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October 14, 2011

Via ECFS

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

Re: American Cable Association (“ACA”) Written Ex Parte Presentation; *In the Matter of Connect America Fund*, WC Docket No. 10-90 et al.

Dear Ms. Dortch:

In an October 6, 2011 speech, Chairman Genachowski stated that his proposal to reform the Universal Service Fund and create the new broadband Connect America Fund (“CAF”) “will not eliminate states’ responsibility for designating eligible telecommunications carriers.”¹ On behalf of its 500 cable operator members who are not eligible telecommunications carriers (“ETCs”), ACA is disappointed in this decision. Once the Commission establishes a competitive bidding process for the receipt of CAF support based on a predetermined set of public interest obligations, any post-bidding clearance process by states is not only redundant but potentially inconsistent with the Commission’s policies and regulations. Further, as ACA stated in its comments in this proceeding, the Commission has more than sufficient legal authority to provide support to the winning bidder to provide broadband service without involving the states.² This argument is supported by the authors of the ABC Plan, who stated in a recent meeting with the Office of General Counsel:

Commission Authority over “Broadband ETC” Designations. We also discussed how the Commission can exercise exclusive jurisdiction over the designation of broadband support recipients. We noted that nothing in the Act requires that broadband eligibility determinations be performed under the cumbersome process outlined in section 214(e), which provides for a state role in ETC designations for

¹ FCC Chairman Julius Genachowski, “Connecting America: A Plan to Reform and Modernize the Universal Service Fund and Intercarrier Compensation System,” (Oct. 6, 2011).

² See e.g., Comments of American Cable Association, WC Docket No. 10-90 et al. (May 23, 2011).

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legacy telecommunications services. To the contrary, section 214(e)(2) grants state commissions authority only to “designate a *common carrier* ... as an eligible *telecommunications carrier*.” 47 U.S.C. § 214(e)(2) (emphasis added). Because broadband Internet access is an information service, the Commission has authority to create a separate process for evaluating which providers of that service should be eligible for broadband funding. Furthermore, the Commission could preempt any state effort to impose additional eligibility requirements on broadband funding recipients. Section 2(b) would not constrain the Commission’s power to preempt state rules, as that provision limits the Commission’s jurisdiction only with respect to “intrastate communication service[s],” *id.* § 152(b), and broadband Internet access is a jurisdictionally interstate service.³

In light of the importance of this issue and public policy justification, and the Commission’s legal authority with respect to broadband service discussed above, ACA asks that the Chairman reconsider his decision.

However, should the Chairman not reconsider, as part of the follow-on proceeding that ACA understands the Commission is planning to undertake to establish the process for competitive bidding for the CAF and public interest obligations, ACA urges the Commission to limit the role of the states in reviewing petitions by CAF awardees to become ETCs to ensure consistency with the CAF’s purposes. The Commission has sufficient authority to interpret the Act to ensure that actions of states are not inconsistent “with the Commission’s rules to preserve and advance universal service.”⁴ The Commission has acted in other instances to define the roles of states to further national purposes.⁵

When it established ETC rules in 2005, the Commission decided not to mandate state compliance based on the valuable role states could play in evaluating “local factual situations in ETC cases.”⁶ However, that rationale is inapt with regard to a competitive bidding process where a single award is made to a recipient agreeing to comply with a series of public interest obligations established by the Commission. In such an instance, a diversity of approaches by states, as exists today, is counterproductive to achieving the aims of the new federal program.⁷ The Commission itself notes

³ See *Ex Parte* Notice of AT&T et al., WC Docket No. 10-90 et al. (Oct. 6, 2011).

⁴ See 47 U.S.C. § 254(f).

⁵ See *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Second Report and Order, 22 FCC Rcd 19633 (2007).

⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, ¶ 61 (2005).

⁷ See “State Certification Requirements for Eligible Telecommunications Carriers,” The National Regulatory Research Institute (Feb. 2007).

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that “collectively these [ETC] decisions have national implications that affect the dynamics of competition, the national strategies of new entrants, and the overall size of the federal universal service fund.”⁸ While the Commission refrained from imposing mandates in its 2005 decision and instead merely encouraged states to follow its guidelines, the award of federal broadband support pursuant to the CAF is premised on a much different regulatory regime where national uniformity is essential. Therefore, the Commission should limit the role of states in reviewing petitions by CAF awardees to become ETCs to provide supported broadband service.

Specifically, ACA suggests that the Commission limit the length of review by states to at most 30 days, limit any supporting documentation required to be submitted by the winning bidder, prohibit states from imposing any inconsistent or additional obligations, and establish an expedited review process of any state actions. By adopting such mandates, the Commission would further ensure the success of its competitive bidding process and the award of CAF funding.

This letter is being filed electronically pursuant to section 1.1206 of the Commission’s rules.

Sincerely,



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⁸ *Id.*, ¶ 60.