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September 30, 2016

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

Ex Parte

Re: Notice of Ex Parte Presentation, WC Docket No. 10-90.

Dear Ms. Dortch:

The Utilities Technology Council is providing the following ex parte notification in the above-referenced proceeding in accordance with Section 1.1206 of the Commission's Rules. On September 28, 2016, Martha Duggan from the National Rural Electric Cooperative Association and the undersigned on behalf of the Utilities Technology Council ("UTC") met with Stephanie Weiner, Senior Legal Advisor, Wireline, Office of Chairman Wheeler, and Carol Mattey from the Wireline Competition Bureau.

During the meeting, NRECA and UTC discussed the Joint Petition for Reconsideration of the National Rural Electric Cooperative Association and the Utilities Technology Council.[1] Specifically, NRECA and UTC explained that the Commission's decision to exclude from eligibility certain census blocks based on recently filed FCC Form 477 data failed to provide sufficient notice and opportunity for comment, in violation of the Administrative Procedure Act; and it arbitrarily and capriciously prevents utilities from the opportunity to compete for access to funding in certain census blocks where they submitted non-winning Category 1 applications to provide Rural Broadband Experiments.

By declaring these census blocks ineligible for funding, the Commission punishes utilities who did the right thing and deployed broadband networks in these areas with the good faith expectation (based upon the Commission's *December 2014 Connect America Order* that "carved-out" these census blocks from the offer of model-based support) that they would be able to compete in the reverse auction for access to funding under Phase II of the Connect America Fund.[2] Likewise, the decision discourages other RBE applicants from deploying broadband in their census blocks until the FCC conducts its reverse auction; otherwise, they too will lose the opportunity to compete for funding in these areas in the CAF Phase II reverse auction. Meanwhile, the longer that the Commission takes to conduct the reverse auction gives incumbent more time to deploy in those census blocks, thus removing them from eligibility

[1] Joint Petition for Reconsideration of the National Rural Electric Cooperative Association and the Utilities Technology Council in WC Docket Nos. 10-90, 14-58 and 14-259 (filed Jul. 21, 2016)("Petition").

[2] *See Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order, 29 FCC Rcd. 15644, 15675 at ¶85 (2014) ("*December 2014 Connect America Order*")(stating that "[w]e determine that rural broadband experiment proposals submitted in funding category one that facially meet the requirements for submission of financial and technical information could help us achieve our universal service goals in a cost-effective manner.") *See also Id*. (stating that "excluding these areas from the offer of model-based support and instead making them available in the Phase II competitive bidding process should enable us to stretch our finite Connect America budget even further.")

and thwarting potential competition. Consumers lose out because broadband is delayed or it is deployed with slower speeds and reduced coverage from what would be required under the rules through the CAF Phase II reverse auction. As such, the Commission's decision to remove these census blocks from eligibility contradicts the Commission's decision in the *December 2014 Connect America Order* to promote broadband access through RBE projects that would provide faster speeds at lower costs than the services that would otherwise be made available by the price cap carriers under the terms of the offer of model-based support.[3]

For all of these reasons, NRECA and UTC urged that the Commission should preserve funding eligibility for those census blocks where there were non-winning Category 1 RBE applications. This would promote the deployment of broadband to all locations in those census blocks, and would bring consumers in those areas access to broadband services that would provide 25/3 mbps speeds or higher. At the same time, it would not significantly affect the budget for the Connect America Fund, because it would only restore funding in those census blocks where applicants had submitted proposals for non-winning Category 1 RBE projects, not in other census blocks in other parts of the county. This would be consistent with the Commission's decision to carve-out these census blocks from the offer of model-based support and to provide an opportunity for access to CAF Phase II funding through competitive bidding, as provided in the Commission's *December 2014 Connect America Order*.

Thank you for your help in this matter. If there are any questions concerning this matter, please let me know.

Respectfully,

Brett Kilbourne

Cc: FCC Participants

[3] *Id.* at ¶85 (stating that "[w]e are not convinced that providing model-based support to a price cap carrier in an area where another entity [i.e. a category one RBE applicant] has demonstrated an interest to provide service that so significantly exceeds the Commission's speed requirements, for an amount at or below the model-determined support, would be an efficient use of funding.")