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March 25, 2019

Via ECFS

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

Re: *Ex Parte* Filing of ACA Connects - America's Communications Association in WC Dockets No. 10-90, 11-10, 17-108 and 17-84; GN Dockets No. 18-231 and 18-238; and MB Dockets No. 05-311 and 10-71.

Dear Ms. Dortch:

On March 21, 2019, Ross Lieberman and Brian Hurley (ACA Connects - America's Communications Association ("ACA Connects")), Thomas Cohen (Kelley Drye & Warren LLP and Counsel to ACA Connects) and the following representatives from ACA Connects members:

- Michael Bowker (COO, Cable One);
- Carla Framil-Ferran (General Counsel, Liberty Puerto Rico);
- Jeffrey Ross (President, Armstrong Utilities, Inc. & Armstrong Telephone Company);
- Tom Whitaker (Senior Vice President, Shentel) ("ACA Connects representatives")

met, in separate meetings, with Nirali Patel, Wireline Advisor to Chairman Ajit Pai; Evan Swarztrauber, Policy Advisor to Commissioner Brendan Carr, Travis Litman, Chief of Staff and Senior Legal Advisor to Commissioner Jessica Rosenworcel; and the following staff of the Wireline Competition Bureau: Kris Monteith, Daniel Kahn, Terri Natoli, Pamela Arluk, Edward Krachmer, Adam Copeland, Melissa Droller Kirkel, Ramesh Nagarajan, and Justin Faulb.¹

ACA Connects members include more than 700 small and medium-sized independent providers of broadband, voice and video services that collectively serve about 8 million broadband subscribers and pass about 17 million housing units. ACA Connects members typically provide

¹ Mr. Lieberman did not participate in the meetings with Mr. Swarztrauber or with the Wireline Competition Bureau.

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broadband service in smaller markets and in rural areas, including in highly remote areas that would otherwise lack robust options for broadband service. ACA Connects members have invested over \$10 billion in recent years and continue to invest hundreds of millions of dollars annually to upgrade and expand their networks, helping to close the “digital divide” in rural and remote areas and drive competition in smaller urban and suburban markets.

In the meetings, ACA Connects representatives discussed their views on the state of broadband markets today, how ACA Connects members’ broadband investments are driving competition and narrowing the digital divide, and the impact of Commission policies in facilitating ACA Connects members’ broadband deployments. The ACA Connects representatives also submitted and discussed the attached presentation, “Smaller Cable Operator Views on Broadband Markets, Technologies and Competition,” that Mr. Whitaker, representing Shentel and ACA Connects, delivered at the Federal Trade Commission’s March 20, 2019 hearing, the tenth session of its Hearings on Competition and Consumer Protection in the 21st Century.²

ACA Connects Members Face Competition That Drives Them to Invest in Higher Performance Broadband Services, Keep Prices Reasonable, and Go the Extra Mile for Their Customers

The ACA Connects representatives discussed the nature and extent of competition in the broadband markets ACA Connects members serve. Even in rural areas, ACA Connects members face competition from a variety of sources, including from either an incumbent telephone company or cable operator, fixed wireless and satellite providers, and newer all-fiber providers, such as electric cooperatives.³ To provide an example, Mr. Whitaker explained that in Shentel’s territories, CenturyLink is a strong competitor because it provides 25 Mbps service at a low price point to loyal customers, fixed wireless and satellite providers target value customers, and 4G mobile providers appeal to customers that cannot afford both fixed and mobile service. He noted that even competition for a limited segment of the market is sufficient to cause Shentel to increase its network investments and lower its prices. In fact, Shentel, which has invested \$125 million over the past five years, will invest another \$25 million this year, and it reduced its prices from \$3 per Mbps to \$.50 per Mbps.

Mr. Bowker of Cable One, which operates in 21 states, noted that “100% of Cable One’s markets are competitive.” This competition has driven Cable One to continually improve service; today, Cable One offers 1 Gbps service in 98 percent of its service area.

Mr. Ross of Armstrong explained that his company has been willing to invest in some of the most difficult-to-serve areas to deploy a high-speed broadband network. Even in areas such

² See Federal Trade Commission, FTC Hearing #10: Competition and Consumer Protection Issues in U.S. Broadband Markets, <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-10-competition-consumer-protection-21st-century> (last visited Mar. 25, 2019).

