



April 3, 2023

Ex Parte Notice

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

RE: *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 A-CAM Program, RM-11868*

Dear Ms. Dortch:

NTCA–The Rural Broadband Association (“NTCA”) submits this correspondence to provide further information in support of points raised previously in the above-referenced proceedings regarding: (1) the potential impacts of the budget control mechanism on rural operators receiving cost-based Connect America Fund Broadband Loop Support (“CAF-BLS”) and/or High-Cost Loop Support (“HCLS”); (2) the steps necessary to address such impacts; and (3) the legal and procedural justifications for such measures.¹

Before turning to these specific points, it is worth noting how the proposals supported by NTCA for CAF-BLS and HCLS updates, and for reforms to the Alternative Connect America Cost Model (“ACAM”) and the Alaska Plan as well, would address the broadband needs of millions of Americans in an efficient and effective manner. NTCA members and providers like them serve approximately 30% of the U.S. landmass. Adoption of the proposals previously articulated would enable the delivery of high levels of service for wide swaths of rural America equivalent to (if not exceeding) services anticipated to be delivered through upcoming grant programs – efficiently leveraging existing networks and ensuring that forthcoming resources from these other programs can go further in serving other rural areas. It must also not be missed that the Commission’s high-cost universal service programs do more than merely facilitate deployment, providing essential support too for ongoing service delivery and more affordable rates.

Based upon the best information currently available, however, NTCA estimates that a significant increase in the budget control mechanism (“BCM”) is likely to be announced on or about May 1, 2023. The substantial ensuing cuts in CAF-BLS and HCLS support would undermine the efforts of hundreds of small providers to fulfill and sustain the mission of delivering better broadband to

¹ See, e.g., *Ex Parte* Letter from Michael R. Romano, Executive Vice President, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission (the “Commission”), WC Docket No. 10-90, *et al.* (filed Feb. 16, 2023).

millions of rural Americans at affordable rates. As described further below, these providers have made substantial efforts in recent years to meet increasing needs for robust and affordable broadband in some of the most rural and remote parts of the country, accommodating escalating demands not only from existing residents of such areas for upgraded service but responding as well to installation and service activation requests in the wake of recent demand growth in rural areas – even as there is clearly more to do to connect still many more rural Americans who still lack sufficient access.

To provide examples of how demand has increased in rural areas in just the past few years, one NTCA member indicates that broadband subscriptions overall increased by 6% from 2021 to 2022, with customer elections of standalone broadband service (*i.e.*, broadband connections without associated regulated voice subscriptions) increasing by 50% over the same period. Another member has identified significant growth patterns, with overall broadband subscriptions in its incumbent serving area growing by over 40% from 2019 to 2023 and most of that growth coming in the form of new standalone broadband connections. Still another NTCA member reports a 15% increase in subscriber growth over the same period, with more customers now served by the fiber-to-the-premise connections in 2023 than the total number of broadband customers served in 2019. This customer growth is clearly the product of both increased broadband demand and rural population growth overall. During 2020 and 2021, nonmetropolitan areas grew at a faster rate than metropolitan areas. The Economic Research Service of the USDA reports that migrations from urban to rural areas increased during this period.² Overall population growth increased 0.4%, the fastest rate in nearly 30 years.³ Moreover, some small cities and towns are embracing a “Zoom Town” strategy, enticing remote workers to move to rural areas. These include initiatives in Arkansas, Arizona, and West Virginia, which offer financial incentives to people who relocate. Surveys reveal that many applicants were from large metropolitan areas including New York, Los Angeles, and San Francisco.⁴

Of course, none of these ventures to attract workers, grow populations, increase local tax bases, and add to the thriving vitality of rural spaces can be accomplished without a foundation of robust broadband connectivity – and both newly rural residents and those long present in rural communities have been adopting higher-performing broadband. In NTCA’s most recent broadband survey, members reported broadband adoption rates (at any speed) of over 80%, and this survey for the first time indicated that services with speeds between 100 Mbps and one Gigabit are the most popular among customers.⁵ Such fast-paced efforts to invest in better networks and deliver faster, higher-performing services in response to massive consumer demand over the past several years come at increased cost – and there is of course the need to reach those many Americans still awaiting such connections despite this progress overall.

