NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
www.ntca.org

October 19, 2011

***Ex Parte* Notice**

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th 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 Tuesday, October 18, 2011, Shirley Bloomfield, Joshua Seidemann, and the undersigned on behalf of the National Telecommunications Cooperative Association, together with John Rose and Stuart Polikoff of the Organization for the Promotion and Advancement of Small Telecommunications Companies, Derrick Owens on behalf of the Western Telecommunications Alliance, Paul Cooper from Fred Williamson Associates, and Robert DeBroux from TDS Telecommunications Corporation (collectively, the "Rural Representatives") met with Zachary Katz, Sharon Gillett, Carol Mattey, Amy Bender, Victoria Goldberg, Rebekah Goodheart, Patrick Halley, Marcus Maher, and Michael Steffen. Ms. Bloomfield participated via telephone.

In the meeting, 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 a number of national, regional, and state associations on April 18, 2011, as updated by the "Consensus Framework" joint letter submitted on July 29, 2011 (the "RLEC Plan"). S*ee* 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:

<u>*Vision for USF Reform*</u>. The Rural Representatives asked the Federal Communications Commission (the "Commission") to adopt not only <u>near-term</u> USF reforms, but also to lay out its <u>longer-term</u> vision for promoting broadband-capable investment through a new Connect America Fund ("CAF") for rate-of-return-regulated incumbent local exchange carriers ("RLECs"). Specifically, the Rural Representatives explained that the RLEC Plan provided a reasonable and workable roadmap for the ultimate transition from legacy mechanisms to a new CAF over time.

To this end, the Rural Representatives urged the Commission to pair any near-term constraints and further review and evaluation of various aspects of the rate-of-return framework with a comprehensive set of USF/CAF proposals that can indicate to carriers, consumers, lenders, and investors how the Commission intends to ensure that specific, sufficient, and predictable mechanisms will promote longer-term investment and operation of broadband-capable plant in high-cost areas served by small carriers. **Specifically, the Commission should find that the RLEC Plan presents a reasonable path forward for such comprehensive reform, and seek further comment on that plan and the associated rules filed as part of a further notice of proposed rulemaking.**

Adoption of Caps on Supported Expenses. **The Rural Representatives 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. Indeed, the rule apparently under consideration is at once complex and yet not sufficiently formed to enable understanding of it or meaningful comment on it. As of the writing of this letter, the Rural Representatives have not seen the details of these proposals, but they are concerned that misplaced "groupings," "dynamic 90th percentile cut-offs," and other factors that may be employed in the regression analyses and caps could result in unjustified and substantial cuts to support for any given carrier, increasing uncertainty further still and putting loans and investment at even greater risk.

Adopting such a rule without the opportunity for review, complete comment, and thorough presentation of arguments *to the Commission* (rather than to a bureau) is of substantial procedural concern. Moreover, we highlighted that: (1) retroactive application of caps to prior capital investment is of particular concern given that carriers cannot "undo" investments made in reliance on current rules and based upon a reasonable assumption that the rules of cost recovery would not change mid-course; and (2) even those who were proponents of operating expense caps as a policy matter acknowledged that it had not yet been shown that such caps could truly be developed and implemented. **Given the substantial and severe financial impact that such a rule could have on USF/CAF support distribution for small companies and given the substantial policy implications of such a rule, procedural fairness indicates that the Commission should refrain from adopting any rule that would impose caps on supported capital or operating expenses until parties have had a chance to present to the full Commission the policy, technical, and financial implications of doing so.**

Elimination of Safety Net Additive. The Rural Representatives recommended that, consistent with the Commission's commitment to "no flash cuts" in reform, there should be a reasonable phase-down of Safety Net Additive ("SNA") support where such support is received as a result of line loss rather than investment. **Specifically, the Rural Representatives urged the Commission to eliminate a proportional amount for each recipient over the remainder of that recipient's "term" of SNA support** – *e.g.*, if a recipient had four years left in which to receive SNA support after this rule took effect, it would receive 100 percent of SNA support the first year after the rule took effect, 75 percent in the second year, 50 percent in the third year, and 25 percent in the fourth year.

Disqualification of USF Support. The Rural Representatives expressed concern with the adoption of any rule at this time that would disqualify any area for support based upon the presence of an unsubsidized competitor. **The unrebutted record in this proceeding reveals far too many unanswered questions relating to the implementation of such a "disqualification" rule in RLEC areas.** Specifically, the Rural Representatives have made numerous filings listing the many issues that need to be resolved before such an approach could be implemented, and to the Rural Representatives' 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.

Furthermore, the Rural Representatives noted that there is certainly no record basis to consider a *mobile* broadband and voice provider as an "unsubsidized competitor" for purposes of disqualifying support to a carrier providing *fixed* service – or vice versa. Indeed, to the extent any newly created "Mobility Fund" support goes to an area in which an unsubsidized wireline or other fixed service provider operates, the adoption of such a rule would be patently discriminatory – USF/CAF support would be "technology agnostic" for one support stream, but not for another. The Rural Representatives emphasized that fixed and mobile services should be considered "complementary," rather than as "substitutable" for the many reasons already set forth in the record. *See, e.g.,* Comments of the Nebraska Rural Independent Companies, (filed July 12, 2010), at Appendix A, pp. 17-18; Comments of NTCA, *et al*., (filed July 12, 2010), at 12.

