January 12, 2012

The Honorable Thomas J. Vilsack
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Re: Preserving and Promoting Rural America's Broadband Future

Dear Secretary Vilsack:

We are writing to you on behalf of the National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance (collectively, the "Rural Associations") in your dual capacity as Secretary of Agriculture and as Chair of the White House Rural Council. In these roles, you address the challenges faced by rural America and oversee coordination and implementation of the administration's rural economic strategy. As explained below, at this moment there may be no greater challenge to rural economic vitality and the critical interdependencies between rural and urban America than dramatic changes that are being implemented by the Federal Communications Commission (the "FCC"), as well as others now being considered for imminent implementation. As described below, these changes threaten the sustainability of current investments in rural broadband, discourage future investment in rural broadband, and portend a new "rural-rural divide" in broadband access. In sum, the actions ultimately undermine the commitment to "expanding broadband access and promoting global connectivity in rural America" as touted by the administration several months ago. White House Rural Council, *Jobs and Economic Security in Rural America*, at 13 (Aug. 2011).

I. The Success of Public-Private Partnership with USDA is Evidenced by the Commitment of Small Rural Telecommunications Providers

By way of background, the Rural Associations represent hundreds of small telecommunications cooperatives and family-owned companies that operate exclusively in rural areas throughout the United States. These community-based businesses provide significant employment opportunities for residents in the rural regions they serve, and act as engines to drive economic benefits for residents and businesses within and beyond their service areas. As demonstrated by a recent study, small rural local exchange carriers ("RLECs") generate job creation and economic activity throughout rural *and* urban areas. *See* Hanns Kuttner, *The Economic Impact of Rural Telecommunications: The Greater Gains*, Hudson Inst. (Oct. 11, 2011).

At a time when the nation seeks to emerge from economic recession, RLECs are vital elements for such efforts in rural areas. Through financing programs administered by the Department of Agriculture's Rural Utilities Service ("RUS"), your department has long recognized the importance of such operators to rural economies. Specifically, through telecommunications loans available since 1949, broadband loans available since 2000, and economic stimulus efforts launched by this administration in 2009, RUS had extended nearly $4.3 billion in capital to RLECs as of mid-2011. Of particular note, consistent with a congressional mandate to ensure that valuable federal resources are leveraged to invest in modern networks, RUS has long employed the philosophy of "build it right the first time" in specifying how telecommunications networks should be deployed. Recognizing that networks are long-term investments backed by long-term financing, RUS requires that networks be constructed on a "future-proof" basis that can reasonably accommodate consumer demand and evolution of advanced services over the life of those investments.

This policy has helped RLECs to deploy state-of-the-art networks in many rural areas where the market would otherwise not support investment. As you know, RLECs (and the RUS telecommunications financing programs) exist in the first instance largely to provide communications service in areas where "market incentives" were insufficient to attract the involvement of the private Bell system. Vast regions of rural America were deemed too sparsely populated or otherwise too challenging to warrant investment by operators, lenders, and investors. In contrast, the RUS programs, together with the commitment of community-based cooperatives and family-owned business met the challenge of "wiring rural America." Their collective track record evidences the unmitigated success of these public-private partnerships that provide substantial benefits at reasonable cost to advanced networks users in rural America.

Indeed, as noted by a Federal-State Joint Board on Universal Service (composed of FCC commissioners and state regulators), RLECs have done a "commendable" job investing in and operating advanced networks in rural America. *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Board Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision (rel. Nov. 20, 2007), at ¶¶ 30, 39. The data stand behind this assessment: RLECs have increased broadband penetration to their consumers above 92% with only 3% growth per year in universal service fund ("USF") support over the past several years. *See* National Exchange Carrier Association, *Trends 2010*, at 5; *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 an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, (rel. Feb. 9, 2011), at Figure 7. At the same time, RLECs have witnessed dramatic declines in intercarrier compensation ("ICC") network cost recovery payments from larger carriers and other service providers. Accordingly, by any reasonable measure, the work of RLECs, enabled in large part by the partnership with your agency and RUS in particular, has been a tremendous success for rural consumers and businesses, for rural economies, and for the nation as a whole.

