

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

In the Matter of

Connect America Fund—Alaska Plan

WC Docket No. 16-271

APPLICATION FOR REVIEW

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April 1, 2019

TABLE OF CONTENTS

I.	INTRODUCTION AND EXECUTIVE SUMMARY.....	1
II.	BACKGROUND	2
III.	QUESTIONS PRESENTED FOR REVIEW	6
A.	The Commission Has Never Resolved the Need for the Accuracy Standard or What Burdens Justify a Waiver	7
B.	The <i>Waiver Denial Order</i> Contains Factual Errors	10
1.	The Bureaus Made Incorrect Findings That Petitioner Failed to Show a Burden.....	10
2.	The <i>Waiver Denial Order</i> Mistakenly Characterizes the 7.6-meter Standard as a “Commonly Used Mapping Standard” for Connect America Reporting.....	13
3.	The <i>Waiver Denial Order</i> Confuses the Availability of Some Data on Fiber Locations with the Ability to Certify Accuracy	15
C.	The <i>Waiver Denial Order</i> Contains No Identification of Benefits from the 7.6-meter Accuracy Requirement and No Cost-Benefit Analysis	16
D.	Relief Can Be Granted to Some Members Even If Not All Require It.....	18
IV.	CONCLUSION.....	20

I. INTRODUCTION AND EXECUTIVE SUMMARY

GCI Communication Corp. and its wholly-owned affiliates, United Utilities, Inc. and Yukon Telephone Company, Inc. (together, “GCI”) respectfully file this Application for Review of the recent order denying a limited waiver of the accuracy standard for two elements of the network maps that Alaska Plan participants must submit annually.¹ In the *Waiver Denial Order*, the Wireless Telecommunications and Wireline Competition Bureaus (collectively, the “Bureaus”) denied a request for waiver of the 7.6-meter spatial accuracy standard (and 95 percent confidence level) for mapping buried and aerial fiber, even though all fiber nodes were mapped within that accuracy. The *Waiver Denial Order* contains factual errors, goes against established Commission precedent for waivers filed by trade associations, lacks a cost-benefit analysis, and reflects the fact that no valid purpose has ever been expressed for a location accuracy standard as strict as 7.6 meters.

The *Waiver Denial Order* misunderstands or mischaracterizes evidence provided with the Waiver Petition regarding the burden of collecting buried and aerial fiber location information to within 7.6 meters. ATA explained that some providers (including GCI, as shown in a sworn declaration) would be required to walk thousands of miles of fiber to take manual measurements. But the *Waiver Denial Order* finds that this is not an “undue burden” based on the costs of gathering data *other than* the buried and aerial fiber. The *Waiver Denial Order* misses the core point of a cost-benefit analysis: even small costs are not justifiable and simply cause

¹ See *Connect America Fund—Alaska Plan*, WC Docket No. 16-271, DA 19-136, Order, (Wireless Telecomm’n & Wireline Comp. Burs. rel. Mar. 1, 2019) (“*Waiver Denial Order*”). The *Waiver Denial Order* responded to a request for waiver filed by the Alaska Telecom Association (“ATA”). Petition for Limited Waiver of Alaska Telecom Association To Permit Commonly Accepted Industry Levels of Spatial Accuracy for Middle Mile Fiber Route Mapping, WC Docket No. 16-271 (filed Feb. 6, 2019) (“Waiver Petition”).

unwarranted economic loss when there are *no* identifiable benefits. As such, it is unreasoned and arbitrary. And the costs are not merely *de minimis*. The *Order* also mistakenly states that the 7.6-meter standard that applies uniquely to Alaska Plan participants is a “commonly used” standard for Connect America Fund reporting. Similarly, it conflates the likelihood that a particular fiber facility’s location is accurate to within 7.6 meters with a *certifiable certainty* that the location is accurate to that standard.

Significantly, neither the Commission nor the Bureaus have articulated why such a strict location accuracy standard is necessary for oversight of the Alaska Plan participants’ progress in meeting their commitments—or for any other reason. GCI agrees that proper oversight is essential to safeguard the Universal Service Fund, and that inaccurate data frustrate that purpose. But the 7.6-meter standard is overly strict: it is unfathomable why it matters here to know on which side of a right-of-way a fiber is located. It runs within the right-of-way boundaries, with precisely measured nodes as the locations for access.

GCI respectfully requests that the Commission reverse the *Waiver Denial Order* and grant the Waiver Petition at least as to GCI.

