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September 25, 2017

Ex Parte Notice

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

**RE: *Connect America Fund, WC Docket No. 10-90; Developing an Unified
Intercarrier Compensation Regime, CC Docket No. 01-92***

Dear Ms. Dortch:

On Thursday, September 21, 2017, the individuals listed in Attachment A representing Kansas rural broadband providers (the “Kansas Broadband Representatives”) met with Federal Communications Commission Chairman Ajit Pai and his legal advisor, Zenji Nakazawa, following Chairman Pai’s speech at the 2017 Kansas Broadband Conference. The meeting consisted of a question and answer session and discussion of issues impeding the deployment and ongoing provision of broadband services in rural America.

The Kansas Broadband Representatives thanked Chairman Pai for making the digital divide a focus of his administration, and noted they share the view that high-speed broadband can help create jobs and economic growth, increase opportunities for education, and improve access to healthcare in rural America. The Kansas Broadband Representatives explained, however, that a shortfall in universal service fund (“USF”) support caused by the high-cost budget is undermining their efforts to deploy broadband infrastructure and close the digital divide. Furthermore, continuous growth of the budget control mechanism that reduces individual USF disbursements to keep total support within the budget combined with everchanging expense limitations have created significant regulatory uncertainty. The impact of the USF support shortfall has been immediate and widespread, causing rural providers to roll back scheduled broadband deployment plans. Also, as shown in the slide distributed by TCA, 11 Kansas broadband providers will see a \$15 million reduction in 2017 of recovery on investments that have already been made. Without sufficient and predictable support, decreased rural broadband deployment will become the norm, stiffening the digital divide. Additionally, the Kansas Broadband Representatives stated that the USF support shortfall will lead to slower broadband speeds and higher prices for rural Americans, neither of which comport with the universal service principle of reasonable comparability of services and rates.

In light of the problems stemming from the shortfall in USF support, the Kansas Broadband Representatives urged Chairman Pai to direct the FCC to perform a full review of the high-cost budget before the end of this year. The Kansas Broadband Representatives also stated that the

FCC should take immediate action to address the shortfall using broadband reserve funds until the time the Commission completes its review and makes necessary adjustments to correctly size the high-cost budget.

Next, the Kansas Broadband Representatives asked Chairman Pai to provide more details on the FCC's impending plan to begin maintaining USF funding within the U.S. Treasury, rather than in an account controlled by the Universal Service Administrative Company ("USAC"). While the plan has been publicly announced, to date, many questions about its implementation remain unanswered. The high-level aspects of the plan that have been released are very troubling. For instance, the Kansas Broadband Representatives expressed concern over the possibility that USF funds, when moved to the Treasury, could be used to pay down federal government debts unrelated to universal service purposes.¹ Since the USF's inception, funding has been managed and maintained by USAC outside the U.S. Treasury, consistent with the determination that USF funds are not public moneys received for the use of the federal government. If USF funds are ultimately moved to the Treasury, there must be firm conditions and requirements prohibiting their use for anything other than supporting universal service as required by statute. Without such strict conditions, moving USF funding to the Treasury could cause command of the funds to politically spiral out of control, which would result in regulatory uncertainty as to the availability of support at anticipated levels.

Finally, Michael Brigman, President of Kansas Fiber Network ("KFN"), discussed interexchange carriers' ("IXCs") refusal to pay KFN's tariffed rates for tandem switched transport access services, and asked Chairman Pai for the FCC's help in addressing the problem. Mr. Brigman explained that KFN is a competitive tandem provider, and not a terminating carrier, as it neither owns nor operates end offices or serves end users. As such, the FCC's CLEC benchmarking rule does not apply to KFN. Moreover, when the Commission began transitioning intercarrier compensation rates in the *USF/ICC Transformation Order*, it did not address transport charges "where the terminating carrier does not own the tandem."² Mr. Brigman explained that beginning a number of months ago, certain IXCs have refused to pay invoices sent by KFN for tandem switched transport access services. Rather than pay those invoices, which are based on rates in KFN's valid tariff, the IXCs are engaging in unlawful self-help. Mr. Brigman explained that the Commission should confirm that KFN's rates, as well as the rates of other competitive tandem

