August 15, 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 Friday, August 11, 2017, the undersigned, on behalf of NTCA–The Rural Broadband Association ("NTCA"), met with Jay Schwarz, wireline advisor to Chairman Ajit Pai.

NTCA raised the need to address the shortfall in high-cost universal service fund ("USF") support that is undermining the intended effectiveness of recent reforms to the USF programs. Because of the lack of sufficient funding for the Commission's cost model, 71,000 rural locations will receive lower-speed broadband than the model design would have yielded, and nearly 50,000 may see no broadband investment at all. Moreover, as the attached survey results indicate, the USF budget shortfall of $173 million over the next 12 months for cost-based USF recovery will severely harm rural American consumers and businesses in the form of higher prices, lower speeds, and reduced investment by the smaller rural local exchange carriers ("RLECs") dedicated to serving them; due to the impacts of the budget control imposed on cost-based USF and the uncertainty of changes to that mechanism in future, 183 NTCA member RLECs have indicated that they will reduce their broadband investments over the next 12 months by nearly $950,000, on average, and must still charge rates for standalone broadband that are on average far in excess of those paid by urban consumers. NTCA then discussed potential solutions for this budget shortfall and various means of overcoming the serious adverse impacts it is having on rural broadband infrastructure investment and rural consumers and businesses.

As a preliminary matter, NTCA noted that the United States Court of Appeals for the Tenth Circuit upheld the 2011 establishment of a high-cost USF budget based in significant part upon a representation made by the Federal Communications Commission (the "Commission") during appellate litigation that it would conduct "a budgetary review" by the end of 2017. *In re: FCC 11-161*, 753 F.3d 1015, 1060 (10th Cir. 2014). The Commission at the time clearly expected to have implemented its many USF reforms and also to be able to "squeeze" support within the newly limited USF budget by implementing multiple new caps and constraints on RLECs. *See id*. Indeed, since 2011, such caps and constraints on RLEC cost recovery have included expanded corporate operations caps, two variations of caps on operating expenses and capital investments (the latter including both a per-location cap and an overall limit), two variations on eliminating USF support in areas served by unsubsidized competitors, the elimination of safety net additive support, the imposition of a (currently frozen) rate floor, overall limitations on per-line support, the reduction of the authorized interstate rate-of-return, and the reduction of intercarrier compensation revenues that previously provided implicit support without full replacement of those revenues via explicit support.

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Yet, despite these many efforts to root out alleged inefficiencies and promote effective use of USF resources, demand for high-cost USF support currently exceeds the RLEC annual high-cost USF budget by at least $173 million (and by approximately $110 million more, if one counts those RLECs electing model-based support, although these carriers are not subject to a budget control mechanism that affirmatively reduces support they would otherwise have received). Moreover, despite the Commission's defense to the Tenth Circuit that any budgetary shortfall was acceptable because RLECs had the ability "to determine which requests for broadband service are reasonable," *see id*., the Commission has since imposed buildout obligations on RLECs that attach to USF support. In short, RLECs are being asked to do more with less even in the face of affirmative, arbitrary reductions to the support that the Commission's own rules would otherwise say they should receive for their efforts; RLECs nonetheless have strived to build and sustain broadband-capable networks for their consumers and communities even in the face of a budget that is demonstrably insufficient.

In any "budgetary review" to be conducted, the current RLEC cost recovery budget shortfall – notwithstanding the many caps and constraints (or "efficiency measures") already applied to RLEC cost recovery over the past six years – would constitute *prima facie* evidence of the insufficiency of the budget first established in 2011 as further codified in 2016. (To be clear again, these are amounts that the Commission's own USF mechanisms, even as reformed and "made more efficient," indicate are due as support, but for the arbitrary budget control set at 2011 levels of support.) And the harm this years-old RLEC USF budget is causing to rural American consumers and businesses in the form of reduced broadband investment and higher-priced broadband services would constitute an additional compelling exhibit in that budgetary review. In fact, however, no such budgetary review has yet occurred. Rather, notwithstanding the representation to the Tenth Circuit court that a review would be completed before the end of this year, it is NTCA's understanding that the Commission's directive to collect a total of $4.5 billion per year for high-cost USF support will cease as of the end of 2017 in the absence of further instruction to the Universal Service Administrative Company ("USAC"). It is NTCA's further understanding that if the current instruction to USAC lapses, USAC will collect only those amounts reflecting "current demand" – which, in the case of RLEC support, would include a budget control mechanism that artificially "suppresses" USF support demand otherwise permitted by the Commission's own support distribution rules.

