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May 13, 2019

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

Re: *Ex Parte* Communication: WC Docket No. 10-90

Dear Ms. Dortch:

On May 10, 2019, Mike Saperstein of USTelecom, Mike Jacobs of ITTA and the undersigned representing WISPA met by telephone with Preston Wise, Legal Advisor to Chairman Ajit Pai regarding the *Order* in the above-referenced proceeding, as well as the pending petitions for reconsideration and applications for review of it, and responsive pleadings thereto.¹

During the call, we focused primarily on the Commission's speed and latency compliance framework. We reiterated our position that the *Order* created a misalignment with respect to Tier 1 non-compliance: the deployment compliance framework imposes only more frequent reporting obligations for missed milestones up to 15% whereas *any* speed and/or latency shortfall – even a one percent miss – would result in an immediate suspension of funding. We explained that suspending funding for a relatively minor shortfall would make it more difficult for CAF recipients to meet buildout milestones and performance obligations going forward.

¹ See *Connect America Fund*, Order, 33 FCC Rcd 6509 (WCB/WTB/OET) (*Order*); see also, e.g., Comments of ITTA – The Voice of America's Broadband Providers, WC Docket No. 10-90 (Nov. 7, 2018) (ITTA Comments); Petition of USTelecom – The Broadband Association, ITTA – The Voice of America's Broadband Providers, and the Wireless Internet Service Providers Association for Reconsideration and Clarification, WC Docket No. 10-90 (Sept. 19, 2018); Reply of USTelecom, ITTA, and WISPA to Opposition to Petition for Reconsideration and Clarification, WC Docket No. 10-90 (Nov. 19, 2018).



To help address this situation, we made the following recommendations:

- If speed and/or latency testing showed a compliance gap of 0-5%, there would be no consequences (i.e., the recipient would not be in Tier 1 status).
- If speed and/or latency testing showed a compliance gap of 5-10%, the recipient would be subject to quarterly reporting until it met the applicable standard, in the same manner that a similar deficiency in deployment milestones would impose quarterly reporting obligations.
- If speed and/or latency testing showed a compliance gap of 10-15%, in addition to ongoing quarterly reporting, the FCC (or USAC operating under the FCC's direction) would provide the recipient with a notice that, unless the compliance gap were reduced to 5% or less within a year, the Commission would then withhold CAF support retroactive to the notice date.

We also made clear that a CAF recipient failing to meet both the speed and latency obligations would be subject to a single non-compliance obligation. In other words, it would not suffer double penalties, one for missing on speed performance and a second for missing on latency performance. Of course, such a recipient would need to comply with both testing thresholds in order to avoid non-compliance obligations.

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,

/s/ Stephen E. Coran
Stephen E. Coran

cc: Preston Wise