² James C. Davis, Anil Rupasingha, John Cromartie, Austin Sanders, “Rural America at a Glance,” Economic Research Service, Economic Research Bulletin No. 246, USDA (Nov. 2022), at 4.

³ *Id.* at 12.

⁴ “The Rise of Remote Work in Rural America,” Center on Rural Innovation (Oct. 2021) (“CRI”), at 9 (https://ruralinnovation.us/wp-content/uploads/2022/01/Remote-Work_122721.pdf).

⁵ NTCA Broadband/Internet Availability Survey Report (Dec. 2022) (“NTCA Survey”), at 4 and 9.

There are many reasons why more rural users have been seeking better performance from their broadband services in recent years. Telehealth and telework have become prevalent use cases. Although telehealth spikes from the COVID-19 pandemic have subsided, overall usage is higher than before the pandemic – indicating a fundamental shift in how Americans interact with their healthcare providers – and such interactions are expected to become more user-friendly for both patients and physicians. Investments in digital health are anticipated to increase, as well.⁶ Similarly, although many workers are returning to offices on a more frequent basis, telework arrangements have become far more common and, in many workplaces, remote working for at least part of each week appears to be an ensconced practice emerging from the pandemic. Moreover, a 2021 survey found that remote workers save approximately \$4,000 annually on transportation, work clothes, and other expenses related to working outside the home⁷ – savings that can be particularly impactful and drive greater use of teleworking arrangements in rural areas where lower densities and longer distances present unique commuting challenges.

Rural businesses as well are recognizing and realizing the benefits of better broadband of the kind delivered by NTCA members and supported by programs like CAF-BLS and HCLS. The six largest rural industries are agriculture, manufacturing, retail, health, hospitality, and government.⁸ All rely on robust broadband connections. Broadband powers applications to support productivity efficiencies and substantial financial gains in both animal and crop farming;⁹ ecommerce sales are expected to increase more than 10% in 2023;¹⁰ manufacturing associations cite broadband as key to their ability to compete.¹¹

These data points indicate that the 2018 universal service reforms are working as intended, enabling and even propelling small rural providers to meet increasing demand for better broadband for a variety of applications and use cases. At the same time, however, there is more work to be done – and cracks are showing in the support mechanisms. Specifically, it has become clear that predictive judgments made in 2018 to establish the level of the BCM for CAF-BLS and HCLS have missed the mark for reasons that were both anticipated on the one hand and unforeseen and unforeseeable in other respects.

⁶ Tanya Albert Henry, “What to Expect in Telehealth in 2023? Here are Five Predictions,” American Medical Association (Jan. 9, 2023) (www.ama-assn.org/practice-management/digital/what-expect-telehealth-2023-here-are-5-predictions).

⁷ CRI at 10.

⁸ James C. Davis, Anil Rupasingha, John Cromartie, Austin Sanders, “Rural America at a Glance,” Economic Research Service, Economic Research Bulletin No. 246, USDA (Nov. 2022) at 12.

⁹ *See generally* Joshua Seidemann, “From Fiber to Field: The Role of Broadband in Emerging Agricultural Technology,” Smart Rural Community, NTCA (2021).

¹⁰ Anna Baluch, “38 E-Commerce Statistics of 2023,” Forbes Advisor (Feb. 8, 2023) (<https://www.forbes.com/advisor/business/ecommerce-statistics/#:~:text=E%2Dcommerce%20sales%20are%20expected,earn%20more%20as%20a%20result>).