II. New and Impending Changes in Regulatory Policy Threaten This National Success Story and Will Adversely Affect Rural Economies

As impressive as the accomplishments of small rural carriers are, their work deploying high-quality broadband is not done. In many cases, the broadband that RLECs have deployed is only basic DSL speed. This basic level of broadband often does not reach the speed – 4 Mbps downstream/1 Mbps upstream – that the FCC has now identified as a target level of "universal service." Although it may have been "state-of-the-art" technology earlier in the past decade, the FCC's new 4/1 Mbps standard demonstrates that the broadband ecosystem has eclipsed basic DSL. Furthermore, even this 4/1 Mbps speed target is likely to be surpassed in only a few years: the National Broadband Plan indicated that average broadband speeds double every four years, and the FCC has already suggested that speeds of 6 Mbps downstream/1.5 Mbps upstream may be the new threshold within several years.

RLECs cannot deliver such higher speeds and affordable services to rural consumers without both reliable access to capital and sustainable, predictable cost recovery support. Your agency has played a critical role in the former respect, with RUS providing financing terms that enable investment in rural markets where there is otherwise little, if any, incentive to build. But, the federal Universal Service Fund – which was created in response to a congressional order to provide predictable, sufficient, and specific support for operations in high-cost areas – is also a critical piece of this effort. As Congress recognized in the Telecommunications Act of 1996, the high costs of operating in many rural areas necessitate support to ensure the availability of affordable, high-quality services for consumers. Without sufficient and predictable USF support as an explicit supplement to end-user revenues, carriers would need to charge retail prices for communications services that no consumer could realistically afford. USF is therefore as critical to the business case for rural network investment and operation – and to the availability and affordability of services on those networks – as the USDA programs that enable network construction in the first instance.

As you know, the USF program has been the subject of review and potential reform for many years. Although initially crafted to support telephone (voice) service in high-cost rural areas, there has been an increasing acknowledgment in recent years that USF must be recalibrated to support broadband-capable networks. In fact, RLECs have invoked USF support to this effect for years already. Specifically, under the FCC's "no barriers" policies, RLECs have relied upon USF support in recent years to deploy and operate "multi-use" networks that enable high-quality broadband *and* voice services. Thus, as noted above, from every reasonable perspective, RLECs have been efficient and effective in utilizing USF support to respond to evolving consumer demand for advanced services. While RLECs leveraged dual-use networks to extend broadband in rural America, other carriers did not, and some rural areas have gone without the same kinds of broadband-capable investments. At the same time, the declining nature of the intercarrier compensation structure has placed increased pressures on the ability of RLECs and other carriers to recover network costs. Accordingly, the industry and the FCC looked toward USF and ICC reform to stabilize and refine these essential cost recovery mechanisms for a broader broadband-focused future.

In November 2011, the FCC released an Order adopting new USF and ICC regulations, as well as a Further Notice of Proposed Rulemaking ("Further Notice") seeking input on a series of additional reforms to the USF and ICC mechanisms. The results, however, fall short of the FCC's admirable goals. Although the FCC endeavored to direct the high-cost USF and ICC toward a more sustainable, broadband-focused path, the Order does not provide the mechanisms and support levels necessary to enable sustainable broadband in areas served by RLECs. The FCC adopted a new "Connect America Fund" for larger carriers, but provided no similar construct for smaller, community-based rural carriers. Instead, through a combination of changes to existing USF and ICC programs, the FCC effectively reduced funding available to RLECs, implemented *retroactively applicable* limitations that "pull the rug" from beneath RLECs that invested on the basis of then-existing federally administered programs, and imposed new requirements on rural carriers. In sum, RLECs are now expected to "do more," but with far less opportunity for network cost recovery. This "downside only" approach to reform puts existing investments (including portions of the RUS loan portfolio) at risk, with the FCC itself noting that three in 10 carriers (nearly a third of RLECs) will likely lose more than 10% of their current USF support revenues and 1 in 10 carriers will lose more than 20% of their USF support revenues. By comparison, RUS noted last year that 22% of its borrowers would fall below TIER ratios of 1.0 if USF were reduced by only 5%. (Of course, these figures do not capture additional losses resulting from ICC reductions.)

Of equal, if not greater concern, are a number of additional, potentially significant cuts proposed by the FCC in its Further Notice. These are a sword of Damocles hanging over the prospects of rural investment, robust broadband, and economic recovery. Rather than allowing the market (including lenders and investors) to recalibrate to already damaging reforms, the Further Notice amplifies uncertainty by proposing (1) reductions in the authorized rate of return available for investments made in rural areas; (2) further reductions in USF cost recovery for RLECs; (3) elimination of all intercarrier payments without compensatory cost-replacement measures; and (4) gerrymandering of RLEC service areas in a way that will, in a single stroke, obstruct recovery of existing investments and diminish greatly the prospects for future investment. In sum, the additional measures proposed by the FCC threaten to advance little more than the abandonment of broadband in RLEC areas.

