

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Connect America Phase II Challenge Process)	WC Docket No. 14-93

ORDER

Adopted: September 28, 2018

Released: September 28, 2018

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) resolves challenges to 4,762 locations proposed by Alaska Communications Systems (ACS) to receive high-cost support as part of ACS's obligations set out in previous Commission actions seeking to extend service to unserved Alaskan consumers. The Bureau finds that 1,713 of these locations will be eligible for high-cost support.¹ The Bureau also grants ACS's request for a short extension of the deadline for submitting its deployment plan for meeting its CAF Phase II deployment obligations.

II. BACKGROUND

2. In the *USF/ICC Transformation Order*, the Commission reformed and modernized the universal service and intercarrier compensation systems to maintain voice service and extend broadband-capable infrastructure to millions of Americans.² As part of that reform, the Commission established Connect America Phase II (Phase II) to provide ongoing support to promote the deployment of voice and broadband-capable networks in high-cost areas in price cap territories, targeting Phase II support to those census blocks that are not served by an unsubsidized competitor.³ The Commission also recognized that price cap carriers serving specific non-contiguous areas of the United States, such as in Alaska, face different operating conditions and challenges from those faced by carriers in the contiguous 48 states.⁴

3. Relevant to the current situation, in the *ACS CAF Phase II Order*, the Commission adopted tailored service obligations for ACS to receive Phase II support for a 10-year term by offering voice service and broadband service to at least 31,571 locations at the same speed, latency, usage and pricing metrics as established for Phase II model-based carriers. Eligible locations are primarily in census blocks identified as high-cost that are unserved by unsubsidized competitors.⁵ However, as an exception, the Commission granted ACS the flexibility to deploy up to 7,900 locations that are unserved by any

¹ See *Connect America Fund*, Order, 31 FCC Rcd 12086, 12096-97, para. 36 (2016) (*ACS CAF Phase II Order*). A list of the locations deemed to be served or unserved are provided in the Appendix to this Order.

² *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

³ *Id.* at 17722, para. 149. Ultimately, the Bureau implemented that decision by treating each census block as served where an unsubsidized competitor reported service to at least one location, subject to a challenge process.

⁴ *Id.* at 17737-38, para. 193.

⁵ *ACS CAF Phase II Order*, 31 FCC Rcd at 12088, para. 8.

provider within partially served census blocks.⁶ The Commission also required ACS to complete its deployment plan identifying locations in this category it planned to serve and certify that it does not serve the proposed locations no later than October 1, 2018.⁷

4. *Challenge Process.* The Commission adopted a challenge process to ensure that all of the proposed locations in partially served blocks in fact are unserved by any provider offering service of 10 Megabits (Mbps) downstream and 1Mbps upstream (10/1 Mbps) or better. The Commission found that it is in the public interest to ensure that the locations selected are unserved by any fixed, terrestrial competitors, including those that currently receive high-cost universal service support, before allowing ACS to build and deploy services to those locations.⁸ The Commission directed the Bureau to issue a public notice announcing the proposed deployment plan, census blocks, and geocoded locations and to provide an opportunity for comment on whether or not a particular location was eligible for support.

5. *Procedural History of ACS CAF Phase II Challenge Process.* On February 5, 2018, the Bureau commenced the ACS CAF Phase II challenge process, releasing a public notice⁹ with a list of 4,762 unique geocoded locations, which encompassed 6,056 locations, that ACS proposed to serve.¹⁰ Parties then had an opportunity to present evidence that a proposed location is served.¹¹ Challenges were due on March 22, 2018.¹²

6. General Communication, Inc. (GCI) filed a challenge to 3,099 of the 4,762 unique locations ACS identified.¹³ For those locations, GCI stated that it already offered “facilities-based, residential, fixed voice service and broadband service at 10/1 Mbps or higher, at prices at or below the Alaska-specific reasonable comparability benchmark.”¹⁴ In support of its challenge, GCI provided an analysis that was supported by maps of its node boundaries, advertisements of current qualifying services offered at the locations, and declarations of persons who conducted the analyses of existing customer

⁶ The Commission adopted this exception to allow ACS to serve only those locations in otherwise-served census blocks that the competitor does not serve.

⁷ *ACS CAF Phase II Order*, 31 FCC Rcd at 12099, para. 43.

⁸ *ACS CAF Phase II Order*, 31 FCC Rcd at 12096, para. 36 (noting that ACS committed to deploy service to locations not served by any competitor).

