NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
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March 13, 2012

***Ex Parte* Notice**

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

***Connect America Fund,* WC Docket No. 10-90; *A National Broadband Plan for Our Future,* GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers,* WC Docket No. 07-135; *High-Cost Universal Service Support,* WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime,* CC Docket No. 01-92; *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45; *Lifeline and Link-Up,* WC Docket No. 03-109; *Universal Service Reform – Mobility Fund,* WT Docket No. 10-208**

Dear Ms. Dortch:

On Monday, March 12, 2012, the undersigned met on behalf of the National Telecommunications Cooperative Association ("NTCA") with Angela Kronenberg, Wireline Legal Advisor to Commissioner Mignon Clyburn, to discuss matters related to the above-referenced proceedings.

Regression Analysis Caps. During our conversation, I highlighted the exhaustive presentations in the record identifying problems with the proposed regression analysis-based approach to developing and implementing caps on capital investment and operating expenses supported through the Universal Service Fund ("USF"). *See, e.g.*, Comments of NTCA, *et al*., (filed Jan. 18, 2011), at 63-75 and Appendices D and E; Reply Comments of NTCA, *et al*., (filed Feb. 18, 2011), at 24-28 and Appendix B; Comments of the Nebraska Rural Independent Companies (filed Jan. 18, 2011), at 9-50; Comments of the Rural Broadband Alliance (filed Feb. 17, 2011), at 2-23. Indeed, even the "father" of the quantile regression analysis preferred by the Federal Communications Commission (the "Commission") has provided a report indicating that the proposed methodology lacks statistical discipline and introduces substantial arbitrariness to the potential caps. Comments of NTCA, *et al*., (filed Jan. 18, 2011), at Appendix E. I also pointed out that rare, if not unprecedented, "peer reviews" recently requested by the Wireline Competition Bureau from other Commission staff appear to provide a laundry list of concerns and questions with respect to development of the caps that are ostensibly to be implemented on July 1. Letter from Patrick Halley, Legal Counsel, Wireline Competition Bureau, to Marlene H. Dortch, Secretary (dated March 9, 2012), at Appendices B and C.

Given the substantial questions surrounding the development and use of such caps, the Commission and the Bureau should consider alternatives that are far better developed and for which there is much stronger evidentiary support on the record. Specifically, the Commission should consider the alternative submitted by NTCA and other rural associations last year, which would limit investment based upon a schedule tied to replacement of depreciated plant. *See, e.g.*, Comments of NTCA, *et al*. (filed April 18, 2011), at Appendix A. This proposal, as explained at length previously, would place reasonable, locally tailored controls on the growth of USF that take into account "conditions on the ground" across the wide variety of areas served by rural rate-of-return regulated incumbent local exchange carriers ("RLECs") nationwide. In addition to its effectiveness, this proposal would be far simpler to implement than the regression analysis-based caps, which appear highly unlikely, if not impossible, to implement by July 1, 2012 on the basis of the current record.

In the alternative, if the Commission and the Bureau will not reject regression analysis-based caps altogether, I suggested that they need at a minimum to publish a revised proposal for such caps and then provide reasonable opportunity for further comment *prior to* adoption and implementation. It would defy basic notions of procedural fairness and fundamental tenets of administrative procedure to adopt modified caps within the next several months without giving interested parties a reasonable opportunity to examine and comment upon such revised proposals.

Furthermore, I noted that many RLECs have been placed in an extremely difficult position, facing the likely prospect of needing to file for waivers from such caps but feeling unable to do so because no party yet knows what the final caps will look like – or whether regression analysis works at all as presently proposed. This uncertainty has led to substantial concern among carriers who have very good reason to expect substantial reductions in support but do not know yet precisely what waiver needs they may have and when those may arise. It has also discouraged investors and lenders, and has all but frozen broadband investment in early 2012 – contrary to the very purpose of the National Broadband Plan, the President's own stimulus initiatives, and the stated objectives of the Commission's reforms. For these reasons too, I urged the Commission to consider a clearer and sounder limitation on prospective investment along the lines of that proposed by the rural associations.

Further Notice Concerns. I also expressed concern with the adoption of any further caps, cuts, and constraints to USF support and intercarrier compensation ("ICC") in the wake of the Commission's November 18, 2011 Order in the above-referenced proceedings. I noted that the "dust has not even started to settle" on the many support and revenue reductions adopted in that Order – including the regression analysis-based caps discussed above. I also highlighted that numerous questions and substantial confusion continue to surround implementation of the Order, and that end users already appear to face the prospect of significant rate increases as a result of the actions just taken.

In light of these concerns, the Commission, rural consumers, service providers, and lenders and investors would be far better served by first answering the many pending questions and taking the time to implement and evaluate the impacts of the many changes just made, rather than racing forward with further steps such as: (i) represcribing the authorized interstate rate-of-return; (ii) extending the still-being-developed regression analysis-based caps to Interstate

Common Line Support; (iii) reducing USF support in areas served by a purported "unsubsidized" competitor; or (iv) reducing any other ICC rate elements. Indeed, many lenders, investors, and service providers are still processing and attempting evaluate the changes just adopted, even though it is not entirely possible to do so because some of the most significant changes remain subject to ongoing development by the Wireline Competition Bureau. Racing forward to consider yet more changes when those reforms adopted last fall have yet to be implemented or even fully understood provides no predictability in universal service, runs contrary to the objectives of promoting broadband deployment, and only perpetuates regulatory uncertainty.

The Need for a True Connect America Fund. Finally, I observed that the Order adopted last fall contains no specific enhancements for broadband-focused funding for RLECs. With legacy USF reductions and no incremental USF support, it will be difficult – and in many cases, impossible – for RLECs to deploy (or even sustain) broadband at 4/1 Mbps speeds or higher.

I therefore emphasized the importance of implementing a true "Connect America Fund" (or "CAF") for RLECs. Detailed rules to implement such a plan have been on the record now for nearly six months; this "RLEC Plan" would enable reasonable broadband deployment in rural areas while helping to ensure that USF growth would remain at historical, very modest levels (approximately 3% annually). Moreover, the RLEC Plan would solve two of the most vexing issues with respect to rural broadband deployment: (1) the need to ensure that consumers can migrate to standalone broadband services without being compelled to take legacy voice service as well; and (2) the need for middle mile support that will enable RLECs to provide reasonably comparable services at reasonably comparable rates. I urged the Commission to adopt the RLEC Plan as the CAF for rate-of-return carriers or, at a minimum, to ensure that provisions are in place to provide incremental support for middle mile networks and standalone broadband, particularly since such measures appear likely to be a part of any CAF mechanism in areas served by price cap carriers.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. If you have any questions, please do not hesitate to contact me at (703) 351-2016 or mromano@ntca.org.

Sincerely,

/s/ Michael R. Romano
Michael R. Romano

Senior Vice President - Policy

cc: Angela Kronenberg