June 22, 2022

***Ex Parte* Notice**

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

RE: ***Report on the Future of the Universal Service Fund*, WC Docket No. 21-476; *Connect America Fund*, WC Docket No. 10-90; *ETC Annual Reports and Certifications*, WC Docket No. 14-58; *Telecommunications Carriers Eligible to Receive Universal Service Support*, WC Docket No. 09-197; *Connect America Fund – Alaska Plan*, WC Docket No. 16-271; *Expanding Broadband Service Through the ACAM Program*, RM-11868; *Universal Service Contribution Methodology*, WC Docket No. 06-122**

Dear Ms. Dortch:

On Friday, June 17, 2022, the undesigned and Brian Ford on behalf of NTCA–The Rural Broadband Association ("NTCA") spoke with Jodie Griffin, Charles Eberle, Allison Jones, Nissa Laughner, and Joseph Schlingbaum from the Wireline Competition Bureau, as well as Eugene Kiselev and Eric Ralph from the Office of Economics and Analytics, regarding the future of the universal service fund ("USF") programs overseen by the Federal Communications Commission (the "Commission"). Our conversation addressed matters in the above-referenced proceedings.

We first discussed the significant opportunity presented by the call from Congress for a report on the future of universal service. As an initial matter, it is important to observe that the high-cost USF program is not merely a deployment "grant" program despite the beliefs of some over the past decade, in that it does not provide the upfront capital necessary to construct networks. Instead, it provides support over a period of time that helps to *recover* the costs of deploying networks; in this regard, it *enables* deployment but does not finance it, and providers must still seek out or otherwise have access to capital from other sources to pay for construction in the first instance.

Moreover, we observed that the high-cost USF program aims for far more by law than simply "deployment" or "availability." The statutory mission of the program is to deliver reasonably comparable services at reasonably comparable rates – this of course presupposes the existence of a network as a condition precedent, but the mere deployment of a network is by no means the "end state" dictated by statutory mandate. *See* 47 U.S.C. § 254(b)(3). We highlighted how the National Broadband Plan called out this often-forgotten critical distinction, cautioning: "While the FCC will initially target CAF funding toward unserved areas, the objective over time is to develop a mechanism that supports the provision of affordable broadband and voice in all areas, both served and unserved, where governmental funding is necessary." National Broadband Plan at 151.

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NTCA asserted that these broader and timeless perspectives from the statute and the National Broadband Plan should form the foundation for the future of USF. Specifically, we noted that the Commission should consider the high-cost USF program first and foremost as a "sustainability" initiative, aimed both at *getting* customers connected and, just as importantly, *keeping* them connected. This perspective, in turn, should help the Commission in describing for purposes of its report to Congress how its USF programs are distinct from, and can successfully interact and align with, the recent broadband deployment grant programs (and those to come) for which Congress has appropriated substantial sums in recent years.

In short, while the grant funding made available in recent years is likely to prove critical in helping to close the "availability gap," these grants will neither override nor replace the distinct and essential mission of the Commission's USF programs, nor will they by themselves close the divide everywhere. Despite the substantial grant resources being made available, private capital and USF support will still be needed as well to close the remaining divide. Indeed, Congress itself recognized this when creating the largest grant program in history last year by: (1) indicating that these grant awards are intended "to supplement, and not supplant" other efforts; (2) stating that the new programs and the call for a report to Congress should not be read to "in any way reduce the congressional mandate for universal service;" and (3) encouraging the Commission instead to consider "recommendations to expand the universal service goals for broadband." Infrastructure Investment and Jobs Act at §§ 60102(l) and 60104(c)(3). NTCA therefore asserted that this proceeding and the forthcoming report to Congress represent an important chance to refocus the USF programs on their broader and more holistic mission of universal service, highlighting in particular how the high-cost USF program can help enable deployment, sustain and upgrade networks over time, and keep rates for rural consumers more affordable.

NTCA thus asserted that the proper question for examination going forward is one of calibration and alignment between the USF and new grant programs, rather than calling into question the need for USF support at all or delaying needed reforms based upon an overly simplistic and unrealistic view that "the grant programs will connect everyone." Where it is determined in the future that grant funds are in fact sufficient on their own in a given area to enable the ongoing delivery of reasonably comparable services at reasonably comparable rates – that is, to satisfy the unaltered mandate of universal service – then USF support may not be required in that area at such time; the same has been true for some time where the private sector can fulfill needs in an area without USF support. But it remains unclear where grants will be awarded, and meanwhile the mission of universal service must be fulfilled now. In those areas where grants are not awarded, where they are awarded but do not cover all of the capital expenses of deployment, and/or where the ongoing higher costs of keeping networks upgraded and maintained preclude the offering of reasonably comparable services at reasonably comparable rates even with grant funds available, the Commission's high-cost USF program can and must continue to play a critical role.

