



November 21, 2016

***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***

Dear Ms. Dortch:

On Thursday, November 17, 2016, the undersigned on behalf of NTCA–The Rural Broadband Association (“NTCA”), together with Lynn Follansbee of USTelecom, Chad Duval of Moss Adams, Steve Meltzer of JSI, Jeff Smith of GVNW, and Jim Frame, Regina McNeil, and Jeff Dupree of the National Exchange Carrier Association (the “Rural Representatives”), participated in a conference call with Carol Matthey, Ted Burmeister, Victoria Goldberg, Doug Slotten, Joe Sorrosso, and Suzanne Yelen of the Wireline Competition Bureau (“Bureau”).

During this conversation, we discussed possible means by which rural local exchange carriers (“RLECs”) could avail themselves of relief with respect to existing universal service fund (“USF”) contribution obligations in connection with broadband transmission services as articulated in the *Rate of Return Reform Order* and as further addressed in several subsequent Bureau-released items. *See Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3160 (2016), at n. 428; *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Order, DA 16-1661, 31 FCC Rcd 6862-63 (rel. June 15, 2016), at ¶¶ 23-25; *Access Charge Tariff Filings Introducing Broadband-Only Loop Service*, WC Docket No. 16-317, Order, DA 16-1145 (rel. Oct. 6, 2016) (“*Tariff Review Order*”), at n. 1 and ¶ 10.

In particular, the Rural Representatives noted that these collected orders appear to outline two means by which a RLEC would not be subject to USF contributions in connection with providing broadband (like other providers) pending comprehensive reform. The first path, which might be defined as a “private carriage option,” would entail the RLEC choosing to detariff such services and providing them on a private carriage basis such that they are no longer “telecommunications services” and instead constitute “telecommunications.” The second path, which might be defined as a “retail approach,” would entail the RLEC ceasing to offer a separate transmission service, and instead providing a finished retail broadband Internet access service (“BIAS”) directly to an end user. The Rural Representatives also briefly described a third potential scenario that they believe should be considered as means of ensuring equitable regulatory treatment with respect to broadband contributions pending comprehensive reform, pursuant to which a retail BIAS provider would provide a resale certificate to the RLEC indicating that no contributions should be assessed in connection with RLEC wholesale

broadband transmission because it is only one input component of the retail Internet access service provided to end users by the BIAS provider who, but for previously granted temporary forbearance from the Federal Communications Commission (the “Commission”), would be responsible for such contributions. Focusing, however, on the first two options described in the prior Commission and Bureau items cited above – the “private carriage option” and the “retail approach” – the Rural Representatives discussed why each presented substantial questions and concerns that would, for the time being, result in most RLECs remaining as the only entities today contributing to USF based upon the provision of broadband.

With respect first to the “private carriage option,” the Rural Representatives observed that such relief was explicitly dependent upon treatment of the transmission service as “telecommunications,” rather than being a “telecommunications service.” But the Rural Representatives noted that this “relief” offered no hope for most RLECs, as current rules (even after this year’s reforms) limit recovery via non-model USF or access rates to those costs that are derived from “telecommunications services.” See 47 C.F.R. § 65.800 (indicating that the “rate base” consists of certain costs related to “plant used and useful in the efficient provision of interstate telecommunications services regulated by this Commission”). It appears, therefore, that the “promise” of the “private carriage option” in relieving non-model RLECs of their unique contribution burden on broadband transmission can only be realized if the RLEC agrees to forego all USF support for that transmission – making this an “option” in name and theory only for those carriers serving high-cost rural areas, and of no real use to any RLEC in need of USF support. We discussed ways of potentially mitigating this concern by permitting carriers to use existing cost allocation and recovery mechanics and procedures on a tariffed or detariffed basis even if the broadband transmission were treated as “telecommunications” due to its provision to a single ISP customer solely (although it remains uncertain whether such options provide a clear solution).

