



January 11, 2016

Ex Parte Notice

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

RE: *Connect America Fund, WC Docket No. 10-90*

Dear Ms. Dortch:

On Thursday, January 7, 2016, the undersigned, on behalf of NTCA–The Rural Broadband Association (“NTCA”), and Ryan Boone, Regulatory Manager, Premier Communications, met with Carol Matthey, Alexander Minard, and Suzanne Yelen of the Wireline Competition Bureau to discuss matters in the above-referenced proceeding.

We first discussed the need for reasonable and sensible transitions with respect to any aspects of universal service reform, such as operating expense limits, that may be applied by the Federal Communications Commission (the “Commission”) to costs associated with prior investments. It is unclear how the application of any limits or caps to costs associated with prior investment would be consistent with the use of a “bifurcated approach” to reform, and in no event should any new limits be applied to sunk costs that were consistent with rules in place at the time such investments were made and which cannot be adjusted or shed. If, however, the Commission should nonetheless adopt limits on certain costs associated with prior investment, carriers must be provided with a reasonable opportunity and period of time to adjust their operations to come into compliance with such limits.

We next discussed open questions surrounding the mechanics of a potential bifurcated approach to reform, including the substantial complexity required for any individual company to assess the impacts of that approach – and, in the case of average schedule companies, it remains impossible to assess company-specific impacts at this time. We observed that key details of such an approach remain unsettled, and that the only means currently available to assess potential impacts are: (1) industrywide aggregate “price-outs” that have been expressly stated as unlikely to reflect any individual company’s results; and (2) individual company spreadsheets that consist of multiple tabs and hundreds, if not thousands, of inputs that require population and which themselves remain works in progress.¹ To

¹ See *Ex Parte* Letter from Regina McNeil, General Counsel, National Exchange Carrier Association, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Dec. 15, 2015); *Ex Parte* Letter from B. Lynn Follansbee, Vice President, Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Jan. 4, 2016).

complete reform in a timely manner, we encouraged the Commission to remain open to simpler, more straightforward ways of achieving the same goals of reform via “modules” (*e.g.*, new limits or policy changes) that could be applied to any distributional mechanism rather than creating substantial new complexity by remaking the underlying distribution calculations. We also noted that the more complex the potential changes to existing mechanisms, the harder it will be for individual companies to undertake a meaningful examination of whether to take a model option for support or remain under the existing mechanisms as modified.

We further discussed the development of buildout obligations applicable to universal support received by rate-of-return-regulated rural local exchange carriers (“RLECs”). As an initial matter, it is worth noting that RLECs have long been cited by federal and state regulators alike as doing a “commendable job” in deploying broadband; the facts today confirm that RLECs remain committed to their communities and, by leveraging a mix of entrepreneurial spirit, private capital, and universal service support, they continue to make steady progress – even in the face of regulatory uncertainty – in attempting to provide broadband to their consumers.² Of course, much more work remains to be done to sustain the successes achieved thus far and to build upon them, especially if consumers in rural and urban areas are to receive “reasonably comparable” services as required by federal law. For this reason, NTCA joined with other stakeholders in proposing new buildout objectives aimed at ensuring universal service programs look to keep pace ultimately with the Section 706 standards that the Commission otherwise deems a necessary level of broadband availability for every American.³

NTCA further notes that, unlike Connect America Fund model-based support, which will pay carriers in advance as they build networks, the universal service mechanisms applicable to RLECs provide greater accountability in that they only pay carriers for networks as and after they are built. Thus, incentives for increased buildout are already built into RLEC universal service support, and the only questions therefore should be: (1) to what degree the Commission can use policies to steer support toward making sure every consumer has at least some basic level of broadband (while also striving ultimately for the Section 706 standard that every American should expect as a matter of Commission policy); and (2) how the Commission can monitor progress made toward that goal using universal service resources. NTCA submits that the Capital Budget Mechanism and the targeted buildout objectives such as those proposed by NTCA and others provide effective answers to these questions.

² See, *e.g.*, *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-4 (Fed.-State Jt. Bd., rel. Nov. 20, 2007), at ¶ 39 (noting that RLECs have done “commendable” work in delivering voice and broadband despite flat or declining universal service support, and therefore recommending continuation of existing mechanisms); NTCA Broadband/Internet Availability Survey Report, June 2015 (available at: <https://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2014ntcabroadbandsurveyreport.pdf>) (finding that 83% of RLEC customers can receive 10 Mbps broadband).

³ *Ex Parte* Letter from Michael R. Romano, Senior Vice President-Policy, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Dec. 16, 2015); see also “The Facts and Future of Broadband Competition,” Prepared Remarks of Chairman Tom Wheeler (delivered Sept. 4, 2014) (“A 25 Mbps connection is fast becoming ‘table stakes’ in 21st century communications.”). While universal service policy can and should look to ensure that every rural American has at least some access to a basic level of broadband, universal service policy cannot and should not be premised upon ensuring *only* such access in rural America – we can and should (and must, by law) aim for “reasonably comparable” services.

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Finally, we discussed the need to ensure that any competitive overlap policy that may be adopted by the Commission will provide sufficient support for those areas where the RLEC remains the only provider offering voice and broadband to consumers. NTCA noted the importance in particular of a rational and accurate disaggregation mechanism to ensure that eliminating any universal service support in the (likelier lower-cost) areas served by a verified unsubsidized competitor will not result in a shortfall of support associated with continued service to the (relatively higher-cost) areas that competitors generally do not enter. We discussed various options that might be considered for achieving such disaggregation, and committed to return to the Commission with suggestions on how to implement such a mechanism.

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 – Policy

cc: Carol Matthey
Alexander Minard
Suzanne Yelen