

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 the FCC completes its consideration of the record in its Universal Service Fund (“USF”) reform efforts, the Mississippi Cable Telecommunications Association (“MCTA”) wishes to submit these additional comments.¹

Perhaps more than any other state, Mississippi will benefit from ubiquitous broadband deployment. According to the 2000 U.S. Census Bureau, it ranks as last among states in *per capita* income and first in poverty. If pervasive broadband can make a difference in jobs, healthcare and education as the *National Broadband Plan* advocates, Mississippi will benefit most from the Commission’s USF reform effort.

The hundreds of commenters to USF reform in this proceeding unite on two themes: all recognize the importance to move from the voice-centric, largely unaccountable legacy model to the promotion of broadband; and to target the fund to assist primarily in unserved and high-cost areas.

The administration of USF in Mississippi has been recognized as among the most troublesome of the current regime. Since 2004, AT&T has collected in the neighborhood of \$1 billion in USAC payments for Mississippi under the high-cost (non-rural) program. While entirely within the lawful bounds of the program, its administration reflects this reality: so much has been expended to so few with so little to show for it.

¹ See also Reply Comments of MCTA, WC Docket 05-337 et al., June 8, 2009.

The state lags in many areas where a robust communications environment could make a real difference. Thus, we urge the FCC to use this submission as a checklist, to make sure that widely shared reform goals find their way into the Commission's order.

√ ***Does any right of first refusal to provide broadband to an unserved or high-cost area go to the lowest-cost provider or to the incumbent carrier?***

After a short transition, the lowest-cost broadband provider should receive support to wire unserved areas; there is no apparent good reason for a long-term default arrangement to the incumbent. As NCTA pointed out in reviewing the ABC Plan: "[T]he price cap incumbent LECs are suggesting that they should have first access to new money simply because they were recipients of old money. That is precisely the opposite of a market-driven approach and it should be summarily rejected."²

Reform requires a plan to provide high-cost funding not based on past status as an ETC or as a legacy provider. Mississippi is the "poster child" for the case to remedy this situation. As recipient of the nation's largest non-rural high-cost fund payments for years, the principal ILEC has still been unable to provide DSL service to many locations in the state. In 2010 alone, USAC disbursed nearly \$151 million to AT&T wireline and wireless and \$260 million in high-cost support (rural and nonrural) to the state overall.

Even without an FCC waiver for funding to support broadband (as the Mississippi Public Service Commission ("MPSC") notes),³ it strains credulity that more could not have been accomplished with non-USAC revenues to advance ILEC broadband services to the state. So little was done over the years (with the exception of the purely risk-capital funded broadband successes achieved by MCTA members) and so much of the state remains unserved – as the MPSC points out.⁴

² Comments of the National Cable & Telecommunications Association, WEC Docket No. 10-90 et al., at 16 (Aug. 24, 2011). MCTA agrees with NCTA and the American Cable Association's proposal to limit the amount awarded to any incumbent LEC under a right of first refusal; and to offer it only in areas substantially unserved by a broadband provider. See NCTA Letter to Marlene Dortch, WC Docket No. 10-90 et al., Oct. 14, 2011; ACA Letter to Marlene Dortch, WC Docket No. 10-90 et al., Oct. 18, 2011.

³ Comments of the Mississippi Public Service Commission in WC Docket No. 10-90 et al. at 8 (Apr. 5, 2011).

⁴ The MPSC notes the "great 'broadband divide' separating Mississippi's hard-work industrious citizens from those in other states who are equipped with more pervasive broadband capabilities." *Id.* at 4. This divide does not arise where cable operators have introduced high capacity broadband service. Yet for all the hundreds of millions spent in Mississippi among USAC recipients, the object of the MPSC's lament persists.

Yet the ABC Plan ironically would make the incumbents exclusively eligible for still more support for years to come.

Worse, from an administrative standpoint, accountability about the fate of USAC funds was lacking, and funding ignored other telecom policy developments in the state. These deficiencies (and others like them) should not be perpetuated in the FCC's reforms. General telephone rate deregulation in Mississippi took effect at the request of ILECs in 2006,⁵ based on the premise, as in other jurisdictions, that existing or potential competition sufficed to keep rates affordable. Deregulation (based on asserted competition) combined with large subsidy payments to these same entities (because there was no other provider of last resort) – to create direct conflict of policies. Instead of ensuring that USAC payments flowing to Mississippi ILECs and wireless eligible telecommunications carriers (“ETCs”) in fact subsidized high-cost rural wire centers, there was no mechanism in place to prevent the use of these funds to support ILEC or ETC offerings in competitive markets, *despite* the legislature's conclusion that competition would keep rates in check. As to still-regulated (such as switched access service and single-line flat-rate voice) services, there was no reason to assume that those services were not satisfactorily being offered by non-USF-funded competitors.

