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November 13, 2012

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

**Re: Connect America Fund, WC Docket No. 10-90  
High-Cost Universal Service Support, WC Docket No. 05-337**

Dear Ms. Dortch:

On behalf of the National Cable & Telecommunications Association (NCTA), this letter responds to recent submissions by a number of price cap incumbent local exchange carriers (LECs) proposing that the Commission make available almost half a billion dollars in Connect America Fund (CAF) Phase I support in 2013 on an exclusive basis.<sup>1</sup> As explained below, a far better approach would be for the Commission to make that support available to a wider range of companies on a competitive basis, as it did successfully in its recent Mobility Fund Phase I auction.

The Commission established the CAF, which “will ultimately replace all existing high-cost support mechanisms,” to help make fixed and mobile voice and broadband available in “areas that do not, or would not otherwise,” have such services.<sup>2</sup> To do this, “[t]he CAF will rely on incentive-based, market-driven policies, including competitive bidding, to distribute universal service funds as efficiently and effectively as possible.”<sup>3</sup>

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<sup>1</sup> See Letter from Micah M. Caldwell, Vice President, Regulatory Affairs, Independent Telephone & Telecommunications Alliance, to Marlene H. Dortch, Secretary, Federal Communications Commission, 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 (Oct. 24, 2012) (ITTA Oct. 24 *Ex Parte* Letter); Letter from Marlena F. Barzilai, Senior Counsel, Government Affairs, Windstream Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 05-337 (Oct. 24, 2012) (Windstream Oct. 24 *Ex Parte* Letter); Letter from Robert Mayer, Vice President, Industry and State Affairs, United States Telecom Association, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 05-337 (Oct. 1, 2012) (USTelecom Oct. 1, *Ex Parte* Letter).

<sup>2</sup> *Connect America Fund, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17673, ¶ 20 (2011) (*CAF Order*).

<sup>3</sup> *Id.*

While the broad goals of CAF are laudable, the Commission strayed from its long-standing principle of competitive neutrality in providing universal service high-cost support under this mechanism.<sup>4</sup> Rather than providing support to any technology or service that would maximize the value of program resources and benefit consumers, the Commission made CAF Phase I support available only to certain types of providers, i.e., price cap regulated incumbent LECs.<sup>5</sup> There are only thirteen total price cap incumbent LEC holding companies and three of them were not allocated any of the \$300 million incremental CAF Phase I support in 2012.<sup>6</sup> Of the ten companies allocated CAF Phase I support, only seven companies accepted some portion of their allocations.<sup>7</sup> As a result, only \$115 million of the total \$300 million CAF Phase I support, or 38 percent of the funding, was accepted by these seven companies.<sup>8</sup>

Furthermore, four of the seven companies have filed waivers of the CAF Phase I requirements, arguing that they cannot accept any further support, or in the case of ACS, cannot use the support that it has already accepted, within the parameters of the program adopted by the Commission.<sup>9</sup> In general, each of these waiver petitions is premised on the notion that the Commission is expecting too much of these carriers, and that the only way they can reach any more customers that do not currently have broadband is if the Commission gives them much more money per home (in the range of \$4000 - \$7000 per location), reduces significantly the level of service or number of locations that must be served, and/or permits them to overbuild existing broadband providers. The price cap incumbent LECs make similar arguments in more recent submissions asking the Commission to allocate to these same companies an additional

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<sup>4</sup> 47 U.S.C. §254(b)(7); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8803 ¶ 50 (1997) (*Universal Service Report and Order*) (“COMPETITIVE NEUTRALITY -- Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”).

<sup>5</sup> *CAF Order*, 26 FCC Rcd at 17712-13, ¶ 128; 47 C.F.R. § 54.312(b).

<sup>6</sup> *Wireline Competition Bureau Announces Support Amounts for Connect America Fund Phase One Incremental Support*, WC Docket Nos. 10-90, 05-337, Public Notice, 27 FCC Rcd 4203, 4206, ¶ 9 (Wireline Comp. Bur. 2012).

<sup>7</sup> AT&T, Verizon, and Virgin Islands Telephone Company did not accept any CAF Phase I support. Letter from Robert W. Quinn, Jr., Senior Vice President Federal Regulatory and Chief Privacy Office, AT&T Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 05-337 (July 24, 2012); Letter from Kathleen Grillo, Senior Vice President Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90 and 05-337 (July 24, 2012); Letter from Seth Davis, Virgin Islands Telephone Corp. d/b/a Innovative Telephone, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90 and 05-337 (July 24, 2012).

<sup>8</sup> *FCC Kicks Off “Connect America Fund” with Major Announcement*, FCC News Release, at 1 (July 25, 2012).

<sup>9</sup> CenturyLink Petition for Waiver, WC Docket No. 10-90 *et al.* (filed June 26, 2012); Windstream Election and Petition for Waiver, WC Docket No. 10-90 *et al.* (filed July 24, 2012); Fairpoint Communications, Inc. Petition for Waiver, WC Docket No. 10-90 *et al.* (filed Sept. 10, 2012); ACS of Anchorage *et al.* Petition for Waiver, WC Docket Nos. 10-90 and 05-337 (Sept. 29, 2012).