II. BACKGROUND

In August 2016, the Commission adopted the *Alaska Plan Order* based on a consensus proposal from ATA “designed to maintain, extend, and upgrade broadband service across all areas of Alaska served by rate-of-return carriers and their wireless affiliates.”² The carriers that opted to participate in the Alaska Plan each committed to maintain and upgrade service within their service areas in exchange for receiving a fixed amount of high-cost support over ten years.

² *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-115, 31 FCC Rcd. 10,139, 10,140 ¶ 1 (2016) (“*Alaska Plan Order*”) (footnote omitted).

Individual providers' performance plans, as approved by the Wireline or Wireless Bureau as appropriate, reflect whether the relevant community is connected to the larger network by satellite, microwave, or fiber facilities.

The Commission also acted to ensure that, as new middle mile facilities become available, Alaska Plan participants' performance plans are appropriately adjusted to account for the new capabilities.³ To support the evaluation of these adjustments, the Commission required Alaska Plan participants to submit maps of their fiber and microwave middle mile and backhaul facilities and to update them annually "if they have deployed middle mile facilities in the prior calendar year that are or will be used to support their service in eligible areas."⁴ The Commission did not include detailed filing instructions in the *Alaska Plan Order* but required participants to submit their maps "in a format specified by the Bureaus."⁵

³ See *id.* at 10,148 ¶ 25 (requiring rate-of-return participants to meet broadband public interest obligations if backhaul facilities improve sufficiently); 10,158 ¶¶ 61-62 (directing the Wireline Competition Bureau to take improvements in middle mile infrastructure into account in evaluating rate-of-return carrier performance commitments at set intervals); 10,172-73 ¶ 102 (requiring mobile participants to upgrade certain performance commitments in response to improvements in middle mile).

⁴ See *id.* at 10,158 ¶ 60, 10,172-73 ¶ 102; see also 47 C.F.R. § 54.316(a)(6) ("Recipients subject to the requirements of § 54.308(c) or § 54.317(e) shall submit fiber network maps or microwave network maps covering eligible areas. At the end of any calendar year for which middle-mile facilities were deployed, these recipients shall also submit updated maps showing middle-mile facilities that are or will be used to support their services in eligible areas."). "The Bureaus' assessment would include a review of any revised performance commitments and service obligations triggered by the carriers' certification on FCC Form 481 that new 'middle-mile' facilities are 'commercially available.'" *Connect America Fund – Alaska Plan*, Order on Reconsideration, 33 FCC Rcd. 2068, 2069-70 ¶ 3 (Wireline Comp. and Wireless Telecomm'ns Burs. 2018) ("*Middle Mile Mapping Order*") (citing *Alaska Plan Order* at 10,156, 10,172-73, ¶¶ 52, 102).

⁵ *Alaska Plan Order* at 10,158 ¶ 60, 10,172-73 ¶ 102.

On February 28, 2018, the Bureaus released the current instructions for Alaska Plan participants to follow in submitting their maps.⁶ As relevant here, the instructions require that all relevant fiber “links” and all relevant “nodes” must be reported consistent with the “National Standard for Spatial Data Accuracy: accurate to within 7.6m CE95 (FGDC-STD-007, 3-1998).”⁷ This standard requires geolocations to be spatially accurate to within 7.6 meters (about 25 feet, less than the width of a two lane road with minimal shoulders⁸), 95 percent of the time. An officer of the company must certify at the time of filing that the filing is accurate and complete.⁹

To prepare for the March 1, 2019 filing, GCI expended over 2,000 hours and more than \$265,000 in outside vendors and equipment to gather and prepare information, including location information for thousands of “nodes” such as cell sites, central offices, schools, clinics, libraries, Internet peering points, and other locations. GCI also prepared information regarding its undersea cable and microwave “links.” GCI reported all these locations and certified their accuracy to 7.6 meters.

GCI also tried in good faith to find a way to report location information meeting the Bureaus’ accuracy standard for its 2,500-plus miles of buried and aerial fiber (more than all the other Alaska Plan participants combined). These rejected possibilities included using specialized

⁶ See *Middle Mile Mapping Order*.

⁷ *Middle Mile Mapping Order* at 2083 (fiber links), 2085 (nodes).

⁸ See National Cooperative Highway Research Program, Report 362, Roadway Widths for Low Traffic Volume Roads, at (1994), https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=19&ved=2ahUKEwiixeCuiq3hAhXIwVvKkHVmdAIoQFjASegQIBRAC&url=http%3A%2F%2Fonlinepubs.trb.org%2FOnlinepubs%2Fnlchrp%2Fnlchrp_rpt_362.pdf&usg=AOvVaw1mbbm-h6-Xjfbzob5Rb5I_I.

