

April 6, 2018

Marlene H. Dortch
Federal Communications Division
Office of the Secretary
445 12th St. SW, Room TW-A325
Washington, DC 20554

Re: Ex Parte Regarding Discontinuance of BETRS Service.

Dear Ms. Dortch:

On April 3, 2018, Matanuska Telephone Association, Inc. ("MTA") met telephonically with members of the Wireline Competition Bureau. Michael Burke, Chief Executive Officer, Eric Anderson, Director of Engineering, Ryan Ponder, Legal and Regulatory Affairs Manager, Jackie Kenshalo, Community and Public Affairs Senior Manager and I spoke with Jesse Jachman, Nissa Laughner, Rodney McDonald and Kimberly Jackson.

MTA provided an update on the customers currently connected to the BETRS network and its efforts to assist customers to transition to an alternative service. MTA also discussed the issues raised by various commenters including Mr. Williams, the Regulatory Commission of Alaska ("RCA") and the Matanuska-Susitna Borough ("Borough"). MTA takes the issues discussed very seriously and provides a more in-depth analysis of the issues discussed.

Update

There are currently 34 customers connected to the BETRS system. Many of the customers remaining are waiting for more favorable weather to install new equipment at these remote locations. MTA is actively working with customers to facilitate their transition. We continue to provide access to our dedicated wireless network technician, Clint Spencer.

Of the 11 comments that were submitted to the FCC in February, only three remain connected to the BETRS system.¹ Here is a breakdown of the individual comments submitted to the Commission:

Not a Fixed Wireless customer

1. Robert W. Lane
2. Meghan N Williams
3. Craig and Roberta Ketchum
4. Randall Kowalke

Disconnected

¹ The Regulatory Commission of Alaska and the Matanuska-Susitna Borough submitted comments, but neither entity is an individual so we did not include them in this list.

Marlene H. Dortch
April 6, 2018
Page 2

5. Craig L. Saunders

Currently working on solution

6. United States Postal Service (Al McNees)
7. Crystal and Michael Branchaud

Not Disconnected (same household)

8. Michael W. Williams
9. Michael W. and Paula A. Williams

Alaska Plan Support

On March 6, 2018, MTA briefly responded to the reference made by Mr. Williams to the Alaska Plan in his February 26, 2018 comment. MTA would like to take this opportunity to provide a more robust explanation of MTA's use of high cost support, the distinction between locations included in MTA's Alaska Plan performance obligations and the BETRS locations and the long term impact of discontinuing BETRS service on MTA's Alaska Plan performance obligations.

The Commission has consistently held that some customer locations exceed a reasonable cost threshold and cannot justify support.² The Commission does not require deployment for if it would require support that would exceed the \$3,000 per line annual support cap.³ The Commission identified carriers serving these very remote, high cost customers.⁴ MTA was not one of them because its highest cost customers were served with BETRS technology and not subject to this process. "We recognize that certain locations in rate-of-return areas may be very costly to serve, and requiring buildout to these locations could place high demands on both rate-of-return carriers and consumers across the United States who ultimately pay for USF."⁵ The Commission concluded that "we will not require deployment using terrestrial wireline technology for any rate-of-return carrier in any census block if doing so would result in total support per line in the study area to exceed the \$250 per-line per-month cap."⁶

² 47 CFR § 54.302; *USF/ICC Transformation Order*, FCC 11-161, 26 FCC Rcd at 17663, 17765, para. 274 (2011)(adopting a \$3,000 per line annual support cap (or \$250 per line per month)).

³ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3152, para. 172 (concluding that the Commission will not require deployment for any rate-of-return carrier in any census block if doing so would result in total support per line in the study area exceeding the \$250 per line per month cap). See also *April 2014 Connect America Order*, 29 FCC Rcd at 7073, para. 67 (finding that a request for support is not reasonable if it would require a carrier to undertake new network upgrades merely for the purpose of newly providing broadband service in study areas where total support is already subject to the \$250 per line monthly cap).

⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17765, para. 277 (noting 18 incumbent carriers and 1 competitive carrier received support in excess of the cap).

⁵ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3152, para. 172.

