November 26, 2013

***Ex Parte* Notice**

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

Re: ***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 Friday, November 22, 2013, the undersigned, on behalf of NTCA–The Rural Broadband Association ("NTCA"), together with Joshua Seidemann of NTCA, Derrick Owens and Gerry Duffy on behalf of WTA, David Cohen of the United States Telecom Association, Jeff Dupree of the National Exchange Carrier Association, Robert DeBroux of TDS Telecom, Mark Gailey of Totah Communications, and Paul Cooper of Fred Williamson Associates met with Carol Mattey, Steve Rosenberg, Kalpak Gude, Deena Shetler, Erin Boone, Randy Clarke, Talmage Cox, Alexander Minard, Gilbert Smith, Joe Sorresso, Suzanne Yelen, and Chin Yoo of the Wireline Competition Bureau (the "Bureau") regarding matters in the above-referenced proceedings. Information provided in this meeting is enclosed with this correspondence.

First, we discussed the consideration of a targeted program to refine universal service support mechanisms in areas served by rate-of-return-regulated rural local exchange carriers ("RLECs") to facilitate consumer choice and stimulate adoption of broadband. We re-supplied copies of previously filed proposed rules detailing how such targeted updates could aid the transition from current support mechanisms to a Connect America Fund ("CAF") for RLECs. *See* Comments of NTCA, *et al*., WC Docket No. 10-90 (filed June 17, 2013), at 1-10 and Attachment 1. We also provided handouts explaining how such targeted rule changes would support broadband-capable networks and discussed the anticipated effects of the proposals on CAF support flows, current universal service mechanisms, consumer rates, and adoption of voice and broadband services.

We then discussed how to proceed with respect to the need for changes to the quantile regression analysis ("QRA")-based caps in the wake of the Sixth Order on Reconsideration released by the Federal Communications Commission (the "Commission") and a Bureau order earlier this year providing additional temporary relief from the caps. We discussed in particular the need to square the Commission's desire to apply fiscal discipline in the use of universal service support with the requirement that such support be predictable and with broader public policy goals that contemplate transparency in regulation.

To achieve a better balance, we discussed our proposal to establish a Capital Budget Mechanism ("CBM") as an alternative to and substitute for the current application of the QRA caps. We explained how this new CBM would satisfy the objective of ensuring fiscal responsibility within RLEC-specific support mechanisms (including a new standalone broadband support CAF program) while dispelling the confusion caused by current application of the QRA year-over-year to past investments. We discussed how the CBM proposal would provide, in a streamlined way, transparent and clearly defined carrier-specific prospective investment budgets that reflect local plant conditions, while also incorporating "triggers" that would permit advance notice of any prospective adjustment to such budgets. We indicated that more information regarding examples of the effects of such a proposal would be forthcoming.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

Sincerely,

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

Enclosures

cc: Carol Mattey
Steve Rosenberg
Kalpak Gude
Deena Shetler
Erin Boone
Randy Clarke
Talmage Cox
Alexander Minard
Gilbert Smith
Joe Sorresso
Suzanne Yelen
Chin Yoo

STAND ALONE BROADBAND SUPPORT

Rural consumers require an immediate solution that makes predictable and sufficient USF support available when a consumer chooses to purchase Data-Only Broadband services but declines to purchase voice telephone service offered by the RLEC**.**

Such support would be consistent with, and is in fact compelled by, the Transformation Order, which found that while ETCs are required "to offer voice telephony service as a standalone service throughout their designated service area" (¶80), Section 254 also grants the authority "to support . . . the facilities over which it is offered" (¶64). The FCC further found that ETCs must, as a condition of such support, offer broadband over those same facilities "at rates that are reasonably comparable to offerings of comparable broadband services in urban areas." (¶86) The Connect America Fund for larger, price-cap regulated services, in turn, provides support for broadband-capable networks regardless of the service selection of any given customer in the area (voice or broadband). By contrast, consumers in areas served by smaller companies risk being left behind in the IP Evolution absent a similar construct.

Proposal:

Data-Only Broadband Service is a stand-alone broadband Internet access transmission service sold without voice service that requires the use of the same loop facility that has the ability to provide access to the PSTN, or its functional equivalent.

A Broadband Subscriber Line Charge (BBSLC), together with a tariffed wholesale transmission rate, forms a benchmark to ensure consumers in rural areas pay a reasonably comparable amount for broadband Internet access service when they do not purchase POTS with the Broadband service. Support for Data-Only Broadband Service loop cost funding would be calculated as the difference between the loop-related cost to provide the service and the revenues from the BBSLC.

