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April 5, 2013

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

Dear Ms. Dortch:

On April 4, 2013, Jennifer McKee and the undersigned, on behalf of the National Cable & Telecommunications Association (NCTA), met with Michael Steffen, Legal Advisor to Chairman Genachowski, and Carol Mattey, Deputy Chief of the Wireline Competition Bureau, to discuss issues related to the high-cost support program. The attached document was distributed at the meeting.

NCTA expressed grave concern about proposals made by incumbent price cap LECs for the use of Connect America Fund (CAF) Phase I funding and legacy high-cost support. Under these proposals, price cap LECs would receive roughly $1.5 billion in support for 2013 but would have no obligation to extend broadband service to any of the 19 million Americans that do not currently have broadband. Such an approach is fundamentally at odds with the Commission's goals for universal service reform.

With respect to CAF Phase I, we explained that the price cap LEC proposal would classify as unserved roughly 1 million locations that the Commission currently counts as served and then make support available to upgrade the existing DSL service at those locations.[1] NCTA explained that spending limited resources to upgrade existing DSL service in areas that already receive 3 Mbps downstream/768 kbps upstream (and already are counted as served by the Commission) should not be a priority and that the Commission should take all steps necessary to ensure that CAF Phase I funding only is used for the deployment of facilities that will reach the 19 million Americans currently unserved by broadband.[2] For similar reasons, we urged the Commission to reject the price cap LECs' proposal to use CAF Phase I

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[1] *See* Comments of the United States Telecom Association, the Independent Telephone and Telecommunications Alliance, and the ABC Coalition, WC Docket No. 10-90 (filed Jan. 28, 2013) at 11-12.

[2] As NCTA has noted previously, there is strong congressional support for using CAF Phase I funding to reach unserved areas. *See, e.g.*, Letter from Senators Amy Klobuchar and Al Franken, to Julius Genachowski, Chairman, Federal Communications Commission (Feb. 6, 2012) ("Unfortunately, almost a quarter of the population living in rural areas lacks access to broadband service, and almost a third of the population living in tribal areas lacks access. It is essential that the FCC act as quickly as possible to deploy broadband to these areas and help close the digital divide in this country.").

funding for the construction of second mile fiber without any obligation to use that fiber to reach currently unserved customers.[3]

With respect to legacy high-cost support, NCTA raised concerns regarding proposals from USTelecom and some of its member companies to eliminate the obligation under Section 54.313 to spend one-third of 2013 legacy high-cost support on broadband in areas not currently served by an unsubsidized provider. Consistent with our recent submissions on this issue,[4] we explained that enforcement of that requirement is critical to achieving the Commission's goal of promoting broadband deployment in areas where it is not available today and that adopting price cap LEC proposals that permit legacy support to be spent solely on non-broadband equipment or in areas that already are served by competitors would be a poor policy decision.

We also discussed a variety of issues related to the challenge process that will be used to determine whether an area is served by an unsubsidized competitor and therefore not eligible to receive CAF support. NCTA encouraged the Commission to use the National Broadband Map as the starting point for determining whether an area is served because it continues to be the most definitive source of nationwide availability that is currently available. We also explained that the Commission's three *Measuring Broadband America* reports demonstrated conclusively that cable operators consistently are providing their customers with broadband services that far exceed the speed and latency standards that will be applied to CAF recipients and consequently there is strong justification for the Commission to adopt a presumption that areas served by cable operators are not eligible for CAF support. We further explained that such a presumption is warranted even with respect to cable operators that did not participate in the *Measuring Broadband America* testing process because those companies typically provide service using similar equipment to that used by the larger companies and pursuant to the same DOCSIS standards. We further discussed the prevalence of nationwide pricing by many cable operators, which ensures that prices in urban and rural areas generally are comparable.

Finally, we briefly discussed issues related to the cost model that will be used by the Commission to determine support levels in price cap LEC territories for purposes of CAF Phase II. NCTA encouraged the Commission to move as quickly as possible to adopt the Phase II mechanism. We emphasized the importance of sticking to the budget for Phase II that the Commission adopted in the *CAF Order* and reiterated the potential benefits that should develop with a properly structured competitive bidding mechanism.

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris

cc: M. Steffen
C. Mattey

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3 *Id*. at 23-24.

4 *See* Letter from Steven F. Morris, NCTA to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Mar. 19, 2013); Opposition of the National Cable & Telecommunications Association, WC Docket No. 10-90 (filed Mar. 18, 2013).

THE PRICE CAP LEC PROPOSALS WOULD NOT BRING BROADBAND TO ANY CURRENTLY UNSERVED AMERICANS

19 Million
Number of Americans living in areas where terrestrial broadband is not available (according to FCC's 8th Broadband Progress Report, August 2012)

$1.5 Billion
Amount of money price cap LECs have asked the Commission to distribute to them on an exclusive basis in 2013 ($500 million in CAF Phase I + $1 billion in legacy high-cost support)

0
Number of Americans living in areas where the FCC has found that terrestrial broadband is not available that price cap LECs have committed to serve with new CAF Phase I funding and legacy high-cost support

NCTA strongly opposes handing out money to the price cap LECs on an exclusive basis, but if the Commission is going to distribute as much as $1.5 billion to these companies this year, it should demand meaningful and measurable commitments to reduce the number of Americans living in unserved areas