FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Connect America Fund	)	WC Docket No. 10-90
Rural Broadband Experiments	)	WC Docket No. 14-259

REPLY COMMENTS OF AMERICAN CABLE ASSOCIATION ON THE POTENTIAL APPLICABILITY OF LETTER OF CREDIT PROPOSALS TO THE CONNECT AMERICA FUND PHASE II COMPETITIVE BIDDING PROCESS

The American Cable Association ("ACA") hereby files reply comments in response to the Federal Communications Commission's ("Commission's") Public Notice seeking comment on Letter of Credit ("LOC") proposals and their potential applicability to the Connect America Fund ("CAF") Phase II competitive bidding process.[1]

In adopting rules for the Rural Broadband Experiments ("RBE") program,[2] the precursor of the CAF Phase II competitive bidding process, the Commission sought to create an objective, accountable process that would encourage the maximum number of viable entities to participate. By balancing various goals, the Commission would ensure the integrity of the program and the efficient distribution of support for the deployment of the most robust broadband networks. Among the accountability measures adopted by the Commission was the mandate that a winning

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[1] *See Wireline Competition Bureau Seeks Comment More Generally on Letter of Credit Proposals for Connect America Phase II Competitive Bidding Process*, Public Notice, WC Docket Nos. 10-90 and 14-259, DA 15-140 (rel. Jan. 30, 2015).

[2] *See Connect America Fund; ETC Annual Obligations and Certifications*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90 and 14-58 (rel. July 14, 2014) ("RBE Order").

bidder supply an irrevocable LOC, and here the Commission imposed stringent requirements, including that the winning bidder "must modify or renew its LOC to ensure that it is valued at the total amount of money that has already been disbursed plus the amount of money that is going to be provided for the next disbursement."[3] As noted in the Public Notice, several groups have sought waivers of the LOC requirement, claiming in general that the Commission's requirement is not necessary to achieve its aim while it imposes burdens that deter smaller providers from participating in the program.[4] Two ACA members shared a similar perspective when they met with staff of the Wireline Competition Bureau ("Bureau") one month ago: "regarding the Letter of Credit, while both support the purpose of the requirement, they explained that it imposes a material cost, which could inhibit builds with fewer locations, and that it is not necessary once a provider meets the buildout targets."[5]

The views of these ACA members also were set forth by many parties in the initial comments filed in response to the Public Notice. The National Rural Utilities Cooperative Finance Corporation[6], for instance, stated, in its filing, "There has been near-unanimous support among commenters in the RBE for more flexible LOC requirements that strike a better balance of cost and accountability." Moreover, even the United States Telecom Association, which opposed LOC waivers in the RBE program, in its comments asserted that in the context of CAF Phase II, "these [LOC] terms are onerous…[and]the terms should be tailored to the amount of

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3 *See id.*, ¶ 62.

4 *See Federal Register* , Federal Communications Commission, Public Notice, DA 15-140, Vol. 80, No. 39 at 10658, ¶ 1 (Feb. 27, 2015), citing the petitions filed by the Alliance of Rural Broadband Applicants, NTCA – The Rural Broadband Association, and the National Rural Utilities Cooperative Finance Corporation.

5 *See Ex Parte* Letter from Thomas Cohen, Counsel for the American Cable Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90 and 14-259 at 3 (Mar. 6, 2015).

6 *See* Comments of National Rural Utilities Cooperative Finance Corporation, WC Docket Nos. 10-90 and 14-259 at 4 (Mar. 30, 2015).

amount 'at risk' annually or at most within a one or two year range."[7] CoBank, while finding the LOC to be "a useful tool" to ensure funds are utilized properly, commented that there are problems with the current LOC mandate's structure, explaining:

> This [annual renewal] structure has the potential of putting the award recipient into default under the program if the recipient were unable to replace the original LOC with one from a new issuing bank. This could cause financial distress and potentially trigger ancillary defaults under the carrier's other loan agreements, exposing the original bank to lender liability risk. This means that the LOC, as currently structured, effectively has a 10-year tenor with an increasing exposure amount to the life of the program. This is inconsistent with commercially prudent lending practices, as it is impossible to assess the various risks facing operators in the rapidly changing telecommunications industry over a 10-year horizon.[8]

CoBank then proposed that the "LOCs be structured such that the amount increases only through the build-out period," and that it then should be eliminated upon certification the plant is operational or the amount should be reduced to cover only the funds to be disbursed over the coming year.[9] The National Rural Electric Cooperative Association found this proposal "has substantial merit."[10] ACA too finds the CoBank proposal is reasonable and would better enable smaller providers to participate in the competitive bidding process while preserving accountability. It urges the Commission to adopt this or a similarly equitable approach. In addition, ACA continues to discuss with its members other modifications to the LOC requirements that would both ensure accountability and facilitate their participation, and it will bring those to the Bureau's attention as soon as possible.

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7 *See* Comments of the United States Telecom Association, WC Docket Nos. 10-90 and 14-259 at 2 (Mar. 30, 2015).

8 *See* Comments of CoBank, ACB, WC Docket Nos. 10-90 and 14-259 at 3 (Mar. 20, 2015).

9 *Id.*

10 *See* Comments of the National Rural Electric Cooperative Association, WC Docket Nos. 10-90 and 14-259 at 5 (Mar. 30, 2015).

Respectfully submitted,

Thomas Cohen

AMERICAN CABLE ASSOCIATION

Matthew M. Polka
President and Chief Executive Officer
American Cable Association
Seven Parkway Center
Suite 755
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Ross J. Lieberman
Senior Vice President of Government Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007
(202) 494-5661

Thomas Cohen
Kelley Drye & Warren LLP
3050 K Street, NW
Suite 400
Washington, DC 20007
Tel. (202) 342-8518
Fax (202) 342-8451
tcohen@kelleydrye.com
Counsel to the
American Cable Association

April 13, 2015