

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**WASHINGTON HARBOUR, SUITE 400**

**3050 K STREET, NW**

**WASHINGTON, D.C. 20007-5108**

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

NEW YORK, NY

LOS ANGELES, CA

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES

MUMBAI, INDIA

DIRECT LINE: (202) 342-8518

EMAIL: tcohen@kelleydrye.com

May 13, 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 on the Connect America Fund, WC Docket No. 10-90**

Dear Ms. Dortch:

On May 11, 2016, Ross Lieberman, Senior Vice President of Government Affairs, American Cable Association (“ACA”), and Thomas Cohen, Kelley Drye & Warren LLP, Counsel to ACA, met with Stephanie Weiner, Senior Legal Advisor, Wireline, to Chairman Wheeler, and Carol Matthey and Alex Minard, Wireline Competition Bureau. They also met with Travis Litman, Senior Legal Advisor to Commissioner Rosenworcel. On May 13, 2016, Ross Lieberman met with Amy Bender, Legal Advisor, Wireline, to Commissioner O’Rielly. The purpose of the meetings was to discuss the proposed order to develop a framework for the Connect America Fund (“CAF”) Phase II competitive bidding process (“auction”).

Over the past six months, ACA representatives have met many times with Commission staff to discuss their shared goal of maximizing participation in the auction. ACA’s presentations focused on two issues that may act as barriers to participation by smaller broadband providers:

- Many smaller providers would not meet the Commission’s proposed “audited financials” requirement for entities that seek to bid or be able to obtain a “Letter of Credit” (“LoC”) from a bank meeting the Commission’s proposed eligibility requirements if they are a winning bidder. ACA proposed that a smaller provider should be permitted satisfy the “audited financials” requirement after it wins a bid

Marlene H. Dortch  
May 13, 2016  
Page Two

and that any penalty for not providing “audited financials” be reasonable given the size of the provider.<sup>1</sup> ACA also proposed that a smaller provider should be permitted to obtain a LoC from a bank that is FDIC/FCSIC-insured and has an investment grade rating of B- or above from Weiss Ratings.<sup>2</sup>

- Smaller providers may not be eligible telecommunications carriers (“ETCs), and the process to be designated as an ETC may prove unduly burdensome for them. ACA proposed streamlining the process by limiting the time for states to review applications and the issues that states could review.

In previous meetings, ACA representatives also explained that any wireline broadband provider that does not currently offer service in a CAF eligible area is not likely to participate in the auction if the Commission only requires the provision of relatively low-speed broadband service because the provider will not believe it can compete if it has to build new fiber plant to serve the eligible area whereas an incumbent provider only needs to upgrade existing facilities. ACA representatives also noted that encouraging (or at least not discouraging) the provision of higher speed broadband service will have the virtue of providing to consumers in these areas service that is more robust and future-proof – a critical feature given the importance of broadband service and the ten-year duration the CAF Phase II competitive bidding program. Finally, so long as bids are capped at a reserve price set pursuant to the cost-model used to determine the award of “right of first refusal support” to price cap incumbent local exchange carriers, the Commission will get more “bang for the buck” by requiring auction winners to provide future-proof broadband service.<sup>3</sup>

With all that said, ACA believes that above all, to maximize participation, the Commission should construct an auction process that is relatively simple and straightforward, which thereby provides the certainty that will increase incentives for providers, especially smaller providers, to participate. Accordingly, should the Commission deem it appropriate to weigh bids by different performance characteristics, it should minimize complexity, which would invite greater participation.

---

<sup>1</sup> *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).

<sup>2</sup> *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 (May 2, 2016).

<sup>3</sup> Price cap carriers receiving “right of first refusal support” were only required to provide broadband service at speeds of 10/1 Mbps.

KELLEY DRYE & WARREN LLP

Marlene H. Dortch  
May 13, 2016  
Page Three

In the meetings on May 11<sup>th</sup> and May 13<sup>th</sup>, ACA representatives briefly reviewed these three issues and thanked the Commission staff for engaging with them to address these concerns. ACA representatives expressed particular appreciation for the work of Carol Matthey, Alex Minard, Heidi Lankau, and Neil Dellar.

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: Stephanie Weiner  
Carol Matthey  
Alex Minard  
Travis Litman  
Amy Bender