



4417 13<sup>th</sup> Street #317  
Saint Cloud, FL 34769  
Ph. (260) 622-5776  
In U.S. (866) 317-2851

---

December 4, 2018

**Via ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: *Connect America Fund*, WC Docket No. 10-90**

Dear Ms. Dortch:

This letter responds to the November 14, 2018 ex parte presentation submitted by NTCA – The Rural Broadband Association (“NTCA”) in the above-captioned proceeding.<sup>1</sup> In sum, the NTCA Letter is a misguided effort to re-write both Title II of the Communications Act of 1934, as amended (the “Act”), and the rules of the Connect America Fund (“CAF”) Phase II reverse auction promulgated thereunder. Following the overwhelming success of competitive providers in the CAF auction, some of which are WISPA members, NTCA’s arguments seek to saddle auction winners with additional obligations not required by long-established law, undermine the Commission’s consideration of long-form applications submitted by auction winners, and delay the deployment of broadband and voice services to unserved rural consumers. The Commission should not be swayed by NTCA’s attempt to re-litigate settled law and auction requirements.

The Commission has recognized that legacy TDM voice subscriptions continue to plummet, and voice-over-IP (“VoIP”) subscriptions and mobile voice subscriptions continue to rise.<sup>2</sup> Data, voice and video services continue to converge as services offered over broadband infrastructure, a fact that the Commission presciently recognized in the 2011 *Transformation Order* when it permitted subsidy recipients to offer voice telephony service over broadband-capable infrastructure.<sup>3</sup> Consumers wanting voice service are voting with their wallets, and are migrating towards services that offer substitute – and improved – functionality. In the *Transformation Order*, the Commission made clear that it would not pigeon-hole CAF funding to one particular technology, but would flexibly allow CAF recipients to offer services that meet

---

<sup>1</sup> See Letter from Michael R. Romano, Senior Vice President, NTCA, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90 (filed Nov. 14, 2018) (“NTCA Letter”).

<sup>2</sup> See *FCC Fact Sheet: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment* (May 17, 2018) at ¶ 32; see also *Voice Telephone Services: Status as of June 30, 2016* (April 2017) at 2.

<sup>3</sup> *Connect America Fund*, 26 FCC Rcd 17663, 17691-17693 (2011), *aff’d sub nom. In re: FCC 11-61*, 753 F.3d 1015 (10<sup>th</sup> Cir. 2014) (“*Transformation Order*”).

the needs of consumers and businesses in their service territories.<sup>4</sup> The Commission cannot allow that flexibility to be undermined.

NTCA first contends that “the Commission or any reviewing state commission must scrutinize the proposal to confirm that the [voice] offering meets the criteria for classification as a telecommunications service.”<sup>5</sup> NTCA then argues that “the Commission cannot simply take at face value a claim that any voice telephony service – for example, one which was recently classified as an information service by one court and which has never been classified as telecommunications service by the Commission – is a telecommunications service merely by virtue of an ambiguous, high-level pledge to offer it ‘on a common carrier basis.’”<sup>6</sup> Although it is not clear, NTCA’s reference to the Eighth Circuit’s holding in *Charter Advanced Services* suggests that the offering of interconnected VoIP service may not constitute “telecommunications service” under the Act.

The Commission’s overall goal is to support technology-neutral, broadband-capable infrastructure and voice telephony services, consistent with consumers’ needs. Indeed these were the Commission’s specific conclusions in the *Transformation Order*.<sup>7</sup> There, the Commission concluded that, based on “changes in technology and in the marketplace,” the CAF-supported service is “voice telephony service.”<sup>8</sup>

We determine that it is appropriate to describe the core functionalities of the supported services as “voice telephony service.” . . . Given that consumers are increasingly obtaining voice services over broadband networks as well as over traditional circuit switched telephone networks, we agree with commenters that urge the Commission to focus on the *functionality* offered, not the specific technology used to provide the supported service.

\* \* \*

The decision to classify the supported services as voice telephony should not result in a lower standard of voice service: Many of the enumerated services are universal today, and we require eligible providers to continue to offer those particular functionalities as part of voice telephony. *Rather, the modified definition simply shifts to a technologically neutral approach, allowing companies to provision voice service over any platform, including the PSTN and IP networks.* This modification will benefit both providers (as they may invest in new infrastructure and services) and consumers (who reap the benefits of the new technology and service offerings). Accordingly, to promote technological neutrality while ensuring that our new approach does not result in lower quality offerings, we amend section 54.101 of the Commission rules to specify that the

---

<sup>4</sup> See *id.* at 17692.

<sup>5</sup> NTCA Letter at 2.

<sup>6</sup> *Id.* (citation omitted).

<sup>7</sup> See *Transformation Order* at 17672

<sup>8</sup> *Id.* at 17692.

*functionalities of eligible voice telephony services include voice grade access to the public switched network or its functional equivalent....*<sup>9</sup>

Notably, NTCA challenged this conclusion, and that challenge was rejected by the reviewing court.<sup>10</sup> It is clear that it is the *function* of the service – its ability to provide voice service irrespective of technology, and its offering to the public on a common carrier basis – that is critical to the Commission’s and state commissions’ analyses in considering ETC applications. WISPA is confident that the Commission and state commissions can adequately perform their statutorily defined duties without being misled that the lack of a Commission decision on whether or when VoIP is a telecommunications service or an information service impinges on the ability of a provider to offer such a service consistent with the Act and state laws, or somehow bears on their authority to designate CAF recipients as ETCs.

