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April 15, 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 14, 2014, Ross Lieberman, ACA and the undersigned, Thomas Cohen, Kelley Drye & Warren LLP, Counsel to ACA, met with Daniel Alvarez, Legal Advisor, Wireline, Public Safety and Homeland Security, to Chairman Wheeler. The purpose of the meeting was 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 meetings, 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

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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program should be re-opened, enabling it to eliminate “non” competitive-neutral aspects of the program.

- 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 CAF 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.

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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.

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 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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Mssrs. Lieberman and Cohen briefly noted that in a recent filing CenturyLink raised concerns with this version of the model⁴ and that ACA was 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. (ACA's *ex parte* was filed on April 10, 2014.)⁵

- 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, Mssrs. 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. Further, should the Commission want to retain the funding for universal service programs, ACA strongly believes it should only be added to programs that are competitively neutral, such as the CAF Phase II competitive bidding process.
- ACA understands the Commission is considering seeking comment on increasing the broadband speed obligation for CAF Phase II from 4/1 Mbps to 10 Mbps downstream. In response to inquiries from the Legal Advisors about this change, Mssrs. Lieberman and Cohen urged the Commission not to allow examination of this issue in a further notice to delay completing implementation of CAF Phase II, including by adopting the cost model, initiating the challenge process to determine eligible areas, and completing work on competitive bidding rules.⁶ As stated at the outset of this letter, even though it is operating in a highly dynamic environment, the Commission at some time needs to make the decision to move the program forward. ACA suggests that because the Commission and Wireline Competition Bureau have done so much work in the past two years to implement CAF Phase II, the time is ripe to complete its work so that price cap carriers can

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).

⁵ See Ex Parte Filing of the American Cable Association, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, CC Docket No. 96-45 (Apr. 10, 2014).

⁶ For instance, if the Commission alters the broadband speed for purposes of determining the census blocks eligible for funding under the right-of-first refusal, it also will need to adopt a new "comparable" rate for that service, which would likely significantly delay implementation of the challenge process.

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make their statewide elections and the competitive bidding process can follow. That does not mean that subsequent changes cannot be made, so long as they are properly noticed.

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

Sincerely,

A handwritten signature in blue ink that reads "Thomas Cohen".

Thomas Cohen
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cc: Daniel Alvarez