November 14, 2016

***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:

By this letter, NTCA–The Rural Broadband Association ("NTCA") provides its recommendations with respect to how the Federal Communications Commission (the "Commission") should address budget concerns arising in relation to recently adopted universal service fund ("USF") reforms.

NTCA has long highlighted the need for USF resources sufficient to promote and recover investment, sustain operations, and enable the provision of quality and affordable voice and broadband in the hardest-to-serve reaches of rural America in which rural local exchange carriers ("RLECs") operate. This notion proceeds from Section 254 of the Communications Act of 1934, as amended, which requires that USF support be "specific, predictable and sufficient" and ensure that consumers "have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."[1]

Consistent with this statutory mandate, as part of proposed USF and related intercarrier compensation reforms in 2011, NTCA first worked with other stakeholders to develop a "Consensus Framework" containing measures to encourage efficiency and accountability from RLECs receiving USF support as well as a slightly increasing amount of support over time roughly equivalent to a historical rate of inflation.[2] Yet the Commission ultimately and inexplicably declined the voluntary commitment by AT&T and Verizon to forgo several hundred million dollars per year of their USF support as part of that package framework, and instead adopted a flat $2 billion annual budget target for RLEC USF support.

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[1] 47 U.S.C. § 254(b)(3) and (5).

[2] *Ex Parte* Letter from Jonathan Banks, USTelecom, to Marlene H. Dortch, WC Docket Nos. 10-90, *et al.*, Attach. (filed July 29, 2011). The budget proposed in 2011 as part of this "Consensus Framework" would have addressed at least a significant portion of the budget shortfall now faced in 2017.

NTCA–The Rural Broadband Association
4121 Wilson Boulevard, Suite 1000, Arlington, Virginia 22203
(703) 351-2000 (Tel) ● (703) 351-2001 (Fax)

Since then, NTCA has specifically and expressly urged the Commission to reconsider the sufficiency of a budget for the existing USF program that is based upon support levels now more than six years old,[3] and to include an inflationary index (much like E-Rate and Lifeline already have) in the determination of the high-cost USF budget.[4] NTCA has been eager and hopeful for a renewed conversation with the Commission about these issues, while also attempting to remain patient in the face of admittedly significant immediate demands on the Commission and its staff this year with respect to implementation of the reforms. In the past few weeks, however, developments in the form of Commission releases arising out of reform implementation have brought to a head these long-standing concerns with respect to the insufficiency of USF support in the high-cost program – model and nonmodel support alike. In light of these recent developments, NTCA feels it has no choice but to highlight these concerns again, and the association asserts that now is the time to provide the resources that the Commission's recent publications confirm are needed to carry out the intended effects of its reforms and fulfill the universal service mandate of federal law.

First, after the model election window closed on November 1, the Wireline Competition Bureau (the "Bureau") promptly processed the carrier elections and published the results.[5] The release revealed that those RLECs seeking model election were seeking an additional $310 million per year on average – or $160 million per year in excess of the additional $150 million per year that the Commission had initially set forth as a budget for such voluntary model elections. Preliminary analyses of these figures indicate that if no additional funds are made available to satisfy this demand, the per-location cost of model support may be as low as $97 per location, which would fall far below the comparable cost of locations supported in the larger company cost model and leave far too many locations in rural America unserved or underserved.

[3] Petition for Reconsideration and/or Clarification of NTCA, WC Docket No. 10-90, *et al.* (filed May 25, 2016) ("Petition"), at 2-9. Although NTCA has supported and continues to support reasonable measures to promote budget accountability, it is important to note that NTCA's prior proposal with other associations would have applied the budget control only and exclusively to a new standalone broadband mechanism, thereby enabling a transitional implementation of the budget control and that mechanism while limiting its potential negative impact on the recovery of past investments. *Ex Parte* Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, WC Docket No. 10-90 (filed April 21, 2015), at Rules Attachment, p.3. Ultimately, however, as NTCA highlighted in the Petition and as discussed further below, it was clear that a lack of sufficient budget and the enforcement of such an insufficient budget through any control measure would undermine the effectiveness of a standalone broadband mechanism for some time to come.

[4] *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 referencing the irony that the inflationary factor used to increase the E-Rate program is premised upon the factor utilized in the context of High-Cost Loop Support but not for purposes of adjusting the overall high-cost USF program budget).

[5] *Wireline Competition Bureau Announces Results of Rate-of-Return Carriers that Accepted Offer of Model Support*, WC Docket No. 10-90, Public Notice (rel. Nov. 2, 2016).