¹ U.S. Government Accountability Office, *Telecommunications: Additional Action Needed to Address Significant Risks in FCC's Lifeline Program*, GAO-17-538, p. 23 (May 2017) ("In addition to addressing any risks associated with having the funds outside the Treasury, FCC identified potential benefits of moving the funds. For example, FCC explained that having the funds in the Treasury could allow USF payments to be used to offset other federal debts, and would provide USAC with better tools for fiscal management of the funds, including access to real-time data and more accurate and transparent data.").

² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶819 (Nov. 18, 2011) ("[T]ransport charges...where the terminating carrier does not own the tandem, are not addressed at this time."); see also *Parties Asked To Refresh The Record On Intercarrier Compensation Reform Related To The Network Edge, Tandem Switching And Transport, And Transit*, WC Docket No. 10-90, CC Docket No. 01-92, Public Notice, DA 17-863 (Sep. 8, 2017) ("The rate transition adopted in the *USF/ICC Transformation Order* reduced tandem switching and transport charges only when the terminating price cap carrier also owns the tandem in the serving area.").



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providers experiencing the same problem, are valid and failure to pay such rates is a violation of the FCC's rules.

Pursuant to Section 1.1206 of the Commission's rules, this ex parte is being filed using the electronic comment filing system.

Respectfully submitted,

/s/ Catherine Moyer

Catherine Moyer
CEO, Pioneer Communications

cc: Chairman Ajit Pai, ajit.pai@fcc.gov
Zenji Nakazawa, zenji.nakazawa@fcc.gov
Matthew Berry, matthew.berry@fcc.gov



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Attachment A – Meeting Attendees

Angie Schwerdtfeger – Tri-County Telephone
Dale Jones – Tri-County Telephone
Scott Leitzel – Twin Valley Telephone
Brian Boisvert – Wilson Communications
Beau Rebel – Golden Belt Telephone
Brent Cunningham – Cunningham Telephone
Catherine Moyer – Pioneer Communications
Chris Flaherty – Home Communications
Colleen Jamison – State Independent Telephone Association of Kansas
Craig Wilbert – Craw-Kan Telephone
Brian Thomason – Blue Valley Tele-Communications
Dana Pierce – KanOkla Networks
Dion Nero – Alexicon, Inc.
Lee Brown – Pine Telephone (Oklahoma)
Diane Thompson – LICT
Jason Smith – Rainbow Communications
Stacey Brigham – TCA, Inc.
Janet Bathurst – S&A Telephone Company
Jason Pettit – Tri-County Telephone
John Tietjens – Mutual Telephone Company
Kathy Billinger – Peoples Telecommunications
Kendall Mikesell – Southern Kansas Telephone
Kelly Johnson – South Central Telcom
Mendi Anschutz – Nex-Tech
Mary Jane Stankiewicz – Kansas Rural Independent Telecommunications Coalition
Matt Pearce – Moss Adams
Michael Brigman – Kansas Fiber Network
Mike Murphy – Gorham Telephone Company
Malcom Hardage – Alexicon, Inc.
Marlene Sanders – NTCA
Rob McDonald – MT Networks
Becky Richardson – Epic Touch
Shekinah Bailey – RUS
Larry Jones – Chickasaw Telephone (Oklahoma)
Shirley Bloomfield – NTCA
Stacy Simmer – Rainbow Communications
Greg Reed – Wheat State Telephone
Terry Force – Blue Valley Tele-Communications
Todd Houseman – United Telephone Association
Lance Murphy – Gorham Telephone Company
Tonya Murphy – Gorham Telephone Company
Harry Weelborg – Moundridge Telephone
Zack Odell – S&T Telephone
Allison Koch – H&B Communications
Jill Kuehny – KanOkla Networks