



February 15, 2017

***Ex Parte Notice***

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

**RE: *Universal Service Reform – Mobility Fund, WT Docket No. 10-208; Connect America Fund, WC Docket No. 10-90***

Dear Ms. Dortch:

On February 14, 2017, the undersigned and Michael Romano representing NTCA – The Rural Broadband Association (“NTCA”) met with Claude Aiken from Commissioner Mignon Clyburn’s office to discuss the Commission’s expected order on the Mobility Fund Phase II.

NTCA supports the efforts of the Federal Communications Commission (the “Commission”) to finalize the rules for the next phase of mobility fund reform and interject much-needed certainty into the wireless market. Sufficient and predictable support targeted to areas that require funding for the provision of mobile service will help ensure that all consumers, including those in rural and difficult to serve areas, have access to essential mobile voice and data communications.

The participants discussed use of Form 477 data to determine which areas are considered “served” by would-be “unsubsidized competitors” and therefore might be deemed ineligible for Mobility Fund II Support. NTCA has highlighted numerous times in other contexts the existence of known flaws in the 477 data that are likely to overstate actual coverage area.<sup>1</sup> There is a clear need to move beyond – or at the very least supplement and refine – Form 477 data as the determinative factor to identify unsubsidized competition. This can be achieved through a robust but efficient challenge process to ensure that rural consumers are not harmed, while also ensuring that the reforms can be implemented in a timely manner.

Moreover, the participants discussed the standard by which an area in which an unsubsidized competitor offers service might be deemed “served” and thus ineligible for mobility funds.

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<sup>1</sup> See, e.g., Reply Comments of NTCA, WC Docket No. 10-90 (filed Sep. 28, 2015), *Ex Parte* Notice of NTCA, WC Docket No. 10-90 (Dec. 15, 2015).

NTCA submits that an area should be declared “served” only if all, or at least a substantial portion of, the inhabitable geographic area has access to mobile voice and data at a minimum speed of 5/1. While some parties have proposed that partially served areas should be considered “served” for purposes of finding overlap by an unsubsidized competitor, given the need for greater precision particularly in large rural census blocks where consumers and coverage may be widely dispersed, service to only one or a handful of locations in such an area should not be considered “served” for purposes of any such finding.<sup>2</sup>

Consistent with these considerations, the Commission should adopt the following data confirmation and challenge process:

- 1) Using the available 477 data, the Commission should publish a list identifying all census blocks in which an unaffiliated, unsubsidized competitor(s) is believed to be able to provide voice and LTE data to all or a substantial portion of the geographic area in question.
- 2) The identified competitor(s) should then have 60 days to file information that would bridge the gap between what is shown on the Form 477 and what is necessary to make a final determination of competitive presence. The identified competitor(s) should be required to file with the Commission and serve on other service providers in the identified geographic area(s) a declaration of service consisting of reasonable but sufficient technical support verifying its ability to provide service in the area(s) that it claims to serve, backed by an officer certification.<sup>3</sup>
- 3) The notified competitor(s) should then be provided 30 days to challenge the declaration of service; if no declaration of service is filed, the competitor is presumed not to offer unsubsidized service in the census block(s) in question notwithstanding the Form 477 report.

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<sup>2</sup> See, e.g. Atlantic Tele-Network, Inc, AT&T Services, Inc and Buffalo-Lake Erie Wireless Systems Co *Joint Proposal for Mobility Fund Phase II*, WT Docket 10-208, WC 10-90 (filed Feb. 9, 2017) (“AT&T/ATN Proposal”), at 4; *contra Connect America Fund*, WC Docket No. 10-90, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking (rel. March 30, 2016), at ¶ 131; *Ex Parte* Letter from B. Lynn Follansbee, USTelecom, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Feb. 5, 2016), at Attachment, p. 1 (indicating, in the wireline context, that an unsubsidized competitor must demonstrate service to 85% or more of the locations in a census block for that block to be deemed competitively “served”).

<sup>3</sup> The Commission should make clear that, if it is found at any time after the challenge process has been completed, a provider that has made a declaration and the other requisite related showings does not in fact meet the applicable standards, mobility fund support will be restored to the competitor so that service may be sustained – in addition to any sanctions that may be applicable to the competitor and a retroactive restoration of support for the affected provider.

This process would be data driven and consistent with the underlying requirement that ties the analysis of competition to specific geographic areas. It is also efficient and provides the most accurate results. This process would offer the would-be unsubsidized competitor (which presumably has the best knowledge of its claimed service territory by virtue of current operations and prior Form 477 filings) more than ample time – indeed, the same amount of time contemplated in the AT&T/ATN Proposal– to identify and confirm its geographic coverage and notify the Commission and affected USF recipients. While this would on its face provide affected universal service fund (“USF”) mobility recipients only 30 days to reply, by virtue of being on the preliminary list of areas in question published by the Commission, they could undertake work that might be needed to validate or deny the claimed coverage of the competitor. This timeline, which would take in total only 30 more days than the proposal put forward by AT&T and ATN, would help ensure that the Commission and affected parties can move forward in a deliberate manner with an accurate understanding of where service boundaries lie.

Moreover, it would be far more efficient from the Commission’s perspective to adopt this approach than the “crossfire” contemplated by the AT&T/ATN Proposal, wherein both parties would take aim at swinging the Form 477 data in one direction or another, leaving the Commission to sort through a mass of filings. Instead, the Commission (and potentially affected USF recipients) would receive better information than the Form 477 validating coverage from the party in possession of the best information to do so – the would-be competitor – and then the debate would focus only upon whether that data, including any responsive filing by the potentially affected USF recipient, confirmed the unsubsidized LTE coverage.<sup>4</sup>

NTCA further believes that a reasonable transition to Mobility Fund II (along with disaggregation of USF support in the event of any finding of competitive overlap) is critical given the long-term nature of the investments that are currently supported. NTCA stressed the importance of recognizing that the GSM and CDMA networks are incompatible. Flash cutting all support where only one LTE network is currently available could result in a total loss of voice service for existing consumers, including even the ability to dial 911. Although technology may eventually moot the issue, incompatibility is a serious concern for consumers – necessitating again a thoughtful, carefully designed transition. NTCA therefore supports a reasonable transitional phase down of support specifically in those areas where consumers face losing voice service because there is only one unsubsidized competitor with LTE network capabilities.<sup>5</sup>

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<sup>4</sup> AT&T/ATN Proposal, at 4.

<sup>5</sup> See, e.g., *Connect America Fund*, WC Docket No. 10-90, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking (rel. March 30, 2016), at ¶ 145; *Ex Parte* Letter from B. Lynn Follansbee, USTelecom, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Feb. 5, 2016), at Attachment, p. 1 (discussing a multi-year phase-down of support in the wireline context upon a finding of competitive overlap).

Marlene H. Dortch  
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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/ Jill Canfield

Jill Canfield

Vice President, Legal & Industry,  
Assistant General Counsel

cc: Claude Aiken