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January 7, 2010

Marlene H. Dortch
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554

Via ECFS

Re: Ex Parte Communication; GN Docket Nos. 09-47, 09-51, 09-137

Dear Ms. Dortch:

This letter responds to several questions that were raised during a December 17, 2009, meeting between American Cable Association (“ACA”) representatives and members of the Commission’s National Broadband Plan Team regarding ACA’s proposal for reforming and evolving the current federal high-cost universal service fund to provide funding for broadband services. The ACA hereby offers additional details regarding the scope and application of its plan.

As a threshold matter, ACA reiterates the guiding principle of its plan: provide efficient universal service funding where it is truly needed. To effectuate this goal, ACA proposed to (1) cap the entire universal service fund at its December 31, 2009, level; (2) create a new last-mile wireline and wireless and middle-mile Broadband Fund for unserved and underserved areas; and, (3) transition the current high-cost voice fund to the new broadband fund.¹ ACA’s proposal incorporates the critical elements of competitive and technical neutrality that should serve as the foundation for any universal service funding plan adopted by the Commission. ACA maintains that the current universal service system is irretrievably broken and urges the Commission to scrap it in favor of a new scheme – like the one proposed by ACA – that truly furthers the goals of Section 254² and the National Broadband Plan.

Members of the National Broadband Team have asked several questions regarding ACA’s proposal to permit current wireline eligible telecommunications carriers (“ETCs”) with

¹ See *Comments Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan*, Public Notice, GN Dockets 09-47, 09-51, 09-137 (rel. Nov. 13, 2009), Comments of the American Cable Association, at 2-4 (filed Dec. 7, 2009).

² 47 U.S.C. § 254.

fewer than 100,000 access lines to continue to draw from the current high-cost fund for a particular area as they draw today for the provision of voice service, unless they choose to access funding from the new Broadband Fund to serve that area.³ The questions focused specifically on the 100,000 access line exemption. The exemption, which would apply to each ETC by study area on a holding company-specific basis, was included by ACA in an effort to create a fair, balanced and administratively efficient plan. ACA is aware that as a general matter smaller ETCs receive a significantly higher percentage of revenue from the current high-cost fund than larger ETCs. For many of these carriers, a mandatory cessation of this funding could lead to rate shock that could significantly impair their ability to continue to provide service. Consequently, it is both logical and equitable to provide these smaller ETCs with a measure of control by permitting them to continue to access the current high-cost fund until they determine the appropriate time to begin accepting money from the new Broadband Fund.

The 100,000 access line exemption makes sense for the additional reason that it would permit the Commission to implement a new mechanism to transition from funding of voice service to broadband service in a measured manner. Exempting smaller ETCs from mandatory participation in the new Broadband Fund would allow the Commission to more easily make adjustments to the plan if unforeseen circumstances arise upon initial implementation. The decision to sunset support for voice services and to begin supporting the provision of broadband service is an important policy decision that should be effectuated cautiously and in stages. Making the new plan voluntary for smaller ETCs would allow for such reasoned implementation by the Commission and the industry.⁴

At the December 17th meeting, members of the National Broadband Team posed some additional questions regarding ACA's broadband funding plan. ACA was asked whether it proposes that applicants for capital funding for last-mile broadband deployment should be required to contribute any of their own money. ACA proposes that the Commission adopt a similar requirement as is part of the National Telecommunications and Information Administration's ("NTIA") Broadband Technology Opportunities Program ("BTOP"). Under BTOP, awardees are required to provide matching funds of at least 20 percent towards the eligible project cost. NTIA provides up to 80 percent of total eligible project costs, unless the applicant petitions for a waiver of the matching requirement and that waiver is granted based on the applicant's demonstration of financial need.⁵ Under ACA's plan – as is the case with BTOP – the applicant would not be required to have all matching funds on hand at the time it submits its application, but it must convincingly demonstrate that it will be able to supply the proposed

³ If an ETC with 100,000 or fewer access lines chooses to access funding from the new Broadband Fund for a particular area, that funding mechanism would replace the current fund for that ETC in that area.

⁴ ACA is aware that the National Cable & Telecommunications Association ("NCTA") has filed a petition for rulemaking that offers a similar plan for reducing funding of voice services in favor of funding broadband services which does not contain an exemption for smaller ETCs. See *Reducing Universal Support in Geographic Areas that are Experiencing Unsupported Facilities-Based Competition*, National Cable & Telecommunications Association, RM Docket No. 11584 (filed Nov. 5, 2009). ACA intends to address the specifics of NCTA's proposal in comments due January 7, 2010.

⁵ See Department of Commerce, National Telecommunications and Information Administration, Broadband Technology Opportunities Program, *Notice of Funds Availability* ("NOFA"), at Section V.C.4.b.

matching funds if it receives a grant.⁶ At the time the award is made, the applicant must have the matching funds available and ready to expend at least in proportion to the federal share.

ACA suggests that the Commission employ the same criteria to determine applicants' eligibility to receive funds from the new broadband plan as those used to determine Competitive Eligible Telecommunications Carrier ("CETC") status under the current federal high-cost universal service fund. The CETC eligibility criteria, which have been incorporated in the Commission's rules,⁷ are well defined and have been successfully used over a number of years. Moreover, the CETC criteria measure the appropriate categories for determining whether an applicant should be awarded funds for broadband deployment. Similarly, the Commission should adopt the same rules for determining consumers' eligibility to participate in ACA's proposed Broadband Lifeline Program as apply to the current federal Lifeline Program. These regulations, which generally require a consumer to meet the eligibility criteria established by the relevant state commission for such support, are codified in the Commission's rules.⁸

In reviewing whether an applicant's estimate of the costs for serving an unserved area is appropriate, the Commission should establish benchmarks based on the BTOP system currently being administered by NTIA. The BTOP program provides an excellent source of information for determining whether the cost estimates proffered by an applicant for funding under the Commission's new broadband plan are reasonable, particularly in unserved areas where only one applicant has applied for funding. The BTOP program also provides an excellent model for the monitoring and enforcement mechanisms the Commission should adopt for the new Broadband Fund.⁹ BTOP requires that all awardees must report quarterly on their progress in achieving the project's goals, the expenditure of grant funds, the level of non-federal investment in the project, whether the project is on schedule, the number and type of entities receiving new access to broadband services, and the number and type of entities receiving improved access to broadband services.¹⁰ BTOP also requires that all recipients of funds submit an annual organization-wide financial and compliance audit report.¹¹ The Commission should seriously consider applying similar requirements to all federal Broadband Fund awardees.

ACA hopes that the clarifications and additional information contained in this letter assist the Commission in developing an equitable plan for funding the deployment of broadband services to all Americans. Please do not hesitate to contact the undersigned if there is a need for additional information, or if there are further questions.

⁶ *Id.*

⁷ See 47 C.F.R. § 54.201.

⁸ See 47 C.F.R. §§ 54.409, 54.410.

⁹ The Broadband Initiatives Program ("BIP") being administered by the Department of Agriculture's Rural Utilities Service ("RUS") is also a good source of information on monitoring and enforcement mechanisms.

¹⁰ See NOFA, at Section IX.D.3.a.

¹¹ *Id.*, at Section X.H.

Marlene H. Dortch
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Sincerely,

A handwritten signature in black ink that reads "Ross Lieberman". The signature is written in a cursive style with a large, prominent "R" and "L".

Ross J. Lieberman
Vice President of Government Affairs
American Cable Association

cc (*via email*): Thomas Koutsky
Rebekah Goodheart
Mukul Chawla
Carol Matthey