⁹ *Middle Mile Mapping Order* at 2081.

aerial photography to verify or adjust existing location information so that it reflects “ground truth,” using specialized underground radar, and using desktop imaging as verified by known nearby locations. As the filing date approached, however, it became apparent that GCI would be unable to certify in good faith that all its buried and aerial fiber location records were accurate to 7.6 meters with 95 percent confidence.¹⁰

As ATA explained below, fiber does not easily lend itself to location reporting. No commercially available desktop applications or aerial photography can locate an underground facility. For aerial fiber, satellite imagery can reflect the location of poles, but not consistently or reliably. Poles can be obscured by cloud cover, leaves, and shadows from nearby trees or structures. Nor is the imagery guaranteed to a 95 percent confidence level (as required by the 7.6m CE95 standard). “The only way to produce a 7.6-meter accurate ‘link’ dataset for all fiber paths for which the required information does not yet exist would be to physically walk the length of buried fiber and trace the signal above ground and record the accurate location of sufficient poles (for aerial fiber) to validate and supplement any other sources of aerial fiber location information.”¹¹

For these reasons, ATA filed the Waiver Petition seeking relief from the accuracy standard for buried and aerial fiber (but specifically *not* seeking relief from the obligation to file

¹⁰ Because the HUBB will not accept filings that do not certify the entire dataset as accurate to the specified standard, GCI submitted its data to the Bureaus to avoid possibly making a false certification. *See* Letter from Frederick W. Hitz III, GCI Communication Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271 (filed Mar. 1, 2019).

¹¹ Waiver Petition at 7.

location information for these facilities). GCI participated extensively in the waiver proceeding.¹²

III. QUESTIONS PRESENTED FOR REVIEW

Consistent with section 1.115(b)(2) of the Commission's rules, GCI here states the "questions presented for review with reference, where appropriate, to the findings of fact or conclusions of law," and identifies the specific factors from section 1.115 that "warrant Commission consideration of the questions presented."¹³

Before addressing the questions presented for review, GCI clarifies what it is *not* seeking. GCI is not asking for any relief with regard to its obligation to submit maps of its network, including its buried and aerial fiber. Notwithstanding the denial of the waiver, GCI timely submitted all required information and certified all nodes, all submarine cable fiber, and all microwave facilities to 7.6 meters of accuracy. GCI also submitted all required buried and aerial fiber location information and certified accuracy to within 50 meters at 80 percent confidence level.¹⁴

¹² As required of a party seeking review by the full Commission of a Bureau decision, GCI participated in the proceeding below. 47 C.F.R. § 1.115(a). Through its Vice President of Architecture and Planning, GCI submitted an affidavit with the Waiver Petition detailing its particular circumstances and need for a waiver. *See* Waiver Petition, Attach., Declaration of Mark Ayers ("Ayers Declaration"). GCI representatives also participated in ex parte meetings and conversations along with ATA and other individual ATA members. *See* Letter from Christine O'Connor, Executive Director, Alaska Telecom Association to Ms. Marlene Dortch, Secretary, FCC, WC Docket No. 16-271 (filed Feb. 14, 2019); Letter from Christine O'Connor, Executive Director, Alaska Telecom Association to Ms. Marlene Dortch, Secretary, FCC, WC Docket No. 16-271 (filed Feb. 19, 2019); Letter from Christine O'Connor, Executive Director, Alaska Telecom Association to Ms. Marlene Dortch, Secretary, FCC, WC Docket No. 16-271 (filed Feb. 21, 2019).

¹³ 47 C.F.R. § 1.115(b)(1)-(2).

¹⁴ *See supra* note 10.

A. The Commission Has Never Resolved the Need for the Accuracy Standard or What Burdens Justify a Waiver

The Commission has provided no guidance to the Bureaus on what hardships or burdens would justify a waiver of the 7.6-meter mapping requirement. As a new or novel issue, it is beyond the Bureaus' authority to resolve.¹⁵ Indeed, neither has the Commission addressed the specific uses to which the mapping submissions will be put or the need for such a strict level of spatial accuracy. Therefore, this Application for Review is proper because the Bureaus' action "involves a question of law or policy which has not previously been resolved by the Commission."¹⁶ GCI urges the Commission to grant a waiver on the grounds that burdens to satisfy the accuracy standard are not justified by any purpose for the information that the Commission or the Bureaus have ever articulated.

