



February 22, 2018

***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 Tuesday, February 20, 2018, the undersigned, on behalf of NTCA–The Rural Broadband Association, and Derrick Owens and Gerard Duffy on behalf of WTA–Advocates for Rural Broadband (collectively, the “Associations”), met with Lisa Hone, Pamela Arluk, Victoria Goldberg, Justin Falub, Christopher Koves, and Arielle Roth from the Wireline Competition Bureau to discuss matters in the above-referenced proceeding.

In the meeting, the Associations urged the Federal Communications Commission (the “Commission”) to provide clear and tailored guidance regarding the eligibility of certain expenses for recovery via high-cost universal service fund (“USF”) support and/or regulated interstate rates. To promote the integrity of the USF programs, to ensure effective use of support under a fixed budget, and to provide better direction to the small businesses that operate within these programs, the Associations support delineating explicit limitations with respect to the recoverability of specific expense categories consistent with prior filings and statements by several commissioners. *See Ex Parte* Letter from the Associations to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Dec. 20, 2017) (“December 20 *Ex Parte*”); Commissioners Mignon Clyburn and Michael O’Rielly, *Defining Recoverable Expenses for Rate-of-Return Providers*, Jan. 31, 2018 (available at: <https://www.fcc.gov/news-events/blog/2018/01/31/defining-recoverable-expenses-rate-return-providers>).

The Associations indicated that they have worked in good faith to develop a list of reasonable and effective expense limitations, as well as specifics regarding their scope (USF only, or both USF and regulated interstate rates) and effective periods. *See, e.g.,* December 20 *Ex Parte*. They noted that their members were particularly concerned about the potential retroactive impact of some of the expense limitations apparently under consideration, and upon the impacts of such retroactivity upon future audits. More specifically, the Associations noted that, while an October 2015 Public Notice purported to “remind” carriers that certain expense items were ineligible for recovery via USF in 2015, then-existing rules that are still in effect today only prohibited recovery of *some* of the listed items. Public Notice, WC Docket Nos. 10-90 and 14-58 (rel. Oct. 19, 2015). In fact, the rules in effect then and still today expressly permit recovery of several other expense categories listed in the Public Notice (or are ambiguous or internally inconsistent at best). *See* Comments of NTCA, WC Docket No. 10-90, *et al.* (filed May 12, 2016) (“NTCA May 2016 Comments”), at 10-11.

The Associations then turned to discussing consistent with the prior filings cited above which expense categories were already subject to limitations on recovery even as of October 2015, as compared to those specific categories that should be addressed only prospectively. As one example, the Associations noted there is no question that penalties and fines were already precluded as of the time of the “reminder” in October 2015. But as to several other categories identified in the December 20 *Ex Parte*, the Associations reiterated that any changes in scope from current exclusions should apply only prospectively pursuant to the current rulemaking process. These would include items that were not mentioned at all in the October 2015 “reminder,” but were instead raised only in a March 2016 Further Notice of Proposed Rulemaking. *See Connect America Fund*, WC Docket No. 10-90, *et al.*, Report & Order, Order & Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3234-35 (2016). These would also include a number of items that, while ostensibly identified as part of the October 2015 “reminder,” were and still are authorized for recovery pursuant to rules or orders still in effect today. *See* NTCA May 2016 Comments, at 12-18. The Associations further indicated that any potential changes in scope with respect to prior long-standing cost recovery practices and preclusions – for example, changes related to the scope of what organizational fees are recoverable or precluded – should be considered carefully and not disrupt existing cost recovery practices.

Finally, while the Associations expressed support for clearer guidance regarding the recoverability of specifically delineated expense categories consistent with the discussion above and the December 20 *Ex Parte*, they cautioned against and objected to any far-ranging, open-ended language in either a new rule or order text that would attempt to recast, restate, or recharacterize decades of settled cost recovery standards and jurisprudence. The Associations indicated that the focus should be on promoting clear accountability by providing very direct and plain indication of what expenses are not recoverable through USF and/or rates, rather than rewriting cost recovery policies more broadly in a way that could create, rather than dispel, confusion for small businesses and increase, rather than decrease, complicated compliance risks and burdens.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the rules of the Commission, 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: Lisa Hone  
Pamela Arluk  
Victoria Goldberg  
Justin Falub  
Christopher Koves  
Arielle Roth