¹¹ *See* “Broadband in Rural Manufacturing,” Industry Today (Jun. 26, 2019) (<https://industrytoday.com/broadband-in-rural-manufacturing/>); *see also* Emily Newton, “Increasing Rural Broadband Can Help Rural Manufacturers Compete,” Manufacturing Tomorrow (Dec. 13, 2021) (<https://www.manufacturingtomorrow.com/story/2021/11/increasing-rural-broadband-can-help-rural-manufacturers-compete/17955/>).

With respect to reasonably foreseeable factors now presenting challenges to the BCM, many NTCA member customers are migrating to “standalone broadband” – declining to purchase or dropping “plain old telephone service” and retaining only a fixed broadband connection. In addition to the specific examples provided earlier in this letter, NTCA estimates generally that rural providers’ telephone lines in their incumbent serving areas have decreased by 9% over the past two years while standalone broadband connections grew by nearly 20% over the same period – with 7% of this total coming from new customers. Customer adoption of this kind is a good thing of course and is a result that the 2018 reforms sought to promote. The *pace* of such transitions to standalone broadband services, however, far exceeds what was predicted in 2018. Indeed, the Commission’s projections while setting the BCM initially in 2018 assumed standalone broadband lines would increase by an average of only 4% annually between 2019 and 2023,¹² a presumption that falls far short of the impressive 20% pace for customer conversion to standalone broadband over the past two years.

This misplaced predictive judgment in estimating standalone broadband demand has had a material adverse effect on the BCM, contributing to support shortfalls over the past several years and providing one of the primary justifications for the BCM waivers that have been thankfully granted during that period. But such concerns were foreseeable in 2018 and, in fact, the Commission sought comment through a further notice of proposed rulemaking on this very issue precisely because of concerns about how the potential for more rapid standalone broadband adoption could place significant pressure on the BCM.¹³ As NTCA explained in early 2019 in response to that call for comment:

There can be no doubt that the transition to standalone broadband will place increased pressure on federal support mechanisms as more network costs are effectively transferred into the interstate jurisdiction, both those costs associated with new investments and even just the costs associated with prior investments that are reclassified as interstate when a consumer ceases to buy intrastate voice service on the same line. . . . What is unmistakably clear, however, is that care must be taken to ensure the sustainability of the budget that the Commission has thankfully supplemented during a transition period when customers are increasingly expected to migrate to standalone broadband and prior to the Commission’s planned re-evaluation of the budget in 2024.¹⁴

As significant an effect as it has had, however, the foreseeable increased adoption of standalone broadband is hardly the sole factor driving recent BCM cuts and justifying relief. In the face of an unforeseeable pandemic where consumers and businesses alike clamored for broadband, NTCA members and operators like them met that call over the past several years by investing in network enhancements at a pace never seen. The considerable and unrelenting efforts of small providers to address this increased demand in hard-to-serve rural areas even in the face of these many challenges

¹² See *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, 12017 (2018), at Appendix D.

¹³ *Id.* at 11948-49, ¶¶ 200-204 (seeking comment on the potential effects of broadband-only adoption on CAF-BLS demand).

¹⁴ Comments of NTCA, WC Docket No. 10-90, *et al.* (filed Mar. 8, 2019), at 16.

can be seen clearly through a comparison of NTCA’s annual broadband surveys for the most recent year [before the pandemic](#) and [last year](#):

December 2019 Survey

- 60.8% of NTCA member customers on average could receive 100 Mbps service or greater, with 25.3% of those capable of receiving Gigabit-level service
- 63.8% of customers on average were served by fiber-to-the-premises networks

December 2022 Survey

- 81.9% of NTCA member customers on average could receive 100 Mbps service or greater, with 60.9% of those capable of receiving Gigabit-level service
- 79.3% of customers on average were served by fiber-to-the-premises networks

These efforts over just the past three years highlight and underscore the remarkable effectiveness of the CAF-BLS, HCLS, ACAM, and Alaska Plan programs, demonstrating how they enable the business case for investment in the best possible networks and delivery of the best possible services for millions of Americans – even as the data show there is clearly still much more work to do to enhance these programs and to ensure that every American (including many of the hardest to reach) has sustainable access to this kind of service at affordable rates. Applying cuts to CAF-BLS and HCLS support in the face of (and essentially as a “reward” for undertaking) such efforts would harm providers and consumers alike, both for those consumers already connected and for the millions still waiting for such access despite such progress overall.