When considering a waiver request, the Commission or Bureau considers whether there is "good cause," and may waive its rules "where particular facts would make strict compliance inconsistent with the public interest."¹⁷ The Commission should grant a waiver "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."¹⁸ In this case, it was not within the Bureaus' ability to determine whether GCI's

¹⁵ See 47 C.F.R. § 0.291(a)(2) ("The Chief, Wireline Competition Bureau shall not have authority to act on applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines."); *id.* § 0.331(a)(2) ("The Chief, Wireless Telecommunications Bureau shall not have authority to act on any complaints, petitions or requests, whether or not accompanied by an application, when such complaints, petitions or requests present new or novel questions of law or policy which cannot be resolved under outstanding Commission precedents and guidelines.").

¹⁶ 47 C.F.R. § 1.115(b)(2)(ii).

¹⁷ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*"); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹⁸ *Northeast Cellular* at 1166; see also *AT&T Corp. v. FCC*, 448 F.3d 426 (D.C. Cir. 2006).

circumstances warranted a deviation from the general rule, because the Commission has not articulated how the public interest is served by having maps of Alaska’s fiber and microwave facilities to 7.6 meters of accuracy. (Again, GCI does not challenge the need for maps or a reasonable accuracy standard, but it is not at all apparent why it makes a difference on which side of a two-lane road or similar right-of-way a fiber is located.) Without any substance behind this standard, the Bureaus could not have evaluated whether a deviation was in the public interest, as the waiver standard requires.

The explanations of the need for fiber and microwave maps—including in the *Waiver Denial Order*—are vague and do not give any reason why Alaska Plan participants must certify to an accuracy standard as granular as 7.6 meters. In the *Alaska Plan Order*, the Commission required Alaska Plan participants to submit “fiber network maps or microwave network maps in a format specified by the Bureaus,” but did not specify how those maps would be used or why they would need to be more accurate than location information required of other high-cost recipients.¹⁹ In rejecting a commenter’s proposal to require Alaska Plan participants to disclose in advance how they intend to spend their Alaska Plan support, the Commission said “it will be more helpful to [its] ongoing assessment of the performance commitments of the recipients to have information on middle mile actually deployed rather than information regarding planned middle-mile deployment.”²⁰ But that does not itself translate to a 7.6-meter accuracy standard.

When the Bureaus adopted the filing details for the network map including the 7.6-meter spatial accuracy standard, they said little more about why that standard was necessary for

¹⁹ *Alaska Plan Order*, 31 FCC Rcd. at 10,158, 10,172-73 ¶¶ 60, 102.

²⁰ *Id.* at 10,173 ¶ 102.

“ongoing assessment of the performance commitments.”²¹ The Bureau explained that the availability of new middle mile facilities might lead to increased performance commitments in areas previously served with lesser middle mile facilities.²² But the Bureaus gave no reason for adopting the strict spatial accuracy standard.²³ In granting an extension of time and flexibility for the first year’s filing, the Bureaus purported to address why “the overall benefit of the data accuracy requirements, as modified here, outweighs any burden on carriers.”²⁴ The main reason the Bureaus offered for a 7.6-meter standard specifically (as opposed to another standard) was that the HUBB filing portal relies on Census boundary and road data, and “the HUBB portal uses the 7.6-meter accuracy standard to take into account the inherent error in census block boundary measurements.”²⁵ All recipients of high-cost support must file in the HUBB, yet we understand that only Alaska Plan participants need to certify the accuracy of their data to 7.6 meters. Moreover, the only facilities relevant to the Waiver Petition are fiber links, which are not required to be built as part of the Alaska Plan and do not relate to census block boundaries. The

²¹ *Id.*

²² *Wireline Competition Bureau and Wireless Telecommunications Bureau Release Instructions for Filing Terrestrial Middle-Mile Network Maps*, Public Notice, 32 FCC Rcd. 6863, 6863-64 (Wireline Comp. & Wireless Telecomm’n’s Burs. 2017), *pet for recon. granted in part, Middle Mile Mapping Order*.

²³ Nor is the value of this level of accuracy apparent on its face. We are unable to imagine any analysis Commission staff might reasonably need to conduct to assess Alaska Plan participants’ performance commitments that warrants a 7.6-meter level of accuracy.

²⁴ *Middle Mile Mapping Order* at 2075 ¶ 19.

²⁵ *Middle Mile Mapping Order* at ¶ 21 & n.71. The Bureaus also offered the defenses that the standard provides an “important backstop to ensure carriers maximize their commitments and service levels to Alaskans,” and that it is “critical for obtaining a complete picture of facilities’ locations in relation to other existing data.” Yet these do not explain or justify the need for this particular standard. *Middle Mile Mapping Order* at 2076 ¶ 21.

