



December 18, 2013

Ex Parte Notice

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; High-Cost Universal Service Support, WC Docket No. 05-337*

Dear Ms. Dortch:

NTCA –The Rural Broadband Association (“NTCA”) submits this correspondence in response to letters filed recently by representatives of the satellite industry regarding an *Analysis of Satellite-Based Telecommunications and Broadband Services* as submitted to the Federal Communications Commission (the “Commission”) by NTCA in early November 2013 (the “Thompson Paper”).¹

In ex parte letters submitted November 14, 2013, and November 21, 2013, respectively (the “Satellite Letters”), the Satellite Broadcasting & Communications Association (“SBCA”) and the Satellite Industry Association (“SIA”) allege that NTCA submitted the Thompson Paper “to forestall broadband competition in rural areas” and “revisit a Commission conclusion in the USF/ICC Transformation Order.”² This is simply untrue. In fact, the Thompson Paper does not delve at all into policy holdings of the Commission regarding eligibility for Remote Areas Fund (“RAF”) disbursements, nor did NTCA make any assertions regarding the categorical eligibility or exclusion of any particular type of service provider for purposes of such support distributions.

Instead, the Thompson Paper demonstrates, from a purely technical perspective, the capabilities and limitations of satellite platforms in offering voice and broadband services. As NTCA explained in its November 7 filing, these are considerations that the Commission can – and indeed must – take into account as it considers the degree to which “alternative technologies” can satisfy the statutory mandate included in Section 254 of the Communications Act of 1934, as amended (the “Act”) that services available in higher-cost rural areas must be “reasonably comparable” in price and quality to those available in urban areas.³

¹ Vantage Point, *Analysis of Satellite-Based Telecommunications and Broadband Services* (November 2013), attachment to Letter from Michael Romano, NTCA – The Rural Broadband Association, to Marlene H. Dortch, FCC, WC Docket No 10-90 (filed November 7, 2013).

² Letter from Lisa Volpe McCabe, Satellite Broadcasting & Communications Association (“SBCA *Ex Parte*”) at 1, to Marlene H. Dortch, FCC, WC Docket Nos. 10-90 and 05-337 (filed November 14, 2013); Letter from Patricia Cooper, Satellite Industry Association, to Marlene H. Dortch, FCC, WC Docket Nos. 10-90 and 05-337 (filed November 21, 2013) (“SIA *Ex Parte*”).

³ 47 U.S.C. §254(b)(3).

Despite the narrow technical focus of the Thompson Paper, the Satellite Letters focus almost entirely on NTCA's alleged motivations for the paper's submission while failing to put forward any technical responses, counters, or facts regarding the paper itself. Unquestionably, the Thompson Paper offers detailed analysis regarding latency and capacity limitations of satellite broadband service platforms, as well as the impacts that environmental events often have on satellite communications. The Satellite Letters do not attempt to dispute this evidence, but instead simply enunciate marketing claims about their services. For example, rather than refute the technical findings of the Thompson Paper, the SBCA Ex Parte improperly suggests that the factual considerations regarding latency, bandwidth caps and storm interference are unnecessary for the mandated Section 254(b)(3) statutory demonstration but rather are "simply market differentiators."⁴

Moreover, while there may be a valid place and purpose for satellite services (among other types of voice and broadband delivery platforms) in serving certain consumers in the very highest-cost portions of rural areas where service does not extend today, that question is separate and apart from the specific determinations required under law for RAF eligibility and disbursements. As the Thompson Paper makes clear, a straightforward review of the technical capabilities of satellite confirms that this platform, at least at present, cannot deliver "reasonably comparable" services that can help fulfill the specific statutory mission of universal service across wide swaths of the country. Rather, fully consistent with the National Broadband Plan and the Commission's own words in the *USF/ICC Transformation Order*, the Thompson Paper reinforces that satellite-based services could perhaps be considered as one alternative (among many other options) for the narrower universal service purpose of reaching specifically "the less than one percent of Americans living in remote areas."⁵

This being said, even if they could participate in the RAF for this narrow purpose, satellite providers must then be required to participate on a level regulatory playing field where they meet criteria generally applicable to *all providers* with respect to the receipt of universal service fund ("USF") support, including, for example, becoming Eligible Telecommunications Carriers as compelled by the Act and complying with additional accountability measures that the Commission has imposed on other recipients of USF support. In this manner, the purported objectives of SBCA and SIA regarding the development of a "technology-neutral playing field"⁶ for RAF participants could be lawfully achieved.

⁴ SBCA Ex Parte at 2.

⁵ *Connect America Fund, et al.*, WC Docket No. 10-90, et al. Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17633, 18092 (2011) ("USF/ICC Transformation Order"), at ¶ 1223 (emphasis added); *see also* National Broadband Plan, at 138 (referring to 250,000 housing units, or less than two-tenths of 1% of all housing units in the United States, as extremely high-cost to reach).

⁶ SBCA Ex Parte at 1; SIA Ex Parte at 1.

The recently released *CAF Phase II Standards Order* recognized that market demand for data capacity is increasing, that consumers expect a high level of quality in their voice services, and that satellite will not meet some or all of these standards with regards to comparable pricing, data usage allowances, and latency.⁷ Although the Commission recognized that it may be necessary to modestly relax broadband performance obligations for RAF areas,⁸ standards for supported service should – and by law, must – tie back ultimately to the Act’s statutory mandate of ensuring reasonable comparability, rather than defining standards downward to accommodate a particular technological platform that otherwise may not deliver reasonably comparable and adequate services at affordable prices.⁹ As a matter of universal service policy, rural consumers should not (and cannot by law) be relegated to either substandard services to those provided in urban areas or higher prices for reasonably comparable services.

In summary, the Satellite Letters reinforce the point of the Thompson Paper – that is, while satellite platforms may provide a useful alternative platform for some consumers, they cannot be deemed a complete substitute for voice and broadband services on terrestrial networks, nor can satellite enable services that are “reasonably comparable” in price or quality to those available in urban areas for purposes of broader universal service policy.

Sincerely,

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

cc: Julie Veach
Carol Matthey
Alexander Minard
Katie King
Theodore Burmeister

⁷ *Connect America Fund*, WC Docket No 10-90, Report and Order (rel. October 31, 2013) (“CAF Phase II Standards Order”), at ¶¶ 8, 16, 20-34.

⁸ *Id.* at ¶ 17 (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17832-38, ¶ 533).

⁹ *See CAF Phase II Standards Order*, at ¶ 27 (rejecting arguments that network latency should be disregarded in evaluating the performance of support recipients).