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May 3, 2013

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: ***Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund,*** **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**

Dear Ms. Dortch:

On May 1, 2013, Malena Barzilai of Windstream, Cathy Carpino of AT&T, Tiffany Smink (via telephone) of CenturyLink, Mark Montano and Alan Buzacott of Verizon, and David Cohen of USTelecom (via telephone) met with Carol Mattey, Kim Scardino, Amy Bender, Alex Minard, Chris Cook, Steve Rosenberg, and Michael Jacobs of the Wireline Competition Bureau to discuss the draft Form 481 and high-cost recipients' reporting obligations under section 54.313 of the Commission's rules.

In the meeting, we asked the Commission to clarify that, even if it obtains approval from the Office of Management and Budget (OMB) for the proposed Form 481 before July 1, carriers' 2013 reports will not be required to include (1) the number of unfulfilled service requests for broadband; (2) the number of complaints per 1,000 customers for broadband; (3) company price offerings for broadband; or (4) Tribal lands reporting. Because the Commission has not obtained approval from OMB for the information collections specified in sections 54.313(a)(1)-(a)(7) for broadband services or 54.313(a)(9), carriers were not required to collect that information in 2012 and therefore cannot be required to report that information in their July 1, 2013 reports.

We also discussed potential changes to the Form 481.

Certifications: As discussed in USTelecom's April 4, 2013 Petition, the Commission should revise the format of Form 481 to allow carriers to simply attach their section 54.313(a)(5) and (a)(6) certifications, along with an accompanying narrative, to the form.

Voice offerings: The Commission should revise the instructions to make clear that incumbent LEC ETCs filing price information for voice offerings pursuant to section 54.313(a)(7) are only required to report pricing for flat-rate local exchange service, not measured service (unless the incumbent LEC has no flat-rate offering) or bundled service offerings. The Commission should also revise the form to simplify reporting for high-cost recipients that have the same rate in all exchanges.

Definition of affiliate: We asked the Commission to clarify that the term "affiliate" in section 54.311(a)(8) refers only to affiliated eligible telecommunications carriers (ETCs), not to non-ETC affiliates.

One Officer Signature: We asked the Commission to revise the draft Form 481 to permit an officer to sign this form just once, which is consistent with the *USF/ICC Transformation Order*.[1]

Confidentiality: We asked the Commission to make clear that ETCs can file a redacted Form 481 with states and Tribal governments that do not have protections to prevent the public disclosure of confidential information.

In the meeting, staff asked which parts of a Form 481 report could contain confidential information. Those sections of a Form 481 report that could contain confidential information include, but are not limited to, the following:

Outage reporting (draft Form 481, page 3): As contemplated by the draft Instructions, ETC service outage reporting will be based on data reported via the Commission's Network Outage Reporting System (NORS). Given the sensitive nature of this data to both national security and commercial competitiveness, NORS outage data is presumed to be confidential.[2]

Service quality improvement reporting (draft Form 481, page 2): The draft Form 481 contemplates that ETCs designated by the Commission will attach a progress report delineating the status of the ETC's existing section 54.202(a) "five year plan" as it relates

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[1] *Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 581 (2011) (*USF/ICC Transformation Order)* ("We will also require that an officer of the company certify to the accuracy of the information provided and make the certifications required by new section 54.313 . . . .").

[2] 47 CFR § 4.2.

to the provision of voice telephony service. Section 54.313(a)(1) of the Commission's rules requires that such progress reports include detailed information about ETC network construction and expenditures.[3] The progress reports are confidential because they contain competitively sensitive information about network coverage and expenditures, as well as wireless coverage maps that are more detailed than those made available on wireless carriers' public websites.

Unfulfilled service requests (draft Form 481, page 1, lines 310, 330): The draft Form 481 requires that ETCs "provide a detailed description of how [the ETC] attempted to provide service to potential customers whose initial requests for service were unfulfilled in the prior calendar [year]."[4] Certain information included in those descriptions, such as information about the specific geographic location in which a service request was unfulfilled, is confidential because it may reveal competitively sensitive information about network coverage.

