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December 26, 2019

***By ECFS***

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

**Re: Notice of *Ex Parte* Presentation of American Cable Association, GN Docket No. 18-122**

Dear Ms. Dortch:

On December 20, 2019, Ross Lieberman of ACA Connects—America’s Communications Association (“ACA Connects”); Georgios Leris of Steptoe & Johnson LLP, outside counsel to ACA Connects; and the undersigned (collectively, “ACA Connects Representatives”) met with representatives from the Wireless Telecommunications Bureau, the International Bureau, and the Office of Economics and Analytics (listed below).

At the meeting, the ACA Connects Representatives discussed the next steps that the Commission should take to facilitate a fast C-Band transition while keeping incumbents whole. The ACA Connects Representatives stressed that the Commission should issue an Order as soon as possible establishing the framework for an auction, the transition, and technical matters, and a further notice of proposed rulemaking seeking comment on the details of these matters that would be completed no later than the third quarter of 2020. The initial Order should provide that: the 5G licenses on 280 MHz of C-Band spectrum that the Commission plans to auction should be conditioned on payments by the licensees to cover the relocation costs of incumbents; fiber backhaul should be deemed a comparable facility and multichannel video programming distributor (“MVPD”) earth station operators should be free to use relocation funds for fiber solutions<sup>1</sup>; any qualifying costs incurred after the release of the Commission’s next order on this

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<sup>1</sup> Under ACA Connects’ proposal, MVPD earth station operators, who each use a significant amount of the C-Band, would have the option of transitioning to fiber, while the remaining narrowband users, like non-MVPD earth station operators, would be repacked in the upper portion of the C-Band.

matter should be reimbursable; MVPDs earth station operators should be able to access these funds in advance of incurring their costs<sup>2</sup>; another part of the proceeds could be used for incentive payments; and the Commission should condition the new licenses on payments of an amount that exceeds the estimate of relocation costs and any incentive payments.<sup>3</sup> The Commission should also appoint (or propose appointing) a neutral transition facilitator to oversee and supervise the transition, to collect payments by 5G licensees, and to manage the advance/reimbursement/incentive payment process. The C-Band Alliance (“CBA”) is not an appropriate party to serve as a transition facilitator, particularly with regard to the cable operators who elect fiber-based solutions and other changes that would require work inside a cable operator’s headend.<sup>4</sup> The ACA Connects Representatives also discussed the Commission’s legal authority to undertake such actions.<sup>5</sup>

ACA Connects urged the Commission to clarify in an Order that cable operators would be eligible to receive funds to cover the cost of interconnecting existing earth station/headends with an earth station/super-headend,<sup>6</sup> of interconnecting existing earth station/headends with a

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<sup>2</sup> Advance payments for relocation expenses would flow directly from the new licensees to the incumbents, and no federal funds would be implicated in the process (separate funds would flow from the new licensees to the Treasury in accordance with the winning bids). Alternatively, the Commission could adopt the broadcast incentive auction reimbursement process, where it established a process “similar to an approach based on advance payments”—it issued “all eligible broadcasters and MVPDs an initial allocation of funds based on estimated costs, which will be available for draw down (from individual accounts in the U.S. Treasury) as the entities incur expenses, followed by a subsequent allocation to the extent necessary.” Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions, *Report and Order*, 29 FCC Rcd. 6567, 6817-18 ¶ 609 (2014).

<sup>3</sup> The percentage by which the payments exceed the cost estimate should depend on the rigor of the process. If the Commission conducts a further rulemaking proceeding to estimate relocation costs, that percentage could be set at 15%. If the Commission forgoes such a further proceeding and relies on the record available to date, then 30% would be appropriate in light of the greater uncertainty. Excess funds at the end of the transition could be returned to the 5G licensees or, if lawful, to the Treasury.

<sup>4</sup> Of course, the CBA should still have a substantial role in the transition, a role whose timely performance could be rewarded with incentive payments, as discussed below.

<sup>5</sup> See Letter from Pantelis Michalopoulos, Counsel for ACA Connects, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (Dec. 11, 2019).

<sup>6</sup> Collapsing headends into super-headends involves upgrading two headends per regional cluster into super-headends that can receive programming in higher compression and modulation through the C-Band, and then interconnecting the remaining headends to the super-headends by obtaining redundant 10G fiber for ten years and the equipment needed at the collapsed headends to receive content from super-headends through fiber. Collapsing headends with a Managed Video Service Provider involves connecting one headend per regional cluster to a managed video

managed video service provider,<sup>7</sup> or of adopting other variations of fiber-based solutions for video backhaul. For MVPDs who use the C-Band today, fiber-based solutions will assure comparable reliability and quality to what these MVPDs currently enjoy on 500 MHz of C-Band spectrum. By contrast, shoehorning the video content that MVPDs receive today, and will need to receive in the future, in a mere 200 MHz of spectrum is not likely to achieve comparable levels of reliability and quality.<sup>8</sup> ACA Connects also noted that the industry-wide cost of using fiber to receive video programming over the next ten years would be comparable to that of being repacked in a small portion of the C-Band.<sup>9</sup> Specifically, ACA Connects has estimated that the cost for approximately 2,200 MVPD earth stations to continue using C-Band backhaul (based on CBA's forced migration) would amount to about \$3.1 billion.<sup>10</sup> For these MVPDs, this cost is similar to that of choosing fiber-based solutions. As ACA Connects has shown, the cost of providing the optionality of the fiber-based solutions would range from \$2.4 billion to \$4.6 billion, and is estimated at approximately \$3.7 billion based on an analysis of likely business

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service provider by obtaining redundant 10G fiber for ten years, entering into a 10-year agreement with the provider to receive programming terrestrially, and interconnecting the remaining to the one connected headend. *See* Letter from Ross Lieberman, Senior Vice President of Government Affairs, ACA Connects, to Marlene H. Dortch, Secretary, FCC, Attachment at 9, 14-15, GN Docket No. 18-122 (Nov. 15, 2019) (“Nov. 15 Letter”).

