



January 22, 2014

***Ex Parte Notice***

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

**Re: *Connect America Fund, WC Docket No. 10-90; High-Cost Universal Service Support, WC Docket No. 05-337; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition; Petition of NTCA for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, GN Docket No. 12-353; Technology Transitions Policy Task Force, GN Docket No. 13-5***

Dear Ms. Dortch:

On Friday, January 17, 2014, the undersigned, on behalf of NTCA–The Rural Broadband Association (“NTCA”), met with Daniel Alvarez, legal advisor to Chairman Thomas Wheeler, to discuss matters in the above-referenced proceedings.

As an initial matter, NTCA reiterated its members’ previously conveyed interest in participating in any “technology trials” or other experiments that may be designed in these proceedings to the extent such trials help ensure and promote core values of universal service and consumer protection in rural America. *See Ex Parte* Letter from Michael R. Romano, Senior Vice President-Policy, NTCA, to Marlene H. Dortch, Federal Communications Commission (the “Commission”), WC Docket No. 10-90, *et al.* (dated Jan. 13, 2014).

To this end, NTCA discussed the potential for experiments involving rural broadband deployments as part of a broader slate of initiatives related to technology and business trials. NTCA first noted that any program that utilizes federal high-cost universal service fund (“USF”) resources, whether called a Connect America Fund (“CAF”) or something else, must hold true in all respects to the statutory underpinnings of universal service. In particular:

- Pursuant to 47 U.S.C. § 254(e), “only an eligible telecommunications carrier designated under section 214(e) . . . shall be eligible to receive [USF].”
- Pursuant to 47 U.S.C. § 214(e)(1), an eligible telecommunications carrier (“ETC”) must be a “common carrier” and must offer “the services that are supported by [USF] under section 254(e)” throughout the area for which ETC designation is received.
- Pursuant to 47 U.S.C. § 254(c)(1), the services supported through USF must be “telecommunications services.”

- Pursuant to the Commission's 2011 USF/ICC reform order, the service currently supported through USF is "voice telephony service," which must be offered as a regulated telecommunications service on the supported network (even if any given customer might choose not to take such service). *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17692 (2011) ("*USF/ICC Order*"), at ¶¶ 77-79.
- Pursuant to 47 U.S.C. § 254(b)(3), any USF program to promote the availability of supported services in rural, high-cost areas must ensure that such services "are reasonably comparable to those services provided in urban areas and at rates that are reasonably comparable to rates charged for similar services in urban areas."

In light of these mandates, the Commission must ensure that: (1) only properly designated ETCs may participate in any potential rural broadband experiment that uses USF resources; (2) those ETCs must be common carriers that offer supported services (including Lifeline) throughout designated areas; (3) those ETCs must be required to offer voice telephony (as the supported telecommunications service) that is reasonably comparable in price and quality to service in urban areas (*e.g.*, meeting stringent latency and other essential performance requirements, including reliable access to 911); and (4) to the extent that those ETCs would also presumably be required to offer broadband as a condition of receiving such USF support, such broadband must be reasonably comparable in price and quality to broadband in urban areas. Failure to design any experiment rules in accordance with these mandates could call into question the legal underpinnings of the program, and could relegate consumers in the affected areas to substandard services as a matter of price, quality, or both.

NTCA further noted that, if any experiments could involve areas served by rural rate-of-return-regulated incumbent local exchange carriers ("RLECs"), the Commission needs to address in advance how these would interact with carefully designed statutory requirements that govern distribution of USF in RLEC study areas. Specifically, sections 214(e)(2) and (e)(6) of the Communications Act, as amended, 47 U.S.C. § 214(e)(2) and (e)(6), provide that this Commission or a state commission, as applicable, must first find that any designation of an additional ETC in an area served by a rural telephone company is in the public interest. This analysis necessarily requires an individualized, fact-specific analysis of the would-be ETC's capabilities and proposed service offerings, and cannot be achieved by, for example, a reverse auction or a mechanical competitive bidding process. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-46, Report and Order (rel. March 17, 2005), at ¶ 44. Thus, NTCA observes that this is not a determination that can be made *a priori* as a programmatic matter, particularly to the extent that a state commission must by law be involved in the public interest review.

