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November 25, 2015

Via ECFS

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

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

Dear Ms. Dortch:

On November 24, 2015, Ross Lieberman, Senior Vice President of Government Affairs, American Cable Association ("ACA"), and the undersigned, Thomas Cohen, Kelley Drye & Warren LLP, Counsel to ACA, met with Claude Aiken, Office of General Counsel, and Carol Mattey, Wireline Competition Bureau, to discuss the financial qualifications for applicants to participate in the Connect America Fund ("CAF") Phase II competitive bidding process. On November 25, 2015, these ACA representatives had a follow-up discussion via telephone with Alexander Minard (Wireline Competition Bureau).

In recent meetings with Rebekah Goodheart, Legal Advisor to Commissioner Clyburn, and Travis Litman, Senior Legal Advisor to Commissioner Rosenworcel, ACA representatives explained that the financial qualifications being considered by the Commission in the proposed order are so onerous that they would act as a disincentive to smaller service providers participating in the process.[1] Instead, ACA representatives suggested that the Commission tailor the requirements so that "serious" smaller providers could participate.

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[1] *See* Letter from Thomas Cohen, Counsel to the American Cable Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (Nov. 13, 2015); Letter from Thomas Cohen, Counsel to the American Cable Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (Nov. 25, 2015).

In the meeting, ACA representatives proposed the following regime to facilitate participation in the competitive bidding process by smaller experienced service provider applicants[2] while ensuring they are financially qualified:

First, these smaller applicants should not be required to provide audited financials prior to bidding. Many of the service providers are private entities that have not needed audited financials, and the cost to produce them would be in the range of $50,000-$100,000 – a large amount for a smaller bidder with no certainty of prevailing in the competitive bidding process.

Second, the Commission could, if it remains concerned about the financial wherewithall of these smaller applicants, require them to place a reasonable amount of money in escrow, some or all of which they would forfeit if they won the bidding and did not comply with the post-auction financial qualification requirements.

Third, the Commission should permit these smaller applicants to obtain a Letter of Credit ("LoC") other than from a "top 100 bank" that has a Triple B or better credit rating and that is insured by the FDIC or FCSIC. These qualifications may work for larger providers, especially those that are public and have relationships with major banks, but most of ACA's smaller providers only have relationships with community – not top 100 – banks. This is not only driven by longstanding relationships within a community; it also has a sound financial basis. Big banks find it inefficient and unprofitable to make small loans (or loan commitments). Smaller providers in turn are loathe to pay the high fees big banks demand. In the end, the burdens of obtaining the proposed LoC will fall upon smaller providers who will pay to get the attention of large banks that are neither interested nor required to deal with them. This is unfair and not necessary to achieve the Commission's objectives. ACA intends to submit in a subsequent filing more specific criteria by which to judge other financial institutions that the Commission should consider qualified to offer LoCs to smaller providers. ACA also proposed that, as an alternative to requiring a LoC from a smaller provider, a winning smaller bidder be able to place an additional amount in escrow, which would reflect the difference between the amount of support drawn and the value of the network deployed.

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[2] To be deemed experienced, a smaller service provider should have filed Form 477 for the three most recent years.

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

Sincerely,

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cc: Claude Aiken
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