KELLEY DRYE & WARREN LLP
A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400
3050 K STREET, NW
WASHINGTON, D.C. 20007-5108

(202) 342-8400

NEW YORK, NY
LOS ANGELES, CA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES
MUMBAI, INDIA

FACSIMILE
(202) 342-8451
www.kelleydrye.com

DIRECT LINE: (202) 342-8518
EMAIL: tcohen@kelleydrye.com

May 2, 2016

Via ECFS

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

Re: *Ex Parte* Filing of the American Cable Association and the Wireless Internet Service Providers Assocation on the Connect America Fund, WC Docket No. 10-90

Dear Ms. Dortch:

On April 28, 2016, Stephen Coran, Lerman Senter PLLC, Counsel to the Wireless Internet Service Providers Association ("WISPA"), Ross Lieberman, Senior Vice President of Government Affairs, American Cable Association ("ACA"), Micah Sachs and Jacob Roscoe, Cartesian, consultant to ACA, and Thomas Cohen, Kelley Drye & Warren LLP, Counsel to ACA, met with Carol Mattey, Alex Minard, and Heidi Lankau of the Wireline Competition Bureau and Neil Dellar and Suzanne Tetreault of the Office of General Counsel. The purpose of the meeting was to discuss the Connect America Fund ("CAF") Phase II competitive bidding process and the proposed requirement that winners in the process provide a Letter of Credit ("LoC").

WISPA and ACA understand that the Commission is considering requiring that winners in the competitive bidding process submit a LoC from a "top 100 bank" that has a BBB- or better credit rating and that is insured by the FDIC or FCSIC. As WISPA and ACA set forth in prior filings,[1] while these qualifications may work for larger service providers, they will reduce, if not effectively eliminate, participation in the process by smaller providers. WISPA and ACA thus

[1] *See, e.g.*, *Ex Parte* Filing of the American Cable Association and the Wireless Internet Service Providers Association on the Connect America Fund, WC Docket No. 10-90 (Dec. 17, 2015).

have explored various proposals to address their concern and that meet the Commission's objectives.

After extensive research and analysis, WISPA and ACA now propose that a bank should be eligible to provide a qualifying LoC if it is FDIC/FCSIC-insured and has an investment grade rating of B- or above from Weiss Ratings. By adopting this approach, the Commission would ensure that banks eligible to issue LoCs are financially viable while expanding the pool of eligible banks to approximately 3,600, which would facilitate access to LoCs by smaller providers.

WISPA and ACA submit that use of Weiss Ratings is preferable to criteria based on bank asset size and ratings by agencies that charge to rate a bank for the following reasons:

- **Weiss Ratings are a sound measure of bank viability**. Weiss is an independent investment firm, providing paid research to individual investors through a subscription model. Because Weiss is not compensated by the institutions it rates, it does not suffer the same conflict of interest concerns as traditional ratings agencies (*e.g*. Moody's and S&P). Weiss rates depository institutions based on five key parameters: capitalization, asset quality, profitability, liquidity and stability. These are appropriate criteria and align with the high-level methodology of other institutions that rate banks. Weiss Ratings are also correlated with WISPA/ACA's previously proposed Basel III "Well-Capitalized" standard.[2]

- **Weiss Ratings can provide a more stringent filter than the "Well-Capitalized" standard**. WISPA/ACA continue to believe that Basel III "Well-Capitalized" is the best metric to assess the viability of banks, based on its predictive success historically. Limiting eligible banks to those with Weiss Ratings of B- or above creates an eligible pool that is a subset of "Well-Capitalized" banks. Therefore, Weiss Ratings act as a *de facto* filter on the "Well-Capitalized" standard. Historically, banks meeting this filter should have a similar annual failure rate to "Well-Capitalized" banks.[3] Also, because WISPA/ACA propose a threshold at B- rather than C-, which is Weiss's equivalent of the lowest investment grade rating,[4] WISPA/ACA are filtering out many lower-end (near

---

[2] *See Ex Parte* Filing of the American Cable Association and the Wireless Internet Service Providers Association on the Connect America Fund, WC Docket No. 10-90 (Feb. 12, 2016).

[3] In both instances, the annual failure rate is negligible.

[4] *See* "Weiss Ratings Downgrades United States Debt to C-Minus," Marketwired (July 15, 2011), *available at* http://www.marketwired.com/press-release/weiss-ratings-downgrades-united-states-debt-to-c-minus-1538763.htm.

junk-rated) investment grade banks. Weiss Ratings also can add additional granularity to the rankings of banks and provide a more restrictive filter to the larger pool of "Well-Capitalized" banks.

- **Weiss Ratings provide a sufficiently large pool of eligible banks**. Weiss is unique in that it rates almost all (more than 98 percent) of FDIC-insured banks and therefore serves as a standard that can be applied across all banks, not just the largest ones, which is a limitation of using traditional ratings agencies. With the WISPA/ACA proposal, there would be approximately 3,600 eligible banks (versus fewer than 70 if the Commission used the bank asset size and ratings agency criteria it is considering). This pool includes almost 3,000 banks outside of the top 1,000 by assets, which facilitates the inclusion of smaller providers in the competitive bidding process.

- **Almost all banks under the WISPA/ACA proposal are engaged in commercial lending**. Over 98 percent of eligible banks under the WISPA/ACA proposed standard have outstanding commercial loan balances and on average these banks have approximately 13 percent commercial loans as a percent of total loans. Thus, the Commission should not be concerned that the WISPA/ACA standard will result in a pool of eligible banks that do not have a history of commercial lending.

- **Weiss Ratings provide an administrable solution**. Because Weiss provides ready access to its ratings, the Commission can easily determine whether a bank meets this criterion.

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

Sincerely,

Thomas Cohen
Kelley Drye & Warren, LLP
3050 K Street N.W.
Washington, DC 20007
202-342-8518
tcohen@kelleydrye.com
Counsel for the American Cable Association

cc: Carol Mattey
Alex Minard
Heidi Lankau
Neil Dellar
Suzanne Tetreault