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Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20536

Re: Ex Parte Filing of the American Cable Association on the Connect America Fund, WC Docket No. 10-90

Dear Ms. Dortch:

On December 1, 2014, the undersigned met with Priscilla Argeris, Legal Advisor to Commissioner Rosenworcel. The purpose of the meeting was to discuss the above-referenced docket and the pending order to adopt measures to further implement the Connect America Fund (Phase II) in areas served by price cap local exchange carriers (LECs). In the meeting, I made the following points:

I. In amending the speed benchmark for broadband service from 4 Mbps to 10 Mbps, the Federal Communications Commission (Commission) does not need to provide price cap LECs receiving model-based support with additional support or time to serve locations in eligible census blocks with this higher speed service.

ACA does not oppose the Commission's proposal to increase the speed benchmark for broadband service from 4 to 10 Mbps. The price cap LECs submit that because of this change, it will be more expensive to deploy their DSL technology since they will need to push fiber further into the field and add more remote terminals. As a result, the price cap LECs argue they will need additional Phase II model-based support and additional time to construct their networks. For many reasons, the arguments of the price cap LECs are flawed, and no more support or time should be provided –

- First, the price cap LECs do not need additional support because –
    - The Commission adopted a forward-looking fiber-to-the-home (FTTH) greenfield cost model (CAM), which provides support for carriers to build from scratch fiber facilities all the way from the central office to end user locations. The CAM, because it is based on FTTH technology, thus accommodates any increase in speed. The Commission's model differs

from a DSL brownfield cost-model, which the Commission rejected and for which the Commission would need to account for the additional costs to build and maintain a higher-speed broadband network.

- The recent bids in the Rural Broadband Experiment program (RBE) demonstrate the CAM in fact provides excessive support, at least in the instances where applications were submitted. Earlier this month, for the RBE program, almost 600 project bids were submitted from 181 applicants for approximately $885 million of projects. As set forth in the rules, these bids were required to be below the amount of support in the CAM, and for the largest group of projects, the network had to be capable of delivering broadband speeds at 100/25 Mbps. The level of interest among a variety of unsubsidized competitors to receive support to deploy broadband at speeds of at least 10 Mbps in areas where these competitors provide no existing broadband service demonstrates that the CAM provides price cap LECs with excessive support in areas, especially those areas where price cap LECs either need to make no or minimal upgrades to their existing broadband plant.

- To address the limited number of locations where the CAM might not provide sufficient support, we understand the Commission is proposing in its draft to enable the price cap LECs to not serve up to 5 percent of locations in eligible census blocks. These are likely to be the most difficult to serve, highest-cost locations, where the CAM may not precisely match support with the cost of building out and maintaining service. By providing price cap LECs with this flexibility, the Commission is ensuring that the CAM provides more accurate support to other locations.

- Price Cap LECs will receive additional revenues by providing 10 Mbps service – approximately 13 percent greater than for 4 Mbps service according to analysis by the Wireline Competition Bureau.

- Second, the price cap LECs do not need additional time (more than 5 years) to deploy because –

  - Price cap LECs already provide 10 Mbps service to 20 percent of locations receiving support and thus won't need more time to build to these locations. Of these locations, almost 20 percent are among the top 10 percent of most expensive locations that will receive support.

  - ACA members have informed the Commission that they can build broadband networks meeting the speed benchmarks in 3 years or less. The build out timeframe for ACA members is consistent with AT&T's Project Velocity, where the carrier will upgrade 22 million locations (5 times the

number in CAF Phase II) with a mix of VDSL2 and ADSL2+ within 3 years.[1]

Notwithstanding the above, there is insufficient evidence in the record to demonstrate that the price cap LECs should have more support or time to serve locations in eligible census blocks with broadband service at speeds of 10 Mbps. The submissions of the price cap LECs have either been conclusory or anecdotal, and none have provided the type of detailed data to support their requests. For example. the US Telecom *ex parte* of November 13th [2] provided detail on several DSL deployment scenarios, and submitted that costs for a 10 Mbps build were "at least double" those for a 4 Mbps build, but the filing provided no linkage between those scenarios and the actual deployments that would need to occur in eligible census blocks. In fact, US Telecom notes that "each broadband provider's network is different" and its scenarios are ones incumbents are "likely to encounter."[3] Thus, the Commission lacks a sufficient basis on which to grant US Telecom's request for 5 additional years or even AT&T's request in its comments for an additional 3 years.[4]

Finally, the statute requires that universal service support be used to provide rural consumers with service that is "reasonably comparable" to that received in urban areas. With broadband speeds increasing annually in urban areas, providing rural consumers with today's comparable speed of 10 Mbps in 5 years is cause for concern. Locking in that speed until 2025 – as the price cap LECs request – is simply not consistent with the statute. Rural consumers are entitled to real comparability.

II. In enabling flexibility to serve an unserved location, the Commission should ensure the amount of support that is returned when not serving a location reflects the cost of the location not served and does not produce a windfall for price cap LECs receiving model-based support.

