

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**WASHINGTON HARBOUR, SUITE 400**

**3050 K STREET, NW**

**WASHINGTON, D.C. 20007-5108**

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

NEW YORK, NY

LOS ANGELES, CA

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES

MUMBAI, INDIA

DIRECT LINE: (202) 342-8518

EMAIL: tcohen@kelleydrye.com

June 1, 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 et al.**

Dear Ms. Dortch:

On May 28, 2015, Ross Lieberman, Senior Vice President of Government Affairs, American Cable Association (“ACA”), Micah Sachs and Zachary Cohen, Cartesian (via telephone), and Thomas Cohen, Kelley Drye & Warren LLP, Counsel to ACA, met with the following staff: Wireline Competition Bureau – Carol Matthey, Alex Minard, Katie King, and Heidi Lankau; and Office of Strategic Planning & Policy Analysis – Jonathan Chambers and Paul Lafontaine. The purpose of the meeting was to discuss ACA’s proposed design of the Connect America (CAF) Phase II competitive bidding process. The following summarizes the presentation by ACA’s representatives.

In the CAF program, the Commission is seeking to ensure that Americans in high-cost areas have access to voice and broadband capable networks and benefit from the ongoing technology transitions from TDM to IP and copper to fiber.<sup>1</sup> Moreover, the Commission recognizes that “technical capabilities and user needs” will evolve, and so, this past December, it

---

<sup>1</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663 (2011), *aff’d sub nom. In re: FCC 11-161*, 753 F. 3d 1015, 2014 WL 2142106 (10th Cir.2014); see also e.g. *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 *et al.*, FCC 14-98, ¶ 1 (rel. July 14, 2014) (“Rural Broadband Experiments Order”).

Marlene H. Dortch  
June 1, 2015  
Page Two

increased the threshold broadband speed requirement from 4/1 Mbps to a minimum of 10/1 Mbps.<sup>2</sup> Additionally, in this decision, the Commission declared that for the Phase II competitive bidding process, recipients of support will need to meet an “evolving” minimum speed by the end of the ten-year term based on the highest speed adopted by a majority of households and, importantly, it stated that recipients are encouraged to deploy “future-proof networks that are capable of meeting future demand.”<sup>3</sup> The Commission also pursued its objective of bringing networks with high performance capabilities to unserved areas in the Rural Broadband Experiments program by testing “interest in deploying next generation networks in high-cost areas.”<sup>4</sup>

ACA supports the Commission’s efforts to upgrade network capabilities in unserved areas, and it submits that an aim of the Phase II competitive bidding program should be to bring “future-proof networks” to as many “unelected” eligible census blocks as possible within the 10 year timeframe. ACA submits the Commission can accomplish this aim with the same amount of support made available in the cost model process. But, to achieve this aim, it is crucial that the Commission design a competitive bidding process that maximizes participation while minimizing opportunities for gaming and speculation. That is the essence of ACA’s proposal.

The following sets forth the key concepts and elements of ACA’s proposal:

### **Competitive Bidding (Reverse Auction) Approach**

#### **Introduction: Fundamental Concepts**

ACA’s proposal for CAF Phase II competitive bidding seeks to encourage the expeditious deployment of future-proof networks to the largest number of eligible locations across the US, and therefore, the competitive bidding process should initially favor applicants that seek to achieve this objective.<sup>5</sup> This is consistent with the views of Chairman Wheeler, who has indicated that we need to make sure all Americans and all communities have access to high performance broadband because it has such great value for economic growth, social interaction,

---

<sup>2</sup> See *Connect America Fund et al.*, Report and Order, WC Docket No. 10-90 *et al.* FCC 14-190, ¶ 2 (rel. Dec. 18, 2014) (“CAF Order”).

<sup>3</sup> See *id.*, ¶ 29.

<sup>4</sup> See *Rural Broadband Experiments Order*, ¶ 1.

<sup>5</sup> See *CAF Order*, ¶ 29.

Marlene H. Dortch  
June 1, 2015  
Page Three

and citizen engagement.<sup>6</sup> ACA further submits that an approach that favors the deployment of future-proof networks is most consistent with Communications Act and best serves the public interest. In essence, ACA is proposing that for the same amount of support to be awarded to price cap carriers under the cost model program to initially provide broadband at speeds of no better than 10/1 Mbps over their networks, the Commission in the competitive bidding program could obtain vastly superior networks capable of initially delivering significantly higher speeds. That opportunity is so attractive that the Commission should first award support to applicants that offer to deploy networks capable of providing much higher performance broadband service.

ACA's design also favors applicants that bid to maximize coverage of high performance networks by awarding support to applicants that offer to serve more locations in a region than competing applicants who offer to serve fewer.<sup>7</sup> This will avoid the situation where a single bid for a single census block can prevail over a bid to build a great many census blocks throughout an entire area.

