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December 2, 2015

Via ECFS

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

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

Dear Ms. Dortch:

On November 30, 2015, the undersigned, Thomas Cohen, Kelley Drye & Warren LLP, Counsel to the American Cable Association (“ACA”), met with Amy Bender, Legal Advisor, Wireline, to Commissioner O’Rielly. The purpose of the meeting was to discuss the Connect America Fund (“CAF”) Phase II competitive bidding process and the order on circulation to establish a framework for that process.

The Commission is considering an order setting forth a framework for the CAF Phase II competitive bidding process. Here, a key concern of the Commission and ACA jibes: both want to maximize participation by service providers in the process. For the Commission, an auction cannot drive prices in all eligible areas to their most efficient level without maximum participation. For ACA, which represents many experienced network and service providers operating in or near eligible areas, the auction presents an opportunity for these providers to offer service to new customers and increase the size of their businesses.

ACA understands that the Commission needs to strike a balance between seeking to maximize participation and maintain the integrity of the process by ensuring that only “serious” applicants participate. In setting forth the framework for the competitive bidding process, the Commission has sought to use lessons learned in the Rural Broadband Experiments process and other auctions to refine the qualifications that service providers must meet to participate. However, from ACA’s understanding of the proposed financial requirements to participate in the

Marlene H. Dortch
December 2, 2015
Page Two

auction, they are needlessly onerous for smaller providers, particularly when there are less burdensome options available that also could ensure applicants are “serious.”

For experienced service providers, the Commission is proposing that providers submit in advance of bidding one year of audited financials and that winners submit a Letter of Credit (“LoC”) from a “top 100 bank” that has a Triple B or better credit rating and that is insured by the FDIC or FCSIC. These qualifications may work for larger providers, especially those that are public and have relationships with major banks, but for hundreds of ACA’s smaller providers, they are a “hill too high to climb,” thus effectively eliminating their participation in the auction.

The Commission should understand that many private providers – and virtually all smaller private providers – have not needed audited financials. According to ACA members, audited financials are required from businesses when they request a large loan or some other form of debt (often higher than \$5 million) and they are not willing to sign personally. However, should an ACA member need a smaller-sized loan, it turns to community banks, which have a history of providing loans to long-standing businesses in the community, particularly when the operator is willing to sign personally. Should they need to produce collateral for a government franchiser, they often only need to put money in escrow. These smaller providers have been operating this way for decades, successfully providing communications services to their communities. Not having audited financials for these members is not a sign they are not operating financially sound businesses or that they are a credit risk.

Further, producing audited financials is costly and time-consuming. First, an entity needs to re-work its financials to GAAP standards. Then, it undergoes the audit, which can prove especially taxing the first time around. From discussions with ACA members, we understand this initial work will take approximately one year to complete and cost between \$50,000-\$100,000. Subsequent annual audits will cost between \$25,000-\$50,000. According to ACA members, many community banks and others who deal with those without financial audits understand these burdens and are willing to extend credit to these entities without financial audits. That said, the efforts undertaken and costs incurred by smaller providers to produce audited financials should be placed in the proper context: they only permit smaller providers to bid in the auction; if they do not prevail, spending all of this time and money will be for naught.

The LoC process, even with the proposed refinements to lessen the amount required as network infrastructure is deployed and service provided, also is far too burdensome for smaller providers. As noted above, smaller providers have relationships with community – not top 100 – banks. This is not only driven by longstanding relationships within a community, it has a sound financial basis. Big banks do not want to make small loans (or loan commitments); it is

Marlene H. Dortch
December 2, 2015
Page Three

inefficient and not that profitable.¹ Smaller providers in turn are loathe to pay the high fees big banks demand. The Commission may want the two parties to conjugate, but short of a shotgun wedding, this will not happen. In the end, the burdens of obtaining the LoC will fall upon smaller providers who will pay to get the attention of large banks that are neither interested nor required to deal with them. This is unfair and not necessary to achieve the Commission's objectives.

ACA understands the Commission's concerns that only serious applicants participate in the competitive bidding process and that providers should not be permitted to bid for substantial amounts of support when they are not required to meet the financial requirements above minimum thresholds. However, for smaller providers, particularly ones committing to seek lower levels of support in nearby areas, the Commission can and should establish qualifications reflecting this status. The Commission, for instance, could require these providers to submit "Reviewed," not "Audited," financials or permit them to place an amount of money in escrow to indicate they have sufficient financial wherewithall to implement the build should they win. As for the LoC, the Commission could permit smaller providers to obtain LoCs from smaller, financially sound banks or to forgo supplying a LoC and place an additional amount in escrow should they win, which would be forfeited if they do not deploy according to the rules.² To further limit the risk that smaller providers would not be financially qualified yet encourage their participation, the Commission can limit the opportunity for alternative financial qualifications to providers that qualify as small,³ commit to seeking a limited amount of support in the auction,⁴ and only bid for areas relatively close to their existing service territories.⁵ In any event, ACA suggests the Commission, should it not want to adopt one of these proposals immediately, tee up the question in the proceeding that will follow this order. This would give it time to fashion

¹ See, e.g., "Big Banks Cut Back on Loans to Small Business," Wall Street Journal (Nov. 26, 2015).

² There is almost certain to be some "number" (amount of money) placed in escrow that would properly balance the interests of the Commission and smaller providers.

³ For instance, these alternative financial qualifications could apply to a small provider with fewer than 5,000 subscribers that seeks to bid on a single census block adjacent to its existing service territory.

⁴ For instance, smaller businesses that need to borrow more than \$5 million dollars typically turn to larger banks and produce financial audits. Lesser amounts can be done without audited financials and through community banks.

⁵ This requirement will reduce the chances that applicants will be speculators who may bid on areas unfamiliar to them.

KELLEY DRYE & WARREN LLP

Marlene H. Dortch
December 2, 2015
Page Four

financial qualifications that encourage “serious” smaller providers to participate to the maximum extent in the competitive bidding process.

In addition to the discussion of financial qualifications, Mr. Cohen discussed briefly establishing different categories of broadband performance (or technology) and giving different bidding preferences for each category. He noted that by establishing a very high broadband performance category and giving it a preference, the Commission would be encouraging greater participation in the competitive bidding process because it would place all bidders – incumbent and new entrants – in a similar position (or, put another way, offset an incumbent’s advantage). In addition, he explained that the Commission should not be concerned about using limited CAF funding for deployment of very high performance broadband service so long as bidding is capped at the reserve price set by the cost model. After all, as part of the right of first refusal process, price cap local exchange carriers accepted funding for virtually all eligible areas in the country at reserve prices set by the cost model; yet, they are only required to provide relatively low speed (10/1 Mbps) broadband service. Getting fiber or other very high broadband service for the same price is a much better deal.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission’s rules.

Sincerely,



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cc: Amy Bender