Broadband Offerings: We noted that USTelecom's petitions for reconsideration asked the Commission to reconsider requiring high-cost recipients whose support is being eliminated to report *any* broadband data in their annual reports. The Commission already gathers much of this data through providers' Form 477 filings. As such, the information requested in draft Form 481 is unnecessarily duplicative of other information reasonably accessible to the Commission.[5] Moreover, collecting broadband pricing data, particularly pricing data of broadband bundles, has no practical utility, as that term is defined by OMB.[6] Until the Commission makes broadband a supported service, it has no statutory obligation to ensure that broadband rates in rural areas are reasonably comparable to broadband rates in urban areas.[7] We urge the Commission to grant USTelecom's requests.

If the Commission does not modify the section 54.313(a)(7) broadband price reporting requirement, it should make clear that high-cost recipients are not required to report broadband price information in 2013, for the reasons discussed above. For 2014 and beyond, the Commission should revise the instructions for Form 481 to make clear that high-cost recipients are not required to report rates for every broadband offering. In particular, any broadband price reporting should

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[3] 47 CFR § 54.313(a)(1) ("A progress report on its five-year service quality improvement plan pursuant to § 54.202(a), including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve service quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled in the prior calendar year. The information shall be submitted at the wire center level or census block as appropriate.")

[4] Draft Instructions, page 9.

[5] 44 U.S.C. § 3506(c)(3)(B).

[6] 5 C.F.R. § 1320.3(l); 44 U.S.C. § 3506(c)(3)(A).

[7] 47 U.S.C. § 254(b)(3).

be limited to the current, non-legacy offering that is relevant to the broadband service obligations to which the reporting high-cost recipient is subject. The *USF/ICC Transformation Order* requires only that these providers "submit the price and capacity range (if any) for the broadband offering that meets the relevant speed requirement."[8]

In the meeting, staff suggested that paragraph 106 of the *USF/ICC Transformation Order* gives the Bureau the authority to collect broadband pricing information for services other than the "broadband offering that meets the relevant speed requirement" for the Connect America Fund. But the discussion in paragraph 106 is limited to "technical capabilities" and "performance," and it is clear from the order that the term "performance" refers only to the speed, latency, and usage of a broadband service, not price.[9] While the reporting requirements referenced in this paragraph[10] discuss pricing, the purpose is to ensure that a provider's rates in rural and urban areas are reasonably comparable.[11] Accordingly, the Commission should permit a provider whose broadband rates in urban and rural areas are identical (or within some reasonable range) to certify to that effect and avoid the burdensome requirement to report all current broadband rates. It would be inappropriate for the Commission to impose burdensome reporting requirements on high-cost recipients ostensibly for the purpose of ensuring that rates are reasonably comparable in rural and urban areas, but instead, intend to use that data for some other, unrelated purpose (i.e., monitoring broadband "performance" in rural areas). As mentioned above, the Commission already obtains significant broadband data from a broader group of broadband providers through its 477 reports. There is no reason why the Commission could not use that existing data to determine broadband performance trends.

Finally, if the Bureau declines to grant USTelecom's petitions for reconsideration, it should only require high-cost recipients to report the price of standalone broadband service that is currently offered, not the price of bundles that include voice, video, or mobile service as well as broadband. Bundle prices are not necessary for the Commission to monitor whether an ETC is meeting its Connect America Fund obligations. And, even if paragraph 106 of the *USF/ICC Transformation Order* gave the Bureau the authority to collect high-cost recipients' broadband pricing information for other purposes – and it does not – the Bureau recently concluded in the *Urban Rates Survey Order* that standalone broadband prices were sufficient to meet those objectives.[12] Consequently, to perform the apples-to-apples comparison between urban and rural

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[8] *USF/ICC Transformation Order,* ¶ 594.

[9] *See USF/ICC Transformation Order* at ¶ 105 (*see* "Broadband Performance Characteristics" column, listing only speed, latency, and usage requirements). Similarly, the discussion in paragraph 107 addresses only peak downstream speed, not price.

[10] *Id.* at n.173.

[11] *Id.* at ¶¶ 592-94.

[12] *Connect America Fund,* WC Docket No. 10-90, Order, released April 3, 2013, at ¶¶ 22, 24 (*Urban Rates Survey Order*).

broadband service offerings contemplated by paragraph 106, the Commission should revise the Instructions for line 711, and make corresponding changes to the data collection form on page 7 of the draft Form 481, to make clear that ETCs are only required to report the price of standalone broadband service.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules. Please contact me if you have any questions.

Sincerely,

/s/ Alan Buzacott

cc: Carol Mattey
Kim Scardino
Amy Bender
Alex Minard
Chris Cook
Steve Rosenberg
Michael Jacobs