Bureaus added that the standard allows them “to fully identify duplicate facilities,” but still do not explain why such a strict standard is critical to this purpose.²⁶

For the Commission or a Bureau to assess whether “particular facts would make strict compliance inconsistent with the public interest,”²⁷ there must be an understanding of how the rule serves the public interest in the first place. Here, the Commission has not articulated why such a strict accuracy standard is necessary to serve the public interest. While the Bureaus adopted the “format” of the maps on authority that the Commission expressly delegated, the Bureaus too never articulated how the standard serves the public interest. In the absence of a Commission policy on the need for a 7.6-meter accuracy standard for buried and aerial facilities, the Commission should find that the Bureaus lacked delegated authority to hold that the waiver is not in the public interest and that ATA and GCI in particular had failed to demonstrate that the burden outweighed the benefits.²⁸

B. The *Waiver Denial Order* Contains Factual Errors

1. The Bureaus Made Incorrect Findings That Petitioner Failed to Show a Burden

The Bureaus concluded that GCI and the other ATA members should not receive a waiver because they failed to demonstrate that the 7.6-meter accuracy requirement poses an undue burden as applied to buried and aerial fiber.²⁹ GCI and other ATA members have

²⁶ *Middle Mile Mapping Order* at 2076 ¶ 21.

²⁷ *Northeast Cellular* at 1166.

²⁸ Commission consideration of this question and the burden issue addressed in Section III.B.1 would also resolve what standard the Bureaus should have used to resolve whether the Petitioner failed to show “how the standard would be inequitable for individual members.” *Waiver Denial Order* at ¶ 8.

²⁹ *Waiver Denial Order* at ¶¶ 3, 8.

repeatedly provided—including in the Waiver Petition with evidence developed subsequent to the *Order on Reconsideration*—persuasive evidence of the burdens of collecting location information manually in the field. The Bureaus, however, discount or disregard the information that GCI submitted in the record of this proceeding. The Commission should acknowledge this material factual error and find that these burdens justify a waiver.

The Bureaus’ mischaracterize the nature of the cost information that GCI (and others) submitted with the Waiver Petition. GCI demonstrated that it spent 2,000 hours in internal staff time as well as \$265,000 on outside vendors and equipment to prepare for the March 1 filing.³⁰ The *Waiver Denial Order* characterizes these figures as the sum total of the burden for this year’s collection, including the cost to collect fiber locations to within 7.6 meters. This is not correct. GCI’s cost information reflects the costs since the first mapping filing last August to gather and prepare data, including buried and aerial fiber information, but does *not* include the costs that would be incurred to walk over 2,500 miles of fiber to gather location information through the use of hand-held GPS devices. As the Waiver Petition made clear, “[t]he only way to produce a 7.6-meter accurate ‘link’ dataset for all fiber paths for which the required information does not yet exist would be to physically walk the length of buried fiber and trace the signal above ground and record the accurate location of sufficient poles (for aerial fiber) to validate and supplement any other sources of aerial fiber location information.”³¹ ATA was seeking a waiver precisely to prevent GCI and others from having to incur these costs. Notwithstanding, the Bureaus characterized the time and funds expended—without the costs to

³⁰ Ayers Declaration at ¶¶ 5-6.

³¹ Waiver Petition at 7.

walk the fiber—as insufficient to demonstrate a “hardship.”³² Putting aside whether or not the other aspects of the mapping requirements cause a hardship, the Bureaus erred in characterizing these cost submissions as inclusive of the costs to gather fiber locations to 7.6 meters.

This is not the first time that the Bureaus have disregarded the costs of the mapping requirements. In its Petition for Reconsideration of the mapping requirements, ATA explained the manual process necessary to gather information to 7.6 meters of accuracy and the costs in addition to staff time.³³ GCI’s Vice President Network Services and Chief Engineer certified under penalty of perjury that he estimated the costs to gather data to the Bureaus’ specifications at \$10,000 per village.³⁴ ATA reiterated these points in its comments to the Commission on the information collection,³⁵ and again in its comments to the Office of Management and Budget.³⁶

The Bureaus nonetheless represented to the Office of Management and Budget that the total collective cost for all providers over 10 years is 2,700 hours, or \$108,000 in internal staff

³² *Waiver Denial Order* at ¶ 8.

³³ Petition for Reconsideration of Alaska Telephone Association, WC Docket No. 16-271, at 13-15 (filed Oct. 10, 2017) (“Members anticipate that collecting the data to the specified 7.6 meter accuracy will be a largely manual process requiring technicians to take survey equipment to the site. . . . Travel costs in remote Alaska include the costs of traveling via small airplane to reach villages off the road systems, as well as lodging. . . . Some members may need to purchase equipment or software. . . [and] hire consultants to perform the survey to the required degree of accuracy or generate shapefiles to the prescribed levels of precision”).

