January 23, 2020

VIA ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: *Rural Digital Opportunity Fund*, WC Docket No. 19-126; *Connect America Fund*, WC Docket No. 10-90

Dear Ms. Dortch:

On Wednesday, January 22, 2020, the undersigned on behalf of NTCA–The Rural Broadband Association ("NTCA") spoke via telephone with Austin Bonner, legal advisor to Commissioner Geoffrey Starks, regarding matters in the above-referenced proceedings.

NTCA started by expressing support on the whole for the draft order recently circulated and released by Chairman Pai. While expressing concern specifically regarding the inclusion of a new 50/5 Mbps speed tier that would result in two separate levels of performance below that experienced by the average urban consumer, I noted the significance of the "clearing round" provision included within the draft order in helping at least to mitigate such concerns and urged the Federal Communications Commission (the "Commission") therefore to ensure that this provision would remain in the order as proposed. I stated that any changes to the clearing round structure would put at risk the careful balance struck by the draft order and substantially undermine the promise that the order otherwise holds for unserved areas in rural America. I observed that changes proposed by other parties to this provision were lacking in any evidentiary or analytical basis whatsoever – proposing, for example, an arbitrary 50% factor for application of that provision – and were clearly intended to do nothing more than render the provision inoperative given prior experience in the Connect America Fund ("CAF") Phase II auction. *Ex Parte* Letter from Louis Peraertz, Vice President, WISPA, to Marlene H. Dortch, Secretary, Commission, WC Docket Nos. 19-126 and 10-90 (filed Jan. 21, 2020). NTCA therefore urged the Commission to dismiss any such recommendations and to proceed with the draft order as circulated in this respect.

NTCA–The Rural Broadband Association
4121 Wilson Boulevard, Suite 1000, Arlington, Virginia 22203
(703) 351-2000 (Tel) ● (703) 351-2001 (Fax)

NTCA next turned to discussion of a "transition issue" arising in connection with the Rural Digital Opportunity Fund ("RDOF") auction and that is critical to the sustainability of universal service in high-cost areas. *See, e.g.*, Comments of NTCA, WC Docket Nos. 19-126 and 10-90 (filed Sept. 20, 2019), at 34-35; *Ex Parte* Letter from Michael R. Romano, Sr. Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Dec. 19, 2019), at 5. In particular, I discussed the circumstance in which a recipient of CAF Phase II model-based universal service support far "outperformed" its prior 10/1 Mbps buildout obligations, deploying instead a network capable of potentially delivering 100 Mbps or even Gigabit service. In that case, the area in which such a network was built will be considered ineligible for the RDOF auction (because available speeds exceed 25/3 Mbps) – and as a result, under the order as currently drafted, *no* universal service support would appear to be available going forward in that area once the CAF Phase II distribution term completes.

I explained that this result is problematic because there are many rural areas where the costs of operating a network, even once built to the highest level of performance, cannot be recovered through consumer rates; the rates required to recover such costs would not be "reasonably comparable" as required by law, and could range into the hundreds of dollars per month. 47 U.S.C. § 251(b)(3). I highlighted the long-term nature of network asset depreciation (which is 25 years for fiber in the Commission's cost model), and I observed that long-term loans and other financing vehicles leveraged to build such networks – since universal service is *not* a grant program and does *not* provide upfront financing – must be repaid for many years after CAF Phase II distributions cease. I further referenced how the Commission had previously acknowledged this dynamic in prior rulings, expressly recognizing the importance of providing some level of ongoing support to maintain networks, repay loans, and replace depreciated assets. *See, e.g., Connect America Fund*, *et al*., WC Docket No. 10-90, *et al*., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11907-08 (2018), at ¶¶ 40 and 45; *Connect America Fund*, *et al.*, WC Docket No. 10-90, *et al*., 31 FCC Rcd 3087, 3113 (2016), at ¶ 66.

NTCA noted the odd results and perverse incentives for network operators that would follow from this approach. Specifically, had a provider receiving CAF Phase II support deployed a network that met only the bare minimum 10/1 Mbps buildout obligation (even if that deployment was at a cost *less* than that of model support), that area would then be eligible in the upcoming auction for another ten-year term of support. Yet, if a provider receiving support deployed a network capable of 25/3 Mbps or greater *for the same amount of funding*, its "reward" for being so efficient and doing so much more for rural consumers would be the declaration of the areas it serves as seemingly ineligible for future support. Thus, rather than prompting operators to deliver the best possible broadband they can for the funds they receive (regardless of technology choice), this inefficient policy would prompt operators to scale back their deployment plans and do only the least amount necessary to comply with current buildout obligations in the hope of qualifying for the *next* auction and another ten-year term of support.

I further discussed how this would not only create inefficient incentives for operators, but also represent a wasteful use of those ratepayer resources that compose universal service support and of which the Commission is charged as a steward. Indeed, as providers aim only to do the bare minimum to avoid disqualifying themselves from future support, this policy would necessitate serial auctions, requiring the American ratepayer to keep paying for and supporting complete rebuilds of networks every ten years for incremental performance improvements at a much higher overall cost than a higher-performing network that likely requires much lower support which could be focused on operating expenses (*i.e.*, maintenance and accounting for depreciation and loan repayment) after the initial ten years.

