



NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

*The Voice of Rural Telecommunications*

www.ntca.org

October 18, 2011

***Ex Parte Notice***

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

***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; Lifeline and Link-Up, WC Docket No. 03-109***

Dear Ms. Dortch:

On Monday, October 17, 2011, the undersigned, on behalf of the National Telecommunications Cooperative Association, together with John Rose and Stuart Polikoff of the Organization of the Promotion and Advancement of Small Telecommunications Companies, Derrick Owens of the Western Telecommunications Alliance, and Jeff Dupree of the National Exchange Carrier Association (collectively, the “Rural Representatives” or “Rural Associations”) had three meetings at the Federal Communications Commission (the “Commission”) to discuss matters related to the above-referenced proceedings. The first meeting was with Christine Kurth, Policy Director and Wireline Counsel to Commissioner McDowell. The second meeting was with Angela Kronenberg, Wireline Legal Advisor to Commissioner Clyburn. The third meeting was with Margaret McCarthy, Wireline Policy Advisor to Commissioner Capps.

During the meetings, the Rural Representatives discussed potential avenues and proposals for reform of existing universal service fund (“USF”) and intercarrier compensation (“ICC”) mechanisms through adoption of an order in the above-referenced proceedings. We discussed implementation of USF and ICC reforms consistent with the plan filed by the Rural Associations on April 18, 2011, as updated by the “Consensus Framework” joint letter submitted on July 29, 2011 (the “RLEC Plan”). See Comments of NTCA, *et al.* (filed April 18, 2011), at 7-36, 61-74, and Appendices A and C; *Ex Parte* Letter from US Telecom (filed July 29, 2011). Our discussion also addressed the following issues:

*Vision for USF Reform.* The Rural Associations’ members have expressed substantial concern with the possible adoption of only near-term reforms – largely in the form of new constraints to legacy USF mechanisms – without the complementary adoption of a longer-term vision for promoting broadband-capable investment through a new Connect America Fund (“CAF”) for rate-of-return-regulated incumbent local exchange carriers (“RLECs”). The RLEC Plan is

designed to offer incentives for responsible and effective deployment and maintenance of broadband-capable networks in the near-term, while also defining the ultimate transition from legacy mechanisms to a new CAF over time. Without such comprehensive reform, the Rural Associations' members are concerned that there will be no clear vision or roadmap for how the Commission intends to support broadband in RLEC areas. Continuing regulatory uncertainty will stymie broadband investment, undermine economic development, and put jobs in rural areas at serious risk. The Rural Associations urge the Commission to adopt a comprehensive perspective to reform that includes both a near-term *and* long-term perspective on how rate-of-return mechanisms should operate in a broadband-focused support environment.

Adoption of Caps on Supported Expenses. The Rural Associations object to the adoption of any near-term rule that would cap reimbursable capital expenditures or operating expenses without full consideration of such a rule *in all respects* by the Commission itself. It is unclear what form such caps might take and how they might apply to any given carrier, precisely because they have yet to be developed. Moreover, retroactive application of caps to prior investment is of particular concern given that carriers cannot “undo” investments made in reliance on current rules and a reasonable assumption that the rules of cost recovery would not change mid-course. Given the substantial and severe impact that such a rule could have on USF/CAF support distribution going forward for small companies that are so dependent upon such support, any such rule should be published for comment, considered, and then adopted by the full Commission before taking effect.

Disqualification of USF Support. The Rural Associations likewise oppose the adoption at this time of any rule that would disqualify an area for support based upon the presence of an unsubsidized competitor without further notice and comment. There are numerous filings on the record listing the many issues that need to be resolved before such an approach can be implemented, and to our knowledge, not a single commenter has provided *any* response with respect to any of those issues. *See, e.g.,* Comments of NTCA, *et al.* (filed April 18, 2011), at 51-65; Comments of NTCA, *et al.* (filed August 24, 2011), at 24-28; Reply Comments of NTCA, *et al.* (filed Sept. 6, 2011), at 32-38. Moreover, there is no basis to consider a *mobile* broadband and voice provider as an “unsubsidized competitor” for purposes of disqualifying support to a carrier providing *fixed* broadband and voice service – or vice versa. Indeed, the record reflects that these services are complementary in nature, rather than serving as substitutes for one another. *See, e.g.,* Comments of the Nebraska Rural Independent Companies (filed July 12, 2010), at App. A, pp. 17-18. Finally, to the extent that any newly created “Mobility Fund” support goes to an area in which an unsubsidized fixed service provider operates, the adoption of such a rule to disqualify fixed support would be patently discriminatory – in that case, USF/CAF support would be “technology agnostic” for one support stream, but not for another.