We then discussed the “retail approach” as an alternative means of placing RLECs on equal regulatory footing with all other broadband providers pending comprehensive contributions reform. The October 2016 tariff review order indicated that, where a RLEC adopted this approach, “[u]nder existing rules, the costs associated with [BIAS] offered by the [RLEC] would be included in the regulated costs allocated by Part 36 and 69.” *Tariff Review Order*, at ¶ 10. We described how the inclusion of BIAS expenses in the regulated rate base does not in and of itself appear to be a significant logistical challenge. We noted, however, that this would bring into the regulated rate base many categories of costs that today are “non-regulated,” such as Internet routers, middle mile costs, BIAS marketing expenses, and Internet help desk requirements. Although it might be possible to assign some such expenses to a retail BIAS rate element, the majority of such previously non-regulated expenses would likely be allocated to other, regulated services under current rules and procedures. This could perhaps be avoided through further study and development of detailed new cost allocation guidance, but we further observed this very approach of *including* retail BIAS costs in regulated costs as suggested in the *Tariff Review Order* appears contrary to the Commission’s prior admonition that any reform must “ensure that no double recovery occurs by *removing* the costs of [BIAS] service from the regulated rate base.” *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, 7137 (2016), at ¶ 269 (emphasis added). The Rural Representatives therefore expressed concern that, without explicit written direction and further clarification, the “retail approach” would generate significant confusion and uncertainty in the near-term among RLECs – and even among oversight entities such as the Universal Service Administrative Company (“USAC”) – in determining what expenses should or should not be deemed recoverable via USF and access rates.

Although we recognized that the Commission and Bureau face substantial demands on their time with respect to implementation of USF reforms and other matters, the current uncertainty and confusion related to the “retail approach” could lead to the subsequent denial of recovery of costs that a RLEC had thought appropriate for inclusion in the rate base and/or the erroneous initial inclusion of costs in the rate base by a RLEC that should *not* have been included (to the detriment of other RLECs under a fixed USF budget). We therefore observed that it was essential for all parties involved to receive clear written direction and guidance as soon as possible with respect to new cost allocation procedures if the “retail approach” is to be a realistic option for putting RLECs on equal regulatory footing with all other broadband providers.

Finally, the Rural Representatives underscored the importance of obtaining clear written *near-term* direction and guidance from the Commission and Bureau on these issues for several reasons:

- Some RLECs are making decisions now regarding the new “private carriage option” and “retail approach” without the necessary clear understanding of the potential implications of these decisions on continued receipt of high cost support. Further, all RLECs must make important decisions related to cost pooling and tariffing early next year, and lingering confusion or uncertainty with respect to these issues will hinder informed decisions.
- As described in the “retail approach” above, the prospect of delayed clarification may lead to significant confusion and uncertainty regarding what kinds of costs should be included in the rate base, to the detriment of individual carriers, the industry as a whole, USAC, and ultimately the USF system itself.
- Although one might view this unique RLEC contribution obligation as a decade-long practice such that a further delay in relief should present no significant harm, this does not take account of the fact that the *Rate of Return Reform Order* opened a new door *for the first time* by permitting individual RLECs to take advantage of the “private carriage option” or “retail approach” to alter this decade-long practice. *See Rate of Return Order*, 31 FCC Rcd at 3160, ¶ 193 (describing what RLECs can now do “[w]hen the revised rules become effective”). This means that circumstances have in fact clearly and expressly changed, and as carriers seek to walk through the new door that has been opened, greater clarity and direction is needed as soon as possible with respect to these changes for the benefit of individual carriers, the industry as a whole, USAC, and the USF system itself.
- As of January 1, 2017, non-model RLECs face the prospect of a 9 percent average reduction in their USF support due to insufficient funding. This budget control will render RLECs’ standalone broadband rates unaffordable for many rural consumers, denying those consumers the ostensibly promised benefits of reform. Although relief here to place RLECs on equal footing with other broadband service providers would hardly blunt the impact of post-reform budget-control-affected standalone broadband rates that are still likely to be more than \$100 per month in many cases and ensure real “reasonable comparability” for rural and urban consumers, the ability to cease contributing on broadband like all other BIAS providers pending comprehensive contributions reform would at least mitigate some of the severe negative impact of the looming USF budget control on rural consumers and potentially stimulate *some* adoption (presuming a rural consumer wants standalone broadband enough to pay perhaps \$100 or more for it).

Marlene H. Dortch  
November 21, 2016  
Page 4 of 4

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

Sincerely,

/s/ Michael R. Romano

Michael R. Romano

Senior Vice President –

Industry Affairs & Business Development

cc: Carol Matthey  
Ted Burmeister  
Victoria Goldberg  
Doug Slotten  
Joe Sorresso  
Suzanne Yelen