Furthermore, the economic backdrop against which such investments have occurred cannot be ignored. Current inflation rates have dipped over the past several months, but they remain at nearly 6.5%;¹⁵ in contrast, the Federal Reserve Board cites 2% as an acceptable rate of inflation.¹⁶ Food and energy lead consumer price index (“CPI”) increases.¹⁷ Unfortunately, the cost of living may be increasing faster for rural Americans than their urban peers. The main indicator of inflation is the CPI, which is based on prices of common consumer goods in urban areas. Some economists, however, propose that a lack of rural data in this composition leads to underappreciation of the impact of inflation on rural spaces, and that rural residents may endure the impacts of inflation more intensely than urban counterparts. For example, higher vehicle and fuel costs in rural spaces decrease amounts of discretionary income available for food or housing. Greater distances between home and school, work, and other activities in rural spaces translate to higher fuel consumption needs and accelerated

¹⁵ Consumer Price Index: January 2023 CPI Weight Update, U.S. Bureau of Labor Statistics (www.bls.gov/cpi/) (“Bureau of Labor Statistics”).

¹⁶ “What is an Acceptable Level of Inflation,” Board of Governors of the Federal Reserve System (Jul. 25, 2011) (www.federalreserve.gov/faqs/5D58E72F066A4DBDA80BBA659C55F774.htm).

¹⁷ Bureau of Labor Statistics.

rates of vehicle wear.¹⁸ Thus, inflation likely has an outsized impact on rural areas, including the businesses (such as broadband providers) that operate in such areas. Moreover, providers continue to struggle with supply chain constraints that exacerbate both the cost (even above CPI rates) and the timing of obtaining equipment needed for broadband deployment, along with increased costs of securing and retaining a trained workforce to build and maintain these networks.¹⁹ Particularly given that CAF-BLS and HCLS help to recover costs already incurred during periods when these challenges have arisen, this means that these kinds of impacts will be incorporated into the costs that providers must recover for years to come even if inflation levels off and as the nation emerges from the pandemic.

At bottom, the CAF-BLS and HCLS mechanisms (and the ACAM and Alaska Plan programs as well) have delivered over the past several years on their promise, helping to realize a vision in which more customers both have access to and are making effective use of better broadband services. These programs are also needed to *keep* delivering on that promise and to enable *further* deployment to those rural Americans still awaiting sufficient broadband access. But it is increasingly clear that the predictions that went into establishing the BCM in 2018 have proven off, failing to capture how fast customers would adopt standalone broadband and understandably failing to anticipate how broadband demand and inflationary pressures would increase and affect investments as a pandemic struck. Importantly, it must also be noted that in deploying networks at this more rapid pace to respond to demand, CAF-BLS and HCLS recipients are not paid upfront (as would be the case with a grant) or even provided with support on a fixed recurring basis at a certain amount (as is the case under other universal service programs). Instead, CAF-BLS and HCLS support only starts to help with recovery of the costs for these investments and efforts several years *after* they are incurred – in the face of the need to repay loans secured or other capital used upfront to finance the construction of these networks.²⁰ This means that reductions or disruptions to CAF-BLS and HCLS support can introduce significant cash flow concerns given: (a) loans have already been taken out in many cases; (b) the costs of delivering broadband have already been (and continue to be) incurred; and (c) providers must charge rates based upon the Commission’s universal service reasonable comparability benchmarks, meaning they likely cannot raise – and the Commission almost certainly does not want them to raise – consumer rates by as much as 17% or perhaps more to “make up the difference” when universal service support is cut by such an amount.