³ In “overbuild” markets in more urban areas, the ACA Connects representatives noted that competition is even more intense, as smaller cable operators providing broadband service compete with incumbent cable and telephone providers and increasingly with mobile wireless providers. These dynamics constrain ACA Connects members’ broadband prices and drive them to invest more in their networks and offer better customer service.

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as these, Mr. Ross noted that there are factors that constrain pricing and promote a high standard of service. First, the service must be priced that at a level that entices customers, many of whom would be adopting broadband service for the first time. Moreover, because the per-customer deployment costs are so high, there are strong incentives for a provider to go the extra mile to preserve each customer relationship, less it lose the value of its investment. In addition, there are government programs and regulations that effectively impose minimum performance requirements and maximum prices for broadband providers that have deployed private capital to serve highly rural areas. In particular, within the Connect America and Uniendo a Puerto Rico Funds, an area is deemed served—and thus ineligible for support—only if there is a provider serving the area that provides service that meets certain speed and price benchmarks.

Ms. Framil-Ferran discussed the unique circumstances of Liberty Puerto Rico, which has invested over \$130 million to rebuild its network in the wake of Hurricane Maria. She noted that crews worked tirelessly, six days a week for more than a year, to reconstruct Liberty Puerto Rico's network and restore service to the island.

Commission Policies are Making a Difference, But More Work Remains to be Done

ACA Connects representatives applauded the Commission for taking a number of actions over the past two years to accelerate broadband deployments by smaller broadband operators, including by classifying broadband Internet access service as a Title I service, facilitating pole attachments and access to public rights-of-way, and eliminating numerous regulations that imposed costs but no real benefits.

The ACA Connects representatives noted that the Commission's pole attachment reforms adopted last year are already having a positive impact on the marketplace. They urged the Commission to monitor compliance with and to strictly enforce these new rules, because pole access is so critical for broadband deployment and because pole owners often continue to impose barriers to attachments.

ACA Connects representatives further requested that the Commission adopt its tentative conclusions in the proceeding to implement Section 621(a) of the Cable Communications Policy Act of 1984 (MB Docket No. 05-311), which would ensure that cable-related, in-kind contributions are treated as franchise fees and would prohibit franchising authorities from regulating or imposing fees on non-cable services.

The ACA Connects members also discussed the importance of administering the Universal Service Fund, including the Connect America Fund, in a manner that respects private investment. Mr. Ross also discussed ways that the Commission could distribute limited funding more efficiently with greater accountability. Armstrong was awarded a grant by the New York State Broadband Program, which works in tandem with the Connect America Phase II program and which uses a reimbursement model to administer support. Under the program, Armstrong has agreed to deploy broadband to certain uneconomic locations using its own funding, and then, upon verifying that Armstrong has completed the build, the State will reimburse Armstrong for most of its deployment costs. Mr. Ross further explained that Armstrong will be deploying a FTTH

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network, even though the area is not dense, and it is scheduled to complete its work four years after it was initiated.

ACA Connects representatives suggested the Commission consider the New York program as a potential model for the next phases of its Connect America programs in price cap areas. They submitted that the Commission would get higher performance networks than are deployed under the Connect America Phase II cost model program for far less cost and would see these networks deployed sooner with greater accountability.

ACA Connects representatives further urged the Commission to adhere strictly to the principle that universal service funding not subsidize overbuilds of unsubsidized networks. This means not only ensuring subsidies are targeted to truly unserved areas, but verifying that the subsidized networks actually built are only permitted to be used to serve eligible areas.

Finally, ACA Connects representatives explained that the high and rising costs of video programming, including retransmission consent fees and demands for carriage of unwanted programming, remain a tremendous burden. They noted that these costs divert capital from investment in broadband networks, impeding ACA Connects members' efforts to close the digital divide, and eat up capacity that could be used to offer higher speeds.