Apart from this holding concerning voice service, NTCA also would have the Commission ignore significant precedent developed over decades. While NTCA ostensibly argues that an ETC must offer a particular sort of standalone telecommunications service to qualify for ETC status, the Commission has instead held (and courts have upheld) the ability of a service provider to offer a common carrier (i.e., telecommunications) service if it holds itself out indiscriminately to serve a particular class of users with that service – including standalone broadband service.<sup>11</sup> Indeed, even though the Commission has classified broadband as an information service,<sup>12</sup> some rural LECs “choose to offer broadband Internet access transmission service as a common carriage service” in order to receive universal service support for those services.<sup>13</sup> Not surprisingly, NTCA is not suggesting that those providers’ ETC designations should be revoked for doing so. Neither the Commission nor state commissions should give heed to efforts to disproportionately burden recent CAF auction winners based on a selective, simplistic and strained reading of the Act and its interpretations.

As its second argument, NTCA asks the Commission to make CAF winners’ long-form technical information available to interested parties pursuant to a protective order and then subject the technical showings to “a brief window for review and comment.”<sup>14</sup> Its stated reasons for proposing this new process do not withstand scrutiny. First, NTCA essentially is asking the Commission to reconsider its decision in the *Auction Procedures Public Notice* stating that “[w]e will treat all the information submitted with this second [long-form] submission as confidential

---

<sup>9</sup> *Id.* (citations and footnotes omitted) (emphases added). Section 54.101(a)(1) states that “[e]ligible voice telephony services must provide voice grade access to the public switched telephone network *or its functional equivalent.*” (Emphasis added).

<sup>10</sup> See *In Re: FCC 11-161*, 753 F.3d 1015, 1044-1048 (10<sup>th</sup> Cir. 2014).

<sup>11</sup> See *Federal-State Joint Bd. On Universal Service*, 16 FCC Rcd 571, 573-74, (2000), *aff’d sub nom. U.S. Telecom Ass’n v. FCC*, 295 F.3d 1326, 1332-33 (D.C. Cir. 2002); see also *Nat’l Ass’n of Regulatory Util. Comm’rs v. FCC*, 525 F.2d 630,641 (D.C. Cir. 1976).

<sup>12</sup> See *Restoring Internet Freedom Order*, 33 FCC Rcd 311 (2017).

<sup>13</sup> See *Connect America Fund*, 31 FCC Rcd 3087, 3119-24 (2016).

<sup>14</sup> NTCA Letter at 3.

and will withhold it from routine public inspection.”<sup>15</sup> The time for seeking reconsideration of the *Auction Procedures Public Notice* has long since passed, and NTCA should be barred from asking the Commission to re-visit its decision. Even so, the Commission made clear that parties could avail themselves of existing rules that permit the filing of requests for public inspection.<sup>16</sup> NTCA has not explained why existing rules, adopted to protect the kind of trade secret information that would be revealed, do not establish appropriate processes.

Second, NTCA has provided no justification for the public to “augment the Commission’s analysis” of technical proposals.<sup>17</sup> The standards and processes adopted in the *Auction Procedures Public Notice* establish rigorous requirements for long-form applicants,<sup>18</sup> extensive vetting by Commission staff,<sup>19</sup> certifications by both applicants<sup>20</sup> and professional engineers,<sup>21</sup> and severe enforcement penalties assessable before funding is authorized<sup>22</sup> and after.<sup>23</sup> NTCA has not explained why the Commission staff requires a “second set of eyes”<sup>24</sup> to perform its functions or why the Commission should reverse course and reconsider the processes and safeguards it established in the *Auction Procedures Public Notice*. Nor does NTCA advocate for anything approaching the existing CAF safeguards for similar subsidized network builds conducted by rural LECs using new technologies.

WISPA shares NTCA’s view that Commission staff must be assured that technical proposals are able to meet the required performance obligations and build-out milestones. WISPA and its members are heavily invested in the CAF program and have every reason to see the program exceed expectations. WISPA believes that the Commission, informed by an extensive record in which WISPA, NTCA and others contributed, has crafted a comprehensive process that properly balances the interests of CAF auction winners, other stakeholders, and the American public.

---

<sup>15</sup> See *Public Notice*, “Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903,” 33 FCC Rcd1428, 1515 (2018) (“*Auction Procedures Public Notice*”) (footnote omitted).

<sup>16</sup> See *id.* at n.477.

<sup>17</sup> NTCA Letter at 3.

<sup>18</sup> See *Auction Procedures Public Notice* at 1514-18.

<sup>19</sup> See *id.* at 1514 (“If a long-form applicant submits a technology and system design description that lacks sufficient detail to demonstrate that the long-form applicant has the technical qualifications to meet the relevant Phase II obligations, the long-form applicant will be asked to provide further details about its proposed network.”)

<sup>20</sup> See *id.* at 1513.

<sup>21</sup> See *id.* at 1514.

<sup>22</sup> See *id.* at 1520-21.

<sup>23</sup> See *id.* at 1521-22.

<sup>24</sup> NTCA Letter at 3.

Pursuant to Section 1.1206 of the Commission's rules, this letter is being filed electronically in the above-referenced docket.

Respectfully submitted,

/s/ Claude Aiken  
President & CEO  
[caiken@wispa.org](mailto:caiken@wispa.org)

cc: Preston Wise  
Kris Monteith  
Chelsea Fallon  
Alex Minard  
Katie King  
Heidi Lankau