Moreover, to the extent that any ETC would seek designation for less than the entirety of a RLEC study area, substantial caution and an additional layer of individualized public interest analysis are required to examine the impact on existing services and consumers in the affected study area. *See id.* at ¶¶ 48-53. As the only carriers serving the entirety of high-cost, rural areas, RLECs face significant risks to the extent new ETCs can "pick and choose" where they might serve or are able to bundle census blocks together strategically into larger census tracts for purposes of deployment. This is of even greater concern now than in the past, given that the Commission eliminated as part of the 2011 USF/ICC reforms the very "disaggregation rule" that it once cited as perhaps helping to lessen such concerns. *See id.* at ¶ 51. The need for such a granular public interest analysis here too precludes use of a reverse auction or simple competitive bidding for such USF distribution.

At the same time, the Commission must ensure that any network investments by a non-RLEC ETC pursuant to such an experiment are limited only to those discrete, narrowly defined areas where basic levels of broadband (*i.e.*, basic speed DSL services) are truly not available, and that any USF support received by the party undertaking the experiment will not be used in any way to support deployment of networks or offering of voice or broadband services in any locations where the RLEC is already doing so. In this regard, NTCA cautions the Commission against undue reliance on the Connect America Model currently being developed in connection with USF distribution to price cap-regulated carriers for the purpose of making assessments about either the costs of or the state of service deployment in RLEC study areas. As NTCA and others have highlighted time and again, that model has not been tested or vetted for use as a reliable means of determining RLEC costs, and the mapping/service information contained within that model likewise remains of questionable accuracy. *See, e.g.*, Comments of NTCA, *et al.*, WC Docket No. 10-90 (filed Jan. 7, 2014), at 2-5; Comments of NTCA, *et al.*, WC Docket No. 10-90 (filed Mar. 28, 2013). At a minimum, to the extent that any experiment might be proposed by a non-RLEC ETC for a RLEC study area, the RLEC in question must have a meaningful opportunity to “challenge” any proposal that asserts a given area is not already served with basic levels of DSL-speed broadband.

Finally, even if any experiments involving non-RLEC ETCs might be considered within RLEC study areas, NTCA urged the Commission to ensure that such “experiments” do not have an adverse effect on services already delivered and networks already deployed by RLECs throughout their study areas. In this regard, the Commission should take heed of its own findings in the 2011 USF/ICC Reform Order that “the CAF is not created on a blank slate, but rather against the backdrop of a decades-old regulatory system” that includes “state carrier of last resort obligations for telephone service.” In particular, the Commission should remain mindful of the need “to avoid consumer disruption” while also looking to get “robust, scalable broadband to substantial numbers of unserved rural Americans as quickly as possible.” *USF/ICC Order*, 26 FCC Rcd at 17727, ¶ 165.

To this end, in addition to ensuring that any potential USF-funded experiment by a non-RLEC ETC will have no effect whatsoever on the levels of existing USF support received by an RLEC for the affected study area as a whole, NTCA now proposes that the Commission should afford RLECs:

- (1) an initial window within which to propose and have accepted any experiments within their incumbent study areas before any non-RLEC ETCs may do so (which would be analogous to CAF Phase I, in which price cap-regulated incumbents were first given incremental support to deploy additional broadband in unserved portions of their own incumbent study areas); and
- (2) a right-of-first-refusal with respect to any application that is subsequently submitted by a non-RLEC ETC for an experiment in a given portion of a RLEC incumbent study area (which would be analogous to CAF Phase II, in which price cap-regulated incumbents will be provided with an opportunity to obtain USF support to deploy additional broadband in remaining unserved portions of their own incumbent study areas before support is opened up to other would-be providers in those areas). A right-of-first-refusal might, for example, be structured to allow the RLEC (in light of its locally situated operations and its service as a carrier of last resort to the broader study area community) to undertake a given project itself to the extent that it is willing to perform the same deployment as the non-RLEC ETC for equal or less support than proposed by the non-RLEC ETC.

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As carriers committed to delivering high-quality, affordable services to all consumers in the rural areas in which they operate, NTCA's members are eager for the prospect of additional ways in which they might be able to carry out this mission, and they welcome the consideration of well-designed experiments that might help facilitate such efforts. They are also interested, however, in ensuring that any universal service programs that the Commission develops will be implemented consistent with applicable law, that the USF support that may flow from such programs will be sufficient, predictable, and specific, that the services enabled by such programs will be reasonably comparable in both price and quality to those available in urban areas, and that ultimately both the programs themselves and the broadband-capable networks and services they enable will be sustainable over time. NTCA looks very much forward to further dialogue with the Commission about how to achieve these common objectives.

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: Daniel Alvarez