November 24, 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:

NTCA–The Rural Broadband Association ("NTCA") submits this letter for inclusion in the record of the above-referenced proceeding to address several matters currently under consideration in this proceeding.

Achieving Goals of Reform. In June 2014, the Federal Communications Commission (the "Commission") released a Further Notice of Proposed Rulemaking that identified four goals of universal service fund ("USF") reform: (1) calculate support amounts that remain within the existing rate-of-return budget; (2) distribute support equitably and efficiently, so that all rate-of-return carriers have the opportunity to extend broadband service where it is cost-effective to do so; (3) distribute support based on forward-looking costs; and (4) ensure that no double recovery of costs occurs.[1]

Recently, some within the Commission have appeared to coalesce around the potential implementation of a "bifurcated approach" as a path for USF reform. NTCA understands that the "bifurcated approach" has been cited in turn as helping to achieve two goals in particular, both of which would appear related to item (2) above. Specifically, we understand that the "bifurcated approach" is intended by proponents: (a) to address concerns about how the operation of existing USF mechanisms causes support to decline for some carriers over time; and (b) to stimulate investments and focus support dollars toward extending broadband in those areas that remain unserved. The data made available thus far, however, appear to indicate that the "bifurcated approach" as currently constructed does not yet achieve either purpose, and that further work and development would be required if a "bifurcated approach" to reform is to fulfill these objectives.

[1] *Connect America Fund, et al.*, WC Docket No. 10-90, *et al*., Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking (rel. June 10, 2014).

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

To be clear, there are a number of other proposals in the current record that already do help to achieve the goals of reform identified in June 2014. For example, a budget control mechanism set forth in draft rules filed by several stakeholders in April 2015 would accomplish item (1) above.[2] Operating expense caps suggested in several filings would help to distribute support equitably and efficiently in accordance with item (2) above, *and* would encourage more forward-looking incentives in operations consistent with item (3) above. The Capital Budget Mechanism defined again in the April 2015 rule filing would also help to fulfill the goals articulated in items (2) and (3), especially as modified in an August 2015 filing to increase prospective investment budgets in areas where broadband is lacking and decrease them in areas where robust broadband already exists.[3] Finally, both current rules and proposed rules ensure no double recovery (as contemplated by item (4)) by prescribing careful tracking and accounting of costs between categories. *In other words, as noted previously, NTCA firmly believes that, but for the need to evaluate and refine the "bifurcated approach" and potential competitive overlap policy changes, there is no need for delay – and no desire whatsoever on the part of NTCA to seek delay – as the Commission could in the very near-term future finalize a number of key, transformative reforms.[4]*

Regarding the "bifurcated approach" specifically, however, more development and testing appears necessary to determine whether and how this approach might achieve item (2) generally or goals (a) and (b) as noted above more specifically. This can be seen clearly in the variety of still-evolving "bifurcated approach price-outs" filed by NECA to date under the direction of the Commission.[5] While these price-outs rely upon substantial assumptions and incorporate various shifting scenarios, the trends they indicate – consistently across each of the several price-outs filed thus far – is that it is more likely than not that the "bifurcated approach" in current form will advance neither goal (a) (stemming an accelerated decline of USF support for certain carriers) nor goal (b) (stimulating investment in unserved areas). The relevant data excerpted from the filings can be seen in the tables on the pages that follow (using Scenario 2 from each price-out to provide a constant, mid-range point of comparison):

---

2 *Ex Parte* Letter from Michael R. Romano, Senior Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed April 21, 2015).

3 *See id.*; *Ex Parte* Letter from Gerard J. Duffy, Regulatory Counsel, WTA-Advocates for Rural Broadband, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed May 29, 2015); *Ex Parte* Letter from Regina McNeil, General Counsel, National Exchange Carrier Association ("NECA"), to Marlene H. Dortch, Commission, WC Docket No. 10-90 (filed Nov. 6, 2015), at Att. 3. Of course, even if ready for adoption, the precise application of such measures – particularly the reasonable transitions and phase-ins necessary to implement them – is an important policy determination that also must be discussed and decided.

4 *See Ex Parte* Letter from Michael R. Romano, Senior Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Nov. 9, 2015) ("*NTCA November 9 Letter*"), at 2. A paired voluntary model option would also represent a "forward-looking" reform.

5 *See, e.g., Ex Parte* Letters from Regina McNeil, General Counsel, NECA, to Marlene H. Dortch, Commission, WC Docket No. 10-90 (filed Nov. 6, Nov. 17, and Nov. 19, 2015).

