

Communications  
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October 14, 2011

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

Dear Ms. Dortch:

**RE: Ex Parte Notice. In the Matter of Connect America Fund; A National Broadband Plan for Our Future. High-Cost Universal Service Support; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up. WC Docket Nos. 10-90, 05-337; 07-135; 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45.**

On October 13, 2011, Debbie Goldman, CWA Telecommunications Policy Director, spoke via telephone with Michael Steffen, Special Counsel, Office of General Counsel, regarding Universal Service Fund (USF) High-Cost Fund/Intercarrier Compensation reform.

Ms. Goldman emphasized the following points:

**Intercarrier Compensation Reform.** Since ICC represents 10 to 30 percent of carrier revenue, the Commission must ensure that as access rates come down, carriers have an opportunity to recover lost revenue in order to protect customers from service degradation or delayed investment in advanced networks. Access charge reductions could result in as much as \$9 billion in consumer welfare in reduced charges for connecting long-distance and wireless calls.<sup>1</sup> An adequate access recovery mechanism would allow carriers to assess a modest annual fee on residential and business subscribers, coupled with additional funding from the Universal Service Fund. To protect consumers, the Commission should impose a cap in the range of \$30 on the total monthly bill (including all fees and assessments) for residential voice customers.

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<sup>1</sup> Testimony of Kathleen Q. Abernathy, Frontier Communications, Hearing of Senate Committee on Science, Commerce, and Transportation, "Universal Service Reform – Bringing Broadband to All Americans," Oct. 12, 2011.

**CAF Support for Price Cap Areas – Right-of-First Refusal to Incumbent Local Exchange Carriers.** The incumbent LEC should be provided the right-of-first refusal to accept or decline baseline support, followed by a competitive bidding process. Providing the incumbent LEC the right-of-first refusal makes the most efficient and expeditious use of limited capital to spur broadband build-out to unserved rural areas by allowing the existing carrier to leverage its current network plant and equipment, technical and market knowledge, skilled workforce, and customer relations to expand broadband to areas already served by its voice network. Most important, it provides the best means to protect consumers from stranded investment and market exit by a new entrant who, after winning a competitive bid, might default on its obligations at the same time that the current incumbent, having lost its subsidy, either exited the area or reduced network investment, leaving customers without quality, affordable voice and broadband services. Ten years is the minimum time frame for allocating USF High-Cost support to ensure that public funding supports continuous upgrading of networks, rather than just hopping from one carrier to another.

**Maintain Carrier-of-Last Resort Obligations.** As the Commission has long recognized, voice telephony is essential to public health, safety, and welfare. The Commission assumes enormous responsibility as it transforms the system of universal service support from one that subsidized incumbents with carrier-of-last resort obligations to one based on a more competitive, procurement model of support. The troubling fact is that in some, perhaps many, places the incumbent carrier will likely either not be able or choose not to maintain a quality voice network without USF and ICC support. This is the danger of the competitive path that the Commission appears determined to take. Therefore, to minimize risk, the Commission should adopt rules that incent incumbent carriers to exercise their ROFR and seek USF support. Most important, the Commission should *not* adopt any provision that would eliminate state Commissions’ abilities to require incumbent carriers to meet carrier-of-last resort obligations. With such obligations in place, incumbents would have greater incentive to exercise their ROFR, minimizing the risks of stranded investment and stranded customers, while facilitating upgrading wired networks.

**Public Interest Obligations.** Commission must make sure that “[p]roviders that benefit from public investment in their networks should be subject to clearly defined obligations associated with the use of such funding.”<sup>2</sup> The Commission must make explicit the public interest obligations that every USF or future CAF recipient must meet, including but not limited to the following requirements:

- Maintain high standards of service quality and data reporting on service quality and employment measures. The Commission should re-institute the Commission’s service quality ARMIS reporting requirements as well as require recipients of support to meet specific broadband build-out milestones with specified bandwidth requirements, and to provide detailed reporting on build-out, speeds, price, and usage.

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<sup>2</sup> USF/ICC NPRM, p. 90.

- Continue to provider operator services and directory assistance.
- Connect all schools, libraries, and other community anchor institutions.
- Require stringent compliance with all labor laws and respect for workers' rights. For example, the Commission should make explicit that it encourages USF recipients to engage in sound labor practices, modeled on language from OMB Circular M-09-15: "Encouraging sound labor practices: The federal government invests substantial resources in enforcing wage and hour, occupational safety and health, and collective bargaining laws, to ensure that American workers are safe and treated fairly. All other things being equal, agencies ... should seek to support entities that have a sound track record on these issues and are creating good jobs."<sup>3</sup> Consistent with other federal programs, the Commission should make explicit that USF funds "shall not be used to assist, promote or deter union organizing."<sup>4</sup>

Sincerely,



Debbie Goldman  
Telecommunications Policy Director  
Communications Workers of America

cc: Michael Steffen

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<sup>3</sup> Memorandum from Peter Orszag, Director, Office of Management and Budget, Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009, OMB Circular 04-09-15, April 3, 2009.

<sup>4</sup> Federal statutes and regulations for job training, Medicare, and Head Start programs all contain similar provisions. See 42 USC Section 9839 subsection (e) (Head Start "funds appropriated to carry out this sub-chapter shall not be used to assist, promote, or deter union organizing"); 42 USC 1395x(v1N) ("Medicare regulations stipulate that "in determining reasonable costs...costs incurred for activities directly related to influencing employees respecting unionization may not be included."); 29 USC Sec 181(b)(7) (The Workforce Investment Act states: "No impact on union organizing. – Each recipient of funds under this title shall provide to the Secretary assurances that none of such funds will be used to assist, promote, or deter union organizing.")