

In the Matter of)
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Connect America Fund—Alaska Plan) WC Docket No. 16-271

NTCA—The Rural Broadband Association¹ hereby submits these comments in support of the Application for Review (“AFR”) filed by GCI Communications on April 1, 2019 in the above-captioned Federal Communications Commission (“Commission”) proceeding.² The GCI AFR ask the Commission to reconsider and overturn an Order³ issued by the Wireline Competition and Wireless Telecommunications Bureaus (“Bureaus”) dismissing an Alaska Telephone Association Petition for Waiver (“ATA Petition”)⁴ that sought limited relief from certain backhaul mapping portions of the *Alaska Plan Order* adopted in 2016.⁵ NTCA supports the GCI AFR, as it correctly argues that the Bureaus dismissed the ATA Petition in error – as

⁵ *Connect America Fund*, WC Docket No. 10-90; *Universal Service Reform–Mobility Fund*, WT Docket No. 10-208; *Connect America Fund–Alaska Plan*, WC Docket No. 16-271, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-115 (rel. Aug. 31, 2016) (“*Alaska Plan Order*”).

discussed in the GCI AFR and further below, the Bureaus' cost-benefit analysis failed to properly balance the benefits of the location accuracy standard at issue here against the burdens it imposes on a subset of ATA's members. In addition, the Bureaus have consistently failed to explain why the location accuracy standard is necessary. For these reasons, NTCA requests that the Commission grant the ATA Petition.

As background, the ATA Petition sought limited relief from portions of the Universal Service Plan ("USF") "Alaska Plan" adopted by the Commission in 2016, as implemented by the Bureaus. Specifically, the Alaska Plan requires support recipients to submit performance plans that include, among other things, maps of their fiber and microwave middle mile and backhaul facilities, with annual updates of such facilities deployed in the prior calendar year. The ATA Petition sought narrow relief of this requirement as the Bureaus implemented it, specifically seeking modification only of "the requirement that the intermediate (between endpoints or 'nodes') location of certain fiber be reported to within 7.6 meters of accuracy."⁶ ATA specifically stated that it *is not seeking reconsideration of the underlying mapping requirement* but is merely seeking to replace the location accuracy standard with one pegged to "commonly accepted industry levels of spatial accuracy."⁷

As GCI states in its AFR, the Bureaus' dismissal of the ATA Petition was for several reasons incorrect and should be overturned by the Commission. Most importantly, the Bureau failed to apply a proper cost-benefit analysis with respect to the 7.6 meter location accuracy standard that is the subject of the ATA petition. Specifically, the Bureaus' cost/benefit analysis falls far short in one important aspect – it fails to articulate the actual benefit that is to be derived

⁶ ATA Petition, p. 1.

⁷ *Id.*, (emphasis added).

from the specific 7.6 meter accuracy standard to which ATA objects. At no point does the *Waiver Denial Order* address the need for such a strict standard or address whether the alternative standard proposed by ATA (one that would be less burdensome for some ATA members) would meet the Commission's needs.⁸ To the contrary, the *Waiver Denial Order* analysis on this point is limited to stating that "Alaska Plan recipients must provide the Commission with sufficient information to ensure that the \$1.5 billion in funding is being used in accordance with the objectives of the Alaska Plan and the carriers' commitments"⁹ and that "the 7.6 meter requirement is necessary to meet those purposes."¹⁰ Yet the *Waiver Denial Order* never addresses why an alternative standard, such as the one proposed by ATA, *would not be sufficient for that purpose as well*. A responsible cost-benefit analysis (responsible in that it is evaluating a burdensome requirement imposed on mainly small providers in perhaps the most difficult place in North America to operate a broadband company) would at the very least consider whether a proposed alternative would meet the needs of the agency while also limiting unnecessary burdens on providers. The fact that the Bureaus' failed to conduct such an analysis prevented it from truly judging whether the public interest would be served by grant of the waiver (as required by Section 1.3).

⁸ In fact, the Commission itself has never addressed this specific issue. While the mapping requirement was adopted in the *Alaska Plan Order*, the Commission delegated the specifics to the Bureaus and at no time has the full Commission itself considered whether an alternative to the 7.6 meter location accuracy standard would meet the agency's needs while minimizing the burden on small providers. Thus, the GCI AFR 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.'" citing 47 C.F.R. § 1.115(b)(2)(ii).

⁹ *Waiver Denial Order*, ¶ 8.

¹⁰ *Id.*

On the other side of the purported benefit, there is the cost (burden). Here too the *Waiver Denial Order*'s analysis falls short. While the *Waiver Denial Order* states that ATA failed to provide sufficient evidence of the burden, it utterly fails to address the point raised by ATA that “no commercially available desktop applications or aerial photography can locate an underground facility,”¹¹ and that as a result adherence to the 7.6 meter standard would require Alaska Plan recipients 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.”¹² As ATA goes on to note, its members would have to map out 3,300 miles of buried fiber and 800 miles of aerial fiber.¹³ Such an undertaking can hardly be considered minimal in even a densely populated lower 48 state, much less in a state such as Alaska. As the Commission acknowledged in creating the Alaska Plan, the carriers at issue here “face unique circumstances including Alaska’s large size, *varied terrain, harsh climate, isolated populations*, shortened construction season, and lack of access to infrastructure that make it challenging to deploy voice and broadband-capable networks.”¹⁴ Those same challenges will apply here as well, and thus the ATA Petition merely seeks to utilize an alternative standard that, like the Alaska Plan itself, is tailored to the harsh terrain and climate and other obstacles that Alaska carriers face on a daily basis. Unfortunately, the Bureaus failed to analyze the evidence presented by ATA with respect to the burden, an analysis that may have led it to consider a less burdensome alternative. Even worse, as noted

¹¹ ATA Petition, p. 7.