Yet huge USAC payments continued to roll in.

Meanwhile, as Mississippi's ILECs and ETCs collected the nation's largest single-state USAC payments, its cable operators successfully constructed facilities-based VOIP and broadband services. *None* of these competitive services, including many in the most rural, low-density parts of Mississippi,⁶ was built with USAC money. Nor are the rates otherwise subsidized. Where cable has built out, customers for years have enjoyed download capacities (*plus* full-featured, state-of-the-art digital voice services) at least comparable to the future-oriented requirements that incumbent LECs must meet to receive support from the Connect America Fund (“CAF”).

It makes little sense to mandate open-ended subsidy windfalls to incumbent providers -- rewards for their failure to successfully build out. Yet that is what the ABC plan would dictate.

MCTA recognizes that any decision must balance the myriad interests of price-cap ILECs who have relied on payments with the reality that cable can, does, and will serve rural customers -- and wants to compete for funding from CAF. Thus, we urge the Commission to limit any “sole source” CAF eligibility period to the absolute minimum. In

⁵ Miss. Code Ann § 77-3-35(4) (a).

⁶ For example, MCTA member companies provide high speed cable modem services to these rural Mississippi communities: Saltillo (pop. 3300), Mantachie (1107); Walnut (754); Sherman (548); Sledge (529); Webb (587); Sumner (407); Carrollton (408); Sumner (407); Tremont (390), Marietta (248).

addition, if price-cap ILECs decline to participate under the CAF rules, the Commission should allow the lowest-cost provider to compete for those funds as soon as practicable.

√ ***Does the transition period for current recipients jeopardize technological advancements or unnecessarily retard competition?***

MCTA recognizes that for a USF reform package to be successful, most of its elements must be acceptable to most stakeholders, including companies that, rightly or wrongly, have business plans that are nourished by USAC subsidies.⁷ The ABC Plan called for a 10-year transition. Such a long duration may sideline the types of technology developments that have led to the unsubsidized facilities-based competition we see from cable operators today.

Fifteen years ago, when the FCC created the USF program, it assumed that service to high-cost areas wasn't feasible without a subsidy to incumbent carriers. Shortly after the USF program took effect, cable-modem service developed and, within a few years, low-cost cable-based VOIP service was a reality in many rural markets that were deemed unlikely to enjoy competition.

One enduring lesson from the FCC's USF history is that the longer an expected subsidy is in place, the tighter the grip of the interests whose business plans depend on it. Any time one competitor taps a subsidy, it makes it harder for competitors with new technologies to flourish. In other words, there is no reason to consign broadband in rural America to 20th century DSL only because that is the technology that the subsidized carrier provides.

The support afforded to Mississippi's ILECs and multiple (and multiplying) ETCs is the result of a well-intentioned program that failed to limit support mechanisms appropriately. USF reform must allow for the next era of innovative technologies to be considered as solutions for high-cost and unserved areas.

√ ***Are there adequate safeguards to make sure that funds are not used to compete in urban areas – whoever receives USF support for high-cost unserved areas?***

Because of the size of Mississippi's USAC annual payments, particularly to the incumbent LEC, it has been difficult to determine whether funds received have been used exclusively to support rural connections. It might be preferable to award payments

⁷ As the Mississippi PSC Comments, at 12, put it, "The MPSC would suggest that the USF expand rather than contract support to currently designated ETCs." MCTA aligns itself with NCTA and ACA in urging that a fund cap, not an ever expanding fund, will better discipline the administration of any subsidies to high cost or unserved areas.

to end-users, as the Lifeline program does, and thus obtain greater accountability for each dollar used in support. However, the CAF will require companies to invest in unserved areas, and such investments are admittedly more difficult when a provider must obtain payments from subscribers rather than a fund. Thus, it appears that the FCC will not adopt a subscriber-based formula in the short term.

There is all the more reason, then, to place safeguards to ensure that funds intended to reach unserved areas not be diverted by their recipients to underwrite service in contested areas served by more than one provider. In nearly all such cases, a cable operator will be such a competitor. It would defeat the purpose of the CAF to allow funds intended for unserved communities to be diverted to urban areas, or even out of the state where the funds were intended to be invested. Strict timelines, detailed build-out standards, and enforcement mechanisms with real penalties for noncompliance are essential to protect both competitors and the customers whose dollars will fund these programs.

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MCTA urges the FCC to use the checklist here as a way to ensure that the hard work of modifying the system works in the state that has the most to gain from effective reform.

Respectfully submitted,



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