Rather than letting the current directive to USAC lapse, NTCA therefore recommends that the Commission direct USAC to continue to collect, at a minimum, the current overall high-cost USF budget of $4.5 billion pending completion of the review contemplated by the Commission's representation to the Tenth Circuit in defending the budgets set in 2011. Particularly as Mobility Fund II and Connect America Fund II auction design and implementation remain works in progress, maintenance of the current instructions pending the kind of thoughtful budgetary review contemplated in the arguments to the Tenth Circuit would appear to be a necessary and prudent course. Moreover, to the extent that this amount were in future periods to exceed then-current demand for high-cost USF (as measured including the budget control that artificially suppresses and reduces RLEC receipts of USF support that the distribution rules would otherwise provide), such additional sums should be used to address the insufficiency in RLEC USF support described above. Once the budgetary review promised by the Commission to the Tenth Circuit is completed, the Commission can then make informed, updated judgments about the "right size" of the high-cost USF budget and its constituent components, and provide revised instructions to USAC regarding the proper level of collections.

As an alternative and/or as a complement to the approach described above, NTCA urged the Commission, at a minimum, to use high-cost USF reserves to fill the budget shortfall, again pending completion of the review contemplated by the Commission's defense of its budget before the Tenth Circuit. Information available in USAC reports indicates that total cash balances within the USF may approach $8 billion as of year-end, and that cash balances for high-cost USF specifically may amount to as much as $2.223 billion as of the end of 2017. *See* USAC FCC Filings, Appendix M03, 4Q2017 (available at: http://www.usac.org/about/tools/fcc/filings/2017/q4.aspx). After setting aside $1.768 billion of the high-cost USF cash balances to fulfill the A-CAM election for the then-remaining nine years of elections consistent with the Public Notice issued by the Wireline Competition Bureau earlier this year, assuming the cash balances represent reserves, this would leave approximately $445 million in high-cost USF resources available as of year-end to address the patent insufficiency of the USF budget for RLEC high-cost support mechanisms for at least some period into the future pending the contemplated budgetary review. *See Wireline Competition Bureau Authorizes 182 Rate-Of-Return Companies to Receive $454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice (rel. Jan. 24, 2017), at n. 12 (indicating that, at the end of 2017, $1.768 billion in reserves will be required to cover the net increase in support for the remaining nine years of the A-CAM model elections).

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

Enclosure

cc: Jay Schwarz

NTCA 2017 USF Budget Control Impact Survey Results

OVERVIEW OF THE SURVEY

In June of 2017, NTCA–The Rural Broadband Association surveyed its members on the impact that the USF budget controls would have on their company and their ability to serve their customers. Responses were received from 183 member companies, a 33% response rate.

SURVEY RESULTS

Q: Is your company receiving non-model-based USF support (CAF-BLS and/or HCLS)?

Yes – 79.7%
No – 20.3%

Q: If your company is receiving non-model-based support, how much (in dollars) is the budget control on such support forecasted to reduce your USF support from July 2017 through June 2018?

Mean	Median
$536,084	$332,852

Q: As a result of your reduction in support, will you be reducing future network investment efforts over the next 12 months?

Yes – 64.0%
No – 36.0%

Q: If yes, how much will the reduction in future investments be ($ value of projects)?

Mean	Median
$943,418	$500,000

Q: If yes, estimate how many customers overall will be denied greater broadband speeds than they receive today due to the declined/delayed future investment?

Mean	Median
854	250

Q: If yes, estimate the PERCENTAGE reduction of your customers to whom you would construct new broadband capable of:

	Mean	Median
10 to 25 Mbps down (%):	34%	25%
26 to 50 Mbps down (%):	31%	10%
51 to 100 Mbps down (%):	30%	5%

Q: If you will be required to charge your customers higher broadband prices because of the reduction in support due to the budget control, how much more do you believe that you will need to charge <u>per month</u> for broadband (whether on a standalone basis or as part of a bundle)?

$0.01 to $5.00:	18.5%
$5.01 to $10.00:	33.8%
$10.01 to $25.00:	33.8%
$25.01 to $50.00:	7.7%
More than $50.00:	6.2%

Q: If you offer standalone broadband, what is your monthly charge for that?

Mean	Median
$83	$72

Q: If you do NOT offer standalone broadband, what do you estimate your standalone broadband rates would be if you offered it given the budget control?

Mean	Median
$126	$120

Q: How much do you believe your standalone broadband product would cost customers if the budget control did not apply?

Mean	Median
$70	$52

Q: Have you received any estimates from advisors regarding the magnitude of the budget controls in future periods (i.e., for periods AFTER the next 12 months?)

Yes – 31.4%
No – 68.6%

Q: If "Yes," what are those estimates for 2018-2019 (stated as a % of USF support)?

Mean	Median
17%	12%

***DISCLAIMER**: Data from the survey has been presented as reported.*

To get more information on this report please contact Rick Schadelbauer at NTCA (703-351-2019, rschadelbauer@ntca.org)