⁶ *Id.*

Consistent with this precedent, MTA and the FCC did not include these locations in the Alaska Plan performance obligations.⁷ MTA discussed these locations with Commission staff, including the technology used to serve them.⁸ MTA cannot extend its network to these customers to deliver the broadband needed to comply with the Alaska Plan performance obligations.⁹ The Alaska Plan prohibits MTA from spending the thousands of dollars per location necessary to provide service.¹⁰ BETRS service is a rudimentary rural radio service and does not qualify for high cost support given its quality and non-dominant status.¹¹ Longstanding federal policy supports the exclusion of MTA's BETRS customers from the Alaska Plan. MTA made aggressive commitments to expand broadband service under its Alaska Plan obligations and it is honoring those commitments.¹²

CPCN, Carrier of Last Resort and Eligible Telecommunications Obligations

The Regulatory Commission of Alaska ("RCA") indicated that it might investigate whether or not MTA's discontinuance of BETRS service might implicate its Certificate of Public Convenience and Necessity ("CPCN"), its Eligible Telecommunications Carrier ("ETC") designation or its Carrier of Last Resort ("COLR") obligations.¹³ MTA disagrees with that implication and takes this opportunity to explain why. The BETRS customers do not fit in the Alaska regulatory definition "local exchange" and thus fall outside the RCA's jurisdiction.¹⁴ A local exchange is defined as "an operating unit established by a utility for communication service within a specific geographic area; the unit usually embraces a city, town, village or community and its environs, and usually consists of one or more central offices together with the associated plant used in furnishing telephone communication service to the general public within that area."¹⁵ MTA has no central office that serves this area; the customers are served by wireless infrastructure. These customers belong to no city, town or village.

MTA will address each specific concern raised by the RCA in turn. MTA's local CPCN is not implicated by its discontinuation of BETRS service.¹⁶ MTA applied for and received BETRS

⁷ See *In re Connect America Fund—Alaska Plan*; Report and Order (Aug. 31, 2016) ("Alaska Plan Order") https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-115A1.pdf.

⁸ See ATA June 10, 2016 *Ex Parte* Letter.

⁹ See FCC Public Notice: Wireline Competition Bureau Authorizes Alaska Plan Support (Dec. 21, 2016). https://apps.fcc.gov/edocs_public/attachmatch/DA-16-1425A1.pdf.

¹⁰ See *In re Connect America Fund—Alaska Plan*; Report and Order (Aug. 31, 2016) ("Alaska Plan Order") https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-115A1.pdf.

¹¹ Alaska Plan Order at para. 12. Locations funded by the Alaska Plan must offer "at least one voice service and one broadband service."

¹² See FCC Public Notice: Wireline Competition Bureau Authorizes Alaska Plan Support (Dec. 21, 2016). MTA's performance obligations are detailed in Exhibit B.

¹³ See Regulatory Commission of Alaska WC 17-363 RCA Letter, Docket 17-363 (filed March 21, 2018). The RCA Letter was submitted into the record twice, once on March 21 and once on March 29.

¹⁴ See 3 AAC 48.820(11).

¹⁵ 3 AAC 48.820(11).

¹⁶ MTA's CPCN was granted on January 1, 1964.

<http://rca.alaska.gov/RCAWeb/ViewFile.aspx?id=faef81cf-f0fc-40e3-af9f-97ebd98d3725>.

license to serve the very remote customers under discussion. Over time, MTA began serving some BETRS customers with its CDMA spectrum. MTA's certificate allows it to provide local, wireline telephone service within its study area. That authority does not require MTA to build network infrastructure border to border within that study area.¹⁷ MTA's CPCN requires it to provide wireline local telephone service of a certain quality and character.¹⁸ BETRS service does not and has never met those requirements. For example, local telephone service provided under a CPCN must be of modern, adequate and sufficient¹⁹ and it must comply with the State Modernization Plan.²⁰ Just last year in TA93-249, the RCA staff acknowledged that BETRS service does not meet the definition of telephone service under Alaska law.²¹

The RCA has permitted other Alaska carriers to discontinue BETRS service without any implication for their CPCNs.²² In TA188-359, ACS of the Northland ("ACS") sought and received permission to discontinue BETRS.²³ ACS will not connect to any new customers. ACS also discontinued BETRS service for any customer on a seasonal disconnect, any customer who was disconnected for nonpayment and any customer whose equipment fails or becomes impaired due to terrain or foliage.²⁴ The RCA made no mention of any issues this discontinuation might have for ACS' CPCN. Similarly, United Utilities sought to grandfather BETRS service and cease offering it to any new customers, including customers who were on a seasonal plan, customers disconnected for nonpayment and customers whose equipment failed.²⁵ The RCA granted their application to revise its tariff with no mention of any implications for their CPCN.