III. The White House Rural Council Can Stabilize the Uncertainty

RLECs, and the lenders and investors who form a critical part of a vital private/public partnership, must discern a Connect America Fund that justifies additional broadband-capable network investment and upgrades for rural consumers and businesses. This will benefit not only broadband networks, but the users and economies that rely upon them. Like any other business, RLEC sustainability relies upon regulatory certainty. In contrast, uncertainty is abundant as carriers anticipate additional cuts and constraints proposed by the Further Notice. We are already hearing from members whose business plans for 2012 consist primarily of cutting back on operations and/or reducing staff to accommodate the constraints already ordered by the FCC, and few, if any, RLECs plan significant investment in 2012 as uncertainty gathers and lingers. This "regulatory overhang" is undermining job creation, network investment, and the sustainable quality of broadband services in wide swaths of rural America.

To dispel this uncertainty, provide RLECs and their consumers with a reasonable opportunity to adjust to the substantial changes already adopted by the FCC, and provide at least some prospect for investment in rural broadband networks in 2012, the Rural Associations respectfully request that the White House Rural Council and USDA provide the following as express written input to the FCC and other policymakers as appropriate:

1. *Remove Regulatory Uncertainty*

   The FCC should expressly decline to act on several further aspects of its Further Notice at this point, and should instead signal service providers, lenders, investors, and consumers that it will allow adequate time for adjustment to the changes already made in its Order. The FCC could then indicate its intent to revisit these issues after a reasonable period of time – such as five years – has passed.

   Among other things, the FCC should expressly decline at this time to: (a) reduce the rate of return available for investments made in rural areas; (b) apply and extend a series of new caps (beyond those already expressly adopted in the Order) to further reduce USF support payments for RLECs; (c) eliminate the last vestiges of ICC payments without a clear path for replacement or restructuring; and/or (d) carve up RLEC serving areas in a way that will make it even more difficult to justify new investments or recover existing investments. Moreover, since carriers cannot "undo" loan commitments or "tear out" existing networks, the FCC should make clear that any caps or other limitations on cost recovery already adopted in its Order will be applied prospectively. The retroactive application of caps violates fundamental fairness and disrupts any notions of certainty that are the hallmark of rational rulemaking.

2. *Create a Broadband Path Forward*

As it has done for consumers in other areas, the FCC should adopt a Connect America Fund that will provide additional funding for broadband-capable deployment in areas served by RLECs. Specifically, the FCC should either adopt the Connect America Fund proposal submitted by the Rural Associations in April and October of 2011, or in the alternative, the FCC should adopt targeted measures that will provide specific, sufficient, and predictable funding to support: (a) last-mile local networks where customers choose to take only broadband (and not voice) services; and (b) "middle mile" network facilities that are essential to ensure that adequate capacity is available to exchange consumer traffic between rural areas and distant Internet "on-ramps."

IV. Conclusion

The Rural Associations urge the White House Rural Council and USDA to embrace these important issues and escalate them to the highest levels of the administration. The Rural Associations and their respective members are greatly concerned that current reductions followed only by the prospect of greater reductions will fail to advance broadband in rural areas, and instead only cripple the availability and affordability of broadband in rural areas where it exists today. These changes – both those in place and those that appear on the horizon – threaten economic growth, network reliability, and public safety. And, as noted above, the viability of rural networks and economies improve the health of regional and national markets.

The Rural Associations would appreciate greatly the assistance and input of the White House Rural Council with regard to the two specific requests noted above. Following through on these two specific requests will be critical to promoting job creation (or at least retaining jobs) in rural areas, to enabling continued responsible investment in and maintenance of rural broadband networks in 2012 and beyond, and to delivering on the administration's stated commitment to "expanding broadband access and promoting global connectivity in rural America."

Thank you for your attention to this correspondence. We look forward to working with you to shape a better broadband future for rural communities nationwide.

Sincerely,

Shirley Bloomfield
Chief Executive Officer
NTCA

John Rose
President
OPASTCO

Kelly Worthington
Executive Vice President
WTA

cc: Honorable Frank D. Lucas, Chair
U.S. House of Representatives Committee on Agriculture
Honorable Colin C. Peterson, Ranking Democrat
U.S. House of Representatives Committee on Agriculture
Honorable Debbie Stabenow, Chair
U. S. Senate Committee on Agriculture, Nutrition, and Forestry
Honorable Pat Roberts, Ranking Republican
U.S. Senate Committee on Agriculture, Nutrition, and Forestry