



NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

The Voice of Rural Telecommunications

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January 28, 2013

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; High-Cost Universal Service Support, WC Docket No. 05-337; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition; Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, GN Docket No. 12-353; Technology Transitions Policy Task Force, GN Docket No. 13-5

Dear Ms. Dortch:

On Thursday, January 24, 2013, the undersigned, on behalf of the National Telecommunications Cooperative Association, together with Stuart Polikoff from the Organization for the Promotion and Advancement of Small Telecommunications Companies, Derrick Owens and Gerry Duffy on behalf of the Western Telecommunications Alliance, Robert DeBroux of TDS Telecom, and Jeff Dupree of the National Exchange Carrier Association, met with Carol Matthey, Rebekah Goodheart, Amy Bender, Alex Minard, Joseph Cavender, Claude Aiken, and John Visclosky of the Wireline Competition Bureau to discuss matters in the above referenced proceedings.

In this meeting, we discussed the need for a near-term solution that makes universal service fund (“USF”) support available to rural local exchange carriers (“RLECs”) for broadband-capable networks even where a consumer might choose not to take regulated local exchange service (“POTS”) on the specific loop to be supported. By way of background, the Federal Communications Commission (the “Commission”) has through its “no barriers” policy long allowed RLECs to utilize USF support for the deployment and operation of “multi-use” networks that facilitate the offering of both voice and broadband services.¹ But despite this efficient and forward-looking policy, USF support – in the form of High-Cost Loop Support (“HCLS”) and Interstate Common Line Support (“ICLS”) – is available for such a broadband-capable loop only if the customer in question actually purchases a regulated local exchange service (such that the costs of the loop are then considered a joint use loop and part of the Common Line Pool).²

¹ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, et al.*, CC Docket No. 02- 33, *et al.*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14900-14903 (2005), at ¶¶ 89-95. Pursuant to this policy, many RLECs tariff the transmission layer of their broadband Internet access services as a Title II special access service.

² See 47 C.F.R. §§ 36.621 and 54.901.

Thus, where a customer chooses *not* to take POTS on the loop and instead desires to take only broadband, the costs of that loop are re-assigned entirely to the interstate Traffic Sensitive Pool (as special access), and no USF support is then available under current rules with respect to that loop.³ In practical terms, this means that a consumer's rates for broadband in high-cost areas will *increase* simply because that consumer might decide that he or she only wants broadband and no longer wants to purchase POTS on that line. This result – denying the availability of USF support and increasing broadband rates based solely upon a rural customer's choice to purchase only broadband – significantly inhibits a consumer's freedom of choice. In the wake of reforms that were ostensibly intended to reorient the USF for a broadband-capable world, there is simply no reason whatsoever that consumers should still be compelled to take POTS to obtain broadband at rates that are affordable and reasonably comparable to those available in urban areas.

Indeed, the Commission appeared to grasp the need for such an evolution in its November 2011 reform order, indicating that the service to be supported would *not* be POTS, but rather “voice telephony service” – which could be provided via any technology and was not tethered to specific form of regulation.⁴ Specifically, the Commission determined that to be eligible for receipt of USF support, carriers should be required “to offer voice telephony as a standalone service throughout their designated service areas.”⁵ Unfortunately, this vision in the text of the order did not carry through as a mechanical matter to the rules that actually govern the distribution of USF support for RLECs; as noted above, even in the wake of reform, instead of being able to receive support on a loop based upon the standalone *offer* of *voice telephony service*, RLECs can still only receive USF support under today's rules if they actually *sell POTS*.⁶

³ Both ICLS and HCLS payments for a RLEC decline as loop costs are reassigned from the joint use common line cost category to the special access cost category. Moreover, denying support that would enable an individual consumer to obtain broadband at reasonably comparable rates and instead might prompt that customer to disconnect service altogether because it cannot obtain affordable standalone broadband only increases an RLEC's reliance on USF on a per-line basis; by contrast, if stand-alone broadband support were provided, this might allow the RLEC to retain the customer in question and thereby obtain or retain greater end-user revenues – which in turn would help to reduce dependence on USF. Finally, any system that ultimately perpetuates an incentive to sell POTS lines to obtain cost recovery for operations in high-cost areas potentially deters the desired technological evolution of networks, undermines the purported objective of reform – the stimulation of broadband deployment and adoption – and ultimately runs directly contrary to the Commission's expressly stated vision of supporting the *offer* of *voice telephony service* rather than continuing to support only the *sale* of *POTS*.

⁴ *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, *Universal Service – Mobility Fund*, WT Docket No. 10-208, Report and Order and FNPRM, 26 FCC Rcd. 17663, 17692-93 (2011), at ¶¶ 77-81.

⁵ *Id.* at 17693, ¶ 80.

⁶ As a more technical matter, even though the transmission layer of broadband Internet access might continue to be tariffed and offered as a Title II service, because the costs of that loop shift from the Common Line pool to the Traffic Sensitive/special access pool when the customer ceases to subscribe to

We therefore urged the Commission to “connect the dots” between the text of its order and the rules that unfortunately continue to deny USF support for the provision of standalone broadband. Specifically, we suggested that the Commission consider technical fixes to its rules that would permit loop costs to remain in the Common Line pool (and thus eligible for USF cost recovery) even where a consumer declines to take an offer of voice telephony and instead elects only to take broadband service from an RLEC. Such simple Part 69 rule changes are needed to fulfill the express and plainly stated intent of the Commission’s reform order, and they would also allow consumers in rural areas to have the same choices as those in urban areas with respect to their communications services. In fact, providing USF support for standalone broadband would actually promote both broadband adoption as well as competition in voice services, by permitting customers to choose from among POTS, over-the-top VoIP, or even “cutting the cord” altogether on fixed voice service with the assurance that such a choice would not have an adverse effect on their ability to procure broadband at an affordable rate. In short, providing support for loops that are used to provide standalone broadband services would promote and accelerate the ongoing IP evolution.

We further discussed with staff some of the issues that remain to be resolved in structuring a standalone broadband funding mechanism, including what would constitute a sufficient and predictable level of USF support to ensure that broadband is available at affordable, reasonably comparable rates for consumers in high-cost areas. While some of these issues require further analysis, we expressed the concern that these technical fixes to the rules are needed in relatively short order to avoid undermining the Commission’s stated objectives of reform, limiting consumer choice, and stalling the ongoing IP evolution. We therefore committed to work in good faith with the Commission to help work through these issues as promptly as possible, in the hope that the needed technical fixes to current rules can be in place soon – and at least by the time that the Connect America Fund “Phase 2” mechanism begins to provide support for networks that enable standalone broadband offerings by price cap carriers in their high-cost rural areas.

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: Carol Matthey
Rebekah Goodheart
Amy Bender
Alex Minard
Joseph Cavender
Claude Aiken
John Visclosky

POTS on that line, the Commission’s current HCLS and ICLS rules preclude any cost recovery from USF on that loop (which in turn means the customer seeking only broadband in the high-cost area pays more).