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April 10, 2014

Via ECFS

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

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

Dear Ms. Dortch:

On April 9, 2014, Ross Lieberman, ACA and the undersigned, Thomas Cohen, Kelley Drye & Warren LLP, Counsel to ACA, met with Amy Bender, Legal Advisor, Wireline, for Commissioner Michael O'Reilly to discuss the Connect America Fund ("CAF") Phase II program and the related items on the Tentative Agenda for the Commission's April Open Meeting.¹ In the meeting, Mssrs. Lieberman and Cohen made the following points:

- The Commission and especially the Wireline Competition Bureau have spent over two years working diligently to implement CAF Phase II. ACA has participated extensively in that process, and, while it objects to the outcome of some decisions, it believes the process has been constructive and that the Commission should move forward to adopt the cost model, begin the challenge process, and work to complete competitive bidding rules. Should the Commission believe there is a need to make revisions to core elements of the CAF Phase II program, including the cost model or challenge process, ACA believes that all core elements of the program should be re-opened, enabling it to eliminate "non" competitive-neutral aspects of the program.

¹ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (Nov. 18, 2011); Public Notice, DA 12-2075 (Dec. 27, 2013).

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- For the CAF Phase II competitive bidding process to be most successful, the maximum number of qualified providers need to participate. Many of ACA's small and mid-sized cable operators are eager to participate; they have demonstrated an ability to deploy high-speed broadband networks expeditiously and provide robust service in high cost areas.² However, they will only participate if unreasonable barriers are eliminated. They therefore are heartened to hear that the Commission is considering streamlining the Eligible Telecommunications Carrier ("ETC") designation process.³ In the meeting, Msrs. Lieberman and

² ACA estimates that 1.6 million homes in its members' territories are considered high-cost. Of those locations, more than one-half would be eligible to receive Connect America Fund Phase II support if not for the presence of ACA members. This is significant when compared to the 4.3 million locations in areas served by price cap local exchange carriers that are likely to be eligible for support. *See* "Connecting Hometown America," American Cable Association, at 7-8 (Apr. 2014), available at [http://americancable.org/files/140328%20ACA_Whitepaper_PDF%20\(FINAL\).pdf](http://americancable.org/files/140328%20ACA_Whitepaper_PDF%20(FINAL).pdf).

³ In comments filed on March 31, 2014, ACA discussed the following flaws with the ETC designation process and why reform is required to increase the efficiency and effectiveness of CAF Phase II:

More specifically, the ETC process is flawed for a number of reasons, including

- ETC designations are generally sought and obtained in areas where a provider already is offering service; thus, these providers have a customer base and are willing to undertake the obligation to serve them. In contrast, in unserved areas, unsubsidized providers do not yet offer service, and they cannot afford to become an ETC and agree to those obligations without first being assured of receiving support.
- The ETC designation process in certain states can be particularly burdensome for smaller unsubsidized competitors, further limiting participation.
- The ETC designation process varies significantly among states, which may limit participation by unsubsidized providers in certain states, skewing the allocation of support.

Not only is the ETC designation process inconsistent with the Commission's aims, because the Commission in the Connect America Fund program requires applicants to adhere to strict and complete requirements, additional state review is largely, if not entirely, superfluous. Accordingly, the existing ETC designation process is at best

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Cohen suggested the Commission adopt the following elements as part of that effort –

- Enable participants in the competitive bidding process (who are currently not ETCs) to apply to become an ETC after winning a bid.
- For participants in the competitive bidding process that bid as a group of entities, require that only one needs to be an ETC.
- Institute a shot clock (60-90 days) for state decisions.
- Prohibit states from imposing requirements that are either contrary or in addition to those adopted by the Commission for the CAF Phase II program.
- Enable a state to forgo the ETC designation process for CAF Phase II participants (who are not currently ETCs) and have the Commission oversee the designations for that state.

They added that if the Commission decides not to adopt any of these proposals at its upcoming meeting, they urged it to include those not adopted as part of its Further Notice of Proposed Rulemaking on the CAF Phase II competitive bidding process.

- ACA understands that the Wireline Competition Bureau is intending to adopt CAM Version 4.1 as the cost-model for CAF Phase II. While ACA continues to believe a “brownfield DSL” model better reflects the actual deployment that the price cap local exchange carriers will undertake, it accepts the Bureau’s decision. The process for developing the model has been reasonable and exhaustive. Msrs. Lieberman and Cohen briefly noted that in a recent filing CenturyLink

unnecessary and at worst would discourage qualified providers from participating in the Experiments and the overall Connect America Fund program. *See* Comments of American Cable Association on the Further Notice of Proposed Rulemaking on Next Generation Network Experiments in Rural America, WC Docket No. 10-90, at 8-9 (Mar. 31, 2014).

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raised concerns with this version of the model⁴ and that ACA is about to file an *ex parte* responding to those concerns, demonstrating flaws in their analysis, and urging the Bureau not to alter its policies for CAF Phase II based on them. (A copy of this filing will be sent to the legal advisors of the Commissioners when it is filed.)

- ACA understands the Commission is considering as part of the order addressing Mobility Fund issues whether the program should be downsized because major wireless carriers have deployed LTE to virtually all areas. If that occurs, Msrs. Lieberman and Cohen submitted that ACA believes the most fiscally responsible approach is for the Commission to return unneeded funding that was earmarked for the program to consumers by reducing the contribution rate.

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

Sincerely,



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cc: Amy Bender

⁴ See CenturyLink Submission for the Record with Preliminary Network Engineering Analysis of CAF II Build Cost, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, CC Docket No. 96-45 (Mar. 31, 2014).