USTELECOM
THE BROADBAND ASSOCIATION

April 11, 2014

Ex Parte

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

Dear Ms. Dortch:

Re: Connect America Fund, WC Docket No. 10-90

On Wednesday, April 9, 2014, Eric Einhorn and Malena Barzilai (Windstream), Mary Henze (AT&T), Jeff Lanning (CenturyLink), Maggie McCready (Verizon), Mike Saperstein (Frontier), and I (collectively referred to as "the price cap ILECs") met with Rebekah Goodheart and Stefanie Frank from Commissioner Clyburn's office to discuss the above-referenced Commission proceeding. The parties discussed the Report and Order and Further Notice of Proposed Rulemaking ("FNPRM") on universal service high-cost issues that is currently on circulation and scheduled to be considered at the Commission's April 23 Open Meeting.[1]

On Thursday, April 10, 2014, Malena Barzilai (Windstream), Mary Henze (AT&T), Mike Saperstein (Frontier), Alan Buzacott (Verizon) and I met with Priscilla Delgado Argeris from Commissioner Rosenworcel's office and Nick Degani from Commissioner Pai's office.

On Friday, April 11, 2014, Malena Barzilai (Windstream), Alan Buzacott (Verizon), Mary Henze (AT&T), Mike Saperstein (Frontier), and Jonathan Banks (USTelecom) met with Amy Bender from Commissioner O'Rielly's office on the same topics.

The price cap ILECs noted that Section 254(b) of the Communications Act compels the Commission to base its policy decisions on the principle that all Americans, including those in

[1] *See* FCC Announces Tentative Agenda for April Open Meeting (rel. Apr. 2, 2014), **Connect America Fund; Universal Service Reform - Mobility Fund:** The Commission will consider a Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, and Seventh Order on Reconsideration taking significant steps to continue the implementation of the landmark reforms adopted in the 2011 USF/ICC Transformation Order to modernize universal service for the 21st century. An accompanying Further Notice of Proposed Rulemaking proposes measures to update and further implement the framework adopted by the Commission in 2011.

rural and high-cost areas, should have access to telecommunications and information services.[2] Consistent with this principle and a concomitant interest in fiscal responsibility,[3] the Commission in its 2011 *USF/ICC Transformation Order* struck a balance under which price cap carriers would be offered cost model-based support, allocated from a set budget, in exchange for a state-level commitment to provide 4/1 Mbps broadband to all eligible high-cost locations within their service areas.[4] The price cap ILECs have worked cooperatively with the Commission and other stakeholders to craft a Connect America Fund ("CAF") Phase II program that efficiently targets funding to high-cost areas unserved by an unsubsidized competitor and aligns support with carrier obligations.

In light of these facts, the price cap ILECs expressed concern that the Commission in the FNPRM may recommend an increase in the broadband speed requirement for CAF Phase II without recommending concurrent changes in other terms for areas in which carriers are eligible to elect cost model-based support. In particular, the price cap ILECs suggest the following actions to ensure that the delicate balance underpinning reform of the high-cost program is not upset:

- If the Commission is considering a change to the CAF Phase II speed requirements, it should postpone commencement of a challenge process to determine CAF Phase II-eligible census blocks until it reaches a final determination of the speed requirements. Alternatively, to the extent the Commission recommends an increase in the CAF Phase II speed requirements in the FNPRM, it should conduct the challenge process to determine what high-cost census blocks are unserved at the heightened speed requirements and should declare those areas eligible to receive CAF Phase II support. A mismatch between the speed used to determine eligible areas and the obligation applied to recipients risks leaving customers between the two speeds with broadband service well below the CAF standard.

- To the extent the Commission in the FNPRM recommends that the CAF Phase II speed requirements should be increased, it should also recommend that the term of support for carriers electing cost model-based support should be revised to 10 years. A 10-year term of support would be consistent with the substantially increased costs of deploying a higher-speed network. In addition, it would align the state-level commitment with the 10-year term of support we understand the

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[2] See 47 U.S.C. Sec. 254(b)(3).

[3] *See 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 an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, CC Docket Nos. 01-92 and 96-45, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, and WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, at para. 18 (rel. November 18, 2011) (*USF/ICC Transformation Order*).

[4] *Id.* at para. 156.

Commission intends to adopt for the competitive bidding process that will occur in areas where the price cap carriers decline a state-wide commitment.

- To the extent the Commission in the FNPRM recommends or tentatively concludes that the CAF Phase II speed requirements should be increased, it should also recommend that a census block will be eligible for support if it is between the two high-cost benchmarks and is not fully served by an unsubsidized competitor with broadband meeting the increased speed requirements. It would be arbitrary to set a higher speed requirement and at the same time continue to hold that only those census blocks lacking 3 Mbps/768 kbps broadband are eligible to receive support.

  The Commission should enhance the existing substitution rule by permitting CAF Phase II recipients to substitute any high-cost locations that are not served by unsubsidized competitors, without regard to the eligibility status of the census block in which those locations are found. This revision would ameliorate cost challenges presented by the most recent version of the Connect America Cost Model, which requires build-out to sparsely populated and isolated census blocks, and would enable broadband deployment to unserved consumers in partially served census blocks who otherwise would be left behind by CAF Phase II.

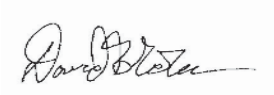
- To the extent that the FCC proposes to increase the Broadband Public Interest Obligations by requiring high-cost ETCs to provide or offer high-speed broadband services to schools, libraries, and healthcare providers under specific terms and conditions, such obligations should apply only to CAF II recipients who knowingly accept or decline funding with the associated obligations. Applying new obligations to ETCs who receive legacy Frozen support is totally arbitrary and requires that such ETCs are able to decline such support and be relieved of all ETC obligations. From an E-rate program perspective, placing unique obligations on one class of E-rate service provider and not on all others would disrupt the fair and open competitive marketplace that the E-rate rules have sought to foster. By statute, E-rate service providers are not required to be ETCs and it is, therefore, contrary to differentiate among e-rate providers by imposing new obligations only on those who also happen to be ETCs.

In addition, the price cap carriers expressed concern about the schedule for phasing in the local rate floor. The proposed $3.00 increase to be implemented January 2, 2015, followed 18 months later by another increase in excess of $3.00 will create rate shock among consumers and exceeds the threshold established in several states for the level of local rate increases that can be implemented without time-consuming and expensive state rate cases. USTelecom proposed a more graduated increase of $2.00 to the cap on the local rate benchmark to be

implemented on January 2, 2015, with $2.00 increases each subsequent January 2nd until the rate floor benchmark is reached.[5]

Pursuant to Commission rules, please include this ex parte letter in the above-identified proceeding.

Sincerely,



David Cohen
Vice President, Policy

c: Rebekah Goodheart
Stefanie Frank
Priscilla Delgado Argeris
Nick Degani
Amy Bender

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[5] *See* Reply Comments of ITTA and USTelecom on the Petition for Extension of Time to Comply with the New Rate Floor, In the Matter of Connect America Fund, WC Docket No. 10-90 (filed Mar. 31., 2014).