March 6, 2012

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

Re: *Ex Parte* Communication: WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208

Dear Ms. Dortch:

The purpose of this letter is to propose an approach that the signatories believe, when combined with other measures, will help facilitate achievement of the goals of the Connect America Fund ("CAF") Phase I incremental support mechanism adopted in the *USF/ICC Transformation Order*.[1] The CAF Phase I mechanism was specifically designed to "provide an immediate boost to broadband deployment in areas that are unserved by any broadband provider."[2] The Commission agreed to distribute up to $300 million in incremental support to spur the immediate deployment of broadband to as many unserved locations as possible. As it stands now, however, many unserved consumers are precluded from the benefits of this program because of problems with the eligibility criteria associated with the incremental support program.[3] To remedy this situation and to maximize the number of unserved locations that are able to obtain broadband service quickly, the signatories propose modifications to the CAF Phase I incremental support program. If these modifications are accompanied by reform that replaces the $775 per served location deployment requirement with an appropriately targeted accountability mechanism, the impact of the Phase I incremental support program – and the corresponding benefits to consumers – will be greatly enhanced

Under the current rules, all census blocks on the most current version of the National Broadband Map ("NBM") containing at least one location shown as served by fixed broadband

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[1] *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*USF/ICC Transformation Order*").

[2] *USF/ICC Transformation Order* at ¶ 137.

[3] Several of these problems were identified in the petitions for reconsideration of the *USF/ICC Transformation Order* filed by the Independent Telephone & Telecommunications Alliance ("ITTA") and jointly by Frontier Communications Corp. and Windstream Communications, Inc. *See* Petition for Reconsideration of the Independent Telephone & Telecommunications Alliance, WC Docket Nos. 10-90, *et al.* (filed Dec. 29, 2011); Frontier Communications Corp. and Windstream Communications, Inc. Petition for Reconsideration and/or Clarification, WC Docket Nos. 10-90, *et al.* (filed Dec. 29, 2011).

with a minimum speed of 768 kbps downstream and 200 kbps upstream are excluded from eligibility for CAF Phase I support.[4] Eligible census blocks cannot contain even one served location, yet the signatories' experience has shown that many unserved locations are in partially-served census blocks.[5]

The problem with partially-served census blocks takes two forms: (1) census blocks that are shown on the NBM to be partially served; and (2) census blocks that are shown on the NBM to be entirely served but are, in fact, at most only partially served. With respect to the first problem, the many unserved consumers who live in census blocks shown on the NBM as partially served are precluded by the current rule from benefitting from CAF Phase I incremental support even though the NBM shows they do not have availability. In the second case, unserved consumers are not allowed to benefit because the NBM does not accurately reflect fixed broadband service areas and may indicate that a census block is completely served by a fixed broadband provider when, in reality, the fixed broadband provider only serves a portion of the census block.

The straightforward, administratively-simple modifications explained below would greatly expand the benefits of the Phase I program by addressing the problematic situations described above. By increasing the number of census blocks eligible to receive CAF Phase I incremental support, the modifications would help to immediately extend robust, scalable broadband to greater numbers of unserved Americans.

Census Blocks Containing Unserved Locations Where the ILEC Is the Only Provider

In some census blocks, the relevant incumbent local exchange carrier ("ILEC") is the only fixed broadband provider. The reporting methodology used to create the NBM indicates that an entire census block is served by the ILEC even if only a single location in that census block is able to receive broadband. Consequently, many census blocks are shown as fully served when, in fact, the ILEC serves only a part of the census block. Under the current rules, the ILEC is prohibited from using CAF Phase I support to deploy broadband to those unserved locations.

The signatories propose that in census blocks where the ILEC is the only fixed broadband provider, the ILEC should be permitted to use CAF Phase I support to serve locations it does not currently serve, subject to the following requirement. The ILEC shall provide written certification by an officer of the company that the census block is not currently fully served and that it intends to deploy broadband to some or all of the unserved locations in the census block using CAF Phase I support.[6] Such certification shall be provided at the time the ILEC provides notice to the Commission, the Administrator, and the relevant state identifying the amount of

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[4] *USF/ICC Transformation Order* at ¶ 146.

[5] Often, a few subscribers in a census block are reached by the edge of a network located in an adjacent census block. *See, e.g.,* Letter and Attachment from Jeffrey S. Lanning, Assistant Vice President, CenturyLink, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, *et al.* (filed Jan. 27, 2012).

