



February 3, 2017

***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, February 2, 2017, the undersigned, on behalf of NTCA–The Rural Broadband Association (“NTCA”), met separately with Jay Schwarz, legal advisor to Chairman Ajit Pai, and Kristen Harris, intern in the Chairman’s office; Claude Aiken, legal advisor to Commissioner Mignon Clyburn; and Amy Bender, legal advisor to Commissioner Michael O’Rielly, to discuss matters in the above-referenced proceeding. In each meeting, NTCA discussed a series of “punchlist” items as described below that are necessary to ensure that high-cost universal service fund (“USF”) reforms previously adopted will function as intended and comport with the statutory mandates governing universal service. The conversations also discussed Connect America Fund (“CAF”) Phase 2 competitive bidding structures.

**Universal Service Budgets.** NTCA first expressed continuing concerns with respect to the obvious shortfalls in the high-cost USF support mechanisms, even in the wake of the much-needed and much-welcomed infusion of an additional \$50 million per year in support from “cash on hand” in the CAF accounts to facilitate and fulfill elections of model-based USF support. *Connect America Fund, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking* (rel. Dec. 20, 2016); *see also Ex Parte Letter from Michael R. Romano, Sr. Vice President, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission (the “Commission”), WC Docket No. 10-90 (filed Nov. 14, 2016); Petition for Reconsideration and/or Clarification of NTCA, WC Docket No. 10-90, et al. (filed May 25, 2016) (“NTCA 2016 Petition”), at 2-9.* In particular, NTCA noted that: (1) the lack of full funding of model-based support (*i.e.*, the lingering \$110 million shortfall) is resulting in fewer locations being reached and lower speeds being delivered to locations that are reached; and (2) with model elections having been concluded, it is now becoming clear that the shortfall in support received by “non-model” carriers could reach \$140 million per year (and more over time depending upon investment growth assumptions) and would be captured in the form of a budget control mechanism that cuts at least 10% of USF support from carriers (and again potentially more over time) – discouraging future investments and increasing consumer broadband rates to even more unreasonably high and unaffordable levels in plain defiance of the goals of reform.

NTCA pledged to provide specific data with respect to these budget shortfalls and their effects on consumers and investment incentives in upcoming filings in this docket. At the same time, NTCA also renewed at its long-standing request for the inclusion and application of an inflationary factor with respect to the high-cost USF budget as part of any budget review, just as such a factor is applied to other USF program budgets. *Ex Parte* Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, WC Docket No. 10-90 (filed April 21, 2015), at 2 (urging inclusion of inflationary adjustments to high-cost USF budgets and highlighting the irony that the inflationary factor used to increase the E-Rate program budget is based upon a factor first developed and applied in the context of high-cost USF support but not actually for purposes of adjusting the overall high-cost USF program budget).

**Rate Floor.** NTCA addressed concerns about the continuing adverse effects upon consumers arising out of robotic application of an overly rigid “rate floor” policy. As a reminder, this policy reduces certain USF support to the extent that a rural carrier’s local voice rates are even a penny below the urban average rate for local voice services. When reconsideration of this policy was first sought in 2012 and it was suggested that the Commission adopt *a range* below the urban average rate as still “reasonably comparable,” that petition was denied because the Commission stated that the *example* cited as a potential range would result in an unreasonably low local voice rate. *See* Petition for Reconsideration and Clarification of OPASTCO, *et al.*, WC Docket No. 10-90, *et al.* (filed Dec. 29, 2011), at 13-14; *Connect America Fund*, WC Docket No. 10-90, *et al.*, Third Order on Reconsideration, 27 FCC Rcd. 5622 (2012), at ¶ 23. Yet, subsequent events confirmed the validity of concerns expressed by rural stakeholders, as the rate floor was poised to shoot upward by nearly \$6.50 per month before the Commission acted quickly to phase in this change instead.

In August 2014, NTCA and other rural stakeholders filed a petition seeking a revised calculation methodology for the rate floor, including among other things a request for a stay of any further increases in the rate floor pending further consideration of the methodology specifically and the policy more generally. Petition for Reconsideration of NTCA, *et al.*, WC Docket No. 10-90 (filed Aug. 4, 2014). In the meetings, NTCA renewed its request for timely action on these requests and urged renewed review of the rate floor policy before consumers face yet another set of rate increases this year. NTCA noted that such action is particularly important as long as most rural consumers continue to face no meaningful prospect for standalone broadband at affordable rates if they cancel their local voice services.