Addressing Declines ("Falling off the Cliff") in Support for Certain Carriers

November 6 Filing

Cost Per Loop Percentile	# of Study Areas	$ Change in Support	% Change in Support
10%	110	-$57.0M	-85.9%
25%	164	-$45.8M	-38.1%
50%	274	+$13.7M	+6.4%
75%	274	+$60.6M	+11.9%
90%	163	+$38.7M	+8.4%
95%	55	-$5.6M	-4.2%
>95%	55	-$53.3M	-31.2%

November 17 Filing

Cost Per Loop Percentile	# of Study Areas	$ Change in Support	% Change in Support
10%	110	-$54.2M	-81.7%
25%	164	-$32.8M	-27.2%
50%	274	+$36.0M	+16.7%
75%	274	+$100.0M	+19.7%
90%	163	+$67.8M	+14.8%
95%	55	+$1.2M	+0.9%
>95%	55	-$47.1M	-27.6%

November 19 Filing

Cost Per Loop Percentile	# of Study Areas	$ Change in Support	% Change in Support
10%	110	-$60.4M	-83.3%
25%	164	-$50.8M	-36.7%
50%	274	-$6.7M	-2.6%
75%	274	+$120.6M	+24.8%
90%	163	+$155.0M	+41.7%
95%	55	+$33.4M	+32.9%
>95%	55	-$0.3M	-0.2%

All three NECA filings cited above show that, rather than helping to stem the tide of declining USF support for relatively lower-cost high-cost carriers under current mechanisms and providing some stability in support instead for such carriers, the "bifurcated" approach looks to exacerbate – or, at the very least, does not solve for – such concerns via the new mechanism. Instead, the analysis reveals substantial and steepening reductions in support over time under a "bifurcated approach" for those carriers at the lowest (and highest) ranges of the cost-per-loop spectrum.

Stimulating Investment in Unserved Areas

November 6 Filing

Level of Deployment	# of Study Areas	$ Change in Support	% Change in Support
0% Deployed	70	-$.2M	0%
1% to 25%	242	+$8.2M	+3%
25% to 50%	104	-$20.0M	-11.2%
50% to 75%	135	-$11.9M	-5.6%
75% to 99%	386	-$31.1M	-4.6%
100% Deployed	158	+$6.4M	+2.2%

November 17 Filing

Level of Deployment	# of Study Areas	$ Change in Support	% Change in Support
0% Deployed	70	+$3.2M	+6%
1% to 25%	242	+$27.7M	+11%
25% to 50%	104	-$8.9M	-5%
50% to 75%	135	+$3.1M	+1.5%
75% to 99%	386	+$18.6M	+2.7%
100% Deployed	158	+$27.6M	+9.6%

November 19 Filing

Level of Deployment	# of Study Areas	$ Change in Support	% Change in Support
0% Deployed	70	+$10.5M	+22%
1% to 25%	242	+$40.2M	+16%
25% to 50%	104	+$11.1M	+7.0%
50% to 75%	135	+$15.1M	+7.6%
75% to 99%	386	+$64.4M	+10.1%
100% Deployed	158	+$49.5M	+18.7%

To summarize as to this second set of tables, under the set of assumptions in the first NECA filing, the "bifurcated" approach looks to provide increased USF support to only two categories of carriers – those with relatively low (1% to 25%) broadband deployment and those already fully broadband-capable (100% deployed). Those study areas with no current 10/1 deployment actually see a slight reduction in support. By contrast, in the second NECA filing under a different set of assumptions, almost all groups of carriers see an increase in USF support (even as and primarily because CAF-ICC declines under this assumption), but the largest gains (over $46 million) accrue to those currently with substantial 10/1 deployment, while those with no current 10/1 deployment see a relatively smaller increase. In the third filing using still a different set of assumptions, all groups of carriers see an increase in USF support, but the largest gains here again flow to those most deployed already (with those substantially 10/1 deployed capturing almost $114 million, or 60% of the increased USF amounts distributed). Finally, it merits careful consideration *why the "bifurcated approach" would result in those already 100% broadband deployed receiving more USF support in every instance* and representing the second largest "winners" in terms of increased support in each case.