¹⁸ Stephen Weiler, Tessa Conroy, “Analysis: Cost of Living May be Rising Faster for Rural Americans,” The Conversation, PBS News Hour (Jan. 29, 2023) (www.pbs.org/newshour/economy/analysis-cost-of-living-may-be-rising-faster-for-rural-americans).

¹⁹ See, e.g., NTCA Survey at 16 (finding that nearly 85% of survey respondents reported experiencing delays in procuring supplies for network deployment, including customer premises equipment, fiber, and network electronics).

²⁰ Of course, to the extent that a recipient of CAF-BLS and HCLS support were to receive a grant to enable deployment, this would have the effect of reducing demand for such universal service support because the capital costs covered by the grant would then need not be recovered through these USF mechanisms. Thus, by definition, CAF-BLS and HCLS support are “self-correcting” and only reflect capital costs incurred by providers in deploying and delivering broadband without any use of or cost recovery through grant funds.

For these reasons, NTCA respectfully renews its repeated calls for the Commission to address such concerns through prompt adoption of updates to the CAF-BLS and HCLS mechanisms.²¹ **While there is ample justification for the Commission to grant a BCM waiver again and provide a similar measure of relief for the year ahead – and while NTCA would welcome such relief – the recurring nature of this issue confirms that fundamental recalibration of the 2018 BCM at the current level of demand (paired with 100/20 Mbps service level commitments) is warranted and appropriate.** These simple steps would put these programs on more sound footing and on a clear path to both require and enable the delivery of higher-speed broadband to broad rural geographies. **NTCA further observes that the Commission is well-positioned from a procedural perspective to adopt such updates to the CAF-BLS and HCLS mechanisms, given that service level commitments need to be revisited this year pursuant to Commission rule and in the wake of having sought comment in rulemaking proceedings multiple times over the past several years on the specific questions of: (a) whether such revised commitments should be aligned with any ACAM updates; (b) the budget that would be necessary to accommodate such commitments;²² and (c) concerns that the BCM established in 2018 would be insufficient to accommodate more rapid adoption by customers of standalone broadband services.²³**

In closing, it should be underscored again how the proposals supported by NTCA for ACAM and CAF-BLS/HCLS updates would address the broadband needs of millions of Americans in an efficient and effective manner. Adopting these updates would help to promote the availability of broadband services that at least meet, if not exceed, what is anticipated to be delivered through various grant programs, doing so in the form of commitments across wide swaths of rural America. These critical universal service updates would in turn help ensure that the forthcoming resources from these grant programs could go even further in serving other rural areas in need. Finally, it must not be overlooked that the Commission's universal service programs aim not only to promote deployment but also provide essential support for ongoing service delivery and maintenance of more affordable rates – meaning that updates to these programs would help in achievement of not only immediate deployment objectives to help the many Americans still awaiting better access but the ultimate long-term mission of universal service as well.

²¹ See, e.g., Comments of NTCA, WC Docket No. 10-90, *et al.* (filed July 18, 2022); Reply Comments of NTCA, WC Docket No. 10-90, *et al.* (filed Aug. 1, 2022); *Ex Parte* Letters from Michael R. Romano, Executive Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90, *et al.* (filed Oct. 14, 2022, and Dec. 5, 2022). In these prior filings, NTCA has also proposed and advocated for updates to other mechanisms such as ACAM.

²² See *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Further Notice of Proposed Rulemaking and Order on Reconsideration, (rel. Dec. 13, 2018), at ¶¶ 97, 108, 200-202; *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Notice of Proposed Rulemaking (rel. May 20, 2022), at ¶ 58; see also *Connect America Fund*, WC Docket No. 10-90, Order (rel. May 10, 2022), at ¶ 12.

²³ See footnote 13, *supra*.

Marlene H. Dortch

April 3, 2023

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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

Executive Vice President

cc: Jessica Rosenworcel
Brendan Carr
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