



October 26, 2015

***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 June 3, 2015, NTCA–The Rural Broadband Association, USTelecom–The Broadband Association, and WTA–Advocates for Rural Broadband (collectively, the “Associations”) joined a letter summarizing the consensus they had achieved with respect to proposals for simple, straightforward, targeted, and transformative updates to the existing universal service fund (“USF”) support mechanisms paired with a voluntary path toward model-based USF support distributions for those rural rate-of-return-regulated local exchange carriers (“RLECs”) that desired to elect such support.<sup>1</sup> Since that joint submission, the Associations have submitted numerous filings to define and refine those proposals, as well as to provide a framework for potential implementation of a “bifurcated approach” to reform of existing USF mechanisms as requested by certain Federal Communications Commission (“Commission”) offices and bureaus.<sup>2</sup>

As an additional item for Commission consideration in connection with any reforms governing USF support mechanisms for RLECs, the Associations now propose a revised approach to the broadband speed objectives that the Commission utilizes specifically for purposes of RLEC-oriented support mechanisms. The proposals contained herein are intended to work within and alongside those proposals previously submitted, and are not intended to change, disrupt, or upset current progress toward reform. To the contrary, the proposals herein are intended to ensure that any reforms that may soon be enacted are “built for the long haul” by enabling sensible evolution of policy over time and tethering USF speed standards to the Commission’s broader standards with respect to broadband.

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<sup>1</sup> *Ex Parte Letter* from Genevieve Morelli, ITTA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed June 3, 2015).

<sup>2</sup> *See, e.g., Ex Parte Letter* from Lynn Follansbee, USTelecom, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Sept. 25, 2015); *Ex Parte Letter* from Lynn Follansbee, USTelecom, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Oct. 2, 2015).

By way of background, Chairman Wheeler has called broadband speeds of 25 Mbps download and 3 Mbps upload “table stakes” in today’s America.<sup>3</sup> The Commission has further found that having “‘advanced telecommunications capability’ requires access to actual download speeds of at least 25 Mbps and actual upload speeds of at least 3 Mbps.”<sup>4</sup> Thus, by the Commission’s own measure, 25/3 broadband speeds are the current standard toward which our country should be aiming in delivering broadband to American consumers and businesses.

Federal law requires in turn that USF aim toward ensuring “reasonably comparable” services at “reasonably comparable rates.”<sup>5</sup> The law also requires that “[q]uality services should be available at just, reasonable, and affordable rates.”<sup>6</sup> By these standards, a USF program premised upon achieving minimum speeds of 10 Mbps/1 Mbps risks locking rural America into lower service levels contrary to these statutory principles; indeed, the Commission has acknowledged as much in its Section 706 Report.<sup>7</sup> This is particularly true when one considers that the networks that the USF program enables require planning years in advance and then have life cycles measured in decades once built.

For these reasons, the Associations propose to tether more closely the applicable USF broadband speed objectives to the Commission’s Section 706 broadband speed objectives. To be clear, this is not to say that the USF program will necessarily guarantee every American (rural and urban) the same speeds—but at the same time “reasonable comparability” cannot be achieved if the USF program aims explicitly for and only expressly contemplates lower speeds. Thus, to achieve greater parity between USF standards and Section 706 standards while also recognizing that USF budgets could create “unfunded mandates” that preclude carriers from specifically delivering 25/3 broadband speeds (or whatever the Commission deems Section 706 to contemplate in terms of “advanced telecommunications capability” at a given point in time), the Associations now propose the following:

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<sup>3</sup> “The Facts and Future of Broadband Competition,” Prepared Remarks of Chairman Tom Wheeler, Sept. 4, 2014, at 3.

<sup>4</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375 (2015) (“*Section 706 Report*”), at ¶ 3; *see also id.* at ¶ 28 (“Industry-wide, companies are asserting that a minimum of 25 Mbps downstream is required to take advantage of the services widely offered and used today.”), and Tables 1 and 2 (indicating the differences in capabilities from the consumer’s perspective between 25 Mbps and 10 Mbps download and 3 Mbps and 1 Mbps upload, respectively, including participation in online classes and file downloads).

<sup>5</sup> 47 U.S.C. § 254(b)(3).

<sup>6</sup> *Id.* at § 254(b)(1).

<sup>7</sup> *See Section 706 Report*, at ¶ 12 (“Our analysis finds that rural and Tribal areas are being left behind from receiving the advanced services envisioned by Congress, not only at our current 25 Mbps/3 Mbps benchmark but even at the lower speeds. While our efforts with current Connect America funds as discussed below are providing support for 10 Mbps/1 Mbps service and we already have in place initiatives that will support faster service, we acknowledge there is more to be done.”)