³⁴ *See id.*, Attach. 1, Declaration of Jimmy Sipes.

³⁵ Comments of Alaska Telephone Association on Proposed Information Collection Requirements, WC Docket No. 16-271, OMB 3060-1228, at 4-5 (filed Nov. 27, 2017).

³⁶ Comments of Alaska Telephone Association, OMB Control No. 3060-1228; FCC WC Docket No. 16-271, at 19-21 (filed Jan. 11, 2018) (detailing categories of costs and estimating the cost for the first submission between \$10,000 and \$80,000 per provider or more, not accounting for fiber spans outside populated areas).

time, with no external costs for vendors of equipment.³⁷ The Bureaus apparently maintained this position notwithstanding sworn statements from the providers that their costs would be far higher. We can now see that the Bureaus' burden estimates were wildly wrong, and far too low. As predicted, the providers' costs are in fact much higher, as shown in the Waiver Petition. Just to prepare for the second filing, and without walking its fiber to gather coordinates certifiable to 7.6 meters, GCI spent 2000 staff hours and \$265,000 on outside vendors³⁸—more than the Bureaus estimated *for 10 years of mapping by 15 providers*. The Bureaus' failure to address and account for these demonstrated burdens, sworn to by officers under penalty of perjury, represents “[a]n erroneous finding as to an important or material question of fact”³⁹ that the Commission should correct here. As shown multiple times on the record of this proceeding, if a provider does not already have records of its fiber positions to within 7.6 meters, collecting it is a highly burdensome and expensive project.⁴⁰

2. The *Waiver Denial Order* Mistakenly Characterizes the 7.6-meter Standard as a “Commonly Used Mapping Standard” for Connect America Reporting

The *Waiver Denial Order* refers to the 7.6-meter standard as “a commonly-used mapping standard for Commission high-cost data.”⁴¹ This is not correct, but in any event begs the

³⁷ See FCC, Supporting Statement, Connect America Fund – High Cost Portal Filing, 3060-1228, at 15 (Aug. 2017), <https://www.reginfo.gov/public/do/DownloadDocument?objectID=79271202>.

³⁸ Ayers Declaration at ¶¶ 5-6.

³⁹ 47 C.F.R. § 1.115(b)(iv)

⁴⁰ Addressing this question will also resolve that, contrary to the *Order*'s finding, the Waiver Petition did in fact “plead with particularity the facts and circumstances warranting relief.” *Waiver Denial Order* at ¶ 7.

⁴¹ *Waiver Denial Order* ¶ 4 (quoting *Middle Mile Mapping Order* at 2076 ¶ 21).

question of whether 7.6-meter accuracy for the fiber itself, rather than for the nodes, provides any incremental benefit, or whether the costs are outweighed by the purported benefits.

As we understand it, no other high-cost support recipients must report their data to within 7.6 meters of accuracy. This standard is unique for Alaska Plan recipients. The *Waiver Denial Order* cites no other Commission context for the use of this very stringent standard.

The “common use” of the 7.6-meter standard cited in the *Order* apparently refers to a “buffer” around the individual locations that high-cost recipients—including Alaska Plan ILECs—must report to demonstrate that they have built out fixed broadband to the required number of locations. According to USAC, the census block boundaries themselves are accurate to 7.6 meters,⁴² so USAC also grants reporting carriers a 7.6-meter buffer around their reported locations. If a provider reports a location to be within a particular census block, USAC will attribute it to that census block even if it falls 7.6 meters on the other side of the census block boundary.⁴³ USAC does *not* require high-cost recipients to certify to 7.6-meter accuracy when

⁴² However, Census Bureau cautions that census block boundaries may not be accurate:

While [the Census Bureau] has made a reasonable and systematic attempt to gather the most recent information available about the features each file portrays, the Census Bureau cautions users that the files are no more complete than the source documents used in their compilation, the vintage of those source documents, and the translation of the information on those source documents.

[T]he level of spatial accuracy in the TIGER/Line Shapefiles makes them unsuitable for high-precision measurement applications such as engineering problems, property transfers, or other uses that might require highly accurate measurements of the earth’s surface.

United States Census Bureau, TIGER/Line® ShapeFiles, Technical Documentation, §§ 2.2.5-.6 (Sept. 2018), https://www2.census.gov/geo/pdfs/maps-data/data/tiger/tgrshp2018/TGRSHP2018_TechDoc.pdf.