⁹ See *Wireline Competition Bureau Commences Alaska Communications Systems Connect America Fund Phase II Challenge Process*, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 963 (Wireline Comp. Bur. 2018) (*ACS Public Notice I*). On July 19, 2018, the Bureau issued a related public notice announcing additional locations proposed by ACS, and provided parties have 45 days to file replies challenging these additional locations. See *Wireline Competition Bureau Continues Alaska Communications Systems Connect America Fund Phase II Challenge Process*, WC Docket No. 10-90, Public Notice (Wireline Comp. Bur. 2018) (*ACS Public Notice II*). The Bureau will resolve any potential challenges of the additional locations announced by the *ACS Public Notice II* in a separate order. Parties had 45 days from the issuance of the public notice to file a reply challenging these additional locations.

¹⁰ ACS proposed a list of 6,056 locations in partially served census blocks that it seeks to deploy using Phase II support. The 6,056 locations are represented by only 4,762 unique set of coordinates, because many locations are in multi-unit buildings. See Letter from Ruth Willard, Sr. Director of Revenue Management, ACS to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90; 14-93 (filed Jan. 3, 2018); ACS Excel Document, *ACS_EPS_SLs.xlsx*, WC Docket No. 14-93 (filed Dec. 28, 2017).

¹¹ See *ACS Public Notice I*.

¹² *Id.*

¹³ General Communication, Inc.’s Challenge to Alaska Communication Systems’ Proposed Eligible Locations in Partially Served Census Blocks WC Docket Nos. 10-90, 14-93 (filed Mar. 29, 2018) (GCI Mar. 29, 2018 Challenge).

¹⁴ GCI Mar. 29, 2018 Challenge at 3.

addresses near the proposed locations.¹⁵ Subsequently, GCI submitted to the Bureau the shapefiles depicting its cable node boundaries.¹⁶

7. According to declarations by GCI employees and a consultant, GCI compared ACS's proposed locations in partially served census blocks against GCI's node boundaries maps and existing GCI customer addresses to determine which locations fall within a GCI node boundary.¹⁷ GCI determined, based on its analysis, that 3,099 of ACS's 4,762 proposed locations are located within a GCI node boundary. GCI claimed to offer voice service and internet service with speeds in excess of 10/1 Mbps and fees below the Commission's Alaska-specific reasonably comparable benchmark rate.¹⁸ GCI conducted additional analyses of the proposed 3,099 locations using existing customer addresses and determined that 1,605 of those locations currently have GCI internet service.¹⁹

8. In April 2018, ACS filed its response to GCI's challenge of 3,099 locations.²⁰ ACS argued that GCI failed to provide persuasive evidence that it served any of the proposed locations, noting that GCI did not provide "concrete evidence" to the Commission of its facilities and customers' addresses and instead relied on the results of its analyses of "internal company data."²¹ ACS further argued that GCI is not an unsubsidized competitor at any of the proposed locations and, therefore, was ineligible to challenge the locations proposed by ACS.²²

9. On June 21, 2018, ACS proposed an additional 4,691 locations it claims are unserved, though located in partially served high-cost census blocks.²³ These proposed locations were announced by the *ACS Public Notice II* on July 19, 2018.²⁴

10. *ACS Waiver Petition.* ACS filed a petition to waive the October 1, 2018 deadline to submit its proposed deployment plan to the Commission.²⁵ ACS requested a 60 day extension, beginning from the date of the Bureau's final determination of eligible locations. ACS stated that the extension "will not in any way interfere with the overall deployment of services in a timely manner" and "will not alter any of the deployment milestones set forth in the [*ACS CAF Phase II Order*]."²⁶

¹⁵ See generally GCI Mar. 29, 2018 Challenge.

¹⁶ *Ex parte* Letter from Julie A. Veach, Counsel to GCI Communication Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 14-93, 10-90 (filed Aug. 29, 2018).

¹⁷ GCI Mar. 29, 2018 Challenge at Attachments A, B, C.

¹⁸ GCI Mar. 29, 2018 Challenge at 5.

¹⁹ GCI Mar. 29, 2018 Challenge at 5-6.

²⁰ See Letter from Karen Brinkmann, Counsel to ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, (filed April 20, 2018) (ACS Apr. 20, 2018 Response).

²¹ ACS Apr. 20, 2018 Response at 3-7.

²² ACS Apr. 20, 2018 Response at 7-9.

²³ See Letter from Ruth Willard, Senior Director, Revenue Management, ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed June 21, 2018).

²⁴ See *ACS Public Notice II*.