**1. Increase the “Reasonable Request” Threshold to Match the Applicable Then-Current Section 706 Speed Standard for Those RLECs Not Electing a “Model Option” for USF Support and Require Reporting With Respect to the Number of Locations Where Such Broadband is Available**

- a. Those RLECs that do *not* elect model-based USF support would be required to deliver 25/3 broadband to consumers upon receipt of a “reasonable request.” As clarified in the Seventh Reconsideration Order, in evaluating whether a request is reasonable, the RLEC “should consider whether it would be reasonable to make the necessary upgrades in light of anticipated end-user revenues from the retail provision of broadband service and other sources of revenues, including but not limited to federal or state universal service funding projected to be available under current rules.”<sup>8</sup> The 25/3 standard would be revised at such time as the Commission revisits the Section 706 standard to keep pace with that standard.
- b. Furthermore, consistent with both the framework currently in place<sup>9</sup> and Chairman Wheeler’s comment that 10/1 is a “*minimum*” service level,<sup>10</sup> this regime would neither enable nor permit an “all-or-nothing” approach to consumer requests. Rather, if a RLEC could not deliver 25/3 (or the then-current Section 706 speed) to a consumer but *could* deliver 10/1 upon reasonable request, then the RLEC would be required to offer 10/1 – and if the RLEC could not deliver 10/1 but *could* deliver lesser DSL speeds (*i.e.*, 4/768 speeds) upon reasonable request, then the RLEC would be required to do so. Consistent with the current framework, the Section 706 speed standard would then also be used (along with other factors relevant to the quality and price of voice and broadband services<sup>11</sup>) to identify potential “unsubsidized competitors” that could offer advanced telecommunications capability of their own to consumers.

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<sup>8</sup> *Connect America Fund*, WC Docket No. 10-90, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051 (2014), at ¶ 65. The Commission also clarified that a RLEC “may consider both universal service and intercarrier compensation support available at the time a request is made, including the potential effect of pending reforms that could reduce future support essential to make necessary upgrades.” *Id.* at n. 124.

<sup>9</sup> *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks*, WC Docket No. 14-192, Report and Order, 29 FCC Rcd 15644 (2014), at ¶¶ 24-25.

<sup>10</sup> Remarks of Chairman Tom Wheeler as Prepared for Delivery, NTCA Fall Conference, Sept. 21, 2015, at 3 (emphasis in original).

<sup>11</sup> *See Ex Parte* Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed July 16, 2015).

- c. Finally, to enable the Commission to keep track of how USF resources are utilized to advance and sustain broadband (while recognizing the lack of any incremental funds to do so within the RLEC community overall), each RLEC would be required to report each year on Form 481 with respect to: (1) the percentage of total locations served to which it delivers broadband at 25/3 (or the then-current Section 706 speed) and 10/1 speeds, respectively; and (2) the number of additional end-user locations to which it had installed technology capable of delivering services at 25/3 (or the then-current Section 706 speed) and 10/1 speeds, respectively, during the preceding calendar year (to the extent that its reported percentage is less than 100%).<sup>12</sup>
2. **RLECs Electing a “Model Option” for USF Support Should Also Report the Number of Locations to Which They Deliver 25/3 Broadband**
  - a. As an initial matter, the Associations would not propose to disrupt or change the existing option they have proposed for model-based support, whereby a RLEC could elect to deliver 10/1 broadband speed to a pre-defined number of eligible locations in exchange for a pre-defined infusion of incremental support.
  - b. The Associations would propose, however, that each RLEC that voluntarily elects model-based USF support identify those locations to which it delivers 25/3 broadband in connection with deploying 10/1 as required pursuant to the model option. While a RLEC that receives model-based support would remain committed only to deliver 10/1 to a specified number of locations as described in prior filings by the Associations, there will be a number of locations as part of such deployment to which the RLEC will likely be able to deliver 25/3 (or even higher) speeds. Each RLEC should therefore be required to report with respect to the number of locations to which such 25/3 speed deployments are realized, so that the Commission can better track progress toward more broadly applicable national broadband (*i.e.*, Section 706) objectives in addition to measuring progress against the lower universal service program standard.

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<sup>12</sup> Of course, USF support not only enables deployment of network connections, but it also facilitates recovery of ongoing operating expenses in high-cost areas without the need to charge unreasonable, unaffordable rates to consumers. Thus, the number of locations added in a given year may fluctuate from prior years (or no new locations at all may be added in a given year) due to factors ranging from recently completed builds in prior years to use of USF support in a given year to a focus on the assurance of service quality to locations already served through ongoing operations. The Commission should therefore permit carriers to provide an explanation for the number of locations added each year to identify such factors and to describe otherwise how USF resources were properly used in the delivery of services to consumers regardless of the specific number of locations added in any given year.

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/ Michael R. Romano

Michael R. Romano

Senior Vice President – Policy

cc: Stephanie Weiner  
Rebekah Goodheart  
Nicholas Degani  
Travis Litman  
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