December 3, 2014

***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; *Universal Service Reform – Mobility Fund,* WT Docket No. 10-208; *ETC Annual Reports and Certification*, 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; *Modernizing the E-rate Program for Schools and Libraries,* WC Docket No. 13-184,**

Dear Ms. Dortch:

On Monday, December 1, 2014, the undersigned and Brian Ford on behalf of NTCA–The Rural Broadband Association ("NTCA") met with Amy Bender, Legal Advisor to Commissioner Michael O'Rielly. The parties discussed the Universal Service Fund ("USF") Schools and Libraries ("E-Rate") and High-Cost programs.

As an initial matter and as a backdrop to the issues discussed below, NTCA reiterated its support for a "data-driven," surgical approach to ensuring that all schools and libraries across the nation have access to robust and affordable high-speed broadband service. NTCA applauds the goal of closing the "fiber gap" where it exists, yet cautions the Federal Communications Commission (the "Commission") to view E-rate modernization on a holistic basis that accurately identifies and solves the problem presented in each instance, while also leveraging existing networks and the success of existing federal mechanisms that already support and sustain broadband deployment. More specifically, E-rate reform must address the unique needs of each individual institution – any connection at all in some locations, a more robust connection in others, better Wi-Fi availability in others still, or a more affordable connection for those with fiber already in place. Efficiently and cost-effectively solving these issues should proceed from a comprehensive inventory of what schools and libraries already have. Taking such an inventory first can help ensure that reforms do not inadvertently lead to inefficient or even wasteful uses of E-rate funds; such steps are also important to facilitate coordination between the E-rate mechanism and the High Cost USF program in particular, so that broadband can have a truly *community-wide* impact in rural areas, promoting affordable access to a high-capacity broadband connection for students *both at school and at home*.

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

To the extent that E-rate reform proceeds without such a complete inventory of data and identification of issues presented at individual institutions, NTCA recommended certain safeguards intended to minimize any potential "overbuilding" and competitive risks that could arise out of an increased occurrence of "self-construction" on the part of schools and libraries or consortia of such entities.

As a first step, NTCA noted that the Commission should build upon certain provisions contained in the 2012 Healthcare Connect Order,[1] while also strengthening other necessary protections. For example, in the context of the HealthCare Connect Fund, the Commission specifically limited the amount of USF resources available to facilitate outside plant deployment, in substantial part because of concerns such as those raised here.[2] Similar provisions for the E-rate mechanism would enable the Commission to provide an adequate amount of funding for "total unavailability" situations where self-construction makes the most sense, while still reserving resources for other needs such as affordability of services over existing network connections. Moreover, a defined pool of resources for self-provisioning would likely incent all applicants to look more closely at leveraging the assets of existing providers and to focus builds on "finishing" nearby fiber connections in lieu of constructing entirely new wide-area networks from scratch.

Moreover, where "self-provisioning" of networks may be under consideration, NTCA suggested the Commission needs to adopt a more meaningful and precise definition of "cost-effective" that is based on a long-term, objective "total cost of ownership" perspective. This must include a realistic and validated analysis of not only initial construction costs, but the costs of equipment procurement, maintenance, and upgrade over time as well as a demonstration that the institution seeking funds for self-construction has fully and realistically considered all of the ongoing operational costs – including middle-mile and other network leasing costs – that exist and will be incurred over the decades-long life of typical network facilities. This is particularly important to "get right" for entities that otherwise do not typically construct or operate telecommunications networks and may therefore have little experience in estimating the true "total cost of ownership."

NTCA further proposed that, as part of any competitive bidding process, E-Rate applicants seeking funding for any physical outside plant infrastructure construction should post Request for Proposals ("RFPs") on a publicly-available Universal Service Administrative Company website for a period of 60 days and certify that they have taken additional steps to seek out the services of local providers. Any application for self-construction funds must either certify that no existing providers have responded to such RFP with a bid to make the services requested available within a 180 day period or that the application for self-construction meets the above-proposed "cost-effectiveness" standard.

---

1 *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, FCC 12-150 (2012) ("HealthCare Connect Fund Order").

2 *Id.*, ¶ 47.