Finally, ACA believes the competitive bidding process can only be successful if participation is robust while the integrity of the process is maintained. ACA's proposal thus seeks to establish requirements for participation that are sufficiently rigorous in ensuring applicants are technically and financially qualified while being understandable and usable by

---

<sup>6</sup> See Remarks of FCC Tom Chairman Wheeler, Broadband Communities Summit, Austin, TX Apr. 14, 2015, and Prepared Remarks of FCC Chairman Tom Wheeler, "The Facts and Future of Broadband Competition," 1776 Headquarters, Washington, D.C. Sept. 4, 2014. In these speeches, Chairman Wheeler provided additional guidance for how the Commission should provide high-performance broadband service to all Americans:

"The bandwidth demands of U.S. consumers have increased dramatically. The typical connected family of four has seven broadband-powered devices at home, and, increasingly, we are using bandwidth-intensive applications like streaming HD video. The capabilities of copper networks simply aren't keeping up with these growing demands...At 25 Megabits-per-second downstream, which is table-stakes for broadband in 2015, just under 75 percent of U.S. homes can chose from only one or fewer wired providers. And, of course, that "or fewer" reference means that about 20 percent have NO access at that speed. That reality is simply unacceptable."

"Americans living in urban areas are three times more likely to have access to high-speed broadband than Americans living in rural areas. As bandwidth needs increase, we cannot tolerate the broadband digital divide getting larger."

<sup>7</sup> For builds of networks capable of offering very high performance broadband service, such an approach will not favor entities large or small because the entity bidding will be building in a greenfield environment.

Marlene H. Dortch  
June 1, 2015  
Page Four

smaller providers. For instance, ACA proposes having only one bidding round and using a single, easy-to-understand criterion for awarding bids. In addition, applicants develop their own packages of logical network builds, which may cover any combination of eligible census blocks in a standard geographic unit, the county, and they know all census blocks contained in all packages within a county are counted in aggregate to determine coverage.<sup>8</sup>

### **Key Elements of Proposal**

Bidding by Stage and Network Broadband Performance Capability:<sup>9</sup> There will be four consecutive stages of bidding, each corresponding to a different tier of network broadband performance capability.<sup>10</sup> The stages will be ordered in the following manner:

- Stage 1 – Networks Capable of Offering 1 Gbps/500 Mbps
- Stage 2 – Networks Capable of Offering 100 Mbps/20 Mbps
- Stage 3 – Networks Capable of Offering 25 Mbps/3 Mbps
- Stage 4 – Networks Capable of Offering 10 Mbps/1 Mbps

In Stage 1, all eligible census blocks will be included in the auction. Subsequent stages will not begin until the previous stage is complete. The competitive bidding process for each stage will be identical, except that each stage after the first will only include census blocks that remain

---

<sup>8</sup> ACA's straightforward bidding structure will limit applicants gaming the process. In addition, while ACA proposes only a single round of bidding, by enabling applicants to submit multiple packages for an area and by selecting winners on a rolling basis based on maximum coverage, its proposal effectively creates an intensely competitive process.

<sup>9</sup> ACA assumes that the Commission's public interest requirements apply, including broadband performance and pricing requirements.

<sup>10</sup> A network will be deemed capable should its last mile architecture be sufficiently robust to provide service at the performance tier associated with the stage.

Marlene H. Dortch  
June 1, 2015  
Page Five

following the previous stage.<sup>11</sup> At the beginning of each stage, the Commission will publish a list of eligible census blocks that remain available for bidding.<sup>12</sup>

Bidding Structure: Qualified applicants<sup>13</sup> (Applicants) will submit, in a single round per stage, bids consisting of self-designed packages of eligible census blocks<sup>14</sup> contained entirely within a county for any county in the contiguous US.<sup>15</sup> Applicants are not limited in the number of packages submitted per county or in the total number of counties in which packages are submitted. A package bid may range from a single eligible census block up to all eligible census blocks in a county. Applicants may submit different packages containing any mixture of census blocks in a county.

Amount of Support Bid: Applicants do not include a price (amount of support or cost-efficiency metric) in their bids, only a series of packages, each containing a list of census blocks in a single

---

<sup>11</sup> If the total amount of funding available at any stage is not sufficient to award all county-level winning bids, the Commission would award support in order by number of eligible locations covered by winning bids, on a nationwide basis, such that the bids covering the greatest number of eligible locations would be awarded support first.

<sup>12</sup> ACA understands that the competitive bidding process should be completed in a timely manner, yet the Commission will need to ensure that winners are sufficiently qualified. ACA intends to work with the Commission to facilitate this process.

<sup>13</sup> “Qualified” applicants shall be technically and financially qualified. ACA proposes that the Commission presume that an entity (or affiliate of an entity) is technically and financially qualified if it operates a network providing broadband and voice services with performance levels and prices meeting that which is required by recipients of model-based support and has filed Form 477 for the previous three years. In addition, the Commission may establish Letter of Credit requirements that are consistent with comments filed by ACA, which reflect the need to have an appropriate security interest. See Reply Comments of American Cable Association on the Potential Applicability of Letter of Credit Proposals to the Connect America Fund Phase II Competitive Bidding Process, WC Docket Nos. 10-9 and 14-259 (Apr. 13, 2015).

