USDA Rural Development

United States Department of Agriculture
Rural Development

October 20, 2011

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

***Re: Connect America Fund,* WC Docket No. 10-90*; A National Broadband Plan for Our Future,* GN Docket No. 09-51*; Establishing Just and Reasonable Rates for Local Exchange Carriers,* WC Docket No. 07-135*; High-Cost Universal Service Support,* WC Docket No. 05-337*; Developing a Unified Intercarrier Compensation Regime,* CC Docket 01-92*; Federal-State Joint Board on Universal Service,* CC Docket No. 96-45**

Julius
Dear ~~Chairman Genachowski:~~

In the ongoing debate over universal service, there are two points on which all interested parties agree: the Commission must reform the existing federal universal service program (USF) and the Commission should refocus the program to promote ubiquitous availability and affordability of broadband services in the United States.[1] A universal broadband program will be neither responsible nor sustainable, however, without fundamental changes in the way that the Commission collects and distributes support funds.

In this spirit, I write to thank you for the Federal Communication Commission's (FCC) continuing interest in the Rural Utilities Service (RUS) telecommunications programs. Based on your expressed commitment for a data-driven process, our agency has been pleased to respond to several FCC staff inquiries to facilitate a better understanding of our loan programs, our underwriting procedures and the sensitivity of our loan portfolio and lending decisions to overall changes in revenues.

The data we have provided FCC staff and in *ex parte* filings illustrate that a number of RUS borrowers depend heavily on Universal Service Fund (USF) revenues to provide affordable, reliable telecommunications services to rural America. The data also demonstrates that when the FCC and RUS programs work together, tremendous leverage can be achieved, ensuring that USF

[1] *See, e.g.*, Comments of the National Exchange Carrier Association, Inc., *et al.* in WC Docket No. 10-90, at 2 (filed Apr. 18, 2011) (Small Telco Comments). For convenience, unless otherwise indicated, all subsequent references to "Comments" and "Reply Comments" shall refer to pleadings submitted on April 18, 2011, in WC Docket No. 10-90. *See also* Initial Comments of the New York Public Service Commission, at 2 (New York PSC Comments); Comments of Google Inc., at 2-4 (Google Comments); Comments of CTIA—The Wireless Association, at 1-2 (CTIA Comments); Comments of the National Cable & Telecommunications Association, at 2 (NCTA Comments); Comments of AT&T, at 82 (AT&T Comments).

funds are used prudently in RUS-financed infrastructure projects. By keeping financing costs low, RUS also helps keep USF costs low while extending its impact.

As you continue to work on the needed modernization of the USF, I ask that you consider implementing a "safety net" or "waiver" for those who have invested prudently, in good faith and with government oversight, under current USF rules. Since the passage of the Telecommunications Act of 1996 ('96 Act), telecommunications service providers have made binding commitments to RUS to provide service or deploy telecommunications infrastructure based in part on their reliance on the '96 Act's statutory requirements for "specific, predictable and sufficient"[2] USF support.

RUS recognizes the need to modernize USF and sustain efforts to deliver support in a way that promotes adoption of modern technologies in a cost-effective manner. You have clearly indicated the need for a transition that would allow carriers the ability to adjust to new levels of support. This is necessary because any departures from the existing regime are by their nature unpredictable. A phased-in approach to reform is critical to allow service providers to plan effectively. A "safety net" or "waiver" would help alleviate concerns that the new USF formulation will not be sufficient for a recipient to avoid defaulting on a government obligation. A "safety net" or "waiver" could reduce the risk of reform efforts being challenged as inconsistent with the "predictable" and "sufficient" promise of the '96 Act which would further delay much needed reform.

To be clear, this is not asking that USF "guarantee" RUS loans. Entities could, despite the safety net proposed herein, default or declare bankruptcy based on secular trends in the industry, such as line loss and wireless substitution, loss of intercarrier compensation, mismanagement, poor technology choices or for other reasons.

The safety net concept RUS proposes would only apply to USF, which is the only element of carrier revenue that carries a statutory requirement of sufficiency and predictability. The provision would only be available if losses in USF revenues (netted against gains from reform) would cause a default on a verifiable, binding commitment to government. If USF had not been reduced below what a carrier prudently predicted based on then-current rules, a new mechanism would restore funds, up to the level that would have otherwise been received (taking into account new sources of revenue brought on by reform), sufficient to prevent the default. The safety net mechanism would not be available to an entity that would default even with the full level of USF funding based on previous rules.

The safety net could allow a service provider to recover prudently incurred costs from USF at the rate in effect under today's rules, adjusted for changes in revenues directly attributable to reform. The service provider should recover only verifiable and reasonable costs incurred in or related to the high cost area and recover only costs eligible under the current system. Only USF related costs (not inter-carrier compensation revenue losses or any other losses) would be eligible for safety net coverage. The safety net benefits would be available only until prudently incurred costs are recovered. Any new investment incurred after the effective date of the FCC's USF reform order would be covered by the reformed rules and not be subject to safety net coverage.

[2] 47 U.S.C. § 254(d)

Given the transition, and that USF revenues may well be replaced by new Connect America Fund (CAF) revenues as well as other potential revenue streams, we certainly hope the safety net would only rarely be used. Its mere availability, however, could have a major effect on lender and investor confidence for commitments made under the existing USF system. For RUS in particular, the existence of the safety net could enable RUS to continue to meet rural telecommunication infrastructure needs under a difficult budgetary climate.

Access to broadband is a key pillar of rural economic development. The federal USF is an important engine of technology investment and job creation. As you know, it is vitally important that the FCC send a clear pro-investment message in its USF reform efforts. The infrastructure financed by USF dollars and leveraged by RUS lending creates jobs not only in rural America, but throughout the entire engineering, technology and construction sectors of our economy. Broadband networks form the foundation of rural America's future economic growth and participation in the information economy.

Thank you for your consideration, and your strong commitment to broadband deployment to rural America.

Sincerely,

Jonathan Adelstein

Jonathan Adelstein
Administrator
Rural Utilities Service

cc: The Honorable Michael J. Copps
The Honorable Robert M. McDowell
The Honorable Mignon Clyburn
Ms. Marlene Dortch, Secretary