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October 19, 2012

Via ECFS

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

Re: American Cable Association ("ACA"), *Ex Parte* Meeting on Connect America Fund, WC Docket No. 10-90 and High-Cost Universal Service Support, WC Docket No. 05-337

Dear Ms. Dortch:

Today, Ross Lieberman, ACA, and the undersigned, Thomas Cohen of Kelley Drye & Warren LLP, met with Michael Steffen, Legal Advisor to Chairman Genachowski, Julie Veach and Carol Mattey from the Wireline Competition Bureau, and Michael Jacobs from the Consumer & Government Affairs Bureau. The purpose of the meeting was to discuss the Commission's Connect America Fund Phase I incremental support program and potential revision of the rules under which the program operates. ACA filed extensive comments last year as the Commission developed the Phase I program,[1] then later commented on its implementation,[2] and most recently filed comments on petitions seeking waiver of the Commission's rules.[3] At the meeting, Mr. Lieberman and Mr. Cohen made the following points:

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1 *See e.g., Public Notice DA 11-1348: Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket Nos. 10-90 et al., Comments of the American Cable Association (Aug. 24, 2011).

2 *See e.g., Ex Parte* Letter from Ross Lieberman, American Cable Association, and Steve Morris, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (Mar. 29, 2012) and Opposition of the American Cable Association, WC Docket Nos. 10-90 et al. at 13 (Feb. 9, 2012).

3 *See e.g., Wireline Competition Bureau Seeks Comment on Windstream Communications Petition for Waiver of Certain High-Cost Universal Service Rules, WC Docket Nos. 10-90, 05-337, Comments of the American Cable Association (Aug. 24, 2012).*

- ACA supports the Phase I incremental support objective of expediting broadband deployments to unserved locations where there is no private sector business case in areas served by price cap local exchange carriers ("LECs").

- Even though less than 50 percent of the Phase I funding was accepted by the price cap LECs, the program should be considered a success, since it efficiently distributed funding to accelerate broadband deployment to unserved locations where there is no private sector business case.

- If Phase I support is awarded again, the Commission should note that in the recent Mobility Fund Phase I auction, which was open to incumbent and competitive providers, all funds were awarded. This demonstrates there is demand from non-incumbent providers to access universal service support to provide service in unserved areas and the Commission has a mechanism by which it can distribute support efficiently. The Commission should seek comment on using such a mechanism to award Phase I incremental support.

- In their waiver petitions, the price cap LECs make clear that they need greater support per location.[4] Should the Commission consider in a second round of Phase I funding increasing the amount of support per location or otherwise adjusting its rules to give price cap LECs greater flexibility in use of those funds, ACA encourages the Commission to consider issues it has raised in its filings which would enable broadband to be deployed efficiently and responsibly to the greatest number of unserved locations where there is no private sector business case. Specifically:

    1. The Commission should account for the fact that private sector (unsupported) entities are increasingly deploying broadband infrastructure in less dense rural areas. In fact, this dynamic has accelerated as wireless companies increase their "cell sites" and require them to be served by fiber. For instance, Mediacom has informed the Commission that these fiber builds enables them

[4] *See e.g.*, Fairpoint Communications, Inc. Petition for Waiver of Sections 54.312(b)(2) and (3) of the Commission's Rules and Conditional Election of Incremental CAF Support, WC Docket Nos. 10-90, 05-337 (filed Sept. 10, 2012).

to serve locations in low density areas proximate to wireless towers with much higher speed broadband service.[5]

- Consequently, any new Phase I awards should ensure support is only awarded to census blocks (and not just locations) where no private sector entity has built or will soon build without support. ACA believes that one way to achieve this objective is by ensuring support is provided only in census blocks: where there are unserved locations meeting the Commission's 768/200 kbps threshold, where no unsupported provider offers broadband service to any locations meeting the Commission's 768/200 kbps threshold, and that are adjacent to census blocks that are completely unserved by an unsupported provider meeting the Commission's 768/200 kbps threshold.

- In addition, the Commission should adopt a "challenge process," which would enable price cap LECs to challenge the accuracy of the current National Broadband Map and unsupported providers to demonstrate they are currently providing broadband service in a census block where a price cap LEC seeks or is eligible for support.[6] That said, ACA welcomes the opportunity to comment on other approaches that might achieve the objective.

2. To ensure funds are used only for the intended purpose, the Commission should seek comment on additional accountability measures. ACA believes at a minimum the Commission should require recipients, as a precondition to receiving support, to report on the following in each census block where support will be used:

- The specific locations where broadband service meeting the 768/200 kbps threshold is currently offered (served) and those locations where it is not currently offered (unserved);

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5 *See, Ex Parte* Presentation, Mediacom: Driving Broadband Network Investment and Deployment in Rural America, WC Docket Nos. 10-90, 05-337 (June 13, 2012).

6 ACA notes that Connected Nation recently filed a proposed "challenge process," which may serve as a basis for comments. *See* Connected Nation Notice of *Ex Parte* Communication, WC Docket Nos. 10-90, 05-337 at 7 (Oct. 12, 2012).

- The specific unserved locations where support will be used to deploy broadband service;
- Existing first and second-mile network facilities used to serve both served and unserved locations; and
- If the Commission provides support for second-mile fiber to provide service to unserved locations, the routes where the fiber will be deployed and the unserved locations that will be served by that fiber.

Finally, prior to receiving this support, price cap LECs should identify the locations where broadband will be deployed pursuant to merger commitments, in which CAF Phase I support cannot be used.

Mr. Lieberman and Mr. Cohen also discussed the fact that cable operators in many instances are prepared to deploy broadband to unserved areas if they can obtain CAF support. As noted above, cable operators are increasingly serving less dense areas even without such support. Consequently, they urged the Commission, as part of any extension of the CAF Phase I incremental support program, to reconsider the current ETC requirements, even for the limited purpose of application for CAF Phase I, which are unduly restrictive and counterproductive to enabling cable operators to access CAF support to bring the highest performance broadband service to unserved markets. ACA's position on this matter and potential policies to address this concern have been stated in its prior comments and filings.[7]

[7] *See e.g.*, *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Comments of the American Cable Association at 17-28 (Jan. 18, 2012).

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

Sincerely,

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