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October 18, 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:

As part of the Chairman’s universal service fund reform proposed rules, ACA understands that the Commission would award a right of first refusal to price cap incumbent local exchange carriers (“ILECs”) to receive approximately \$2 billion in support annually from the new Connect America Fund (“CAF”). Today, these ILECs receive in aggregate less than half that amount annually in support from the High-Cost fund. Should a price cap ILEC elect this right of first refusal for all its study areas in a state (excluding those census blocks where competitors provide broadband service), it would receive support for five years and be obligated to meet the broadband build out, performance (4/1 Mbps initially and 6/1.5 Mbps by the end of the period), and service requirements. Thus, if all price cap ILECs elect this right for all states, no competitive provider would have the opportunity to receive CAF support through competitive bidding until much later in the decade. Such an outcome is troubling for ACA’s cable operator members that provide broadband service in rural areas and are very much interested in bringing broadband to unserved areas by using CAF support.¹ It also is counter to the goal of ensuring that government support is provided efficiently, including by being awarded to the provider capable of offering the highest performing service at the lowest cost.

ACA appreciates the Commission’s dilemma in seeking to weigh its desire to deploy broadband in unserved and high-cost areas with the interests of both price cap ILECs in receiving high-cost support, which most have relied upon for decades, and competitive providers, many of which are the dominant broadband and voice providers in their service areas. However, a proposal

¹ See *Ex Parte* Presentation of American Cable Association, WC Docket No. 10-90 et al. (Oct. 7, 2011).

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cannot be considered balanced when, without seeing the benefits of competitive bidding, it cedes to price cap ILECs the ability to elect the right for all or most areas of the country. By shutting out competitors from potentially participating in the program for most of this decade, such a policy denies to the public and rural consumers the substantial benefits of competition. Further, it is contrary to the federal government's long time practice of refusing to award "sole-source" contracts without demonstrating there are no alternatives or there is some exigency – neither of which are present in this instance. ACA cable operator members and other competitors are willing to provide an alternative that is more than comparable.

The Chairman seeks to ameliorate concern regarding the right of first refusal proposal by reducing the length of time for support, accelerating the build out schedule, and increasing the broadband speeds. ACA supports these improvements, but, even these improved policies do not cure the fundamental problem that competitors can offer more for less. Further, these improvements are not sufficiently robust to meet the needs of rural users. For instance, ACA member cable companies are ready today to deploy networks in these high-cost areas capable of providing broadband service at speeds of 16/4 Mbps – almost three times what the price cap ILECs would need to meet at the end of the five year period. Any Commission rule should reflect this higher performance benchmark.

ACA thus urges the Chairman and the other Commissioners to reject the right of first refusal proposal as set forth in the Chairman's draft order. It is an expedient measure that falls short of meeting the public interest objectives of bringing about universal broadband service in the most efficient and effective manner.

Finally, the Commission does not need to rush into adopting a right of first refusal. Any election by a price cap ILEC will depend on the amount of support to be awarded pursuant to the cost model that is not scheduled to be adopted until later next year. During the time in which the cost model is developed, the Commission also can seek further comment on how to utilize competitive bidding, rather than the right of first refusal, to ensure that all consumers in unserved, high cost areas receive the most robust broadband service at the lowest cost.

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

Sincerely,



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