NTCA noted that it is sensitive to the need to avoid overly complicated or administratively complex "cost-effectiveness" determinations that either hamper the ability to review applications in a timely manner or burden applicants unnecessarily. In this regard, a recent proposal by USTelecom provides an example of how safeguards such as those proposed above can be translated into a functional and administratively simple process.[3] Under this approach, an applicant could "check the box" on Form 470 as to whether or not it already has access to a fiber-based broadband connection, with that designation certified to or verified by the Universal Service administrator. Those designating themselves as <u>unserved</u> by a fiber connection would function as a "target group" that would be published and thus brought to the attention of potential providers. Those providers that may have inadvertently failed to respond to an initial RFP would then get the chance to do so. This would allow the Commission to focus "self-construction" funds on the portion of this target group that does not receive a bid for the requested service.

NTCA further observed that the Commission, in its 2012 HealthCare Connect Fund Order, found that a 35 percent matching contribution was appropriate to ensure that participants had a sufficient stake to seek the most cost-effective method of obtaining services.[4] By contrast, in the event that the Commission's E-rate reforms provide additional "kicker" discounts to schools or libraries that receive matching state funds, additional safeguards such as those proposed above become that much more necessary. Indeed, such a "kicker" could result in schools or libraries bearing little to no cost themselves for self-provisioning of a network. In such cases, in the absence of any "skin in the game," self-construction is likely to appear – as a subjective matter – to be a more "cost-effective" option for the individual school or library than procuring services on an existing network, even as objectively such a result may be *less* cost-effective for the program as a whole and other schools and libraries that are themselves in need of E-rate resources.

At bottom, the safeguards that have been proposed by NTCA over the course of the E-rate proceeding are intended to ensure four basic objectives: (1) E-rate funds should be used in the most cost-effective manner possible; (2) the Commission should target resources surgically to close the "fiber-gap" where it actually exists; (3) sufficient resources should remain available for those schools and libraries that already have access to robust connections for continued procurement of services on those networks; and (4) E-rate resources must be used in coordination, rather than in competition, with other federal programs that ensure <u>*community-wide*</u> connections not only for schools and libraries, but also for the students, teachers, librarians, and residents at home. It is essential as part of any reforms that the Commission signal to institutions that existing providers and the networks they own and operate – many of which, in rural areas, are supported already via high-cost universal service funding – should serve as a starting point in each and every request for service.

---

3 USTelecom, *ex parte*, WC Docket No. 13-184 (fil. Nov. 17, 2014).

4 HealthCare Connect Fund Order, at ¶ 91.

The parties then moved to a discussion of the High-Cost Universal Service Program, specifically the Commission's implementation of the "100% competitive overlap rule" in areas served by rate-of-return-regulated local exchange carriers ("RLECs"). NTCA has previously proposed a robust but administratively efficient challenge process that is based upon the process used for price cap carriers, but which accounts for the differences in RLEC support mechanisms and which would relieve the Commission itself of much of the burden (and confusion) associated with determining the level of competitive overlap. *See* Comments of NTCA, *et al*., WC Docket No. 10-90, *et al*. (filed Aug. 8, 2014), at 34-41 and 45-55. Specifically, under this proposal, the competitor would file information confirming that it is indeed unsubsidized and otherwise meets the Commission's price, speed, latency, data usage, and other applicable service characteristics for all locations in those study areas where purported one hundred percent overlap exists. Such a process would appropriately place the burden for developing a record on those parties that possess the most accurate and current information as to the scope and capabilities of *their own network reach and service offerings*. Placing the onus on the supported RLEC, by contrast, would require a small business that has little to no access to such information to disprove claims of competitive presence that were established in the first instance merely based upon a broadband coverage map. Moreover, initiating the process in this manner would ensure that the Commission itself has more efficient and effective access to the requisite and relevant information (and not just to self-reported broadband speed coverage by census block) in making final determinations with respect to the extent of any overlap.

Finally, the parties discussed the Commission's proposal in a recent further notice of proposed to adjust the High-Cost Loop Support ("HCLS") mechanism by "freezing" the National Average Cost Per Loop and then applying a percentage ratio reduction to each carrier's anticipated support to fit total support within the capped HCLS mechanism. NTCA noted that such percentage reductions could result in substantial losses of HCLS support for relatively higher-cost companies in terms of recovering prior investments, particularly as those percentage reductions in support compound over time. Thus, NTCA urged adoption of its proposed alternative HCLS modification, or at a minimum, asked the Commission to commit to monitoring actively the effects of any changes that are implemented over time on broadband deployment and recovery of investment and operating costs in RLEC-served areas.

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: Amy Bender