As an alternative, and at a minimum, to ensure that consumers will not be harmed by the effective loss of a carrier of last resort through the revocation/elimination of USF/CAF support, we urge the Commission to ensure that a provider would only "qualify" in a study area as an "unsubsidized competitor" for purposes of any such rule if such competitor:

a. is a state-certified carrier or ETC;
b. offers and can deliver both voice and broadband services throughout the RLEC study area (comparable in quality to those offered by the RLEC, based upon "actual" rather than "advertised" capability, and as measured through a robust and legitimately applied Busy Hour Offered Load metric);
c. offers each of those quality voice and broadband services on a stand-alone basis at rates that are reasonably comparable to those offered by the RLEC;
d. offers each of those quality voice and broadband services through the use of its own facilities and primarily as a "fixed" offering to consumers and enterprise users;
e. imposes any usage-based limits on capacity for broadband services (*i.e.*, where the consumer pays an additional amount for use of capacity above a defined limit) in a manner that is reasonably comparable to any imposed by the RLEC with respect to both price and capacity limits (or, where the RLEC does not impose any such limits, the competitor must not impose them either);
f. complies in all respects with the same "Open Internet"/net neutrality rules as are applicable to the RLEC; *and*
g. neither receives high-cost support of any kind *nor* cross-subsidizes its operations in the relevant study area.

Finally, before any revocation or elimination of USF/CAF support in a study area pursuant to such a rule, the RLEC should be provided with a reasonable and meaningful opportunity to present evidence

that the ostensible "unsubsidized competitor" does not meet the foregoing criteria. *See* Comments of NTCA, *et al*. (filed April 18, 2011), at 52-54.

Parent Trap. The Rural Representatives welcomed the Commission's proposal in its February notice of proposed rulemaking ("NPRM") to eliminate the so-called "parent trap" rule that may artificially preclude corporate transactions among or involving RLECs. *See* 47 C.F.R. § 54.305. We renewed our recommendation that the Commission eliminate this rule along the lines of the proposal set forth in the NPRM, subject to a few minor adjustments. Specifically, the Commission proposed to eliminate immediately application of the "parent trap" rule to any exchanges subject to a study area waiver order adopted five or more years ago and when a certain minimum percentage of the acquired lines (*e.g.*, 30 percent) remain unserved by 768 kbps broadband (presumably downstream), as indicated on NTIA's National Broadband Map and/or on Form 477 data. The Commission further suggested that for study area waivers issued less than five years ago, the "parent trap" rule would effectively lapse five years after the adoption of the implementing order. And, for study area waivers granted subsequent to the adoption of the implementing order, the "parent trap" rule would expire five years after the adoption of the related study area waiver order. In both cases, a specified minimum percentage of housing units would have to be unserved by broadband.

Consistent with prior advocacy, the Rural Representatives recommend some changes and clarifications to these "parent trap" reform proposals to promote the objective of broadband deployment to unserved consumers. First, the waiting period should be reduced substantially from the proposed five-year period. If the Commission's overarching public policy objective is to inject targeted funding to deliver broadband to unserved areas as soon as possible, customers in areas where an acquisition has taken place should not be forced to wait for up to five years (plus the time involved for construction) to realize the benefits of broadband. If the Commission has found a particular study area waiver to be in the public interest (either by granting it or allowing it to be "deemed" granted), it should not only permit but also encourage the new owner to proceed with reasonable broadband deployment to unserved portions of the acquired area as soon as practicable. Second, the determination of what speeds are available in a given set of exchanges should not be based solely on data acquired from the National Broadband Map and/or on Form 477. As an initial matter, even as updated recently, the National Broadband Map remains subject to serious questions with respect to its accuracy. In addition, neither the National Broadband Map nor the Form 477 data measure speeds by individual lines, but rather by census blocks and/or road segments, so their utility in assessing percentages of lines served at certain speeds is spotty at best. Moreover, a provider who acquires a set of exchanges should not be hindered from seeking support based upon potentially incorrect data supplied by the former owner of those exchanges. Thus, the Commission could establish a *rebuttable* presumption as to the "served" nature of such areas by reference to Form 477 data, but it should also enable a provider to demonstrate that the speeds available to a certain percentage of lines in the affected exchanges qualify those areas for elimination of the "parent trap" rule. *See* Comments of NTCA, *et al.* (filed April 18, 2011), at 59-61.

Other USF Reform Issues. 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**; and

(2) to **avoid applying strict per-line caps on total high-cost support without first giving the companies affected (whether RLECs or otherwise) a fair and reasonable opportunity to demonstrate, based upon a showing of actual costs, why their support should not be reduced**.