- Data-Only transmission service would require RLECs to recover (or impute) two separate benchmark components from the end user and/or ISP: (1) a Broadband Subscriber Line Charge of capped at $26 per month that helps to recover loop-rated costs; and (2) the NECA tariff wholesale data-only transmission rate, or equivalent, that helps to recover network-related transmission costs on a Title II Common Carrier basis.
- As customers migrate to Data Only Broadband Service, HCL support and ICLS decrease while support for Data-Only Broadband Service loops increases.
- Neither this support mechanism nor the benchmark components would provide for recovery of middle mile and other non-network ISP operational costs. This is in contrast to the price cap model, which includes some middle mile costs and some non-network ISP operational costs in both the applicable benchmark and the Connect America Fund support mechanism itself.

Narrow Rule Changes:

- Proposed Rule language (attached) was included in June 17, 2013 Association Joint Comments
- No modification would be needed to Part 36 Separations Rules.
- Limited addition of language would be needed to Part 54 defining and establishing support for Data-Only Broadband Service.
- Limited changes would be needed to existing Part 69 Rules to modify assignment of interstate loop costs from Special Access to Common Line element for Data-Only Broadband Service and creation of a Broadband Subscriber Line Charge

Proposed Data-Only Broadband Service Support Rule Language *[New Rule Language Underlined]*

§ 54.5 Terms and Definitions

Data Only Broadband Service is defined as transmission service from an end user to a connection point with an ISP sold without voice service, but over a facility that has the ability to provide voice grade service with access to the PSTN or its equivalent..

§ 54.302 Monthly per-line limit on universal service support.

(a) Beginning July 1, 2012 and until June 30, 2013, each study area's universal service monthly support, including data-only broadband support, (not including Connect America Fund support provided pursuant to § 54.304) on a per-line basis shall not exceed $250 per-line plus two-thirds of the difference between its uncapped per-line monthly support and $250. Beginning July 1, 2013 and until June 30, 2014, each study area's universal service monthly support on a per-line basis shall not exceed $250 per-line plus one third of the difference between its uncapped per-line monthly support and $250. Beginning July 1, 2014, each study area's universal service monthly per-line support shall not exceed $250.

(b) For purposes of this section, universal service support is defined as the sum of the amounts calculated pursuant to §§ 36.605 and 36.631, of this chapter and §§ 54.301, 54.305, 54.322 and 54.901 through .904. Line counts for purposes of this section shall be as of the most recent line counts reported pursuant to § 36.611(h) of this chapter plus data-only broadband lines.

(c) The Administrator, in order to limit support to $250 for affected carriers, shall reduce safety net additive support, high-cost loop support, safety valve support, interstate common line support, and data-only broadband support in proportion to the relative amounts of each support the study area would receive absent such limitation.

§ 54.322 High Cost Support for Data Only Broadband Service

For rural rate of return ILEC study areas, each Data-Only Broadband Service transmission line meeting the criteria outlined in §54.5 shall receive Data-Only Broadband Support based on the difference between the cost of providing the loop facilities as determined by the provisions of § 36.621 (a)(1) through (a)(4) of the Commission's rules, or its Category 2 equivalent cost, and the revenue from the Data-Only Broadband Service Charge pursuant to § 69.132(a). Preliminary support amounts will be based on projected costs and revenues and trued-up when actual data becomes available in pursuant to the schedule set forth in § 54.323.

§ 54.323 Obligations of rate–of–return carriers and the Administrator for Data Only Broadband Service

(a) To be eligible for Data-Only Broadband Support, each rate-of-return carrier shall make the following filings with the Administrator

1) Each rate-of-return carrier shall submit to the Administrator annually on March 31st projected data necessary to calculate the carrier's prospective Data Only Broadband Support, for each of its study areas in the upcoming funding year. The funding year shall be July 1 of the current year through June 30 of the next year. Each rate-of-return carrier will be permitted to submit a correction to the projected data filed on March 31 until June 30 for the upcoming funding year. On June 30 each rate-of-return carrier will be permitted to submit to the Administrator an update to the projected data for the funding year ending on that date.

2) Each rate-of-return carrier shall submit to the Administrator on December 31st of each year the data necessary to calculate a carrier's Data-Only Broadband Support, including cost and revenue data, for the prior calendar year. Such data shall be used by the Administrator to make adjustments to monthly Data-Only Broadband Support amounts in the final two quarters of the following calendar year to the extent of any differences between the carrier's Data-Only Broadband Support received based on

projected data and the Data-Only Broadband Support for which the carrier is ultimately eligible based on its actual data during the relevant period.

§ 69.132 Data-Only Broadband Service charges for non-price cap incumbent local exchange carriers.

(a) This section is applicable only to incumbent local exchange carriers that are not subject to price cap regulation as that term is defined in § 61.3(ee) of this chapter. A charge that is expressed in dollars and cents per line per month shall be assessed upon end users that subscribe to Data-Only Broadband Service. The maximum monthly charge for each Data-Only Broadband Service line shall be the lesser of one-twelfth of the projected annual revenue requirement for the Data-Only Broadband Service in §69.501(g)(ii) divided by the projected average number of Data-Only Broadband Service lines in use during such annual period or $26.00.

