



April 11, 2013

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; High-Cost Universal Service Support, WC Docket No. 05-337; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition; Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, GN Docket No. 12-353; Technology Transitions Policy Task Force, GN Docket No. 13-5; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Petitions for Waiver of Commission’s Rules Regarding Access to Numbering Resources, CC Docket 99-200

Dear Ms. Dortch:

On Wednesday, April 10, 2013, the undersigned, on behalf of NTCA–The Rural Broadband Association (“NTCA”), spoke via telephone with Dave Grimaldi, Chief of Staff to Commissioner Mignon Clyburn, to discuss matters in the above-referenced proceedings.

During that conversation, NTCA expressed positions consistent with prior pleadings in certain of the above-referenced proceedings regarding the grant of any waiver by the Federal Communications Commission (the “Commission”) that would permit an entity to obtain direct access to telephone numbers without accepting the accountability and all of the public interest responsibilities associated with operation as a regulated carrier. *See, e.g.*, Comments of NTCA, CC Docket No. 99-200 (filed Aug. 23, 2012); *Ex Parte Letter* of Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90, *et al.* (filed July 19, 2012); *Ex Parte Letter* of Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90, *et al.* (filed May 31, 2012). NTCA further noted that the fundamental questions surrounding meaningful regulatory processes and constructs (or the potential lack thereof) implicated by the waiver requests are comparable to those teed up in NTCA’s IP evolution petition and the similar petition filed by AT&T (as well as the issues to be evaluated by the Technology Transitions Task Force), such that consideration of these questions and issues should be properly coordinated with those proceedings.

Concerns Regarding Transparency into “Trial” Process

NTCA noted the lack of public visibility into what might in fact be contemplated for any “trial” authorized in connection with the pending waiver requests. For example, it is unclear what the precise objective, scope and bounds of any trial might be, what data will be measured and evaluated through a trial, the methodology for capturing such data, and what will be done with that data to inform any further rulemaking processes. Fundamental administrative procedure concerns arise out of the absence of more public information with respect to such essential contours and the resulting inability to provide any meaningful comment on them.

NTCA observed, by contrast, how careful the Commission was to define publicly the details of trials in the recent context of broadband lifeline efforts. There, the Commission provided substantial information regarding how it intended to administer such trials, the statistical rigor that would be demanded in the capture of data, and the criteria by which it would evaluate those that might seek to participate in such efforts. For example, as a condition of participation in the broadband lifeline project, parties were required “to commit to robust data gathering as well as analysis and sharing of the data,” and to explain in their applications to participate “what types of data they intend to gather and how they intend to gather that data.” Furthermore, the Commission expressly stated that it “plans to make this data public for the benefit of all interested parties, including third parties that may use such information for their own studies and observations.” *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Lifeline and Link Up*, WC Docket No. 03-109; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking (rel. Feb. 6, 2012), at ¶ 336. The Commission subsequently chose a series of projects that contained firm commitments to capture specific kinds of data and that it found would ensure sufficient statistical rigor to help promote the utility of its “pilot” or “trial” concept. See *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order (rel. Dec. 19, 2012), at ¶ 1 (“All of the projects are designed as statistically valid field experiments”). Similar transparency in process, a comparable level of statistical definition and discipline, and a commitment to ensure the public availability of data arising out of any trials would all seem warranted in this context too, but such details are presently lacking.

Concerns Regarding Geographic Scope of Trials

NTCA further explained that the Commission should proceed with extreme caution in considering the effects of any potential waiver on areas served by rural local exchange carriers (“RLECs”). As an initial matter, section 251(f) of the Communications Act of 1934, as amended, captures a congressional intent to ensure that the effects of competitive entry and use of rural networks are coordinated with the objectives of universal service. Given that there has been no examination of how any proposed waiver would affect the public interest or universal service specifically in rural areas pursuant to section 251(f) or otherwise, the Commission should ensure that waivers are carefully targeted to avoid implicating such concerns.

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Moreover, as explained further in recent *ex parte* submissions, NTCA highlighted that the Commission's universal service distribution rules still compel consumers in RLEC-served areas to purchase regulated local exchange service ("POTS") from the RLEC in order to obtain reasonably priced broadband services as well. *See, e.g., Ex Parte Letter* of Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90, *et al.* (filed Feb. 22, 2013). Thus, any waiver that would provide direct access to telephone numbers to an "over-the-top" non-carrier VoIP provider should not apply in RLEC-served areas unless and until the Commission also ensures that predictable and sufficient universal service support will remain available for the underlying broadband-capable network should a consumer decide to cease procuring POTS and procure such an "over-the-top" VoIP service instead. Put another way, the Commission's goals of promoting broadband access and competition would be undermined if the broadband-capable network that actually enables the VoIP provider's offering were to lose universal service support simply because the consumer in question is no longer procuring POTS service (and is instead only procuring broadband) from the RLEC. NTCA therefore urges the Commission to move quickly to make the technical fixes to its rules necessary to support standalone broadband provided by RLECs, and NTCA objects to the grant of any waiver that would apply in RLEC-served areas in the absence of predictable and sufficient universal service support for the broadband-capable networks that make it possible to offer VoIP services in the first instance.

Finally, NTCA notes that any implementation of a numbering trial in the small markets served by RLECs would be plainly inconsistent with the manner in which the Commission has in the past addressed significant changes with respect to numbering policies. Indeed, from the initial deployment of Local Number Portability to the implementation of number pooling, the Commission has consistently recognized that a measured roll-out of changes in numbering policy and administration reflects an appropriate balance among a series of considerations, including number optimization, competition, impacts on small companies serving rural areas, and the public interest. Particularly in light of the lack of transparency (as noted above) regarding the parameters of any trial that might be under consideration, it is unclear what rationale would provide the impetus for departure from or reversal of this long-standing practice with respect to numbering administration, and why these same factors would not carry similar import now.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

/s/ Michael R. Romano
Michael R. Romano
Senior Vice President – Policy

cc: Dave Grimaldi