



May 1, 2017

***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***

Dear Ms. Dortch:

On Thursday, April 27, 2017, the undersigned, on behalf of NTCA–The Rural Broadband Association (“NTCA”), and Derrick Owens and Gerry Duffy on behalf of WTA-Advocates for Rural Broadband (the “Rural Associations”), met separately with Amy Bender, legal advisor to Commissioner Michael O’Rielly, and Claude Aiken, legal advisor to Commissioner Mignon Clyburn, to discuss matters in the above-referenced proceeding. In each meeting, the Rural Associations discussed a series of “punch list” items as identified in prior meetings and again below that can and should be addressed to ensure that high-cost universal service fund (“USF”) reforms previously adopted will function as intended and comport with the statutory mandates governing universal service. *See Ex Parte* Letter from Michael R. Romano, Sr. Vice President, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission (the “Commission”), WC Docket No. 10-90 (filed Feb. 3, 2017).

**Rate Floor.** Consistent with prior discussions, the Rural Associations urged the Commission to act promptly at its May 2017 Open Meeting to address concerns with respect to the rate floor. *See, e.g.,* Application for Review of NTCA, WTA, *et al.*, WC Docket No. 10-90 (filed Jan. 21, 2015); Petition for Reconsideration of NTCA, WTA, *et al.*, WC Docket No. 10-90 (filed Aug. 4, 2014), at 10-11 (asking the Commission to review the methodology by which the rate floor is set and to “consider staying implementation of additional phase-in steps mandated by the Order pending full consideration of alternative rate floor calculation options in the context of a reconsideration proceeding or, if necessary, a further rulemaking proceeding.”) Although the Rural Associations noted the need as described herein to address other items on the “punch list” as well and support acting on all such items together to the extent possible and as soon as possible, they underscored the fundamental importance of addressing the rate floor issues now in light of another imminent increase in that floor.

**Operating Expense Cap.** The Rural Associations also encouraged the Commission to address as part of any upcoming USF order those concerns previously raised with respect to the structure of the operating expense cap adopted in last year's reforms. *See* Petition for Reconsideration and/or Clarification of NTCA, WC Docket No. 10-90, et al. (filed May 25, 2016) ("NTCA 2016 Petition"), at 20-21. Specifically, the NTCA 2016 Petition highlighted that, unlike the corporate operations expense cap that it resembles and upon which it is effectively based, the formula for the operating expense cap lacks an inflationary factor. Presuming that the goal of such a cap is to provide clear guidance to carriers regarding what the Commission considers efficient operations, carriers must be able to plan and execute effectively against such a cap – which is far more difficult if the cap is “reset” every few years rather than being a set formula indexed like the corporate operations expense cap.

**Imputation of Access Recovery Charges.** The Rural Associations further urged the Commission to include in any near-term order addressing USF issues reconsideration of the requirement that carriers impute Access Recovery Charges (“ARCs”) to standalone broadband connections that were in place prior to the 2011 USF and related intercarrier compensation reforms. *See* NTCA 2016 Petition, at 23. Although imputation of ARCs may be necessary as a general matter to ensure that the “careful balance” struck in establishing CAF-ICC support is not undermined as consumers convert from traditional voice services to standalone broadband over time, standalone broadband connections that were in place before the CAF-ICC mechanism was established were never part of that “careful balance” to start. Accordingly, the Rural Associations renew their call for the Commission to eliminate the requirement for carriers to impute ARCs for the number of standalone broadband connections that a carrier can show it served as of September 30, 2011.

**Competitive Overlap.** The Rural Associations advocated that the Commission resolve in any near-term order those questions previously raised in their petitions for reconsideration with respect to how competitive overlap will be validated, *see* NTCA 2016 Petition, at 15-17; Petition for Reconsideration of WTA, WC Docket No. 10-90, et al. (filed May 25, 2016) (“WTA 2016 Petition”), at 3-12, including adoption and use of the form previously submitted by WTA to undertake that process. *See Ex Parte* Letter from Gerard J. Duffy, WTA Regulatory Counsel, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (Oct. 24, 2016).

**Recoverable Expenses.** Questions have arisen previously with respect to how the Commission should clarify whether and to what degree certain expenses are recoverable via USF and/or regulated rates. *See Connect America Fund*, WC Docket No. 10-90, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking (rel. March 30, 2016), at ¶¶ 353-359. NTCA and WTA support the Commission acting in the near future consistent with their prior comments to dispel uncertainty and ambiguity with respect to such expenses and to provide reasonable guidance as to how such expenses may be recovered. *See* Comments of NTCA, WC Docket No. 10-90 (filed May 12, 2016), at 9-19; Comments of WTA, WC Docket No. 10-90 (filed May 12, 2016), at 6-14. Such action need not require significant modifications to existing rules and complex questions posed related to cost allocations and affiliated transactions certainly require more comprehensive review and debate, but the Commission could take action in the near term to specify a simple, clear, and carefully defined list of categories of costs consistent with the associations' comments that would be precluded from recovery via USF and/or regulated rates.

Marlene H. Dortch

May 1, 2017

Page 3 of 3

As one final point of clarification, the Rural Associations noted that, even as action on this “punch list” of items that in the near term is essential to promote the more effective working of the USF mechanisms, this “punch list” does not represent the universe of outstanding USF-related issues raised in the associations’ petitions for reconsideration or that may otherwise warrant further examination and possible recalibration through ongoing discussions between Commission staff and industry experts. As just one example, both associations have of course raised concerns with respect to how the lack of sufficiency in the USF mechanisms is undermining the availability and affordability of broadband for rural consumers. *See* NTCA 2016 Petition, at 2-9; WTA 2016 Petition at 22-24. Thus, while NTCA and WTA remain hopeful for action on the “punch list” items in the near term, they also look forward to working with the Commission to continue discussions on other items necessary to ensure ultimately that the USF mechanisms function as intended and comport with statutory mandates with respect to the availability of reasonably comparable services at reasonably comparable rates in rural and urban America alike.

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 –

Industry Affairs & Business Development

cc: Amy Bender  
Claude Aiken