Second, just a few days before that model election window closed, the Bureau announced the posting of the effects of the "budget control" on nonmodel USF support for the first half of 2017.[6] These results indicated that, on average, those RLECs that cannot or do not elect the model will face a 9 percent reduction in their USF support; NTCA estimates initially that, if all companies that have currently elected the model (as oversubscribed) ultimately receive model-based support, the budget control could deprive remaining nonmodel RLECs of approximately $96 million (annualized) in USF support in 2017. Although this 9 percent budget control applies only for the first half of 2017 (translating to approximately $48 million lost during that period by those companies that did not elect the model), there is no way of knowing whether and to what degree the ensuing budget control for the next twelve-month period covering the second half of 2017 and first half of 2018 will be larger or smaller. NTCA anticipates that future period budget controls will be largely driven by a combination of three factors: (1) net growth or decline in investments and expenses among the collected group of nonmodel RLECs; (2) net growth or decline in Connect America Fund-Intercarrier Compensation ("CAF-ICC") support for model companies that "flow back" into the nonmodel budget; and (3) declines over time in transition payments to those companies that elected the model on a "glide path" basis. Projecting these three factors for future periods, however, is difficult for now, at least in the absence of experience over several periods with the trend lines and volatility (or lack thereof) with respect to these factors.

Of course, much has been done already by RLECs to advance quality and affordable voice and broadband to rural America. As early as 2007, a Recommended Decision from the Federal-State Joint Board recognized the "commendable job" that RLECs had done in deploying voice and earlier stage broadband services to many of the consumers they served in the most rural corners of the United States.[7] Indeed, NTCA's annual surveys confirm that RLECs have made great strides leveraging a mix of entrepreneurial spirit, private capital and/or Rural Utilities Service programs, and USF support to provide quality voice and broadband to their consumers.[8]

But much more remains to be done, and more still is needed to sustain the progress made to date. There are many areas within rural America where access to even basic levels of broadband are lacking, and the model-based reforms in particular offer significant promise in reaching such locations. Moreover, many rural consumers have lacked access to affordable standalone broadband services, and the changes made "on the nonmodel side" could, if implemented properly, overcome those affordability concerns and enable greater access to quality broadband services at reasonably comparable prices. Finally, as NTCA has previously observed:

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6 *Wireline Competition Bureau Announces Availability of Budget Control Mechanism Calculations for Rate-of-Return Carriers for the Period from January 1, 2017 through June 30, 2017*, WC Docket No. 10-90, Public Notice (rel. Oct. 25, 2016).

7 *High-Cost Universal Service Support*, WC Docket No. 06-337, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477 (2007) ¶¶ 30, 39.

8 *See, e.g., NTCA 2015 Broadband/Internet Availability Survey Report* (July 2016) (available at: https://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2015ntcabroadbandsurveyreport.pdf).

> It seems all too often lost in the debate over USF reform that universal service entails not just the act of "getting it there," but also requires "keeping it there." *See* 47 U.S.C. § 254(b)(5) ("There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."). A USF/CAF program that focuses only upon the short-term initial availability of rural broadband (e.g., "but look how many unserved became served!") and ignores or downplays the longer-term question of sustainability – specifically, whether broadband services will remain reasonably comparable in price and quality over the life of the investment in question such that consumers can adopt and make meaningful use of broadband – is doomed to fall short of the statutory universal service mandates and is at great risk of putting valuable USF dollars at risk through unsustainable investments.[9]

Such concerns with respect to sufficiency and sustainability were highlighted in NTCA's May 2016 Petition for Reconsideration in this proceeding. In that Petition, NTCA cited to evidence in the underlying record showing that the much-needed and much-welcomed "standalone broadband" support mechanism adopted in the Commission's March 2016 reform order would unfortunately fail to achieve its intended objective – promoting greater consumer choice for standalone broadband – by denying consumers access to such broadband at rates reasonably comparable to those available in urban areas.[10] The recent release noted above with respect to the budget control impact on nonmodel support for RLECs reinforces this concern, with a 9 percent (on average) budget control equaling nearly $100 million in estimated support cuts for carriers with respect to investments *they have already made* in delivering on the mission of universal service. These cuts in support with respect to investments already made are amounts that will need instead to be recovered from consumers, translating into increased prices for standalone broadband that will in many cases be well above the actual average urban rate or even the higher reasonable comparability benchmark of $75.20 per month for broadband. And now the recent release noted above indicating that it will take $160 million in additional resources for the model election to work as initially proposed by the Commission only adds to concerns about the insufficiency of the current budget for RLEC USF and calls into question the promise of the "model side" of the reformed USF mechanisms in delivering broadband to unserved and underserved portions of rural America.[11]

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[9] Comments of NTCA, *et al.*, WC Docket No. 10-90 (filed June 17, 2013), at n. 22.

[10] Petition at 2-9. NTCA also raised this concern again in its recent petition for a waiver on behalf of RLECs in the Lifeline proceeding, observing that a $9.25 discount off of standalone broadband services that are likely to be priced well above $90 or even $100 per month – well above what even a wealthy urban consumer would typically pay – will likely to do little, if anything, to stimulate adoption by the rural low-income consumer. Joint Petition of NTCA and WTA-Advocates for Rural Broadband for Temporary Waiver, WC Docket No. 11-42, *et al*. (filed Oct. 24, 2016), at 5-7.

