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March 11, 2016

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 201554

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

The National Cable & Telecommunications Association (NCTA) submits this brief response to the proposal recently submitted by CenturyLink and Frontier in the above-referenced proceeding.[1] Notwithstanding the fact that price cap LECs already have received exclusive access to $9 billion in high-cost support through Connect America Fund (CAF) Phase II, CenturyLink and Frontier are now asking for an additional $175 million annually which they assert will be spent on maintaining and repairing their voice networks in certain remote locations. For all the reasons explained below, the proposal should be rejected.

At a time when the Commission repeatedly has acknowledged the importance of providing all Americans with access to broadband, the notion of spending hundreds of millions of consumers' dollars on a program that does not deliver broadband to a single home should be a non-starter for the Commission. To be clear, as we discuss more fully below, NCTA does not oppose spending universal service high-cost support in the areas identified by the LECs. But any additional money for these areas should be distributed solely through the competitively and technologically neutral Remote Areas Fund the Commission adopted in 2011 for the express purpose of bringing broadband access to these remote areas,[2] not through a new ad hoc fund for incumbent LEC voice services.[3]

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1 Letter from Charles Keller, Counsel to CenturyLink and Frontier, to Marlene H. Dortch, WC Docket No. 10-90 (filed Feb. 23, 2016) (Keller Letter).

2 Unlike the funding in CAF Phases I and II, which to date have been made available only to price cap incumbent LECs, the Commission noted that it "do[es] not anticipate restricting the technology that can be used for remote area support. To the contrary, we seek to encourage maximum participation of providers able to serve those most difficult to reach areas." *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17839, ¶537 (2011) (*CAF Order*). The Commission should adopt this common sense approach in the Remote Areas Fund, rather than considering CenturyLink and Frontier's requests to perpetuate incumbent LEC-only support.

3 The letter seems to assume that the Commission has legal authority to create a new support mechanism solely for incumbent LEC voice services, but we think such an assumption is highly questionable given that such services no longer are "subscribed to by a substantial majority of residential customers." *See* 47 U.S.C. 254(c)(1)(B).

The fundamental argument made by CenturyLink and Frontier is that absent these additional subsidies, they will be unable to maintain and repair the voice network that now serves these remote areas.[4] But the LECs have offered no evidence to support this assertion. In particular, they have provided no information on how much they spend on maintenance and repair in these areas today or how much they plan to spend going forward. Nor have they provided any evidence that the revenues they generate in these states are insufficient to cover these costs or that there will be some change that renders them insufficient.[5] Finally, they have offered no information to suggest that they are not earning a reasonable return on their investment in these states. In short, there is nothing in the letter that justifies the relief requested.

Compounding this evidentiary vacuum is a lack of accountability. Unlike the CAF Phase II money they received, this new money seems to be untethered from any obligation. Indeed, CenturyLink and Frontier have not even committed to spend the money they are seeking in the areas where they suggest it is necessary. Nor have they proposed to provide the Commission with any information regarding how the money is spent or offered any suggestion as to what would happen if any portion of the money ultimately proved to be unnecessary for maintaining the relevant facilities.

CenturyLink and Frontier argue that their request for voice support in these remote areas is appropriate because these areas previously were covered by legacy support, but that such legacy support no longer is available because they are now receiving support pursuant to the CAF Phase II program.[6] The short answer to this argument is that the terms of CAF Phase II were well understood by the price cap LECs at the time they were given an exclusive right of first refusal to receive all the support offered in their territories.[7] When CenturyLink and Frontier voluntarily elected to receive hundreds of millions of dollars annually from CAF Phase II last year, they did so with full knowledge that they were taking on significant deployment obligations and that they would lose legacy support.

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[4] Keller Letter at 2.

[5] To the contrary, these companies have been quick to tell Wall Street that CAF Phase II has generated a significant windfall because they will not need to invest their own money to satisfy the deployment obligations. *See, e.g.*, Telecompetitor, *EVP: Frontier Video Launch Planned This Year* (Sept. 17, 2015) ("Frontier won't be contributing additional capital of its own to meet its build-out requirements but said that instead the company expects the CAF funding to cover those costs. The revenue impact could be $100 million annually . . . ."), at http://www.telecompetitor.com/evp-frontier-video-launch-planned-this-year/. *See also* Telecompetitor, *CFO: Windstream CAF Impact Could be $40 Million Annually* (Sept. 11, 2015) ("The company apparently expects the CAF funding to virtually cover the full capital expense of bringing broadband to the target areas. 'The capital expenditure requirements of this program are funded by the incremental receipts,' said [CFO Bob] Gunderman." at http://www.telecompetitor.com/cfo-windstream-caf-impact-could-be-40-million-annually/.