²⁵ See Letter from Karen Brinkmann, Counsel to ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed July 16, 2018) (ACS July 16, 2018 Letter). ACS also cites in its waiver request that it believes there are unserved census blocks not previously identified by the Commission's model as high-cost and that certain census blocks designated as being partially served are in fact unserved by an unsubsidized competitor. ACS contends that the resolution of these discrepancies is critical to its ability to fulfill its deployment obligations. ACS July 16, 2018 Letter at 2.

²⁶ ACS July 16, 2018 Letter at 3.

III. DISCUSSION

11. Based on the review of the evidence for this contested challenge, the Bureau concludes that GCI met its burden of persuasion that it serves 3,049 of the locations ACS identified as unserved. The Bureau also grants ACS a waiver for a brief extension of the October 1 deadline to submit its deployment plan.

A. Initial GCI Challenge to ACS's Proposed Locations

12. *Challenge by Competitors.* At the outset, the Bureau addresses ACS's argument that GCI is ineligible to challenge the locations that ACS identified as unserved. In the *ACS CAF Phase II Order*, the Commission stated that it was in the public interest to ensure that the 7,900 locations selected by ACS are unserved by any fixed, terrestrial competitors, including those that currently receive high-cost universal service support, before allowing ACS to build and deploy services to these locations.²⁷

13. Therefore, the Bureau rejects ACS's argument that we should not consider GCI's challenge of the proposed locations in partially served census blocks because GCI is not an unsubsidized competitor.²⁸ This argument directly contravenes the language of the Commission's order and its stated goal to prevent the use of support to deploy at locations already served by competitors.

14. *Service at Proposed Locations.* In the Phase II challenge process, the Bureau adopted a preponderance of the evidence standard for determining whether it is more likely than not, based on all the evidence, that the status of a location is "unserved" by any competitor.²⁹ Therefore, to show that a location is served in this challenge, GCI must show that all of the Commission's criteria are met, while ACS need only show that any one of the criteria is not met to demonstrate that the location is unserved.³⁰ ACS must provide, for each challenged location, concrete and verifiable evidence supporting its claim that the challenge should not be granted.³¹

15. In order to qualify as "served," a location must have voice service and broadband service with pricing that is reasonably comparable to pricing for similar services in an urban area.³² In addition, a location will be considered "served" if a provider can show that the provider: (1) actually offers voice and broadband service at the location, (2) has physical assets in or adjacent to the location, and (3) currently has or previously had voice or broadband customers at the location.³³ Moreover, a respondent must provide, for each challenged location, concrete and verifiable evidence supporting their claim that the

²⁷ *ACS CAF Phase II Order*, 31 FCC Rcd at 12096, para. 36.

²⁸ ACS Apr. 20, 2018 Response at 7-9.

²⁹ *Cf. Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211, 7215, para. 21 n.48 (*Phase II Challenge Process Order*).

³⁰ *Id.*

³¹ *Cf. id.* at 7214-15, paras. 8-9.

³² *Cf. Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 15060, 15061-65 (*Phase II Service Obligations Order*). See also generally *Connect America Fund*, WC Docket No. 10-90, Report and Order, 29 FCC Rcd 13485 (Wireline Comp. Bur. 2014).

³³ *Cf. Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 7505, 7507-8 (Wireline Comp. Bur. 2014) (*Challenge Process Guidance Public Notice*); see also FCC, *A Basic Guide to the Challenge Process* at 9 (July 31, 2014) (*Challenge Process Basic Guide*), available at <http://www.fcc.gov/encyclopedia/connect-america-phase-ii-challenge-process> (last visited Aug. 30, 2018).

challenge should not be granted.³⁴

16. The Bureau evaluated all of the evidence, and finds GCI's declaration that it serves an area, when coupled with network boundary maps, publicly available descriptions and advertisements of service offerings in partially served census blocks, and similar documents to be more persuasive than ACS's general assertion that a location should be treated unserved.³⁵ In making this finding, we place significant weight on evidence that network facilities are in place and service is advertised throughout an area.³⁶

17. The Bureau specifically reviewed the 3,099 geocoded locations challenged by GCI in comparison to its cable node boundaries. The Bureau observed that 3,049 locations fall within the node boundaries; however, 50 challenged locations fall outside of cable node boundaries depicted by its shape files.

