NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
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October 17, 2012

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 No. 01-92; *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208**

Dear Ms. Dortch:

On Wednesday, October 17, 2012, the undersigned and Joshua Seidemann, on behalf of the National Telecommunications Cooperative Association ("NTCA"), together with Stuart Polikoff from the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"), Gerry Duffy and Derrick Owens on behalf of the Western Telecommunications Alliance ("WTA"), and Jim Frame and John Ricker from the National Exchange Carrier Association ("NECA") spoke via telephone with Carol Mattey, Steve Rosenberg, and Rebekah Goodheart from the Wireline Competition Bureau (the "Bureau").

The parties discussed various interim and longer-term options for addressing concerns with respect to regression analysis-based caps on universal service fund support. As a threshold matter, we continue to express concern with application of a model that has not been fully tested, that contains data errors, and for which limited data – especially as to future year impacts – are available or discernible. We noted during the call that the current capping mechanism, if left unaltered, would likely increase the number of companies that are capped by nearly sixty percent (60%) from 2012 to 2013 – up from approximately 100 carriers in 2012 to approximately 160 carriers in 2013. We also indicated that it remained difficult to predict how many companies (and which companies) would be capped in 2014 given what data are currently available and the fact that the entire model is still to be updated for that year. The need to address this persistent uncertainty and lack of transparency requires careful attention; failure to resolve the uncertainty will deter broadband investment and/or threatens to sweep carriers unsuspectingly into the caps in subsequent years, resulting ultimately in profound harm to consumers and commercial interests throughout various rural areas.

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We discussed the need to extend the phase-in associated with the caps pending resolution of all of these concerns and others raised by various pleadings in these proceedings. Although the Bureau denied requests to stay the caps altogether pending such resolution, at a minimum, an extension of the phase-in of the caps as outlined in paragraph 42 of the Bureau's April 25, 2012 order is both necessary and appropriate in light of the fact that test data with respect to the volatility of the model and the variables within the model have yet to be released, given that many open questions remain with respect to the effects of the model in subsequent years, and given that the model will be updated in all respects for 2014. In particular, the Federal Communications Commission (the "Commission") should extend the current 2012 phase-in into 2013, and then apply the current 2013 phase-in once the updated model takes effect in 2014. Specifically, for 2013 this would continue to limit support reductions to 25% of the model limits with a maximum support reduction of 10%, pending further work on the model update for 2014 (at which point the 50% model phase-in would apply for that year).

We also discussed the concerns with maintaining multiple caps for different cost categories because such caps fail to recognize common "business trade-offs" between investment and operating practices. For example, a company might utilize older plant to minimize the need for new capital investment, but in doing so, that company might incur higher operating expenses associated with maintenance. Similarly, a newer network requires less maintenance (thus entailing fewer operating expenses), but requires higher up-front capital investment. We have been consistent in advocating for a single regression model in the longer-term (if regression is to be retained at all), but we also noted that a reasonable interim step would be to help recognize the various "business trade-offs" of operating a telecommunications network pending such further testing and recalculation by combining now the existing capital expense and operating expense caps into a single cap. *See, e.g.,* Petition for Reconsideration of OPASTCO, WTA, and NECA, WC Docket No. 10-90, *et al*. (filed May 25, 2012), at Appendix D, pp. 12-15, and Appendix E, p. 1; *Ex Parte* Letter from Michael R. Romano, Senior Vice President-Policy, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, *et al*. (filed May 25, 2012), at Presentation, pp. 4-5; *Ex Parte* Letter from Kenneth Johnson, Counsel for Central Texas, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, *et al*. (filed Sept. 14, 2012), at 1-2. Specifically, in the interim for 2013 support payments, the Commission should consider – in conjunction with extending the transition phase-in as described above – maintaining the current 2012 model cost limits but adding together the CAPEX and OPEX values for 2013 support calculations.

Finally, we discussed whether certain adjustments might be made to help address predictability concerns, even as additional testing and analysis will be required to assess whether and how the caps could be made more predictable (and otherwise improved) in the longer-run. Specifically, as a default rule and in the absence of alternatives pending further updating and analysis of the model, we suggest that the Commission hold the caps constant for a period of several years starting in 2014. But we also noted that: (a) such an approach could only be workable if the caps were held constant as calculated on a total study area basis as of the model base period, rather than calculating the overall cap each year for each study area on a per-loop basis, and (b) further testing and analysis will be needed over the next twelve months to determine whether there are more optimal methods than such a default rule to address concerns with respect to predictability

in the longer-term. As an alternative, the Commission could express a firm commitment to promoting (or demonstrating) greater certainty in the model by promptly releasing data it has gathered thus far in its analysis of the model's predictability, and by then evaluating several different options (including the one noted above) for promoting predictability as part of its broader review of needed improvements to the model.

In any event, we expressed the ultimate belief that greater predictability can only be achieved in the longer-term – if it can be at all assured under the model – through further detailed analysis of potential sensitivity and volatility in the model. We therefore urge the Commission to ensure that any near-term steps, such as that suggested in the preceding paragraph, that it might take to improve predictability within the model are reviewed carefully and subject to reasonable transitions as the model is updated and presumably tested in advance of 2014.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

/s/ Michael R. Romano
Michael R. Romano
Senior Vice President – Policy

cc: Michael Steffen
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