



May 9, 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 Friday, May 5, 2017, the undersigned, on behalf of NTCA–The Rural Broadband Association (“NTCA”), and Derrick Owens and Gerry Duffy on behalf of WTA-Advocates for Rural Broadband (the “Rural Associations”), spoke via telephone with Pamela Arluk, Kristine Fargotstein, Victoria Goldberg, Lisa Hone, Alexander Minard, Douglas Slotten, Joseph Sorresso, and Suzanne Yelen of the Wireline Competition Bureau (the “Bureau”) to discuss matters in the above-referenced proceeding. The conversation addressed the following items.

The Rural Associations first urged the Federal Communications Commission (the “Commission”) to address in the near-term reconsideration of 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 reforms. *See* Petition for Reconsideration and/or Clarification of NTCA, WC Docket No. 10-90, et al. (filed May 25, 2016) (“NTCA 2016 Petition”), at 23. We discussed various means of striking an appropriate balance intended to ensure that standalone broadband connections that were in place prior to the requirement to impute ARCs existed are not subject to such a requirement, while at the same time taking careful steps to ensure that the elimination of this requirement does not adversely affect the budget for CAF-ICC support to which ARCs relate.

The Rural Associations next advocated that the Commission resolve (or that the Bureau clarify, as applicable) as soon as possible questions previously raised 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, including adoption and use of the form previously submitted by WTA to undertake that process. *See Ex Parte* Letter from Gerard J. Duffy, WTA Regulatory Counsel, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (Oct. 24, 2016).

With respect to competitive overlap, we focused first upon the need, particularly with Commission resources directed toward Connect America Fund Phase II and Mobility Fund Phase II efforts in coming months, to at least specify as soon as possible the “dataset” that will be used as the preliminary baseline for competitive overlap determinations for CAF-BLS support, even if the actual process of making such determinations will commence later. Specifically, we recommended that the Commission confirm now that it will use as the preliminary baseline for any such overlap process the same Form 477-based dataset that was used in finalizing the cost model for rural carrier elections, or at the very least the December 2015 Form 477 data.

We then encouraged the Commission or Bureau, as applicable, to take two steps to clarify how competitive overlap data will be validated even in advance of that process getting underway or, at the very least, by such time as a form is adopted for this process.

*First*, we explained that little can be done to verify the requirement that a would-be competitor certify and provide sufficient evidence that it actually serves 85 percent or more of a given census block in the absence of the competitor divulging the specific basis – the numerator and denominator – for its calculations and the evidence related to those figures. While the *Rate of Return Reform Order* provided *examples* of information that could be useful in establishing such coverage, the order also makes clear that the would-be competitor bears the ultimate burden of demonstrating that it can: (1) offer fixed voice service at reasonably comparable rates and in compliance with E911 and CALEA obligations; (2) offer fixed terrestrial broadband service with actual downstream speed of at least 10 Mbps downstream and actual upload speed of 1 Mbps, with latency suitable for real time applications (including Voice over Internet Protocol) and at reasonably comparable rates; (3) be capable of porting telephone numbers in the specific census block; and (4) be capable of activating service to a requesting customer within ten business days. *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) (“*Rate of Return Reform Order*”), at ¶ 131. For the Commission, the Bureau, and affected stakeholders to be able to validate with reasonable precision the actual scope of any competitor’s purported offerings, the form implementing this requirement must call for more than blanket assertions and instead require the competitor to divulge how it verified that its coverage equated to 85 percent or more of the housing units in a given census block.

*Second*, and as a related matter as it initiates the competitive overlap process for purposes of CAF-BLS distributions, the Bureau should clarify the standards by which the actual capabilities of a competitor’s offerings will be validated. Just as important as establishing the precise contours of potential coverage of 85% or more of the locations in any census block, any assertions of coverage must be backed by reasonable evidence to substantiate that the service claimed as offered can in fact be received simultaneously by *each of* the locations in question. If having multiple users on a shared system would, for example, degrade service below the standards noted, that is not competitive overlap that meets the Commission’s specified standards even if *some* level of service could be delivered to all such locations. This is where the form proposed by WTA would serve an essential purpose, and should form the baseline for the overlap process. *See Ex Parte* Letter from Gerard J. Duffy, WTA Regulatory Counsel, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (Oct. 24, 2016).

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Finally, the Rural Associations seek greater near-term certainty from the Commission regarding whether and to what degree certain expenses are recoverable specifically via high-cost universal service fund (“USF”) support. *See Rate of Return Reform Order*, at ¶¶ 353-359. NTCA and WTA reiterate here their support for prompt action consistent with their prior comments to dispel lingering uncertainty and ambiguity with respect to such expenses, to provide reasonable prospective guidance, and to promote overall system integrity as to how such expenses may be recovered. *See* Comments of NTCA, WC Docket No. 10-90 (filed May 12, 2016), at 9-19; Comments of WTA, WC Docket No. 10-90 (filed May 12, 2016), at 6-14. The Rural Associations note that such action need not require significant modifications to existing rules and complex questions posed related to cost allocations and affiliated transactions to the extent those issues may require more comprehensive review and debate, but the Commission could take action in the near term to specify a simple, clear, and carefully defined list of expenses consistent with the associations’ comments that would be precluded from recovery specifically via universal service going forward. Draft rule language modeled after that contained in the Further Notice of Proposed Rulemaking that accompanied the *Rate of Return Reform Order* is attached here for consideration.

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

Enclosure

cc: Pamela Arluk  
Kristine Fargotstein  
Victoria Goldberg  
Lisa Hone  
Alexander Minard  
Douglas Slotten  
Joseph Sorresso  
Suzanne Yelen

**DRAFT EXPENSES RULE TEXT**

**§ 54.303 Eligible Capital Investment and Operating Expenses**

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(n) The following kinds of expenses shall not be eligible for recovery via Connect America Fund Broadband Loop Support or High Cost Loop Support:

- (1) Personal travel; gifts to employees, childcare, housing allowances, or other forms of mortgage or rent assistance for employees (unless on temporary assignment in connection with provision of telecommunications services), where any such expenses are not included within taxable compensation; personal expenses of employees, board members, family members of employees and board members, contractors, or any other individuals affiliated with the incumbent LEC, including but not limited to personal use of company-owned housing, buildings, or facilities used for entertainment purposes by employees, board members, family members of employees and board members, contractors, or any other individuals affiliated with the incumbent local exchange carrier;
- (2) Entertainment; artwork and other objects which possess aesthetic value; tangible property not logically related or necessary to the offering of voice or broadband services;
- (3) Aircraft, watercraft, and other motor vehicles designed for off-road use (but not prohibiting inclusion of reasonable business-related travel expenses associated with the use of any such), except insofar as necessary to access inhabited portions of the study area not reachable by motor vehicles travelling on roads; any vehicles provided to employees, board members, family members of employees and board members, contractors, or any other individuals affiliated with the incumbent local exchange carrier for personal use;
- (4) Alcohol; food not in connection with the business of providing telecommunications services, including but not limited to meals to celebrate personal events, such as weddings, births, or retirements, except that a reasonable amount for food shall be allowed for work-related travel;
- (5) Political contributions; membership fees and dues in clubs and organizations (but not including organizations that provide education, training, or other services associated with the provision of telecommunications services or otherwise associated with the operation of a business, such as legal bar association dues or accounting certifications); and
- (6) Penalties or fines for statutory or regulatory violations; penalties or fees for any late payments on debt, loans, or other payments.