§ 69.501 General

(f) Until December 31, 2013, the Common Line element revenue requirement shall be apportioned between End User Common Line and Carrier Common Line pursuant to § 69.502. The Common Line element annual revenue requirement shall be described as the base factor portion for purposes of this subpart.

(g) Beginning January 1, 2014, the Common Line element revenue requirement shall be apportioned to End User Common Line, Data-Only Broadband Service, and Carrier Common Line.

(1) The Common Line element annual revenue requirement less Data-Only Broadband Service determined pursuant to §69.501(g)(ii) shall be described as the base factor portion for purposes of this subpart and apportioned between End User Common Line and Carrier Common Line pursuant to §69.502.

(2) The Data-Only Broadband Service revenue requirement shall consist of a shift from the Special Access Element, §69.114, to the Common Line Element equal to the loop cost of providing the service as determined pursuant to §54.322.

§ 54.901 Calculation of Interstate Common Line Support.

(a) Interstate Common Line Support available to a rate-of-return carrier shall equal the Common Line Revenue Requirement per Study Area less the Data-Only Broadband Service as calculated in accordance with §69.501 of this chapter minus:

(1) the study area revenues obtained from end user common line charges at their allowable maximum as determined by §§ 69.104(n) and 69.104(o) of this chapter;

(2) the carrier common line charge revenues to be phased out pursuant to § 69.105 of this chapter;

(3) the special access surcharge pursuant to § 69.115 of this chapter;

(4) the line port costs in excess of basic analog service pursuant to § 69.130 of this chapter; and

(5) Any Long Term Support for which the carrier is eligible or, if the carrier ceased participation in the NECA common line pool after October 11, 2001, any Long Term Support for which the carrier would have been eligible if it had not ceased its participation in the pool.

EFFECT ON RURAL CONSUMERS OF PROVIDING OR NOT PROVIDING STANDALONE BROADBAND SUPPORT

Benchmark Component	Benchmark/Retail Rate/Other Amount Needed for Cost Recovery From Individual Consumer		Relevant Costs Covered
	Provide Support Per Group Proposal	Not Providing Support	
Broadband SLC	$26.00		Regulated Local Loop Costs (developed on Title II basis pursuant to Parts 32, 36, 64, and 69)
Wholesale Transmission Tariff Rate	$15.05[1]		Regulated Costs of Non-Loop Transmission Facilities and Equipment to Enable Broadband Internet Access (developed on Title II basis pursuant to Parts 32, 36, 64, and 69)
Wholesale Transmission Tariff Rate		$77.63[2]	Regulated Facilities-Based Network Costs of Loop and Transmission to Enable Broadband Internet Access (developed on Title II basis pursuant to Parts 32, 36, 64, and 69)
Total Cost Recovery from Consumer for Supported/Regulated Network Elements	$41.05[3]	$77.63[2]	Regulated Facilities-Based Network Costs of Loop and Transmission to Enable Broadband Internet Access
Middle Mile Costs[4]	$6.50	$6.50	Unsupported unregulated network costs for transmission from Broadband Access Service Connection Point and connections to Internet backbone
Other ISP Costs	**$X**[5]	**$X**[5]	Unsupported unregulated non-network costs associated with provision of Broadband Internet Access to consumers (e.g., marketing, help desk)
Total Approximate Consumer Rate for Finished Broadband Internet Access	$47.55 **PLUS** (banded)	$84.13 **PLUS** (banded)	Finished Broadband Internet Access Service

[1] 2013 Annual Filing – DSL Voice-Data 1/6 Mbps, Rate band 9,Opt B, 3 Year – Rates for rate bands 1-15 range from $8.98 to $17.80

[2] 2013 Annual Filing – DSL Data-Only 1/6 Mbps, Rate band 7, Opt B, 3 Year – Rates for rate bands 1-15 range from $46.57 to $93.01

3 Note this is a rate banded total, and that the total benchmark would actually range from $34.98 to $43.80 depending on the rate band (*i.e.*, the relative distance and density of the market).

[4] The cost of $6.50 per broadband line is calculated from a $26 weighted average cost per Mbps for Ethernet middle mile (from NECA's 2011 Middle Mile Data collection), multiplying by 4 (for 4 Mbps), and then dividing by 16 (for oversubscription). Although support should be provided for such costs and apparently is included to some degree in the price cap model, such costs are currently unsupported for RLECs.

[5] "X" represents the additional unsupported, unregulated non-network costs that the typical ISP would incur to deliver a finished Broadband Internet Access Product to a consumer. Such costs may include sales and marketing functions, help desk operations, etc. While such costs may vary widely based upon company size, size of addressable customer market, and other factors, a typical business' sales and marketing budgets, for example, will each often equal approximately 7% to 8% of revenue.

