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November 10, 2014

Via ECFS

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

Re: *Ex Parte* Filing of the American Cable Association (ACA) on the Connect America Fund Further Notice of Proposed Rulemaking – WC Docket No. 10-90

Dear Ms. Dortch:

On October 21, 2014, ACA filed an *ex parte* letter¹ discussing issues and proposals it raised in a meeting with staff of the Wireline Competition Bureau (Bureau) on the pending Further Notice of Proposed Rulemaking (FNPRM) regarding the Connect America Fund (CAF) Phase II program for price cap local exchange carrier (LEC) areas.² ACA informed staff at that time that it would seek to develop a means of providing location-based flexibility in meeting deployment obligations for recipients of support through competitive bidding and recipients of model-based support.³

¹ *Ex Parte* Filing of the American Cable Association and the National Cable & Telecommunications Association, WC Docket No. 10-90 (Oct. 21, 2014).

² *Connect America Fund et al.*, WC Docket No. 10-90, Report and Order, Declaratory Ruling, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54, ¶¶ 138-185 (rel. June 10, 2014).

³ ACA submits its proposal on providing location-based flexibility in meeting deployment obligations notwithstanding its concerns that such flexibility would likely result in an inefficient allocation of support to recipients of model-based support, and such flexibility could undermine the objectivity of the competitive bidding process.

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To provide a factual underpinning for developing a mechanism to provide location-based deployment flexibility, ACA discussed typical broadband network buildouts with its members, who have significant experience in building such networks, and with consultants, who construct business cases for network providers. ACA also reviewed the basis upon which the Commission granted price cap LECs a right-of-first refusal and the extensive record the Commission relied upon in developing the Connect America Cost Model (CAM) that determines support levels for price cap LECs electing model-based support. From this work, ACA submits that the following should be the basis upon which deployment flexibility should be established:

- To determine whether to undertake a greenfield deployment, unsubsidized broadband providers develop a business case that produces a return on investment within a specified timeframe. The case is based on a number of factors, including costs of deployment and expected revenues. These providers begin to determine their costs by reviewing surface and aerial maps of the service area and locations of buildings, which provide them with such information as the number of route miles and number of locations per mile. They then conduct site surveys and “ride-out” in the service territory to further refine their calculations to reflect actual locations (*e.g.* distance from public roads) and construction conditions (*e.g.* the existence and condition of poles). Providers also check with government authorities, utilities, and private entities to determine availability and cost of access to right of way and to poles, ducts, and conduit. Even with these refinements, providers understand that some necessary information is unobtainable,⁴ and there will be unforeseen circumstances, and accordingly they build in a “contingent” cost factor into their business case. The additional cost factor varies based on such factors as to the degree of familiarity with the areas where deployment will occur and whether the area is more or less “economic.”⁵ However, ACA members generally set the factor at approximately 10 percent for these builds in new areas.

⁴ For example, an unsubsidized broadband provider engaging in a greenfield build would want to know the construction conditions between public roads and every residential home in the deployment area, particularly those homes located a far distance from the road where their exact position on the property cannot be seen or otherwise determined. However, because these homes are located on private property, the unsubsidized broadband provider must make estimates of the cost to reach the home.

⁵ ACA members have provided feedback to us that these cost contingencies are typically used to address the risk of unexpectedly expensive outlier locations rather than a broad-based increase in costs across the entire planned network build area.

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- To determine whether to undertake a brownfield deployment, an unsubsidized broadband provider will employ the same business case model as above, except it will use a lower “contingent” cost factor into its business case due to the fact that the deployment conditions are known. The factor would be approximately 5 percent of costs.
- Similar to a competitive provider’s undertaking a brownfield deployment, price cap LECs are familiar with the areas where support will be used because they operate in these areas. Moreover, they have received legacy high-cost support to bring voice service to virtually all locations in census blocks eligible for Phase II support.⁶ They thus should have a very good understanding of the specific costs of upgrading their networks to serve locations. The CAM accounts for these costs and the price cap LECs have been the source of many of its inputs.⁷ It further bears mentioning, to meet the public interest deployment obligations, price cap LECs will in general not need to replace the most expensive part of the network, the final portion of the last mile copper facilities, which is often the part of the network where costs are most uncertain for operators engaging in a greenfield build. As a result of all these factors, price cap LECs should encounter fewer unforeseen events or circumstances where the cost model estimate is disproportionately in error – and should therefore require less flexibility in their deployments.

From this basis, ACA developed a mechanism, which it sets forth below, to address the issue of flexibility in meeting deployment obligations for recipients of support awarded through competitive bidding and through the CAM. This mechanism seeks to meet a number of objectives: maximize deployments to unserved locations; efficiently distribute limited support; provide recipients of support reasonable flexibility to deal with unforeseen circumstances on a sound basis; and limit the administrative burden on the Commission.