<sup>14</sup> Eligible census blocks are those the Commission deems eligible for CAF Phase II support awarded by competitive bidding. Prior to the auction, the Commission should update the list to exclude any census block where any provider offers service at speeds of at least 10/1 Mbps as determined by the most recent Form 477.

<sup>15</sup> In proposing that bids be aggregated at the county level, ACA is seeking to enable efficient network builds while maximizing participation by applicants of all sizes. ACA is not opposed to another geographic unit of aggregation so long as it reasonably balances these factors.

Marlene H. Dortch  
June 1, 2015  
Page Six

county covered by the bid. All bids will be assumed to be at the reserve price calculated by the cost model for the corresponding census block or aggregation of census blocks.<sup>16</sup>

Basis for Awards: Provisionally winning packages will be determined and funding based on maximum coverage within a county: the Applicant whose bids in a county cover the greatest number of locations eligible for support in the county will prevail over any other Applicants that submitted bids in the county.<sup>17</sup> Two different bidding outcomes may occur for census blocks:<sup>18</sup>

Bids Received – Within each county, the eligible census blocks in an Applicant’s packages will be aggregated. The Commission will provisionally declare the winner to be the applicant whose packages in aggregate would offer coverage to the greatest total number of eligible locations in the county. Packages from other applicants that share at least one eligible census block with the provisionally winning aggregation of packages will be dismissed. The Commission will then turn to the remaining packages of eligible census blocks in the county for each Applicant and conduct the same process. This process will repeat until all Applicants’ aggregations of packages (and therefore all

---

<sup>16</sup> In discussions with FCC staff at the meeting, ACA representatives stated that for the final stage auction (lowest network capability), it may be preferable to hold an initial auction where the reserve price is materially lower than the cost model reserve price so that limited funds may be used cost-efficiently. In the alternative, the Commission may select winning bidders for the final stage auction based on a cost-efficiency, rather than a coverage, standard. In that event, the Commission may wish to use a cost-efficiency standard similar to the one it employed in the Rural Broadband Experiments.

For high-cost census blocks that were ineligible for model-based funding due to being above the high-cost threshold but are now eligible for competitive bidding, the reserve price will be set at the high-cost threshold.

<sup>17</sup> All provisionally winning packages will be awarded funding, insofar as funding remains available. Should funding be insufficient to award all packages at the stage, awards shall be made in order from most to fewest number of locations covered by provisionally winning packages.

<sup>18</sup> ACA notes that any competitive bidding design needs to address the fact that the CAF Phase II competitive bidding process has limited funding. While in the right of first refusal process all eligible census blocks can be funded at the level of support set forth in the cost-model, for purposes of competitive bidding, the Commission has added many census blocks, including those in high-cost remote areas and those in areas where providers offer lower speed (below 10/1 Mbps) broadband service. As such, there is a likelihood that support will not be available in many of these areas.

Marlene H. Dortch  
June 1, 2015  
Page Seven

census blocks bid on) have been declared provisionally winning aggregations or have been dismissed.<sup>19</sup>

No Bids Received – If no bid is received for a census block in a stage, the census block will be included in the next bidding stage.

Build-out and Deployment Requirements: Awardees must build to 90 percent of locations in each census block and according to the Commission's deployment deadlines.<sup>20</sup>

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

Sincerely,



Thomas Cohen  
Kelley Drye & Warren, LLP  
3050 K Street N.W.  
Washington, DC 20007  
202-342-8518

---

<sup>19</sup> In case competing packages cover the same number of locations, the winner will be determined using a sealed-bid second-price tiebreaker, where applicants would bid on the amount of support requested. Applicants will be invited to submit a bid containing the lowest total subsidy they would like to accept for the corresponding aggregation of packages. The bids of each Applicant will be compared using the cost-efficiency formula. Requested support must be at or below model-calculated support. The aggregation of packages receiving the bid with the greatest cost-efficiency (lowest ratio) will be declared the provisionally winning aggregation and will be granted to the applicant at the cost-efficiency level requested by the second-place bidder. In case there is still a tie, the provisionally winning aggregation will be selected at random. To simplify the process, the Commission could select a winner at random, rather than seek bids on the amount of support.

<sup>20</sup> To meet deployment deadlines, awardees must be able to provide service to a location within a commercially-reasonable amount of time (at most 14 days upon a request for service from a consumer).

KELLEY DRYE & WARREN LLP

Marlene H. Dortch  
June 1, 2015  
Page Eight

tcohen@kelleydrye.com  
Counsel for the American Cable Association

cc: Carol Matthey  
Alex Minard  
Katie King  
Heidi Lankau  
Jonathan Chambers  
Paul Lafontaine