Data-Only Broadband Support Impact Analysis

Assumes 5% Annual Conversion to Data Only Broadband

	Projected 2014	2014 5% Shift to DOBB	2015 addl 5% shift	2016 addl 5% shift	2017 addl 5% shift	2033 100% DOBB
HCLS	$ 744,854,935	$ 707,612,188	$ 668,531,001	$ 631,390,390	$ 594,249,778	$ -
ICLS	$ 876,916,182	$ 833,070,373	$ 786,647,427	$ 742,944,791	$ 699,242,157	$ -
DOBB transitioned at 5% per year (no QRA)		$ 117,041,290	$ 234,082,580	$ 351,123,870	$ 468,165,160	$ 2,340,825,801
Total Loop Support	$ 1,621,771,117	$ 1,657,723,851	$ 1,689,261,008	$ 1,725,459,052	$ 1,761,657,095	$ 2,340,825,801
CAF ICC Support	$ 346,000,000	$ 346,000,000	$ 359,000,000	$ 369,000,000	$ 347,000,000	$ 178,026,131
Total RoR High Cost Support	$ 1,967,771,117	$ 2,003,723,851	$ 2,048,261,008	$ 2,094,459,052	$ 2,108,657,095	$ 2,518,851,932
Budget Variance @ $2B	$ (32,228,883)	$ 3,723,851	$ 48,261,008	$ 94,459,052	$ 108,657,095	$ 518,851,932
RoR Portion of Inflation-Adjusted High-Cost USF	**$ 2,000,000,000**	**$ 2,042,600,000**	**$ 2,086,107,380**	**$ 2,130,541,467**	**$ 2,175,922,000**	**$ 3,048,573,245**
GDP-CPI	2.1300%					
Inflation-Adjusted Budget Variance	$ (32,228,883)	$ (38,876,149)	$ (37,846,372)	$ (36,082,416)	$ (67,264,905)	$ (529,721,313)

NEW CAPITAL BUDGET MECHANISM ("CBM")

- **Goal: Satisfy FCC desire for fiscal responsibility in USF/CAF distribution, while also providing more predictable and transparent budgeting tools to guide RLEC network investment.**
  - Manage future investment-related growth in USF through reasonable, responsible pacing of investments tailored to local conditions and challenges
  - Avoid confusion of changing caps and complex, difficult-to-decipher formulas, while using a trigger, if needed, to identify potential "outliers" whose ability to rely upon USF/CAF to recover future investments may be limited accordingly

- **Simple Four-Step CBM Framework:**
  - **Step 1:** ***Determine Current Loop Investment***
    - Total Loop Investment for each RLEC Study Area, adjusted for inflation
  - **Step 2:** ***Determine Future Allowable Loop Investment ("FALI")***
    - Budget for FALI Would be Based Upon Replacement of Depreciated Plant
      - Provides transparent budget for replacement of depreciated plant by each RLEC; precludes support to replace plant that is still used and useful
      - Deprecation is already tracked as part of QRA; should therefore not be difficult to identify what portion of loop plant is depreciated
  - **Step 3:** ***Use a Trigger to Identify Alleged "Outliers" for Possible FALI Adjustment***
    - Identify Perceived "Inefficiencies" and Enable Appropriate Adjustment of FALI for Prospective Investment
      - If a trigger "flags" an alleged "outlier," FCC staff can then examine the nature of that RLEC's loop plant investment for potential adjustment specifically of prospective investment budget
  - **Step 4:** ***Use Final FALI to Establish the Annual CBM Budget for Loop Plant Investment***
    - Simple step would divide each RLEC's FALI (as possibly adjusted in Step 3) by a period of years to establish the "budget" of supported additional investment allowed for each year
    - CBM would thus spread investment efforts over time and link future investment to replacement in each case of old plant
      - RLECs could choose to invest more than CBM budget in any given year, but would do so without USF/CAF support until it fits within FALI.
  - ***Repeat Steps 1 through 4 each year to determine Annual CBM Budget for each RLEC***
    - Provide narrow, constrained exceptions for: (a) very small companies; (b) some provision for routine maintenance and upgrades; (c) greenfield builds; and (d) a waiver process (*e.g.*, natural disasters, etc.).

- **The CBM Strikes an Appropriate and Desirable Balance Between the Need for Fiscal Responsibility and Predictability in USF/CAF Distribution.**
  - The CBM Framework Would Demand Accountability of RLECs, and Give the FCC Tools to Adjust Budgets for Found Inefficiencies in Prior Investment
  - The CBM Framework Would Help Remedy Uncertainty Arising Out of Current Constraint Mechanisms, and Give RLECs Clearer Guidance in Understanding What They Can Do to Deliver Upgraded Broadband-Capable Loop Plant for the Benefit of End Users.