

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

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

**REPLY OF GCI COMMUNICATION CORP. TO CHALLENGE TO ALASKA
COMMUNICATIONS SYSTEMS' PROPOSED ELIGIBLE LOCATIONS IN
PARTIALLY SERVED CENSUS BLOCKS**

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I. INTRODUCTION AND SUMMARY

GCI Communication Corp. (“GCI”)¹ offers this reply in support of its challenge to the eligibility of locations that Alaska Communications Systems Group, Inc. (“ACS”) proposes to overbuild with \$19 million in Connect America funds. Most of ACS’s arguments can be summarily dismissed as contrary to the *ACS CAF II Order*² and the Commission’s approach to challenges generally.

In its challenge filing, GCI provided robust evidence of its broadband network coverage, providing node boundary maps for its cable plant, meticulously comparing the geocodes of ACS’s alleged “unserved” locations, and showing that more than two-third of those locations are already served with GCI voice and broadband at speeds between 250 Mbps/15 Mbps and 1 Gbps/50 Mbps.³

Unable to disprove that GCI already serves (*i.e.*, offers service to) these locations, ACS instead misstates the relevant legal standards, disparages GCI’s evidence, and misapprehends the

¹ GCI Communication Corp. succeeds General Communication, Inc. as the entity pursuing the challenge in this proceeding. Earlier this year, GCI and Liberty Interactive Corp. consummated their approved transaction. As explained in the relevant applications, there are no corporate or operational changes to GCI below the holding company level as a result of the transaction. *See General Communication, Inc. et al.*, Consolidated Application for Consent to Transfer Control of International and Domestic Section 214 Authority, WC Docket No. 17-114, Attachs. 3-5 (filed May 1, 2017); *Joint Application of General Communication, Inc. and GCI Liberty, Inc. for Consent to Transfer Control*, Memorandum Opinion and Order, 32 FCC Rcd. 9349 (Wireline Comp. Bur., Int’l Bur., Media Bur., Wireless Telecomm’ns Bur. 2017).

² *See Connect America Fund*, Order, 31 FCC Rcd. 12,086 (2016) (“*ACS CAF II Order*”).

³ General Communication, Inc.’s Challenge to Alaska Communications Systems’ Proposed Eligible Locations in Partially Served Census Blocks, WC Docket Nos. 14-93 & 10-90 (filed Mar. 22, 2018) (“GCI Challenge”).

Form 477 data.⁴ As explained below, none of these arguments have merit. ACS also points out that, in a few circumstances, GCI's Form 477 filings have changed over time. To the extent that GCI does not serve a particular census block, as reflected in its recent Form 477 filings, GCI has no objection to ACS receiving support to serve eligible locations within any such census blocks. But ACS should not receive limited Connect America funds to deploy 10/1 Mbps or possibly 25/3 Mbps to locations to which GCI already offers 250 Mbps or 1 Gbps broadband service.

II. A LOCATION IS “SERVED” IF SERVICE IS AVAILABLE, EVEN IF THE CUSTOMER DOES NOT CURRENTLY SUBSCRIBE

ACS argues that in order for a location to be considered “served,” and therefore ineligible for ACS to count toward its commitments, GCI must not only offer qualifying service to the location but the customer must actually be subscribing.⁵ That is not the correct standard, and if it were it would lead to wasteful results; the Commission would be subsidizing one provider to serve a location that already can be served by a second provider—contrary to the express purpose of the rule and challenge process, which is to “ensure that support is targeted appropriately to those areas where there are no other providers *offering* broadband service meeting the Commission’s requirements for high-cost support.”⁶

To disqualify a location, a challenger must demonstrate that it “serves” the location, meaning that it *offers* service meeting the relevant standards to that location. In the *USF/ICC Transformation Order*, the Commission established the principle that CAF Phase II Funding in

⁴ See Letter from Karen Brinkmann, Counsel for Alaska Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 14-93 (filed Apr. 20, 2018) (“ACS Challenge Response”).

⁵ See *id.* at 3-7.