[6] A list of the number of locations in each partially-served census block to which broadband is deployed using CAF Phase I support will be provided as part of the annual certification process pursuant to section 54.313 of the Commission's rules. 47 C.F.R. § 54.313.

CAF Phase I support it wishes to accept and the areas by wire center and census block in which it intends to deploy broadband in whole or in part.[7]

Census Blocks Clearly Identified as Partially-Served on the NBM

Some census blocks are shown on the NBM as being served by a non-ILEC fixed broadband provider but the data supporting the NBM clearly identifies that the non-ILEC provider serves only part of the census block. Under the current rules, those census blocks are "stranded" – they are ineligible for use of CAF Phase I support. To remedy this situation and to assist in quickly bringing broadband to more unserved consumers, the signatories propose that CAF Phase I support recipients be permitted to use CAF Phase I support to deploy broadband to some or all of the unserved locations in those census blocks, subject to the following requirement. The CAF Phase I support recipient shall provide written certification by an officer of the company that it intends to use CAF Phase I support to deploy broadband only to unserved locations in the partially-served census block. Such certification shall be provided at the time the recipient provides notice to the Commission, the Administrator, and the relevant state identifying the amount of CAF Phase I support it wishes to accept and the areas by wire center and census block in which it intends to deploy broadband in whole or in part.

Other Partially-Served Census Blocks

In some situations, the NBM is not detailed and/or accurate enough to properly identify census blocks that are only partially served by a non-ILEC fixed broadband provider. For example, the NBM may show fixed broadband availability in one hundred percent of a coverage area defined as a 360 degree circle with no exceptions or the NBM may define the boundaries of a non-ILEC fixed broadband network as all locations within entire counties. The signatories propose that in those situations, and in any others where a CAF Phase I support recipient has reason to believe that the NBM does not accurately reflect that a census block is only partially-served, the CAF Phase I support recipient should have the opportunity, subject to the following requirements, to use CAF Phase I support to deploy broadband to unserved locations in the census block.

The signatories propose that for any particular census blocks, a CAF Phase I support recipient be permitted to provide written certification by an officer of the company that to the best of the CAF Phase I support recipient's knowledge the NBM is not accurate and that there are unserved locations in the census blocks. Such certification shall be provided at the time the recipient provides notice to the Commission, the Administrator, and the relevant state identifying the amount of CAF Phase I support it wishes to accept and the areas by wire center and census block in which it intends to deploy broadband. Such certification may, but is not required to be, accompanied by consumer declarations or other supporting evidence.[8] To the degree that the certification is accompanied by such evidence, the CAF Phase I support recipient's certification cannot be rebutted for the relevant area. The signatories suggest that the Commission post a searchable list of all census blocks for which certifications have been provided on its websites.

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[7] Such notices are due within 90 days of being informed of the amount of incremental support the ILEC is eligible to receive. *USF/ICC Transformation Order* at ¶ 146.

[8] Supporting evidence may take the form of a declaration or affidavit by a consumer located in the relevant census block indicating that he or she is not able to obtain broadband service at the requisite speeds from any provider.

Fixed broadband providers shall then have thirty (30) days to respond to the CAF Phase I support recipient's certification when it has not been accompanied by a consumer declaration or other supporting evidence for the relevant area. The fixed broadband provider will be deemed to have successfully rebutted the CAF Phase I recipient's assertion if the fixed broadband provider provides a certification by an officer of the company stating that the company is capable of providing service at requisite speeds to all locations in the entire relevant area and such certification is accompanied by one or more consumer declarations. Each consumer declaration shall state that the signatory is currently, or has in the past, obtained broadband service at the requisite speeds from the fixed broadband provider within the relevant area. If a fixed broadband provider fails to provide the appropriate certification and/or consumer declaration(s) within thirty (30) days, the CAF Phase I support recipient shall be free to use CAF Phase I support to deploy broadband to unserved locations in the census block at issue.

The signatories urge the Commission to expeditiously adopt the CAF Phase I program modifications described herein. These modifications represent a straightforward way to help ensure that the CAF Phase I incremental support program achieves its full promise and that consumer benefits in the form of accelerated broadband deployment to the greatest number of unserved locations are realized.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed electronically in the above-referenced dockets.[9] Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,

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[9] 47 C.F.R. § 1.1206.

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