



January 22, 2014

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; 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 Tuesday, January 21, 2014, the undersigned, on behalf of NTCA–The Rural Broadband Association (“NTCA”), held separate telephone conversations with Daniel Alvarez, legal advisor to Chairman Thomas Wheeler; Nicholas Degani, legal advisor to Commissioner Ajit Pai; and Christi Barnhart, legal advisor to Commissioner Jessica Rosenworcel, respectively. The subject matter of the conversations was consistent with NTCA’s *ex parte* presentations as filed on January 17, 2014, and January 22, 2014 in the above-referenced proceedings. To summarize:

- **Express Recognition of Critical Differences Between Study Areas, Legal Frameworks, and Current Universal Service Distribution Mechanisms.**
 - In considering the potential to conduct any “experiments” in areas served by rural rate-of-return-regulated incumbent local exchange carriers (“RLECs”), the Federal Communications Commission (the “Commission”) should explicitly recognize that RLECs face different challenges than those faced by price cap-regulated carriers serving rural areas, and also that any experiments would be conducted atop and within the context of very different regulatory *and* statutory frameworks governing universal service distribution in these respective areas.
 - Thus, any experiments that may be conducted in study areas in which RLECs are the incumbents must be the subject of thoughtful review in advance and then tailored to account for such critical differences, in lieu of a “one-size-fits-all” initiative that applies a singular structure across areas served by different kinds of incumbents.
 - It should also be made expressly clear that any experiment would not be intended to disrupt current universal service mechanisms or to prejudice potential updates or modifications to those mechanisms.

- **Faithful and Disciplined Application of the Statutory Universal Service Provisions.**

- The Communications Act of 1934, as amended, is unmistakably clear regarding the general requirements for designation of eligible telecommunications carriers (“ETCs”), and it imposes specific additional requirements for the designation of ETCs in RLEC study areas – and even more requirements still where such designations may be for less than the entire study area in question.
- The Commission must hold faithful in all respects to these carefully designed statutory provisions (and its own precedent and rules) in lieu of somehow providing for “fast-pass” ETC designation or carving-up of RLEC study areas.
- The Commission must further ensure that any ETC will at least offer, among other things, regulated voice telephony service at reasonably comparable rates to all consumers in the relevant area (since that is in fact the supported service by law).

- **No Overbuilding of Supported Networks.**

- The Commission should be mindful of how any experiment could affect networks already in place that offer consumers basic levels of broadband (*e.g.* basic DSL-speed), and must avoid disbursement of universal service fund (“USF”) support for an experiment that would overbuild networks already supported by USF resources.
- The Commission should therefore preclude any opportunity whatsoever for gamesmanship through creative pairing of purportedly “unserved” and served areas.
- The Commission should provide RLECs with a meaningful opportunity for review and challenge of any application submitted with respect to a RLEC study area to the extent that such applications are permitted.
- Consistent with statutory and regulatory precedent, a separate and proper public interest review must be conducted in each and every case for potential “creamskimming” as part of any ETC designation for less than a complete RLEC study area.

- **Connect America Fund Processes.**

- In recognition of the fact that RLECs are the effective carriers of last resort throughout their study areas – including not only to “anchor institutions” but to *all* users in their communities – and given that RLECs did not have an opportunity to obtain incremental USF support to help address their unserved areas through something like a Connect America Fund (“CAF”) Phase I program, the Commission should provide RLECs with both an initial window to submit applications for incremental CAF/USF support for their respective study areas, as well as a right of first refusal with respect to any experiment that may subsequently be proposed by another ETC for a RLEC study area to the extent such applications are permitted.
- The Commission should be clear that any CAF/USF support received by a RLEC in connection with an experiment will be supplemental to the current support received by the RLEC under existing mechanisms.
- The Commission should be clear that any CAF/USF support that might be received by another ETC in connection with an experiment that has in fact been approved in proper accordance with the applicable statutory and regulatory provisions will have no effect on the USF support already received by the RLEC for its operations and investments in the affected study area.

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Resolution of these issues consistent with the foregoing prior to the approval of any possible experiments is essential to achieve the mission of universal service in accordance with core statutory principles and to ensure that *all* consumers throughout rural, high-cost areas have the best possible opportunity to realize the promise of sustainable, affordable access to communications services.

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
Nicholas Degani
Christi Barnhart