With this as backdrop, NTCA asserted that there is no need or basis to hold off on certain much-needed USF reforms now pending the creation, implementation, and execution of new grant programs. As an initial matter, some areas in which USF support is being provided for smaller rural operators like those in NTCA's membership will not be eligible for new grant awards. *See* Broadband/Internet Availability Survey Report, NTCA, at 2 (Dec. 2021) (reporting that nearly 75% of NTCA members' customers on average have access to 100 Mbps broadband and fiber-to-thepremises connections). Holding off on addressing whether the budget for ongoing USF support in such areas is sufficient to sustain these networks, to help repay loans taken out to build them, and to keep services more affordable and in pace with consumer demand atop them simply "because of BEAD" makes no sense whatsoever given that BEAD funding will not be available in these areas. *See Connect America Fund*, WC Docket No. 10-90, Order (rel. May 9, 2022), at ¶¶ 8-9 (noting how increased inflation, increased investment, greater adoption of standalone broadband services, and supply chain concerns have all placed greater pressure on the CAF-BLS USF budget such that a waiver of cuts to support under that mechanism was warranted).

Moreover, even in areas where smaller rural operators are currently delivering broadband at required performance levels of 25/3 or less leveraging USF support, "waiting for BEAD" is problematic for several reasons. First, such an approach would create unnecessary complexity and additional work for both the Commission and other agencies. If BEAD were awarded in such an area (whether to the current USF recipient or another operator), the Commission would need to determine what to do with the existing USF support in that area – including potentially having to reduce or wind down one kind of USF support and/or replace it with a new USF program to support the BEAD recipient where the network built leveraging a grant is not self-sustaining thereafter. By contrast, if the Commission were to enhance existing USF programs and leverage existing networks, it could achieve the same results for consumers more directly and more efficiently, allowing BEAD resources in turn to be deployed in other areas with greater need.

Second, there are still many unknowns within the new grant programs. It is unclear where and when the funds will be distributed or even how the grant programs will be structured as other agencies at the federal and state level fill in some of the outstanding material details. If much-needed USF reforms that would help deliver substantially better services to rural consumers are delayed or denied only to find that an area did not receive grant funding after all, this will make it even harder to reach those consumers still left behind. Where the Commission has the opportunity to ensure that its USF programs will deliver reasonably comparable services at reasonably comparable rates through reforms, it should seek to fulfill that statutory mandate as soon as possible rather than abdicating such reforms to await the details of grant programs still to come and a multi-stage, multi-jurisdiction, multi-year effort to implement them.

Third, NTCA observed that the Commission's high-cost USF programs have proven track records and incorporate substantial existing accountability measures that help to ensure that consumers receive what is promised. With performance testing, location reporting for deployment, and eligible telecommunications carrier oversight at both the federal and state level, recipients of USF support are subject to strict provisions that require them to demonstrate their capabilities and then "show their work" in terms of both building networks and delivering services. Such measures provide further justification for leveraging and enhancing existing USF mechanisms to achieve and sustain the statutory mandate for universal service.

In the final part of the discussion, NTCA encouraged the Commission to undertake reforms to place the contribution mechanism that funds all of the critical USF programs on a more stable foundation. In particular, NTCA highlighted its continuing support for the Commission to act as soon as possible under its existing permissive authority to expand the contribution base to include retail broadband Internet access service revenues. *See Ex Parte* Letter from Carol Mattey, Mattey Consulting LLC, to

Marlene H. Dortch, Secretary, Commission, WC Docket Nos. 21-476 and 06-122 (filed June 15, 2022). In addition, NTCA continues to support efforts to broaden the base through contribution of a fair share as well from those entities whose service offerings place substantial demands on networks and whose businesses would not function without the robust services provided atop these networks. *See* Comments of NTCA, WC Docket No. 21-476 (filed Feb. 17, 2022), at 61-64. NTCA therefore urged the Commission to highlight in its report to Congress the steps that can be taken now by the Commission itself to address concerns about the contribution base as recommended by the *USForward* report and then to call for additional direction and authority from Congress regarding further measures to stabilize and enhance the equity of burdens among potential contributors.

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 Romano*
Michael Romano
Senior Vice President –
Industry Affairs and Business Development

cc: Jodie Griffin
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