⁴³ See USAC, HUBB Frequently Asked Questions at 5-6, <https://www.usac.org/res/documents/hc/pdf/tools/HC-HUBB-FAQ.pdf>.

they submit their built-out location information. Indeed, USAC is using the standard as a sort of forgiveness—a provider might be 1000 meters off when it reports a built-out location, but so long as the location is within 7.6 meters of the relevant census block, it is accepted.

The *Waiver Denial Order* does not explain how this singular use of the 7.6-meter standard is relevant to the fiber and microwave maps that Alaska Plan participants must file. There is no requirement in the Alaska Plan to build out fiber or microwave facilities, much less to particular census blocks. The census block boundaries do not inform whether a provider could take advantage of newly available middle mile. The statement that the 7.6-meter standard is “commonly used” for high-cost reporting is both incorrect and irrelevant. The accuracy of census block boundaries bears no relevance to the locations of Alaska Plan participants’ fiber. If the question is whether it is feasible to build out from a particular fiber, the Commission has utilized much larger distances for the feasibility of buildout, such as a half mile.⁴⁴

3. The *Waiver Denial Order* Confuses the Availability of Some Data on Fiber Locations with the Ability to Certify Accuracy

The *Waiver Denial Order* finds that the Waiver Petition “fail[ed] to demonstrate the need for relief. . . in more densely populated areas, since as ATA acknowledges, locations. . . in those areas will generally not be far off the 7.6-meter standard.”⁴⁵ This conclusion confuses two different concepts—the availability of *some* location data, and the ability to certify the “ground truth” accuracy of the data.

⁴⁴ See *Business Data Services in an Internet Protocol Environment et al.*, Report and Order, 32 FCC Rcd. 3459, 3479 ¶ 39 (2017), *pets. for review granted in part, denied in part sub nom. Citizens Telecommunications Company of Minnesota, LLC v. FCC*, 901 F.3d 991 (8th Cir. 2018).

⁴⁵ *Waiver Denial Order* ¶ 9.

The *Order* is correct that location data for fiber in more densely populated areas are more *likely* to be accurate to 7.6 meters. This is because more densely populated areas contain more nodes, which were in fact certified to 7.6 meters. Cell towers, central offices, schools, clinics, and other locations to which fiber connects were all reported to within 7.6 meters and certified as accurate. So reported fiber links that connect to these nodes are also more likely to be accurate to that standard near the nodes—or certainly not to be off by an amount that would be material from any functional perspective.

But the standard does not ask whether the fiber location is “likely” to be accurate to 7.6 meters. The standard is that location information *must* be accurate to 7.6 meters to a 95 percent confidence level and an officer of the company must certify to that fact. GCI believes that much of the fiber location data it submitted indeed falls within the standard, particularly in more populated areas. But in some cases, it probably does not. Buried fiber may cross under the right-of-way at Pine Street rather than Main Street. Aerial fiber may have moved to new poles on the other side of the village square, or GCI’s pole location information may rely on spatially inaccurate municipal maps. Without the manual data gathering process already described, GCI was unable to certify that its fiber location information meets the required standard. The *Waiver Denial Order* incorrectly equates the likelihood of accuracy with a certifiable certainty.

C. The *Waiver Denial Order* Contains No Identification of Benefits from the 7.6-meter Accuracy Requirement and No Cost-Benefit Analysis

Neither the *Waiver Denial Order* nor any of the Alaska Plan orders that preceded it conduct a cost-benefit analysis to determine whether the benefits of the 7.6-meter accuracy standard justify the demonstrated burdens. Indeed, it never identifies any claimed benefits of the strict standard as applied to fiber running between highly accurately mapped node locations.

This omission is inconsistent with “established Commission policy” and constitutes a “prejudicial procedural error.”⁴⁶

Chairman Pai has established a policy of ensuring that the Commission’s decisions are informed by cost-benefit analysis. The Commission created the Office of Economics and Analytics, among other purposes, to “provide economic analysis, including cost-benefit analysis, for rulemakings, transactions, adjudications, and other Commission actions.”⁴⁷ Yet no such analysis has been done for the Alaska Plan mapping requirements in general or the 7.6-meter accuracy standard for fiber in particular.

This is not surprising. A cost-benefit analysis would weigh the burdens of compliance against the benefit of having the requirements in place. In this case, however, the Commission has not articulated what the benefits of the 7.6-meter accuracy standard are. The record reveals that the requirements are very burdensome, and the benefits are uncertain at best. A cost-benefit analysis, had it been performed, would have shown that the burdens are not justified by any articulated benefits. The lack of a cost-benefit analysis is a prejudicial procedural error and conflicts with established Commission policy.⁴⁸

⁴⁶ 47 C.F.R. § 1.115(b)(2)(i), (v).