Restructure Mechanism. The Rural Representatives noted the essential nature of a restructure mechanism ("RM") as part of a rate-of-return cost recovery mechanism. 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 Representatives urged the Commission to adopt a fully compensatory RM, such as that set forth in the RLEC Plan and Consensus Framework. In particular, the Commission should ensure that the RM will maintain the core principles of rate-of-return regulation in the interstate jurisdiction and encourage responsible investment in upgraded switching equipment in RLEC areas.** The Rural Representatives also urged the Commission to ensure as part of the order now that _all_ expenses incurred in connection with non-access calls originating on RLEC networks are included in the definition of "net reciprocal compensation" for purposes of ICC restructuring. Draft rule language to this effect for proposed adoption in the impending order as part of ICC reform is included in an attachment hereto.

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. Unlike some larger carriers, most RLECs already assess maximum subscriber line charges ("SLCs") on 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 Representatives therefore urge the Commission to subject multiline business customers to the same SLC-like access recovery charge as other customers, in lieu of adopting a different rate for such customers.**

Local Voice Service Benchmark. **The Rural Representatives expressed concern with the adoption of any maximum local voice service benchmark for purposes of ICC reform/restructuring higher than the $25 benchmark set forth in the RLEC Plan.** A $25 benchmark represents 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 at $30 benchmark. The Rural Representatives 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).

Rural Transport. **Consistent with prior advocacy, the Rural Representatives urged the Commission to adopt effective immediately in the impending order a "rural transport" rule consistent with that proposed in the attachment hereto.** *See also* 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 and could introduce new ambiguities on transport and interconnection obligations.

* * *

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.

Sincerely,

/s/ Michael R. Romano
Michael R. Romano

Senior Vice President - Policy

Enclosures

cc: Zachary Katz
Sharon Gillett
Carol Mattey
Amy Bender
Victoria Goldberg
Rebekah Goodheart
Patrick Halley
Marcus Maher
Michael Steffen

PROPOSED CHANGES TO PREVIOUSLY FILED

RLEC PLAN RULES

(CHANGES AGAINST PRIOR VERSIONS SHOWN IN "TRACKED CHANGES")

§ 51.510 Rural Transport.

(a) For non-access switched calls made by the customer of a rural rate-of-return incumbent LEC to the customer of another carrier, in the absence of a pre-existing agreement or arrangement with the other carrier, the rural rate-of-return incumbent LEC will be responsible for transport to a non-rural terminating carrier's point of presence (POP) when it is located within the rural rate-of-return incumbent LEC's ~~service~~ study area. When the non-rural terminating carrier's POP is located outside the rural rate-of-return incumbent LEC's ~~service~~ study area, the rural rate-of-return incumbent LEC's transport and provisioning obligation stops at its existing meet point(s) as of the effective date of this rule within the relevant study area (or meet point(s) to be established within the study area if no such meet point exists as of the effective date of this rule), and the non-rural terminating carrier is responsible for the remaining transport from such point(s) to its POP.

(b) For purposes of this section the term "carrier" includes, but is not limited to LECs, commercial mobile radio services (CMRS) providers, Voice over Internet Protocol (VoIP) service providers, and Internet Service Providers (ISPs) using switched voice circuits for data transmission.

(c) Nothing in this section or any other rule shall prohibit incumbent LECs from assessing charges through tariffs or contracts, nor shall anything herein excuse telecommunications carriers or other responsible parties from being required to pay such charges, associated with transmission of signaling data to interexchange access service customers and/or charges associated with signaling and call setup. The charges in such tariffs or contracts may be discrete charges for signaling or aggregated with other charges for either switched access local switching or switched access transport consistent with ~~the~~ Part 69 of this Chapter.

§ 54.1001 Definitions.

(a) For purposes of determining Access Restructure Support for non-price cap ILECs, the following definitions shall apply:

(1) The *Interstate Switched Access Revenue Shortfall* shall equal **[. . .]**.

(2) The *Intrastate Terminating Switched Access Revenue Shortfall* shall equal:

(i) the difference between revenues billed by a carrier for intrastate terminating switched access services comparable to the interstate services described in (a)(1) above plus net reciprocal compensation revenues and an amount equal to the carrier's revenues for such services during the period January 1, 2011 through December 31, 2011 adjusted each year by **[. . .]**;

(ii) as used in (2) (i) above, net reciprocal compensation revenues shall be the net difference between reciprocal compensation amounts received by the carrier from other carriers or service providers pursuant to agreements established under Part 51 of this Chapter plus ~~(including~~ payments for transit service~~)~~ and amounts paid by the carrier to other carriers or service providers ~~(including payments for transit service)~~ pursuant to agreements established under Part 51 of this Chapter plus payments for transit service.

(3) *Additional End User Common Line Revenues* shall include revenues associated with the Additional Common Line Charges billed or imputed pursuant to section 69.104(s) of this Chapter.