USTELECOM
THE BROADBAND ASSOCIATION

February 8, 2019

Ex Parte

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, D.C. 20554

Re: USTelecom Ex Parte Notice, WC Dkt. No. 10-90, *Connect America Fund*

Dear Ms. Dortch:

On February 6, 2019, USTelecom and some of its members met with Jamie Susskind, Chief of Staff for Comissioner Carr, to discuss the Commission's draft Order phasing down legacy voice support.[1] Meeting participants ("USTelecom") included Mary Henze, AT&T; Jeff Lanning (via phone), CenturyLink; Mike Skrivan (via phone), Consolidated Communications; AJ Burton, Frontier; and Alan Buzacott, Verizon; Thomas Whitehead, Windstream (via phone) and myself representing USTelecom.

US Telecom noted that sections III.A and III.B of the draft order take a reasonable approach to addressing the immediate task of disaggregating frozen support. However, USTelecom remained steadfast that the Commission should provide adequate support to price cap ILECs that are mandated to provide voice services in extremely high cost areas that are not funded as part of the CAF II program.[2] USTelecom advocated that the Commission must either provide funding commensurate with the obligations or it should provide guidance on a path forward to relieve price cap carriers of their unfunded mandate. As written, the Commission impermissibly extends a previously "interim" period of funding, which was supposed to end with the CAF 2 auction, indefinitely.[3] The "interim" period has now become four years and the clock continues to run with no definitive end in sight for relief from the obligations or a funding mechanism.

---

[1] *Connect America Fund*, Report and Order, WC Docket No. 10-90, FCC-CIRC1901-01 (rel. Jan. 3, 2019) ("Draft Report & Order").

[2] Letter from Mike Saperstein, USTelecom, to Marlene H. Dortch, FCC, WC Docket. No. 10-90 (June 29, 2018) ("USTelecom Proposal").

[3] The DC Circuit decided that it "owe[s] deference to the FCC's decision to hold a preexisting regime in place for an interim period." *AT&T, Inc. v. Fed. Commc'ns Comm'n*, 886 F.3d 1236, 1241 (D.C. Cir. 2018). However, the D.C. Circuit was also under the impression that the interim period would end with the decision of the CAF 2 Auction. "Under the new system, in contrast, ETCs would be designated on a census-block basis, and would receive federal subsidies based on a new cost-projection model; in some cases, the old landline-only ETCs signed up to continue to serve areas, but in others a new ETC would have to be selected via a competitive auction—for many census blocks in July 2018—to determine the most effective and efficient provider." *Id.* at 1243. For the census blocks at issue,

In its June 2018 filing, USTelecom proposed a consensus funding mechanism and budget that would meet the expected needs for price cap carriers fulfilling their obligation to provide voice services in extremely high cost areas. The draft Order prematurely dismisses this proposal because it "would far exceed a reasonable amount of legacy support for carriers to continue serving only those areas not won at auction"[4] but does not take into account that the areas won in auction have not yet been finalized (and thus we do not yet know the extent of the areas that were not won, for which voice support will be warranted). Because USTelecom has not yet been able to revise its proposal to reflect the support required in light of the CAF 2 auction, and because at this time the Commission only needs to address the disaggregation of frozen support, we asked the Commission to postpone treatment of its proposal to a further order as not yet ripe. Specifically, we requested for the Commission to delete section III.C. and paragraph 26 from the Report and Order as prematurely decided.

In the event the Commission does not remove section III.C., and paragraph 26, which it should, we asked for further edits. Specifically, in paragraph 20, we requested the second sentence to be amended as follows:

> "The existence of **~~non-fixed~~** voice service options **offered by non-ETCs** within a particular census block does not guarantee that consumers there will continue to have access to voice service in the absence of an ETC being required to serve those consumers."

Without this change the Order is inconsistent with section 214(e)(4) of the Communications Act, which permits ETCs to relinquish their ETC designation in any area served by more than one ETC.[5]

USTelecom also requested the Commission amend its discussion in paragraph 26 of potential additional case-by-case support request to clarify that any required earnings review would be targeted to the earnings of the areas for which support was requested.[6] It would be inappropriate for the Commission to refuse to provide necessary funding to meet a service obligation on the basis that the company is otherwise profitable.[7] USTelecom requested that at a minimum the paragraph should be revised as follows:

---

the "old landline-only ETCs" did not "sign up" for this continuing obligation, nor were they released via competitive auction.

[4] Draft Report and Order at para. 22.

[5] *See* 47 U.S.C. § 214(e)(4); USTelecom Proposal at n.16.

[6] Draft Report and Order at para. 26.

[7] *See generally Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (rejecting the concept that ILECs can implicitly cross-subsidize rural services); *see also* 47 U.S.C. § 254(e) ("Any such [universal service] support should be explicit and sufficient to achieve the purposes of this section.").

> "We do not, however, expect to grant these requests routinely, and caution petitioners that we intend to subject such requests to a rigorous, thorough and searching ~~review comparable to a total company earnings~~ review for the areas **in which support is requested**. In particular, we intend to take into account not only all revenues derived from network facilities that are supported by universal service but also revenues derived from unregulated and unsupported services ~~as well~~ **in the areas for which support is requested**."

Please contact me with any questions.

Sincerely,

Mike Saperstein
Vice President, Law & Policy

cc: Jamie Susskind