Additional Issues Discussed By ACA Connects Representatives in the Meetings

During the meetings, some ACA Connects representatives discussed specific issues of importance to their companies. Mr. Ross discussed a broadcast carriage issue Armstrong is facing in Mercer County, Pa., north of Pittsburgh. While Armstrong's customers in Mercer County expect to receive Pittsburgh channels, the county lies within the Youngstown Designated Market Area ("DMA"). Accordingly, although two of the Pittsburgh "Big 4" broadcasters are significantly viewed, Armstrong cannot provide the Pittsburgh channels to its Mercer County customers without also providing the Youngstown channels. Because of the high cost of retransmission consent, it does not make financial sense to provide both markets' channels, which offer largely identical programming with the exception of local news and advertisements. Mr. Ross recommended that the Commission redraw its DMA market boundaries to move Mercer County from the Youngstown to the Pittsburgh DMA.

Finally, Ms. Framil-Ferran encouraged the Commission to grant Liberty Puerto Rico's pending applications for two experimental licenses to operate a fixed wireless service in San Juan and in a mountaineous region of Puerto Rico that includes highly remote areas that are currently unserved or underserved.⁴

⁴ See Federal Communications Commission, OET Experimental Licensing System, Application of Liberty Puerto Rico for Experimental License, File No. 0082-EX-CN-2019 (filed Feb. 22, 2019); Federal Communications Commission, OET Experimental Licensing System, Application of Liberty Puerto Rico for Experimental License, File No. 0142-EX-CN-2019 (filed Mar. 6, 2019).

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This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.⁵

Sincerely,



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Attachment: "Smaller Cable Operator Views on Broadband Markets, Technologies and Competition," Tom Whitaker, Senior Vice President, Shentel, Member, ACA Connects, March 20, 2019.

cc: Nirali Patel
Travis Litman
Evan Swarztrauber
Kris Monteith
Daniel Kahn
Terri Natoli
Pamela Arluk
Edward Krachmer
Adam Copeland
Melissa Droller Kinkel
Ramesh Nagarajan
Justin Faulb

⁵ 47 C.F.R. § 1.1206.

Smaller Cable Operator Views on Broadband Markets, Technologies and Competition

Tom Whitaker

Senior Vice President

Shentel

Member, American Cable Association



Overview: Broadband Markets Served by Smaller Cable Operators

- In rural broadband markets served by smaller cable operators,* despite higher costs to serve, competition exists and supply is growing
 - Network and service investment by smaller operators has been substantial and will continue to grow
 - Today most housing units served by smaller operators can receive DOCSIS 3.0 service (at least 100 Mbps), and performance is certain to increase¹
 - Prices (as measured per Mbps) have declined rapidly²
 - New providers, including fixed and 4G wireless, satellite and electric coops, are constantly seeking to enter the broadband market in rural areas
- While smaller operators in rural markets have built to many unserved locations, consumers in more remote areas may be unserved; over the past 5 years, federal and state programs have reduced the number of unserved homes substantially, and these programs continue to work³

* Smaller cable operators initially provided traditional Pay TV service and moved into providing broadband service 25 years ago; today, as video margins have eroded, their predominant offering is broadband

Identifying Smaller Cable Operators That Provide Broadband Service

- Smaller cable operators serve about 8M broadband subscribers and pass about 17M housing units⁴
 - Shentel has ~75,000 broadband subscribers in VA, WV, and PA rural areas
- Most smaller cable operators, like Shentel, provide broadband service in rural markets
 - In general, smaller cable operators in rural markets for broadband service face more challenging economics because they lack network and operational scale, locations are less dense, and consumers are less well-off
- Other smaller operators “overbuild” incumbents in more urban markets
 - Overbuilders, like RCN and WOW!, further ensure robust competition but face challenging economics because they enter markets where incumbent providers already provide service, need to expend large amounts of capital upfront to build a network, and need to achieve scale rapidly to be viable



Smaller Cable Operators Face Competition in Downstream Broadband Markets

- Smaller cable operators' competitors in rural areas* in downstream markets --
 - **Incumbent telephone providers**
 - Virtually all smaller cable operators compete with an incumbent telco
 - For Shentel, the incumbent CenturyLink is a strong competitor because it provides 25 Mbps service at a low price point to loyal customers
 - **Other wireline entrants, like electric coops**
 - Electric coops have existing infrastructure (e.g., poles) and operations
 - In Virginia, CVEC is overbuilding Nelson County Cablevision with an all-fiber network⁵
 - **Fixed wireless providers**
 - Fixed wireless providers have a low entry cost and tend to serve “value” customers with sufficient broadband speeds at prices 10-20% below wireline providers
 - **Satellite providers**
 - Satellite providers have capacity limits but a low entry cost and target “value” customers
 - **4G Mobile providers**
 - Many “value” customers can afford only one provider and often want mobile capability