[11] As a related matter, NTCA continues to assert that any ultimate resolution of model budget concerns must not give rise to a situation in which nonmodel companies bear any consequence for the choices of other companies to express initial interest in electing the model only to revisit that decision upon a "second model

It is not too late, however, to "right the ship" and deliver on the promise of *all* of the reforms adopted in March – both the nonmodel standalone broadband mechanism and the model elections. Although NTCA understood the press of Commission business in implementing the reforms adopted in March necessitated patience this year, the recent releases underscore the need for action now to address the budget concerns flagged in NTCA's Petition. The Commission should therefore seize this opportunity to address and remedy *both* the shortfall in 2017 of approximately $100 million in nonmodel support (and possibly more depending upon the recalculation of the budget control next May) *and* the gap of $160 million per year on average in nonmodel support. The Commission can do so by taking steps, much as it has in the context of other USF programs where it found evidence of insufficient funding, to provide much-needed additional resources for these programs. Indeed, the combined total of $260 million per year is a fraction of the increases provided in recent years for other USF programs – and the networks that the high-cost program supports are of course essential to enable the success of these other programs in rural America.

<u>For these reasons, NTCA urges the Commission to make additional budget resources available to fund fully both the model-based and non-model aspects of the reforms it adopted in March 2016.</u> Although the association did not agree with every aspect of those reforms, NTCA greatly appreciated: (a) the Commission's efforts to engage with stakeholders in developing them; (b) the Commission's strides to modernize the programs; and (c) the Commission's interest in providing small rural providers with options for obtaining USF support. But as its Petition earlier this year highlights and the recent releases reinforce, NTCA's concern that an insufficient budget would frustrate the promise and success of those reforms appears poised to become a reality. NTCA is eager for the reforms to deliver on that promise and achieve that success, and we hope that the Commission will take this opportunity to make that happen.

<u>Specifically, providing an additional $160 million per year for ten years to fund the model offers, paired with up to $100 million per year in additional to fund the budget shortfall in the nonmodel mechanisms[12] represents the best, most comprehensive way to seize this opportunity.</u> This collective sum of *up to* $260 million per year represents the most effective "down payment" the Commission could possibly make on rural broadband, allowing the seeds of the reforms that it planted earlier this year to take root and thrive. NTCA estimates that there is already at least $50

run." *See* Petition at 12-14; *Ex Parte* Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, WC Docket No. 10-90 (filed May 12, 2016) (identifying several options for addressing budget implications of model elections). Moreover, to the extent that less than full funding is provided to any USF recipient (model or nonmodel), the buildout obligations must of course be carefully recalibrated.

[12] For purposes of clarification, the proposal with respect to nonmodel mechanisms would be to provide <u>up to</u> $100 million per year over the same ten-year funding period to compensate for any nonmodel budget shortfall. As noted earlier, NTCA estimates that the initial year budget control may equal (or slightly exceed) $100 million, but it is possible that in later years that the shortfall could change. A "revolving fund" of $100 million could therefore be used *"on demand' and only when actually needed* to address any budget shortfall, such that if it turned out in a later year that the budget control resulted in only a $40 million shortfall, for example, only $40 million would be provided. Of course, NTCA also continues to support as a separate matter the need for an inflationary adjustment budget like other USF programs have to ensure that support can keep pace with the costs of deploying and operating networks over time.

million per year in "cash-on-hand" in the high-cost program, meaning that part of this "down payment" can already be covered. Meanwhile, the remaining $210 million per year represents less than a third of the approximately $750 million budget increase authorized for the Lifeline program earlier this year, and less than 15 percent of the $1.5 billion increase that E-Rate received a few years ago (which in substantial part corrected for years of the lack of an inflationary factor in that program – much like the high-cost program now).

In making this request, NTCA is mindful of the need to mitigate contributions effects on ratepayers, but the small increase this might have on contribution burdens as a whole – perhaps by less than $0.25 per month for the average ratepayer, and much less than other recent program increases – must be balanced against the fact that the provision of such additional support would help mitigate the impact on rural Americans who, despite the Commission's reforms earlier this year, will continue to pay tens of dollars more per month for standalone broadband more than their urban counterparts; put another way, this additional support is essential for the Commission's reforms to have any hope of achieving their intended goals and fulfilling the statutory mandate of "reasonable comparability." It should also be noted that, if as expected, it turns out that the "budget control" has less effect on standalone broadband rates over time, demand for this additional funding of $210 million should decline, thereby further mitigating any potential ratepayer burdens.

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: Lisa Hone
Claude Aiken
Amy Bender
Nicholas Degani
Travis Litman
Matthew DelNero
Carol Mattey
Katie King
Alexander Minard
Suzanne Yelen