Because, as discussed above, non-price cap LEC bidders for funding via the competitive bidding process will be building out greenfield networks in unfamiliar, unecomonic areas an

⁶ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17731, ¶ 175-177 (2011) (discussing the reasons for giving the price cap LECs a right of first refusal, which included their receipt of legacy support).

⁷ For instance, their ratio of the type of build (*e.g.* areal versus buried versus underground) is primarily based upon the characteristics of the areas that the price cap LECs currently serve.

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appropriate “contingent” cost factor for them would be 10 percent.⁸ However, since price cap LECs are familiar with the deployment conditions in their territories, which is reflected in the CAM, and are unlikely to rebuild the last mile of their networks, ACA believes a reasonable “contingent” cost factor for these LECs receiving cost-model support should be 5 percent. Therefore, ACA proposes the Commission adopt the following “flexible deployment” mechanism for the CAF Phase II program based on these “contingent” cost factors:

- A recipient of support through the competitive bidding process can elect not to serve up to 5 percent of eligible locations in a census block for which it receives support.⁹
- Price cap LECs receiving model-based support can elect not to serve up to 2 percent of eligible locations in a census block for which it receives support,¹⁰ and for each location

⁸ By providing flexibility at this level, the Commission will encourage non-price cap LECs to participate in the competitive bidding process thereby increasing the efficient use of limited funds.

⁹ ACA continues to support determining winning bidders based solely on a cost-effectiveness criterion: least amount of support per location for the relevant eligible census block judged on a nationwide basis. ACA expects bidders will factor in the 5 percent flexible service allowance into their bids. Accordingly, winning bidders would not be required to return any support as a result of not building to more than 95 percent of locations in a census block. Moreover, while allowing bidders to take account of the 5 percent flexibility may further enable bids to be below the reserve price, because there is a need for flexibility and because winners will be determined on a nationwide basis, ACA believes the Commission should achieve its objectives of maximizing its limited support and funding the most efficient bids.

¹⁰ ACA believes that the CAM provides a highly granular, reasonably accurate estimate of the costs of undertaking a greenfield fiber-to-the-home build and can be used to provide reasonable calculations of the limits of allowable deployment reductions and the size of the associated “givebacks.” The following is the methodology ACA employed.

The CAM models the costs of individual locations and generates an average cost per census block for every census block in the country that is unserved by a competitive provider. All census blocks with average costs above a low-cost threshold and below a high-cost threshold are considered eligible for support from the CAF. This results in 75,000 census blocks being considered eligible for support. Plotting those census blocks from lowest average cost to highest average cost creates a hockey stick-like distribution curve where the vast majority of the census blocks are near the low-cost threshold and a small minority approach the high-cost threshold.

While the cost model does not produce a precise cost per location, the distribution of average cost by census block serves as a good proxy for the cost distribution for all

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not served, it is required to return two and one-half times the average amount of support provided for that census block.¹¹

- A recipient of either support awarded through competitive bidding or through the CAM may seek and receive a temporary waiver of its deployment obligations for the relevant locations if it demonstrates that the deployment is delayed because of government permitting issues, natural disasters or other similar circumstances.

ACA has endeavored in making this proposal to provide a reasoned and productive solution to a difficult issue. It welcomes inquiries from and discussion with the staff on the proposal and the underlying rationale.

locations. The number of census blocks (75,000) covered is sufficiently large and the number of locations per census block sufficiently granular (56 on average) that the CAM's cost distribution curve likely has a similar slope to the theoretical distribution curve of locations. Additionally, there are unlikely to be any extremely high-cost locations eligible for support because extremely high-cost locations would raise the average costs of their parent census blocks so much that the entire census block would become ineligible for funding.

If the CAM provides a good proxy for the cost distribution of locations, then the next step is to determine the limits of allowable deployment reductions and the size of the associated "givebacks." ACA submits that its members' feedback on typical cost contingencies for network build-out projects can provide guidance for the size of the givebacks. The CAM's cost distribution curve can then be used to calculate the allowable deployment reduction to associate with each contingency factor. This analysis reveals that:

- A cost contingency of 5 percent would be expected to cover the top 1.5 percent of most expensive locations.
- A cost contingency of 10 percent would be expected to cover the top 4.2 percent of most expensive locations.

¹¹ As addressed in the previous footnote, 1.5 percent of locations account for 5 percent of total costs. For simplicity's sake, we have rounded 1.5 percent up to 2 percent and assumed the same percentage of total costs for the giveback. If 2 percent of a census block's total locations accounts for 5 percent of its total build out costs, it follows that the average cost to build out each location within the 2 percent group is 2 and 1/2 times greater than the average cost of serving each location in the block.

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This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.

Sincerely,

A handwritten signature in blue ink that reads "Thomas Cohen".

Thomas Cohen
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Counsel for the American Cable Association

cc: Carol Matthey
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