⁶ See *ACS CAF II Order* at 12,094 ¶ 30.

price cap areas would be used to “extend broadband to supported locations; supported locations do not include areas where there is an unsubsidized competitor *offering* 4 Mbps/1 Mbps.”⁷ Implementing this in the Phase II challenge process for price cap carriers in the contiguous states, the Bureau explained that a census block is “served” if, among other things, the challenging provider is “offering voice and broadband in the census block.”⁸ If only locations with current, paying customers could be disqualified, the Commission’s limited Connect America resources would subsidize the overbuilding of 10/1 Mbps service to locations to which, in GCI’s case, already have 250 Mbps to 1 Gbps service available—a ludicrous result not intended here and not supported by the *ACS CAF II Order* or other precedent.

While GCI was not required to demonstrate that it has current subscribers to show that a location is “served,” GCI included in its challenge information about current subscribership as further evidence that it does in fact offer service to the challenged locations. The Commission should therefore disregard ACS’s arguments that GCI has failed to provide sufficient evidence about its subscribership.⁹ As explained below, in all events, GCI has offered persuasive evidence—supported by subscribership information—that it offers qualifying service to 3,099 of the 4,762 unique locations ACS asserts are unserved by any provider.

⁷ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17,663, 17,702 Fig. 1 (2011) (subsequent history omitted) (“*USF/ICC Transformation Order*”) (emphasis added); *see also id.* at 17,729 ¶ 170 (“In determining the areas eligible for support, we will also exclude areas where an unsubsidized competitor *offers* broadband service that meets the broadband performance requirements described above”) (emphasis added).

⁸ *Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process*, Public Notice, 29 FCC Rcd. 7505, 7507 ¶ 9 (Wireline Comp. Bur. 2014) (“*Phase II Challenge Process Guidance*”).

⁹ *See ACS Challenge Response* at 3.

III. GCI PERSUASIVELY DEMONSTRATES THAT IT OFFERS SERVICE TO THE MAJORITY OF ACS'S IDENTIFIED LOCATIONS

Unable to demonstrate that the locations it identified are actually unserved, ACS instead challenges the sufficiency of GCI's evidence that it serves 3,099 of the locations ACS identified as unserved by any provider. ACS's points are factually incorrect and legally misplaced.

First, ACS is simply wrong that GCI has not demonstrated that it has broadband facilities in the challenged areas. GCI provided detailed maps of every challenged area showing the node boundaries for its cable plant, which offers, at a minimum, 250 Mbps/15 Mbps service.¹⁰ GCI supported these maps with a detailed description of the node boundary data and a declaration under penalty of perjury from its Manager of Outside Plant Design & Data Management explaining how and why the data are gathered and maintained.¹¹ ACS states that GCI "ought to, but does not, offer a depiction of the actual coverage of its network,"¹² but that is precisely what is shown in the maps included in GCI's challenge. In any event, in prior Phase II challenge processes, the Bureau has looked to whether the challenger could "provision voice and broadband service to customers in that census block within seven to ten business days without an extraordinary commitment of resources and without any special construction charge or construction fee to consumers in that block."¹³ As GCI explained (and as supported in a sworn declaration), its node boundaries show locations that already have an installed cable drop and

¹⁰ See GCI Challenge, Attach. D.

¹¹ See GCI Challenge at 4 & Attach. A (Decl. of Markus Kofoid).

¹² ACS Challenge Response at 4.

¹³ *Phase II Challenge Process Guidance* at 7508 ¶ 9.

locations past which GCI already has coaxial cable and, therefore, could quickly provision service as requested by the customer.¹⁴

Similarly, ACS asserts that GCI “provides no information about the the [sic] actual location of any customers receiving service from GCI.”¹⁵ As explained above, GCI need not show that it has current customers at challenged locations to demonstrate that it offers qualifying service there. GCI offered information about current customers to supplement its showing that it offers qualifying service to the challenged locations. GCI converted, as well as possible, the geocodes of ACS’s proposed locations to civic addresses, then compared that list of addresses to the addresses of its current broadband customers. From this comparison, GCI calculated that it has current broadband customers at 1,605 of ACS’s proposed locations.¹⁶ GCI supported its statements with a sworn declaration from its Senior Analyst, Data Business Intelligence.¹⁷

ACS makes two further complaints about GCI’s subscriber showing. First, ACS complains that GCI should have provided the exact addresses of its current subscribers. Consistent with prior Bureau guidance, GCI did not do so out of respect for its customers’ privacy. Indeed, in the context of the Phase II challenge process, the Bureau specifically encouraged the very approach GCI has taken here: “Participants in the challenge process should consider alternatives to submitting competitively sensitive information or information implicating customer privacy. For instance, an officer may provide a factual statement that a

¹⁴ See GCI Challenge at 4 & Attach. A.