MTA's COLR obligations are not implicated by its discontinuation of BETRS service. These are single locations without a community or village.²⁶ RCA regulations use the definition of "local exchange" to trigger COLR obligations for an ILEC or IXC. BETRS service does not meet the service quality standards for COLR service identified in Alaska regulations.²⁷ In the ACS and United Utilities examples discussed above, both of those carriers who discontinued BETRS service are COLRs. The RCA expressed no concerns in either case regarding the impairment of BETRS service and the COLR obligations of the carriers. Given the RCA's precedent, there can

¹⁷ MTA's ILEC obligations are defined by Alaska regulation. See 3 AAC 48.820(11).

¹⁸ See 3 AAC 52.260.

¹⁹ 3 AAC 52.260(c).

²⁰ 3 AAC 52.260(e).

²¹ TA93-249, United Utilities, Inc. application to revise BETRS conditions, Tariff Action Memorandum, (July 27, 2017).

²² Regulated local telephone companies must seek authority from the RCA to revise their tariffs. MTA deregulated in 2017 after a vote of its membership and does not have to similarly seek authority to alter its tariff.

²³ TA188-359 (Dec. 19, 2016). <http://rca.alaska.gov/RCAWeb/ViewFile.aspx?id=8c335d62-ae61-4795-b233-149b01016125>.

²⁴ *Id.*

²⁵ TA93-249 (July 27, 2017). <http://rca.alaska.gov/RCAWeb/ViewFile.aspx?id=78a188f2-3922-44c1-a21e-73cfd376bdac>.

²⁶ See 3 AAC 48.820(11).

²⁷ See 3 AAC 53.265(i).

Marlene H. Dortch
April 6, 2018
Page 5

be no credible conclusion that MTA's discontinuation of BETRS service has any impact on its COLR obligations.

The remarks offered by RCA Chairman Stephen McAlpine this week in a hearing before the Alaska legislature further support the lack of an implication for MTA's COLR status.²⁸ In the context of discussing a deregulation bill, Chairman McAlpine referenced MTA's discontinuance and acknowledged that the RCA did not have jurisdiction. "Some customers have been cut off because they are using the BETRS system. MTA has decided they are no longer going to provide that service. And the consumers in that area, they have no ability to come to our consumer protection arm. They are going to the FCC."²⁹ These representations indicate that the RCA understands that the discontinuation of MTA's BETRS service is a matter to be resolved by the FCC.

MTA's ETC status is not implicated by its discontinuation of BETRS service. The state commission's role in certifying an ETC to the FCC occurs on an annual basis. The inquiry delegated to the state commission is to confirm that the ETC has appropriately spent the federal high cost support it received in the previous year.³⁰ A state commission certifies that "all federal high-cost support provided to such carriers within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."³¹ As discussed in more detail above, the FCC has determined that high cost support should not be used to support these locations.³² MTA's Alaska Plan Performance Obligations do not include these locations. There is no investigation or analysis for the RCA to conduct related to MTA's ETC obligations or fulfillment of same. Additionally, any ETC review will be done by the RCA after MTA submits its Form 481 on July 1, 2018. MTA respectfully suggests that there is no investigation for the RCA to conduct.

²⁸ The Alaska Legislature is considering a deregulation bill (SB205). Chairman McAlpine appeared before the Senate Labor and Commerce Committee on April 2, 2018.

<http://www.akleg.gov/basis/Meeting/Detail?Meeting=SL%26C%202018-04-02%2009:00:00>.

²⁹ *Id.*

³⁰ See 47 C.F.R. § 54.314.

³¹ 47 C.F.R. § 54.314(a).

³² See *USF/ICC Transformation Order*, FCC 11-161, 26 FCC Rcd a17663, 17765, para. 274 (2011).

Marlene H. Dortch
April 6, 2018
Page 6



Moss & Barnett

Very truly yours,

Shannon M. Heim

Attorney At Law

P: (612) 877-5320 F: (612) 877-5022

Shannon.Heim@lawmoss.com

SMH/smh

C: Jesse Jachman
Nissa Laughner
Rodney McDonald
Kimberly Jackson
Regulatory Commission of Alaska