In closing, NTCA noted that it understood that the RDOF is focused on reaching unserved areas, and I made clear that NTCA is not suggesting any change to the RDOF itself to address the distinct concerns described above. Instead, to ensure that there are proper incentives for efficient use of universal service resources and to satisfy the statutory mandates for universal service, NTCA's recommendation is simply that the Commission seek comment on how *also* to address those areas where operators leverage universal service support to deploy a network that performs well in excess of prior buildout obligations. Specifically, as described further in the attached proposed notice language, NTCA urges the Commission to ask how to determine which of those areas may require ongoing support to provide service at reasonably comparable rates, how to determine an efficient level of support to achieve that objective in those areas, and what incremental level of performance might be warranted in excess of prior buildout obligations in connection with any such ongoing support.

I explained that asking these questions would have no effect whatsoever on the scope, timing, or budget of the RDOF, and that nothing in such an inquiry would prejudge any result the Commission might reach in terms of whether, where, and to what degree such ongoing support might be available or how precisely such support might be distributed (*e.g.*, via further auction, a revised model, or some other means). Failure to ask such questions at all, however, would run afoul of the statutory mandate for reasonable comparability arbitrarily presuming that universal service is achieved in perpetuity simply by the fact that a network has been built in a given area – in addition to introducing all of the concerns discussed above in terms of parties' incentives and effective use of ratepayer funds. NTCA therefore respectfully requested that the Commission include such questions for further deliberation by all stakeholders and thoughtful consideration in a rulemaking.

NTCA is grateful to the Commission for the careful balance it has struck thus far in developing the proposed structure for the RDOF auction, and the association's members are eager to participate in it where possible. Nothing in this letter should be read to question our support for these efforts, and NTCA hopes that the Commission will proceed as promptly as possible to launch the RDOF in the wake of an anticipated vote at its January Open Meeting. NTCA merely asks that, even as it rightly focuses on how best to reach unserved areas through initiatives like the RDOF, the Commission not overlook as well the ultimate statutory mandate to promote reasonably comparable services at reasonably comparable rates – and to recall that this mandate applies equally to "served" and "unserved" areas alike. Asking questions along the lines of those suggested herein would help to ensure that this mandate is carried out faithfully and diligently.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

Sincerely,

/s/ *Michael R. Romano*
Michael R. Romano
Senior Vice President –
Industry Affairs & Business Development
NTCA–The Rural Broadband Association

Enclosure

cc: Austin Bonner

Proposed insert after/related to paragraphs 121 and 128:

Nevertheless, consistent with prior rulings, we recognize that the mission of universal service is hardly "complete" at such time that a broadband network has been constructed in a given area. Rather, as we have observed in these prior decisions,[1] the costs of operating and maintaining a network in high-cost areas may justify some level of continuing support to sustain reasonable comparable service at reasonably comparable rates moving forward.[2]

Moreover, where providers have used universal service support to deploy networks that are capable of performance well in excess of minimum buildout obligations, we find that it would create perverse and inefficient incentives to cease all support in those areas. Specifically, had a provider receiving support deployed a network that met only the bare minimum of prior buildout obligations, that area would then be eligible in the upcoming auction for another ten-year term of support. Yet, if a provider receiving support deployed a network that far surpassed the prior buildout obligations for no additional level of support, its "reward" would be the declaration of the areas it serves as ineligible for future support.

We believe this represents a substantial disincentive for effective and timely broadband deployment, deterring providers from "doing more with less" and instead encouraging providers to deploy only as much broadband as is necessary to meet current buildout obligations. We further believe this is wasteful, resulting in serial auctions of any given area at incrementally higher broadband buildout levels when one auction followed by some lower level of ongoing support for a much higher-speed network would make far better use of ratepayer resources and deliver better broadband far sooner at a determinable price. Finally, we believe this would represent a significant chilling deterrent to bids in future auctions at higher speeds, for fear that a winning bidder (which may need to obtain a loan to construct the network) would suffer from a total loss of support in ten years for having built, for example, a Gigabit-capable network.

---

1 *See, e.g., Connect America Fund*, *et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11907-08 (2018), at ¶¶ 40 and 45 ("[T]he model estimates the forward-looking cost of a carrier that is maintaining a broadband network and replacing its depreciated assets. . . . Moreover, the Commission has previously recognized that areas with partially or fully-deployed fiber-to-the-premises may still require high-cost support to maintain existing service."); *Connect America Fund*, *et al.*, WC Docket No. 10-90, *et al*., 31 FCC Rcd 3087, 3113 (2016), at ¶ 66 ("We recognize that carriers that are fully deployed in some cases have taken out loans to finance such expansion and therefore may have significant loan repayment obligations for years to come.").

2 The Act, of course, articulates universal service not as a mere deployment objective, but instead as the ongoing assurance of reasonable comparability of services and rates. 47 U.S.C. § 254(b)(3).

To avoid such results, in those census blocks where a provider has used prior support to deploy a network that performs well in excess of prior buildout obligations, we seek comment on what kinds of support may be warranted in those census blocks where providers have leveraged prior support to deploy broadband at performance levels in excess of those required under the terms of such prior support.[3] For example, should we modify the existing cost model to provide some level of ongoing support for a term that is necessary to sustain operations and maintain that network? Are there other methods of identifying an efficient level of ongoing support to provide appropriate incentives for investment and sufficient support for operations, and to make the most efficient use of ratepayer resources, where a much higher-performing network has been deployed? Finally, to the extent that we consider such an approach, what precise level of performance in excess of prior buildout obligations should qualify for some level of continuing support?

---

[3] We note that assessing these questions further will have no impact on the timing of the Rural Digital Opportunity Fund auctions in those areas that are otherwise deemed eligible for them. The questions raised here only address areas that would *not* be eligible for inclusion in these auctions, and therefore seeking comment on what should happen in these *other* areas will not delay or otherwise affect our intent to proceed expeditiously with this auction.