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

Re: Modernizing the E-rate Program, WC Docket No. 13-184
Connect America Fund, WC Docket No. 10-90

Dear Ms. Dortch:

On December 2, 2014, Christianna Barnhart of Charter Communications, Jordan Goldstein of Comcast Corporation, and Jennifer McKee and I from the National Cable & Telecommunications Association (NCTA), discussed potential revisions to the rules governing the E-rate program and high-cost universal service support with Rebekah Goodheart, Legal Advisor to Commissioner Clyburn, Priscilla Argeris, Legal Advisor to Commissioner Rosenworcel, Nick Degani, Legal Advisor to Commissioner Pai, and Amy Bender, Legal Advisor to Commissioner O'Rielly. On December 4, 2014, Ms. Barnhart, Mr. Goldstein, and I spoke by phone with Ms. Argeris to follow up on the discussion outlined below regarding the E-Rate program.

E-rate. We encouraged the Commission to follow the approach taken in the universal service rural healthcare program by limiting the amount of support that is available annually for construction of new infrastructure by schools and libraries. In particular, we advocated limiting the amount of support that is available annually for infrastructure to "ensure that the Fund does not devote an excessive amount of support to large up-front payments for [applicants'] self-construction, which could potentially foreclose [applicants'] ability to use the Fund for monthly recurring charges for broadband services."[1] As the Commission recognized in the rural health care context, placing an annual cap on this support avoids placing "undue pressure on the Fund."[2] We explained that the need for such limits was particularly urgent because the E-rate program soon may be funding construction projects in which the non-discounted portion of the costs, which is not paid for by E-rate, may be as low as 5 percent. In contrast, in the rural healthcare program, the Commission decided to limit total support for self-construction and require recipients to pay 35 percent of the construction cost to limit demand for construction funding and ensure the ability of the program to cover recurring charges for broadband services.

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1 *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16713, ¶ 75 (2012).

2 *Id.* at 16714, ¶ 75.

We also encouraged the Commission to adopt other safeguards that are currently used in the rural healthcare program, including requiring a demonstration that this option is the most cost-effective method. In making this determination, the Commission must ensure that applicants conduct an apples-to-apples comparison of the costs of self-provisioning versus purchasing provider-offered services, taking into account all of the costs associated with activating, maintaining and managing high-speed broadband connections. In addition, the Commission should require schools and libraries that seek funding for self-provisioning also to include a request for bids on provider-offered services for comparison purposes.

Finally, we discussed the need to ensure that the inclusion of state matching funds in an E-rate project does not preclude potential service providers from bidding on the project or tip the scales in favor of particular types of companies during the bidding process. States should not be able to impose additional eligibility requirements beyond those in the E-rate program, such as requiring the applicant to select service through a state contract, or requiring that a selected provider obtain eligible telecommunications carrier status or be certificated by the state commission. Such eligibility requirements would frustrate the Commission's goal of promoting competition among E-rate providers to drive down prices for schools and libraries and the E-rate program.

High-Cost Support. With respect to the Connect America Fund, we questioned the basis for providing price cap local exchange carriers (LECs) with "flexibility" not to serve a percentage of the areas for which they elect to receive model-based support pursuant to the right of first refusal. Allowing price cap LECs to receive billions of dollars in subsidies that would still leave tens of thousands of homes unserved is inconsistent with the goal of achieving universal coverage and at odds with the Commission's rationale for providing these companies with exclusive access to this funding. To the extent such flexibility is necessary to address inaccuracies in the cost model, we encouraged the Commission to permit price cap LECs to avoid serving no more than 1-2 percent of locations in a state.

Furthermore, to the extent these LECs are not required to serve all the locations in supported areas, there should be a reduction in support that fully reflects the savings they will experience from not constructing facilities to the most expensive portions of their territories. In particular, we expressed support for proposals advanced by the American Cable Association in its *ex parte* letter filed November 26, 2014.[3] Reducing support by a lesser amount, such as the average cost of serving a location in a state, results in a windfall to the LECs and is an inexcusable waste of funding provided by American consumers.

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[3] Letter from Thomas Cohen, Kelley Drye & Warren, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, at 5-6 (filed Nov. 26, 2014) (identifying multiple options for calculating an appropriate reduction in support).

In the meetings with Ms. Goodheart and Ms. Bender, we also encouraged the Commission to ensure that the Wireline Competition Bureau implements the Commission's directive to identify rural LEC study areas where an unsubsidized competitor offers service to 100 percent of customers for purposes of its rule eliminating high-cost support in such areas. The Commission did not require any evidentiary showing by competitive providers when it made the decision to eliminate support in these areas over three years ago and there is absolutely no basis for now requiring such a showing as a prerequisite to applying this rule, as advocated by NTCA.[4] There is ample information available to the Bureau to make an assessment that competitive service is available throughout a study area and once the Bureau makes such a determination, the burden should fall on the rural LEC to explain why the public interest would be served by continuing to provide federal subsidies.

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris

cc: R. Goodheart
P. Argeris
N. Degani
A. Bender

[4] *See, e.g.,* Letter from Michael Romano, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Dec. 3, 2014)