<sup>7</sup> *See, e.g.*, Letter from Randy Clarke, Vice President Federal Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (Dec. 20, 2019).

<sup>8</sup> *See generally* Nov. 15 Letter, Attachment at 18-24; Letter from Brian Hurley, Vice President of Regulatory Affairs, ACA Connects, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 2 (Nov. 19, 2019) and Attachment (“at the end of the transition, [MVPDs] would be left with a C-band that is less reliable, less capable, more prone to interference, and unable to meet future demand for higher-resolution video offerings.”).

<sup>9</sup> *See* Nov. 15 Letter, Attachment at 10.

<sup>10</sup> This cost does not include other transition related costs, including the installation of filters and replacement of antennas and the launching of eight new satellites. These additional costs amount to \$3.03 billion. Accordingly, the actual cost of the CBA's transition is \$6.1 billion. *See* Letter from Brian Hurley, Vice President of Regulatory Affairs, ACA Connects, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 1, Attachment at 6-7 (Nov. 19, 2019). CBA's \$2.5-3.5 billion estimate is wildly inaccurate for reasons explained by ACA Connects in that submission. *Id.* Indeed, CBA itself concedes that many of the elements of that cost cannot even be quantified at this time. *See* Letter from Bill Tolpegin, Chief Executive Officer, C-Band Alliance, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, Revised Transition Implementation Process at 3 (Nov. 8, 2019).

decisions.<sup>11</sup> In addition, the transition timeline for choosing fiber or upgrading C-Band facilities would be the same—around five years.<sup>12</sup>

Incentive payments by the winning 5G bidders are also a lawful and valuable tool in achieving the transition in a prompt and timely manner, beyond and above the incumbents' costs. The necessary modifications to the authorizations of all incumbents (both satellite and terrestrial earth station operators) could be made subject to such payments by the 5G auction winners. Alternatively, if the Commission prefers, incentive payments should be tied to the incumbents' timely performance of the roles assigned to them in the transition. In that respect, ACA Connects notes that earth station operators should not lose protection based on the lapse of unreasonably short deadlines, but rather should be allowed reasonable time commensurate to the option they have chosen, and should be encouraged to meet milestones with incentives.

There is precedent for non-auction, non-cost-related payments. In *Mtel*, the D.C. Circuit has upheld the Commission's jurisdiction to require payment for a license that was both outside an auction and unrelated to any incumbent's costs. The court ruled that the Commission has such jurisdiction under a combination of the "necessary and proper" clause, 47 U.S.C. § 154(i), and the Commission's authority to determine whether the grant of a license application would serve the public interest, 47 U.S.C. § 309(a).<sup>13</sup>

ACA Connects believes that C-Band earth station registrants qualify as licensees. Nevertheless, should the Commission disagree, then the Commission lacks the tool of a license modification under Section 316 for these registrants. Using incentive payments would therefore be an attractive alternative, and even more defensible for earth station operators than for satellite

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<sup>11</sup> See Nov. 15 Letter, Attachment at 10, 14-15. All of the cost elements included in these estimates for the fiber transition and C-Band repacking approaches are directly related to the number of users choosing each option.

<sup>12</sup> See *id.*, Attachment at 5. The CBA's proposal to clear the spectrum in three years is unrealistic. See *id.*, Attachment at 11-21.

<sup>13</sup> See *Mobile Communications Corporation of America v. FCC*, 77 F.3d 1399 (D.C. Cir. 1996) ("*Mtel*"). The Court remanded to the Commission on other grounds. See also Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *First Report and Order*, 15 FCC Rcd. 476, 533-34 ¶¶ 142-145 (2000) (permitting new licensees in the 700 MHz band to reach voluntary agreements with incumbent licensees "that would compensate incumbents for (1) converting to DTV-only transmission before the end of the statutory transition period; (2) accepting higher levels of interference than allowed by the protection standards; or (3) otherwise accommodating new licensees.") (footnotes omitted); see also Service Rules for 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd. 20845, 20863-67 ¶¶ 46-53 (2000) (finding that the Commission had statutory authority under Sections 309(j)(14) and 337(d)(2) of the Act to review and approve voluntary agreements between incumbent broadcasters and new 700 MHz band wireless licensees to expedite the clearing process).

operators, if the Commission prefers to avoid a perception that the payment to the incumbents is in exchange for not protesting a proposed license modification. In that case, the MVPD incumbents could negotiate with the satellite industry on an appropriate split of such payments.

Respectfully submitted,

/s/  
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