[6] Keller Letter at 2-3.

[7] *CAF Order*, 26 FCC Rcd at 17727, ¶ 166 ("Second, using the cost model, the Commission will offer each price cap LEC annual support for a period of five years in exchange for a commitment to ***offer voice across its service territory within a state*** and broadband service to supported locations within that service territory, subject to robust public interest obligations and accountability standards." (emphasis added)).

Given the complete absence of evidence demonstrating that the LECs are unable to recover their costs, any suggestion that the requirement to continue providing voice service in these areas constitutes an illegal unfunded mandate does not withstand scrutiny. But even if the LECs had presented evidence suggesting that there was a serious problem that required the Commission's attention, the Commission already has developed a waiver process to address such situations. Specifically, the Commission recognized when it adopted major reforms to the universal service and intercarrier compensation regimes in 2011 that there could be unanticipated consequences for individual companies. Consequently, at the urging of the incumbent LECs, it created a waiver process specifically designed to ensure that there was no harm to consumers as a result of these reforms.[8] That process provides any carrier that believes it is unduly burdened by the Commission's new regime, including CenturyLink and Frontier, the opportunity to demonstrate that additional high-cost support is necessary. Rather than providing all of these companies with additional support without any evidence that it is necessary, the Commission should require individual LECs to demonstrate that they meet the requirements for a waiver before providing any additional support.[9]

It was well understood at the time of the National Broadband Plan that there would be significant challenges to providing broadband in some of the most remote areas of the country and that the Commission likely would have to consider alternatives to traditional wireline technology.[10] For that very reason, the Commission stated in the 2011 *CAF Order* that it would create a special fund, available to all technology platforms, solely focused on bringing broadband to these areas.[11] Had the Commission promptly moved to implement the Remote Areas Fund, customers in these areas would be beginning to experience broadband for the first time, rather than worrying about whether the incumbent LECs will continue to provide voice service.[12]

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8 *CAF Order*, 26 FCC Rcd at 17840, ¶ 540 ("[A] carrier seeking such waiver must demonstrate that it needs additional support in order for its customers to continue receiving voice service in areas where there is no terrestrial alternative. We envision granting relief only in those circumstances in which the petitioner can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice services . . . .").

9 As part of any such showing, a LEC should be required to demonstrate that voice service is not available from another carrier, including a mobile wireless carrier. While the Commission generally has not considered mobile wireless availability as a factor in determining whether an area has broadband for purposes of CAF eligibility, the availability of mobile wireless voice service should disqualify an area from receiving additional voice-only support. The LECs have provided no information on the availability of mobile wireless voice (or broadband) service in the areas where they are seeking support.

10 CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (2010) at 150 ("The FCC should consider alternative approaches, such as satellite broadband, for addressing the most costly areas of the country to minimize the contribution burden on consumers across America.").

11 *CAF Order*, 26 FCC Rcd at 17675, ¶ 30 ("We allocate at least $100 million per year to ensure that Americans living in the most remote areas in the nation, where the cost of deploying traditional terrestrial broadband networks is extremely high, can obtain affordable access through alternative technology platforms, including satellite and unlicensed wireless services. . . . We expect to finalize the Remote Areas Fund in 2012 with implementation in 2013.").

12 Exacerbating this situation is the fact that the Commission has collected $2 billion more in contributions than it has distributed, placing that money in a USAC reserve fund. The Commission's decision to hold this much

In conclusion, the Commission has no evidence supporting the incumbent LECs' claims and no basis for granting the requested relief. Furthermore, even if such evidence had been presented, the proposal would still be an inferior solution to implementation of the Remote Areas Fund. Accordingly, the Commission should reject the incumbent LECs' proposal and begin implementing the Remote Areas Fund immediately.

Respectfully submitted,

/s/

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money in a reserve fund while doing nothing to implement the Remote Areas Fund is impossible to reconcile with its stated desire to bring broadband access to all Americans.