\$300 million in CAF Phase I money in 2013, plus the unclaimed \$185 million from 2012, on an exclusive basis but subject to far more lenient requirements.<sup>10</sup>

NCTA opposed the Commission's decision to allocate the initial round of CAF Phase I support exclusively to incumbent LECs and we are even more strongly opposed to the proposals to spend an additional \$485 million this way, but with even fewer obligations. Not only do these proposals continue to depart from sound principles of competitive neutrality, it is now abundantly clear that they are not the most efficient or effective way to achieve the goal of expanding broadband to unserved areas. Rather, as the Commission has now firmly demonstrated in the context of the Mobility Fund Phase I auction, the use of competitive bidding among all eligible providers is far more effective than identifying a select group of companies to receive support on an exclusive basis. To distribute the \$300 million available in Phase I of the Mobility Fund, the Commission held a reverse auction allowing providers to bid on the amount of high-cost support they would accept to extend 3G or better mobile voice service to unserved areas.<sup>11</sup> Any entity that was eligible to receive universal service high-cost support and that could provide the required service was able to apply for Mobility Fund Phase I support.<sup>12</sup> As a result, thirty-three winning bidders were awarded virtually all of the \$300 million available in Mobility Fund Phase I support.<sup>13</sup> There can be no doubt that this auction was more effective in every way than the process used for distributing CAF Phase I support in price cap areas.

As the Commission considers how best to proceed with CAF Phase I in 2013, it should heed the lessons learned from the divergent outcomes of its recent CAF Phase I and Mobility Fund Phase I disbursements. Specifically, the Mobility Fund Phase I auction was incentive based and competitively neutral and resulted in full use of the funding to provide new services to previously unserved areas. When the Commission strayed from these goals and limited CAF Phase I support to only ten entities, the full amount of support was not put to use to achieve the Commission's goal of maximizing broadband buildout to the most unserved locations possible. Moreover, as evidenced by the numerous CAF Phase I waiver petitions, providing support exclusively to price cap incumbent LECs simply emboldened them to seek more money and fewer obligations to participate in the program.

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<sup>10</sup> See ITTA Oct. 24 *Ex Parte* Letter; Windstream Oct. 24 *Ex Parte* Letter; USTelecom Oct. 1 *Ex Parte* Letter.

<sup>11</sup> *CAF Order*, 26 FCC Rcd at 17781, ¶ 322; 47 C.F.R. § 54.1001; *Mobility Fund Phase I Auction Scheduled for September 27, 2012, Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket No. 12-25, Public Notice, 27 FCC Rcd 4725 (Wireless Telecom. Bur. 2012).

<sup>12</sup> “[W]e will not impose any additional eligibility requirements to participation in the Mobility Fund.” *CAF Order*, 26 FCC Rcd at 17802, ¶ 407. The only restriction the Commission imposed on Mobility Fund Phase I support is that an applicant cannot use the support to build out in areas where it has made a public commitment to deploy 3G or better wireless service by December 31, 2012. *Id.* at 17803, ¶ 410.

<sup>13</sup> *Mobility Fund Phase I Auction Closes, Winning Bidders Announced for Auction 901*, Public Notice, DA 12-1566, at 2, ¶ 1 (Wireless Telecom. Bur., Oct. 3, 2012) (announcing winning bids for \$299,998,632 in Mobility Fund Phase I support).

Going forward, the Commission should eliminate the restriction that CAF Phase I support is available only to price cap incumbent LECs. Instead, any eligible entity that can provide the required service should be allowed to bid on the amount of CAF Phase I support it will accept to provide broadband of 4 Mbps downstream and 1 Mbps upstream to unserved locations, consistent with the Commission's latency and usage requirements. If more than one company submits a proposal for a particular census block or group of census blocks, support should be awarded to the company seeking the least amount of support. If the overall demand for support exceeds the total amount allocated to a particular area, the Commission should distribute the support to the providers proposing to reach the largest number of unserved locations.<sup>14</sup> While the incumbent LECs previously criticized these basic competitive bidding principles as too difficult or too novel to implement in a timely way, the Commission's experience in the Mobility Fund context demonstrates that these criticisms were baseless.

The price cap incumbent LECs were given a chance to provide these services subject to a reasonable set of obligations under CAF Phase I and most of them have either chosen not to participate, or have stated that they are unwilling or unable to participate beyond the funding they have already accepted. The Commission should now allow other providers an opportunity to receive CAF Phase I support to extend broadband to unserved areas of the nation within the parameters of the CAF Phase I program.

Respectfully submitted,

**/s/ Jennifer K. McKee**

Jennifer K. McKee  
Steven F. Morris

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<sup>14</sup> The Commission could continue to allocate CAF Phase I support by price cap incumbent LEC area, but it should eliminate the restriction limiting support only to those companies.