Other USF Reform Concerns. The Rural Representatives also urged the Commission: (1) to ensure that any and all “savings” from new constraints on RLEC high-cost USF support accrue to the benefit of other RLECs who require USF support, particularly in light of the fact that the High-Cost Loop Support mechanism is capped and thus already denies RLECs full cost recovery; (2) to avoid the adoption of strict per-line caps on support without first giving the companies affected a fair and reasonable opportunity to demonstrate why such support should not be limited or eliminated; (3) to provide for a reasonable phase-out of Safety Net Additive

support in lieu of flash-cut elimination; and (4) to ensure that any updates to the existing Corporate Operations Expense cap formula reflect *all* necessary updates, including but not limited to, the effect of inflationary adjustments since the formula was first developed.

*Local Voice Service Benchmark.* The Rural Representatives discussed their members' concerns with the adoption of any local voice service benchmark for purposes of ICC reform/restructuring higher than the \$25 benchmark set forth in the RLEC Plan. We explained that the proposed benchmark was intended to be a reasonable compromise between "early adopter" states and those that have yet to undertake or complete intrastate ICC reform. In some cases, even states that have completed intrastate ICC reform may need to raise consumer rates to reach a \$30 benchmark. We explained that a different benchmark for RLECs as compared to other incumbent carriers is justifiable as a matter of law, given that "reasonable comparability" under Section 254 of the Communications Act of 1934, as amended (the "Act"), should reflect that RLEC consumers typically can reach far fewer other consumers through a local call (even with mandatory Extended Area Service).

*Imposition of Access Recovery Charges on Multiline Business Customers.* The Rural Representatives discussed the potential imposition of different subscriber line-like charges for access recovery on multiline business customers served by RLECs. Unlike some larger carriers, most RLECs already assess the maximum subscriber line charge ("SLC") on their multiline business customers (*i.e.*, \$9.20), and the Commission should be concerned about adding several more dollars to a customer's bill over time without reference to any maximum rate benchmark or otherwise taking into account what they already pay in SLCs. The Rural Associations urge the Commission to subject multiline business customers to the same SLC-like (lower) access recovery charge as applied to other customers, in lieu of adopting a different rate for such customers.

*ICC Rate Reductions.* The Rural Representatives noted the essential nature of a restructure mechanism ("RM") as part of a rate-of-return cost recovery mechanism and ICC rate reforms. Shortfalls in the recovery of interstate or intrastate switched access costs will lead to: (1) higher rates for consumers (where such rates can be raised) in violation of the "reasonable comparability" standard under Section 254 of the Act; (2) carriers retrenching on service in their highest-cost areas; and/or (3) carriers refusing to invest in newer, more efficient switching technologies (such as softswitches) for fear that such costs will be unrecoverable. The Rural Associations therefore urge the Commission to adopt a fully compensatory RM, such as that set forth in the RLEC Plan and Consensus Framework. Moreover, the adoption of any reduction in ICC rates without a compensatory RM would be confiscatory, represent a taking by mandating the use of networks without adequate (or any) compensation by those making use of them, and violate Section 254 by undermining (if not defeating) universal service. Finally, The Rural Associations observe that "bill and keep" is not a "methodology," but rather simply another way of mandating a price of zero.

Phantom Traffic. Consistent with prior advocacy, the Rural Associations request that the Commission ensure the mid- to long-term efficacy of any phantom traffic rules it might adopt by not only requiring the accurate identification of the jurisdictional nature of any call, but also mandating the identification of the carrier or service provider responsible for that call. Comments of NTCA, *et al.* (filed April 1, 2011), at 16-30.

Rural Transport. Consistent with prior advocacy, the Rural Associations urge the Commission to adopt a “rural transport” rule consistent with that previously requested by RLECs. Comments of NTCA, *et al.* (filed August 24, 2011), at 41-42. Such a rule has been under consideration in this proceeding since at least 2006, *see Ex Parte* Letter from NARUC Task Force on Intercarrier Compensation (filed July 24, 2006), at Sections I.A and I.C.1, and remains necessary to ensure that the obligations of RLECs to carry originating non-access traffic do not extend beyond their service area boundaries. Absent such a rule, RLECs could be forced to incur unrecoverable transport costs at a time when ICC reforms may already have a negative impact on network cost recovery – particularly given the path the Commission may also be considering with respect to a bill-and-keep approach. The Rural Associations urge the Commission to adopt the specific rural transport rule proposed within the working draft of rules that they filed on October 17, 2011 via separate *ex parte* letter.

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Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS with your office. If you have any questions, please do not hesitate to contact me at (703) 351-2016 or [mromano@ntca.org](mailto:mromano@ntca.org).

Sincerely,

/s/ Michael R. Romano  
Michael R. Romano

Senior Vice President - Policy

cc: Christine Kurth  
Angela Kronenberg  
Margaret McCarthy