⁴⁷ *Establishing of the Office of Economics and Analytics*, Order, 33 FCC Rcd. 1539, 1539 ¶ 3 (2018). Commissioner O’Rielly has made his position clear: “[T]he law also requires that the Commission ensure that any decisions it makes are reasoned and justified. Quite honestly, that cannot occur if the Commission doesn’t know or understand the economic costs and benefits of its decisions.” Remarks of FCC Commissioner Michael O’Rielly Before the Hudson Institute, “A Conservative Perspective” at 2 (Feb. 6, 2018).

⁴⁸ 47 C.F.R. § 1.115(b)(2)(i), (v).

D. Relief Can Be Granted to Some Members Even If Not All Require It

The *Waiver Denial Order* states in multiple ways that it is not appropriate to grant a waiver to a group—such as a trade association—unless each individual member has shown that it suffers the same hardship with regard to strict application of the rule in question.⁴⁹ This approach is overly restrictive and inconsistent with common Commission treatment of requests filed by trade associations on behalf of their members. The Commission should correct this error by reversing the *Waiver Denial Order*.⁵⁰

The Commission and Bureaus routinely grant waiver requests filed by trade associations when those requests do not provide details on each individual member’s unique situation or burden.⁵¹ For example, in 2017, the full Commission granted relief to the Competitive Carriers Association (“CCA”), on behalf of all its members, seeking a waiver or extension of time to come into compliance with a newly adopted requirement to include embedded references (i.e., relevant URLs) with wireless emergency alerts on smartphones that are capable of processing

⁴⁹ See *Waiver Denial Order* ¶ 7 (noting that the Waiver Petition did not provide detailed information about each members’ available location information, why each member does not have location information to 7.6 meters of accuracy for its buried and aerial fiber, or why some members were able to certify their locations).

⁵⁰ This approach reflects a prejudicial procedural error and a conflict with established Commission precedent. 47 C.F.R. § 1.115(b)(2)(i), (v).

⁵¹ See, e.g., *Wireless Emergency Alerts*, Order on Reconsideration, 32 FCC Rcd. 9621, 9623, 9625 ¶ 5 & n 16 ¶ 10 (2017) (granting in relevant part the waiver petition of CCA seeking waiver of extension of time to comply with new wireless emergency alert requirements to support embedded URLs in wireless emergency alerts) (“*CCA Waiver Order*”); *July 1, 2014 Annual Access Charge Tariff Filings*, Order, 29 FCC Rcd. 3133, 3135-36 ¶ 6 (Wireline Comp. Bur. 2014) (granting additional time for all price cap LECs to file exogenous costs data in response to petition of USTelecom that provided only general reasons to justify a waiver).

them.⁵² The Commission granted relief to all CCA members (as well as some CTIA members, other than the largest five) to comply with the requirement, finding that they “may need” more time to review standards, and that the transition to new standards “may necessitate additional time for compliance, coordination, and testing.”⁵³ CCA provided no information on the specific circumstances of individual members, nor did the Commission find it necessary to have such information in order to grant the request.

In support of their decision, the Bureaus cite one Bureau-level decision that denied a waiver request as “overly broad” because it did not justify relief for all members of the petitioner-group.⁵⁴ That decision does not provide an appropriate basis to deny the Waiver Petition. A single Bureau-level order cannot set new policy or take precedence over orders voted by the full Commission. (The order cited by *Waiver Denial Order* itself cites no Commission precedent for denying a waiver as “overly broad.”)

⁵² *CCA Waiver Order* at 9625 ¶ 10.

⁵³ *CCA Waiver Order* at 9625 ¶ 11.

⁵⁴ See *Waiver Denial Order* at ¶ 6 (citing *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*; *Petitions for Temporary Partial Exemption or Limited Waiver*, Memorandum Opinion and Order, 27 FCC Rcd. 9630, 9638-40 ¶¶ 16-17 (Media Bur. 2012)).

IV. CONCLUSION

GCI demonstrated below that it meets the waiver standard with regard to certifying location accuracy for its buried and aerial fiber to 7.6 meters and 95 percent confidence. GCI requests that the Commission reverse the *Waiver Denial Order* and grant the waiver in full or to the extent needed to permit GCI to certify its buried and aerial fiber locations to 50 meters with 80 percent confidence.

Respectfully submitted,



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April 1, 2019

CERTIFICATE OF SERVICE

I, Alexandra Green, hereby certify that on this 1st day of April, 2019, I caused true and correct copies of the foregoing Application for Review to be served by U.S. mail, first-class prepaid and electronic mail upon:

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