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

Re: Connect America Fund, WC Docket No. 10-90
Intercarrier Compensation, CC Docket No. 01-92

Dear Ms. Dortch:

The National Cable & Telecommunications Association (NCTA) submits this letter in response to the March 14, 2013 letter submitted by USTelecom suggesting that price cap local exchange carriers (LECs) should be relieved of the obligation to spend one-third of their frozen legacy high-cost support on broadband facilities in areas not served by an unsubsidized provider.[1] For the reasons explained in this letter, the Commission should reject that request and confirm that all price cap LECs must comply with obligations the Commission attached to that legacy support in the *CAF Order*.

The USTelecom letter asserts that there is a tension in the Commission's rules that directs them to "allocate certain legacy high-cost support (IAS, ICLS, and LSS) to the calculation of interstate access charges" but also directs them to "spend increasingly larger amounts of this same legacy high-cost support on building and operating broadband networks in certain areas."[2] Attached to the letter is a table that purports to illustrate the "fiscal effects" of this tension in the rules. Specifically, the table shows that six companies are receiving roughly $800 million annually in legacy support. If those companies were required to invest one-third of that amount ($264 million) in broadband facilities as required by the current rules, the table shows that five of the six companies would have an "unrecovered reduction in Legacy Access Replacement" of approximately $91 million.[3]

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1 Letter from Jonathan Banks, USTelecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Mar. 14, 2013) (USTelecom Letter).

2 *Id.*

3 *Id*. at 2. The sixth company – AT&T – apparently will have no "unrecovered reduction in legacy access support" and therefore cannot even make the weak argument advanced by USTelecom for avoiding the investment required under the rule.

USTelecom's request should be rejected for the same reasons explained in NCTA's Opposition to a petition by one of the six companies – FairPoint – seeking a waiver of the frozen support rule.[4] As NCTA explained in the FairPoint case, the legacy rules did not require any demonstration of costs or impose any spending obligation as a condition of receiving support.[5] Consequently, "allocating . . . support to the calculation of interstate access charges"[6] does not require these companies to spend any money or incur any costs. And while the new frozen support rule does impose a spending obligation, that obligation is fully compensated (and more) by the amount of support that is being provided to these carriers.[7] As a result, there is no requirement that the shareholders of these companies spend any money that will not be recovered though high-cost support. Moreover, granting price cap LECs relief from the frozen support rule would enable these companies to continue spending hundreds of millions of dollars in federal subsidies on non-broadband equipment and/or in areas that already are served by competitors, neither of which is consistent with the principles underlying the *CAF Order* reforms.

Recognizing that there are no unrecovered *costs* attributable to the frozen support rule, the USTelecom letter instead asserts that these five companies will experience an "Unrecovered Reduction in Legacy Access Replacement."[8] This newly invented phrase means nothing more than the fact that these companies will be collecting less high-cost universal service support from inefficient legacy mechanisms than they did prior to the fundamental reforms enacted in the *CAF Order*.[9] The fact that five of the largest recipients of high-cost support may receive less legacy support than they did before this "once in a generation"[10] reform effort is hardly surprising, particularly since the Commission made clear that this reform "is not 100 percent revenue-neutral relative to today's revenues."[11] Nor is there any reason for the Commission to be concerned about this $91 million "reduction" in legacy support because it is more than offset by the newly available $300 million in additional support that the Commission has offered to these very same companies – on an exclusive basis – under Phase I of the Connect America Fund.[12]

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4 *See* Opposition of the National Cable & Telecommunications Association, WC Docket No. 10-90 (filed Mar. 18, 2013) (NCTA Opposition).

5 *Id*. at 4.

6 USTelecom Letter at 1.

7 *See* NCTA Opposition at 4-5.

8 USTelecom Letter at 2.

9 Again, the exception is AT&T, which apparently will still be able to collect all of its legacy support even if it complies with the obligation to invest one-third of its frozen legacy support in broadband facilities. Consequently, as USTelecom's *ex parte* filing makes clear, even if the Commission were to relieve the other price cap LECs of the requirement to invest in new broadband facilities, which it shouldn't, there is no reason to excuse AT&T from doing so.

10 *CAF Order*, Statement of Chairman Julius Genachowski at 1.

11 *CAF Order* at ¶ 848.

12 Moreover, the Commission plans to make an even greater amount of support available in territories served by price cap carriers once it implements Phase II of the CAF program.

In sum, the essence of the USTelecom argument is that its member companies are concerned about being required to spend their high-cost subsidies in ways that advance the Commission's broadband agenda. While it is certainly understandable that they would prefer the legacy regime, in which they received millions of dollars in funding each year without any obligation to spend it in a particular way, the Commission should take this opportunity to make clear that those days are over.

Respectfully submitted,

/s/ Steven F. Morris

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