*Overbuilders in more urban markets face competition from incumbent cable and telco providers, as well as mobile providers



Smaller Cable Operators Face Competition in Downstream Broadband Markets

- The existence of competition in downstream rural and “overbuild” markets served by smaller cable operators is indicated by –
 - **Increasing Supply (Investment)**
 - Smaller operators have invested over \$12B in the past decade to upgrade their networks to DOCSIS 3.0/3.1 and continue to invest more than \$1B annually⁶
 - Shentel has invested more than \$125M over the past 5 years and will invest another \$25M this year
 - **Declining Prices (on a per Mbps basis)**
 - Broadband prices for smaller operators have declined substantially on a per Mbps basis⁷
 - Shentel just reduced prices from \$3/Mbps to \$.50/Mbps; it offers 50 Mbps--\$50/month, 150 Mbps--\$80/month, and 300 Mbps--\$110/month⁸
 - **Good Customer Service**
 - Smaller cable operators are recognized for their customer service⁹
 - Shentel was the independent operator of the year in 2017¹⁰



Smaller Cable Operators Have No Leverage in Upstream Broadband Markets

- Because smaller cable operators in rural markets* have fewer subscribers (traffic and “eyeballs”) and networks with no, or at most limited, regional reach --
 - Most smaller operators seeking to interconnect and exchange traffic with peering providers, edge providers, and CDNs need to use and pay a transit provider to carry traffic to and from an internet exchange points (IEP)
 - Shentel is somewhat unique in that its networks are relatively proximate to major IEPs and it has sufficient traffic to justify building to IEPs, but even then, it must pay for peering

*Overbuilders in more urban markets generally carry traffic to IEPs but must pay for peering



Concluding Thoughts about Broadband Markets Served by Smaller Cable Operators

- By virtually any measure, broadband service in markets served by smaller cable operators is a “good news” story
- Government can further increase supply by –
 - Removing barriers to network deployment, including by ensuring providers have timely access at reasonable cost to poles/conduit/ducts and to public and private rights-of-way
 - Awarding subsidies efficiently in “unserved markets” for the deployment of robust broadband networks
- Government also should ensure consumers have reasonable access to clear, accurate, and sufficient information about broadband service rates, terms, and conditions to select a provider and service tier



End Notes

- ¹ See *Communications Market Report et al.*, GN Docket No. 18-231 *et al.*, Report, FCC 18-181 at Fig. G-4 (Dec. 26, 2018)
- ² See Comments of the Fiber Broadband Association, FCC WC Docket No. 17-108 at 7-15 (July 17, 2017)
- ³ Locations being served from FCC Connect America Fund Phase I – 638k; Phase II – 4.331M. Additional locations served from RUS Broadband Loan and Community Connect Grant programs and state programs such as the New York State Broadband program
- ⁴ *Connecting Hometown America*, American Cable Association Paper, (2014) available at www.americancable.org
- ⁵ “Central Virginia Electric Cooperative Announces First Stop in Appomattox for Fiber Network Installation,” (June 22, 2018) available at <https://www.mycvec.com/news/detail/central-virginia-electric-cooperative-announces-first-stop-in-appomattox-for-fiber-network-installation>
- ⁶ Derived from ACA member public announcements, discussions with ACA members, and SEC filings
- ⁷ See note 2 above
- ⁸ *The FCC’s 2019 Urban Rate Benchmark: 50/5 Mbps for ~\$100/month; 100/10 Mbps for ~\$106/month; 250/25 Mbps for ~\$129/month
- ⁹ See “Readers’ Choice Awards 2018: Internet Service Providers, PC Magazine (May 23, 2018)
- ¹⁰ Shentel, Cablefax’s Independent Operator of the Year (June 8, 2017) available at <http://www.cablefax.com/eventsawardswebinars/cablefaxes-top-ops-luncheon>

