expand all the benefits broadband has to offer so rural New Yorkers will not be left behind.

Thank you for the opportunity to testify, and for your commitment to rural broadband. I look forward to working with you and answering any questions you may have.

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