18. With regard to the 3,049 locations within its cable node boundaries, GCI provided marketing and service materials to further support its claim that it offers service meeting the Commission's required service requirements standards at the proposed locations.³⁷ This evidence supports our conclusion that GCI meets the first prong of the three-part standard – that GCI holds itself out to the public as able and willing to provide service to the locations.³⁸ Similarly, GCI provided facilities maps for the 3,049 locations to show where it has node boundaries,³⁹ demonstrating that it meets the second prong of the three part standard – that GCI has plant in or adjacent to the challenged locations. Lastly, GCI provided the results of a comparative analysis of the addresses of its existing customers against the challenged locations, supported by declarations, to demonstrate the third prong—that GCI currently has or previously had voice or broadband customers at the locations.

19. The Bureau therefore concludes that 3,049 challenged locations should be treated as served based on the totality of the circumstances, given the evidence presented by GCI in the initial challenge, as well as the lack of specificity and substantive evidence submitted in response.⁴⁰ The Bureau also concludes that 50 locations should be treated as unserved as outside of GCI's cable node boundaries and thus eligible for deployment by ACS with Phase II frozen support. In addition, the remaining 1,663 locations ACS identified as unserved, and not challenged by GCI, are automatically deemed eligible for deployment with frozen support.⁴¹

³⁴ *Phase II Challenge Process Order*, 28 FCC Rcd at 7214-15, paras. 8-9.

³⁵ *See Challenge Process Guidance Public Notice*, 29 FCC Rcd at 7508, paras. 11-12.

³⁶ *See Connect America Fund et al.*, WC Docket Nos. 10-90, 14-93, Order, 30 FCC Rcd 2718, 2731, para. 38 (Wireline Comp. Bur. 2015) (*Phase II Challenge Process Resolution Order*).

³⁷ GCI Mar. 29, 2018 Challenge at Attachment E. *See Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211, 7213-14, para. 7 (Wireline Comp. Bur. 2013) (concluding “that it is reasonable to presume that providers that provide broadband of the required speed also meet the non-speed broadband criteria, with that presumption subject to rebuttal in particular instances”).

³⁸ GCI provides website marketing screen shots for the communities of Fairbanks, Homer, Juneau, Kenai, Soldotna, and Kodiak for the challenge locations to support its claim that it offers service at the requisite performance metrics. *See* GCI Mar. 29, 2018 Challenge at Attachment E.

³⁹ Charter filed maps of its network plant for only 48 census blocks out of the more than 4,300 census blocks for which it seeks a waiver.

⁴⁰ *See Phase II Challenge Process Resolution Order*, 30 FCC Rcd at 2733, para. 48.

⁴¹ *See ACS CAF Phase II Order*, 31 FCC Rcd at 12097, para. 36. As noted above, to the extent that the 1,663 locations that are deemed unserved include multi-dwelling units, ACS will be permitted to deploy to such multi-unit locations using Phase II support consistent with our orders and limited to no more than 7,900 unserved locations in partially served census blocks.

B. Request to Waive the October 1, 2018 Filing Deadline

20. As provided by the *ACS CAF Phase II Order*, ACS is required to complete its initial deployment plan and submit to the Bureau a list of census blocks and locations it intends to serve using CAF II support by October 1, 2018.⁴² ACS seeks a waiver of the filing deadline in light of, among other things, its recent filing of an additional 4,691 proposed locations in partially served census blocks.

21. The Bureau finds good cause for granting ACS a brief extension of time to submit its deployment plan.⁴³ We agree with ACS that a brief 60-day extension of time should not interfere with its overall deployment of services.⁴⁴ Moreover, we are persuaded that the length of time necessary to resolve locations as served or unserved announced by *ACS Public Notice I* and *ACS Public Notice II* demonstrate the existence of special circumstances and serve the public interest to further the deployment of voice and broadband service, thereby warranting the requested relief. Thus, we grant ACS's request for a 60-day extension for the submission of its deployment plan, and the new deadline for the deployment plan shall be 60 days from the resolution of the 4,691 proposed locations announced by *ACS Public Notice II*.

IV. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), 5, 214, and 254 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 154(i), 154(j), 155, 214, 254, 1302, sections 0.91, 0.291, 1.3 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 1.102, and the authority delegated to the Wireline Competition Bureau in paragraph 36 of the *ACS CAF Phase II Order*, 31 FCC Rcd 12086 (2016), that this Order, IS ADOPTED.

23. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Monteith
Bureau Chief
Wireline Competition Bureau

⁴² *Id.* at 12099, para. 43.

⁴³ 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

⁴⁴ ACS July 16, 2018 Letter at 3.

APPENDIX
Final Challenge Decisions

(List showing the designation of served or unserved for each challenged location)
This list can be found at: <https://docs.fcc.gov/public/attachments/DOC-354305A1.xlsx>