¹² *Id.*

¹³ *Id.*

¹⁴ *Alaska Plan Order*, ¶5 (emphasis added).

below, the Bureaus' analysis with respect to the burden only focused on the fact that *some* ATA members could meet the standard and from that judged that the burden was justifiable for *every single* ATA member.

GCI perfectly summarizes the *Waiver Denial Order's* cost-benefit analysis by stating that it “misses the core point of a cost-benefit analysis: even small costs are not justifiable and simply cause unwarranted economic loss when there are *no* identifiable benefits.”¹⁵ On that latter point, as noted above and in the GCI AFR, neither the Bureau nor the Commission itself has ever identified why the specific 7.6 meter location accuracy standard is warranted. As the *Waiver Denial Order* states, in considering whether to grant a waiver pursuant to Section 1.3 of the Commission's rules, the agency (in this case via the Bureaus) “may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.”¹⁶ Here, the Bureaus seem to have breezed past the evidence provided by ATA¹⁷ with respect to the hardship that would be imposed by the manual collection of the data required by the 7.6 meter standard. The Bureaus also failed to consider whether a more flexible standard would result in a “more effective implementation of overall policy” by providing the Commission with the data it requires while minimizing the burden on reporting carriers. Because the Bureaus' cost/benefit analysis is so flawed, the Commission should overturn the *Waiver Denial Order* and grant the relief as requested by ATA.

¹⁵ GCI AFR, pp. 1-2.

¹⁶ *Waiver Denial Order*, ¶ 6.

¹⁷ See ATA Petition, pp. 6-7 and attached declarations.

The *Waiver Denial Order* also misunderstands/mischaracterizes the ATA Petition by dismissing it based on the reasoning that the relief requested is “overly broad.”¹⁸ The *Waiver Denial Order* specifically states that ATA “seeks relief for situations where relief is neither necessary nor warranted”¹⁹ and that “relief is unnecessary for the over fifty percent of ATA members who have already certified in their initial filing to the 7.6-meter accuracy standard for some or all of their owned fiber links.”²⁰ However, as GCI notes,²¹ the Commission routinely grants waiver requests filed by trade associations without requiring the latter to plead with particularity the specific circumstances of each individual member. Beyond the fact that this is what a trade association is for, in part, the fact that relief might not be necessary for every member is irrelevant. Those for whom the relief is not necessary would, in this case, either file the data at issue as originally required if such data has already been collected or would be spared the unnecessary expense in the future of meeting a standard that ATA argues (persuasively) is unnecessarily strict. In other words, if some ATA members can meet the standard, then so be it; that alone does not justify the application of the standard to those ATA members for whom the standard is unduly burdensome.

In addition, as GCI notes, the *Waiver Denial Order* mischaracterizes the 7.6 meter location accuracy standard as a “commonly-used mapping standard for Commission high-cost data.”²² Specifically, the *Waiver Denial Order* points to no other Commission requirement to

¹⁸ *Waiver Denial Order*, ¶ 7.

¹⁹ *Id.*, ¶ 8.

²⁰ *Id.*

²¹ GCI AFR, p. 18.

²² *Waiver Denial Order*, ¶ 4.

back up this statement. Even were that true, it would certainly not be dispositive of the issue. As noted above, the Commission has consistently recognized that Alaska is a unique place that requires a tailored approach to enable carriers operating in that environment to meet their consumers' needs and promote universal service. Thus, even were the standard as common as the *Waiver Denial Order* claims, the Commission can (and should) look at every opportunity to limit the burden on any provider, even more so for those already identified by the *Alaska Plan Order* as needing a tailored approach. That is all that the ATA Petition sought.

To be clear, NTCA supports the Commission's goal of ensuring that High-Cost universal service support is used for the purposes for which it is intended and (like ATA and GCI) does not challenge the underlying mapping requirement that the agency has already deemed necessary for oversight purposes. To the contrary, NTCA merely supports the very narrow ask contained in the ATA Petition, a modification of the 7.6 meter location accuracy standard that will be unduly burdensome for some ATA members while providing limited to benefit to the Commission. The Commission should therefore reconsider the *Waiver Denial Order* for the reasons as set forth in the GCI AFR and granted the relief requested by ATA.

Respectfully submitted,



By: /s/ Michael R. Romano

Michael R. Romano

Senior Vice President –

Industry Affairs & Business Development

mromano@ntca.org

By: /s/ Brian J. Ford

Brian J. Ford

Director of Industry Affairs

bford@ntca.org

4121 Wilson Boulevard, Suite 1000

Arlington, VA 22203

703-351-2000