Of course, as all of these price-outs highlight, the relative distribution of support among carriers will change as assumptions change. It is quite possible that a future price-out may contain assumptions that generate a "sweet spot" where USF support appears to "stabilize" over time for carriers with relatively lower costs and more USF support flows to carriers with relatively lower levels of deployment under the "bifurcated approach." As of today, however, there is insufficient indication or evidence to show how a "bifurcated approach" might help to achieve either of the objectives identified as the primary reasons for undertaking such a reform. NTCA remains committed to exploring ways of improving the USF distribution mechanisms in accordance with our shared goals and the statutory mandates governing universal service. The data analyses performed to date, however, underscore the need for additional study and examination to verify that the contemplated "bifurcated approach" can in fact achieve the goals that have been stated as justification for it, and to ensure that such reforms would not instead merely give unfortunate and unintended rise to adverse disruptions in support only for the sake of some measure of "change." For these reasons, NTCA renews its suggestion that, rather than acting in short order to adopt a concept that clearly requires further examination, development, and calibration, the Commission either continue an ongoing dialogue with stakeholders regarding the effectiveness and utility of the "bifurcated approach" or move to implement a surgical standalone broadband fix as requested by Congress along with other targeted, but transformative, reforms.[6]

Unintended Consequences of High-Cost Reforms on Low-Income Rural Consumers. Other items that require greater examination and thought include the potential effects of certain high-cost USF reforms on rural consumers who rely upon Lifeline for voice services. Specifically, under the current contemplation of the "bifurcated approach," the new mechanism is being "modeled" as being subject to a $45 benchmark; put another way, the price-outs presume that a carrier will be required to obtain *at least* $45 of cost recovery from each consumer for new investments before USF support might be provided for some portion of the remaining costs on that connection.[7] In the case where a consumer purchases broadband (either on a standalone basis or as part of a bundle with voice), this benchmark could be reasonable, although this question too requires further examination in terms of how it affects the availability of broadband at reasonably comparable rates. But as to a consumer purchasing voice service only – and particularly as to consumers dependent upon Lifeline support to procure voice service – the application of a $45 benchmark may be concerning. With a $9.25 Lifeline subsidy, this could translate to the need for a rural Lifeline consumer to pay *at least* $35.75 per month just for basic voice service. The

---

6 NTCA November 9 Letter, at 2.

7 Although the stated benchmark would be $45 under this contemplated structure, the "effective benchmark" could likely be materially higher, as the imposition of a budget control would require additional recovery of costs from consumers where USF support is insufficient. For example, as one of the recent "price-out" filings indicates, under Scenario 2, the "total effective benchmark" that carriers in the median rate band would need to recover from end users due to the impact of budget controls would be $54.34. *See Ex Parte* Letter from Regina McNeil, General Counsel, NECA, to Marlene H. Dortch, Commission, WC Docket No. 10-90 (filed Nov. 19, 2015), at 5.

Commission should expressly contemplate and ultimately address on the record whether such a result is acceptable in coordinating objectives across universal service programs.

<u>Transitions and Flash-Cuts.</u> As NTCA has previously noted, if the Commission were to proceed with adoption of a "bifurcated approach" to reform, the preeminent value proposition of any such concept would be to enable a reasonable transition to a new mechanism as new investments are made, while existing mechanisms diminish "naturally" over time – put another way, the value of any bifurcated approach would arise primarily out of the fact that, even as reforms are enacted and new mechanisms put into place, it would allow investments to be recovered in accordance with rules that were in place at the time those investments and associated expenses were incurred.

By contrast, if a bifurcated approach were to include an artificial "cut-off" that moves all costs from old to new mechanisms on a flash-cut basis, this would undermine, if not eviscerate, the primary value proposition of a bifurcated approach and call into question why one would undertake the complexity and disruption of adopting such an approach only to "take it down" a few years later. As one particularly concerning example, if the Commission were to adopt a transition from old to new mechanisms that is based upon net plant rather than gross plant measures of network life, this would result in an immediate or nearly-immediate switch of support for any carrier whose plant is substantially or fully depreciated – even as the older network elements still in service are likely to require increased operating expenses to maintain. Such a "transition" is in fact a "flash-cut," and must be avoided. Although NTCA remains open to – and eager for – discussion of reasonable transitions in connection with this concept specifically *and* furthermore with respect to all aspects of reform,[8] NTCA therefore continues to assert that any transition within the "bifurcated approach" in particular must in the first instance be based upon and start from a gross plant measure of the useful life of networks used to deliver supported services.

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,

<u>/s/ *Michael R. Romano*</u>
Michael R. Romano
Senior Vice President – Policy

cc: Stephanie Weiner
Rebekah Goodheart
Nicholas Degani
Travis Litman
Amy Bender
Matthew DelNero
Carol Mattey

---

8 *See* footnote 3, *supra.*