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November 15, 2013

VIA ECFS

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

Re: *Ex Parte* Filing by the American Cable Association (ACA) on Connect America Fund; WC Docket No. 10-90

Dear Ms. Dortch:

On November 12, 2013, a group of price cap local exchange carriers (LECs) met with Amy Bender and Ryan Yates of the Wireline Competition Bureau (Bureau) to discuss the Connect America Fund (CAF) Phase I Round 2 challenge process.¹ In the *ex parte* notice filed describing this meeting, the price cap LECs state that they “urge the Commission not to consider any evidence submitted by a participant in the challenge process after the deadlines.”² They claim that “the Commission did not allow for the submission of, nor should it consider, further information provided by participants after those deadlines.”³ ACA respectfully submits that the assertions of the price cap LECs are wrong as a matter of law, policy, and equity. They also run counter to US Telecom’s recent statement that “A fair, thorough and accurate challenge process is key to efficiently and effectively using CAF I monies.”⁴

¹ See *Notice of Ex Parte* from Michael E. Saperstein, Jr., Vice President, Federal Regulatory Affairs, Frontier Communications (on behalf of AT&T, CenturyLink, Fairpoint, Frontier, and Windstream), WC Docket No. 10-90 (Nov. 14, 2013) (“Price Cap LEC Ex Parte”).

² *Id.*

³ *Id.*

⁴ *Notice of Ex Parte* from David B. Cohen, Vice-President, Policy, US Telecom, WC Docket No. 10-90 at 1 (Oct. 31, 2103).

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First, as a matter of law, nowhere in the *CAF Phase I Round 2 Order* providing for Phase I Round 2 incremental support does the Commission, in setting forth the challenge process, prohibit or otherwise limit the submission of additional evidence after the filing of initial challenges and replies to those challenges.⁵ This is consistent with the Commission's statutory responsibilities to receive information to forward its public interest responsibilities.⁶ Moreover, the Commission's decision not to prohibit the submission of post-comment information in the Phase I Round 2 challenge process stands in stark contrast to the Bureau's explicit decision in the *CAF Phase II Order* to not consider post-comment submissions:

The Bureau does not intend to consider evidence or arguments related to the eligibility of a block for Phase II support unless that evidence or argument is raised within the specified time period for filing challenges and responses.⁷

This clearly demonstrates the Commission and Bureau know how to bar or limit consideration of submissions when they wish.

Second, as a matter of policy, the Commission should collect such information. Getting the facts correct about where an unsubsidized competitor provides service ensures that limited CAF support will not be expended where the requisite broadband service is already being offered. It also furthers the Commission's policy to encourage providers to use their own funds to deploy broadband across the country. Not only does collection of additional information have significant benefits, it should have no material adverse affect on deployments of broadband to unserved locations since the Commission is eager to complete the challenge process promptly and the deployments are to occur over a lengthy (three year) schedule.

Third, as a matter of equity, the Commission should permit competitors to submit additional facts. The Commission's directives in the *CAF Phase I Round 2 Order* about the type of information that should be submitted are limited and at best imprecise.⁸ Additionally, challengers did not have the benefit of prior experience since this is the first instance in which the Commission operated a formal challenge process. Consequently, there were uncertainties as to the extent of information that should

⁵ See *Connect America Fund*, WC Docket No. 10-90, Report and Order, FCC 13-73, ¶ 32 (rel. May 22, 2013) ("*CAF Phase I Round 2 Order*"). The rules adopted pursuant to this Report and Order also do not prohibit or limit the filing of information (47 C.F.R. § 54.312(c)(7)). The references in the Price Cap LEC Ex Parte to the Phase II challenge process are inapt.

⁶ See, e.g., Section 154(j) of the Communications Act of 1934, as amended (47 U.S.C. § 154(j)).

⁷ See *Connect America Fund*, WC Docket No. 10-90, Report and Order, FCC 13-1113, ¶ 21, n. 47 (rel. May 16, 2013) ("*CAF Phase II Order*").

⁸ See *id.*, ¶ 33.

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be provided,⁹ and challengers should be given an opportunity, within reason, to supply information that can make the record more accurate.

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

Sincerely,



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cc: Amy Bender
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⁹ ACA and the National Cable & Telecommunications Association discussed some of these uncertainties with the Bureau on August 28, 2013. *See Notice of Ex Parte* from Thomas Cohen, Counsel for the American Cable Association, WC Docket No. 10-90 (Aug. 30, 2103).