**Capital Investment Allowance Adjustment.** NTCA discussed the urgent need for a technical correction to or clarification of the Capital Investment Allowance adopted in last year’s reforms. Specifically, NTCA observed that the allowance includes a per-location limit intended to serve as a “cap” on the amount of capital expenses that can be recovered in the context of network construction projects. The rule for this measure, however, is drafted in such a manner that the limit could be read to operate more like a “kill switch” than a “cap,” resulting in the potential *total loss of all capital expense cost recovery* via USF even if one exceeds the cap by just a penny. *See* NTCA 2016 Petition, at 22-23. NTCA noted that such application of the rule would be punitive and illogical, inconsistent with how the same kind of cap works within model-based USF support, and result in artificially constrained network designs that create more “remote and stranded

locations” in rural America as carriers who *could* reach higher-cost locations “on their own nickel” above the cap refuse to do so for fear of tripping the cap and losing *all* support for all construction. NTCA noted that this concern and confusion is already negatively affecting network designs and investment plans of carriers for 2017, and thus urged the Commission to move as quickly as possible to remedy this concern.

**Operating Expense Cap.** NTCA next raised concerns with respect to the structure of the operating expense cap adopted in last year’s reforms. *See* NTCA 2016 Petition, at 20-21. Specifically, NTCA noted that, unlike the corporate operations expense cap that it resembles and upon which it is effectively based, the formula for the operating expense cap lacks an inflationary factor. NTCA understands that one potential rationale for failing to include such a factor is the assertion that it would be more technically “precise” to re-run the formula every few years rather than retaining the same formula and updating it each year to reflect inflation. However, the concern with such an approach is that it sacrifices predictability. Presuming that the goal of such a cap is to provide clear guidance to carriers regarding what the Commission considers efficient operations, greater technical precision is of little value if carriers cannot actually plan and execute effectively against such a cap. NTCA therefore renewed its request to reject plans to re-run the operating expense cap formula every few years, and for the Commission to instead simply include an inflationary factor within the formula.

**Competitive Overlap.** Consistent with prior advocacy, NTCA urged the Commission to direct the Wireline Competition Bureau to identify as soon as possible the “fixed dataset” that will form the basis of competitive overlap analyses to come for purposes of nonmodel USF support, and to otherwise initiate as promptly as possible the process of identifying those areas where overlap is confirmed to exist by virtue of detailed filings from would-be competitors. *See Ex Parte* Letter from Michael R. Romano, Sr. Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed June 21, 2016). NTCA also advocated that the Commission resolve questions raised by NTCA and WTA in their petitions for reconsideration with respect to how competitive overlap will be validated. *See* NTCA 2016 Petition, at 15-17; Petition for Reconsideration of WTA, WC Docket No. 10-90, *et al.* (filed May 25, 2016), at 3-12.

**Imputation of Access Recovery Charges.** NTCA renewed its request that the Commission reconsider the requirement that carriers impute Access Recovery Charges (“ARCs”) to standalone broadband connections that were in place prior to the 2011 USF and related intercarrier compensation (“ICC”) reforms. *See* NTCA 2016 Petition at 23. NTCA understands that imputation of ARCs may be necessary to ensure that the “careful balance” struck in establishing CAF-ICC support is not undermined when consumers convert from traditional voice services to standalone broadband over time, but standalone broadband connections that were already in place when the CAF-ICC mechanism was established were never part of that “careful balance” to start. Accordingly, NTCA suggested that the Commission should eliminate the requirement for carriers to impute ARCs for standalone broadband connections, up to the number of such connections that a carrier can show were in place as of September 30, 2011.

**Application of Budget Control Mechanism to “Parent Trap” Lines.** NTCA raised an issue that has only recently come to light as carriers understand the application of the relatively new budget control mechanism to their operations. Specifically, Section 54.1310(d)(2)(i) of the Commission’s rules states that, under the budget control mechanism, the “per-line” reduction amount applied to each carrier’s high-cost loop support will be equal to one-half the difference between the forecasted disbursement amount and the target amount, divided by the total number of loops *eligible for support*. Although this calculation for determining the per-line reduction amount is specifically and appropriately derived using only those loops that may potentially affect the demand for support, NTCA understands that the Universal Service Administrative Company is multiplying the per-line reduction amount derived using only loops eligible for support by a carrier’s *total* number of loops – including loops in acquired exchanges that are *ineligible* for high-cost loop support due to the Commission’s “parent trap” rules. NTCA asked the Commission to provide guidance to correct this mismatch between those lines that are included within the calculation of the budget control and those lines that are being subjected to the budget control.

**CAF Phase 2 Competitive Bidding.** Finally, NTCA reaffirmed its support for its proposal as part of a broader coalition with respect to the development of weights in the CAF Phase 2 competitive bidding process and the need for accountability in validating the claims of coverage by would-be bidders. *See Ex Parte* Letter from Rebekah Goodheart, Jenner & Block, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Jan. 19, 2017). NTCA observed that any reductions in or “flattening of” weighting would result in rural consumers being less likely to receive the kinds of broadband that urban consumers have come to expect as a matter of course, and could discourage rural telcos and electric cooperatives – the most active and interested parties in prior competitive bidding efforts by the Commission – from participating in any meaningful way in future auctions, thus undermining the value and viability of such auctions.

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 –  
Industry Affairs & Business Development

cc: Jay Schwarz  
Kristen Harris  
Claude Aiken  
Amy Bender