As we understand the draft order, it proposes that price cap LECs receiving model-based support have the ability not to serve without penalty up to 5 precent of the locations in eligible census blocks in a state, and that for each location not served, the amount of support would be reduced by the average amount of support per location for all eligible census blocks in a state. ACA believes it is reasonable to permit some flexibility to account for location specific issues that signficantly increase the cost of broadband deployment that are unaccounted for by the CAM. However, as structured in the draft, the price cap LECs have an incentive and ability to receive a significant windfall by foregoing serving the highest cost locations while only reducing their

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1 *See also* AT&T/DirecTV Description of Transaction, Public Interest Showing, and Related Demonstrations, MB Docket No. 14-90, at 39-41 and Exhibit A, ¶¶ 38-46 (June 11, 2014). In its Application to the Commission for approval of its acquisition of DirecTV, AT&T commits to expand its GigaPower (U-verse) reach, which provides speeds in excess of 10 Mbps, by approximately two million locations (from 55 to 57 million locations in its service territory) and to accomplish this deployment within four years. AT&T explains these locations are in higher-cost areas where it does not offer broadband service today or where the broadband service is slow speed. Thus, these locations appear to have cost-characteristics that are similar to those supported by the CAF and in fact may be eligible for support under that program.

2 *See* Letter from Jonathan Banks, US Telecom, WC Docket No. 10-90 et al. (Nov. 13, 2014).

3 *See id*. at 5-6.

4 *See* Comments of AT&T, WC Docket No. 10-90 et al. at 44 (Aug. 8, 2014).

support by the average amount. This problem becomes exacerbated when flexibility is enabled by aggregating all eligible census blocks in a state versus examining each census block individually because certain census blocks as a whole may be much higher cost.

To elaborate, ACA's research shows that the CAM accounts for density and construction conditions, along with a great many other factors. While the cost model does not produce a precise cost per location, it can be used to determine average cost per location for every eligible census block. ACA calculated that on a nationwide basis in –

- Foregoing deployment to the top 1.5 percent of locations, deployment costs are reduced by 5 percent.
- Foregoing deployment to the top 4.2 percent of locations, deployment costs are reduced by 10 percent
- Foregoing deployment to the top 6.8 percent of locations, deployment costs are reduced by 15 percent.

Thus, if a price cap LEC does not serve 5 percent of the highest-cost eligible locations, its costs will decrease by more than 10 percent. However, under the draft proposal, support will only be reduced by the average amount of support for all locations in the state – or 5 percent of the aggregate average amount of support. That would produce a windfall for a price cap LEC, which ACA has calculated to be potentially more than $100 million annually in aggregate for all price cap LECs, or more than one-half billion dollars over the current 5-year model-based support term.[5]

Price Cap Carrier	**Annual Windfall***
AT&T	$31,033,762
CenturyLink	$27,132,928
Frontier	$15,932,138
Verizon	$9,942,082
Windstream	$9,543,590
Alaska Comm. Services	$2,384,526
Fairpoint	$2,190,020
Others	$2,179,980
Total	$100,339,027

*The windfall is the difference between the funding required to serve the top 5% of each price cap LEC's most expensive locations in each state and 5% of the LEC's overall CAF model-based support for that state.

[5] ACA's analysis was conducted on a state-by-state basis for each price cap LEC consistent with the Commission's proposal.

To address this problem, ACA proposes that if the Commission enables a price cap LEC to forego service to up to 5 percent of locations in a state, the LEC would be required to return two times the average amount of support provided for an eligible location in the state for each location not served.

In the alternative, ACA proposes that support be returned beginning with the average amount of support per location provided in the highest cost census block and then moving progressively to lower cost census blocks. For example, assume in a state a price cap LEC has fifty eligible census blocks with ten locations in each – or 500 locations in total. If there is 5 percent flexibility, the price cap LEC could forego serving 25 locations. Under ACA's proposal, if all 25 locations are not served, for the first ten locations, support would be reduced by the average amount of support provided in the highest cost census block multipled by ten, for the next ten locations, support would be reduced by the average amount provided in the second highest cost census block multiplied by ten, and for the final five locations, support would be reduced by the average amount provided in the third highest cost census block mutlipled by five.

Should the Commission not adopt either of these proposals, it should at least address the flexibility issue on a census block, and not statewide, basis. That is, the average amount of support to be returned should be calculated based on the average amount of support provided in the census block of the "not served" location.

III. The Commission should continue its policy of not providing support in census blocks partially served by an unsubsidized competitor.

ACA supports the Commission continuing to not provide support in census blocks partially served by unsubsidized competitors. Not only does the Commission have insufficient data to assess the presence of unsubsidized competitors in these partially served census blocks, but in these areas, competitors are most likely to expand their networks and bring service to unserved locations. Finally, for the limited number of locations that may not get service, ACA is developing solutions and will provide them to the Commission for consideration.

IV. Because the application process and other requirements of the RBE program are so rigorous, the Commission should remove from the model-based support program any census block where an application for either of the two highest speed groups was submitted but an award was not made; these census blocks should be included in the post-right of first refusal (ROFR) competitive bidding process.

The Commission inquired in this proceeding whether an application for support in the RBE program is sufficient indication of potential competitive entry that rural areas included in an application should be removed from a price cap LEC's state-level commitment (but not from the competitive bidding process should the applicant not receive RBE support). ACA submits that because the Commission imposes stringent conditions for applicants in the RBE process, an application represents a firm commitment to provide service in an area. Moreover, for the two highest speed groups of experiments, it represents in most instances a commitment to provide significantly better broadband service than a price cap LEC would provide under the model-based regime, and it would achieve that end by using no more than – and most likely much less

than – the amount of support to be provided to the price cap LEC. Hence, should the applicant not receive RBE support, because of the program's rigorous requirements, an application for either of the two highest speed groups should be viewed as a strong indication that the applicant will participate to receive support for the same areas in the post-ROFR competitive bidding process. Further, a price cap LEC too can bid for the area where the application was submitted. In other words, there is the potential for real gain from removing areas included in RBE applications from the state-level commitment.

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

Sincerely,

Ross J. Lieberman

cc (*via email*): Priscilla Argeris