¹⁵ ACS Challenge Response at 4.

¹⁶ See GCI Challenge at 5-6 (“Second, *to support* its analysis showing that GCI already offers service to the majority of locations ACS identified as unserved, GCI also examined where it already provides service to subscribers.”).

¹⁷ See GCI Challenge, Attach. C (Declaration of Arthur Wilkey).

number of customers are currently being served in the relevant census block without providing any identifying information relating to the customers.”¹⁸

Second, ACS complains that GCI only estimated the addresses of ACS’s challenged locations. Obviously, GCI had to extrapolate from ACS’s list of geocodes the actual street addresses of the proposed locations. In every case, GCI picked the street address nearest the ACS-provided geocode. If there are errors in GCI’s list of street addresses, they are due to poor geocoding or errors in the databases available to make the conversion.¹⁹

Finally, ACS states that GCI failed to demonstrate that it offers service meeting the required standards for speed, capacity, latency, and price at the challenged locations.²⁰ ACS simply ignores the screen shots from GCI’s website, the sworn declaration, and the narrative of its challenge that the service offered to the challenged locations meets the standards: to every challenged location, GCI offers speeds up to 250 Mbps/15 Mbps or higher, capacity of 500 MB or more, low terrestrial latencies, and prices below the Alaska-specific reasonable comparability benchmark.²¹

¹⁸ *Phase II Challenge Process Guidance* at 7511 ¶ 20.

¹⁹ ACS also confuses GCI’s methodology for matching ACS’s geocodes to the nearest civic address—which in some cases was more than 100 meters away—with a claim that GCI can serve customers more than 100 meters from its cable nodes. GCI’s boundary maps show the reach of its cable nodes. The two topics are unrelated.

²⁰ *See* ACS Challenge Response at 4.

²¹ *See* GCI Challenge at 5, Attach. E.

IV. GCI DOES NOT NEED TO BE “UNSUBSIDIZED” TO CHALLENGE A LOCATION

ACS suggests that GCI’s challenge must fail because GCI has not shown that it is an unsubsidized competitor at any of the locations it challenges.²² This is both legally irrelevant and factually incorrect.

The Commission could not have been more clear in the *ACS CAF II Order* that a location in a partially served census block that is served by any entity—whether a high-cost recipient or not—is ineligible for ACS to serve in fulfillment of its commitments. In establishing the challenge process for identifying unserved locations in partially served census blocks, the Commission said: “We find 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.”²³ The Commission did not just make up this standard. Rather, it cited back to a commitment that *ACS itself had made*, noting that “ACS committed to deploy service to locations not served by any competitor.”²⁴ The standard is clear. Whether a location is served

²² See ACS Challenge Response at 7-9.

²³ *ACS CAF II Order* at 12,096 ¶ 36 (emphasis added); see also *id.* (“We will conduct a challenge process to ensure that all of the selected locations in partially served blocks in fact are unserved by *any* provider at 10/1 Mbps or better.” (emphasis added)); *Wireline Competition Bureau Commences Alaska Communications Systems Connect America Fund Phase II Challenge Process*, Public Notice, 33 FCC Rcd. 963, 964 (Wireline Comp. Bur. 2018) (“Additionally, to provide public notice of ACS’ deployment plans and to ensure that the locations ACS identified are in fact unserved by any fixed, terrestrial competitors, including those that currently receive high-cost support, the Commission directed the Bureau to issue a public notice announcing the proposed ACS locations and to conduct a streamlined challenge process.” (footnote eliminated)).

²⁴ *Id.* at 12,096 ¶ 36 n.87 (citing Comments of Alaska Communications Systems, WC Docket Nos. 10-90 et al., at 9-11 (filed Aug. 8, 2014)).

by a subsidized or unsubsidized competitor is of no relevance to whether that location in a partially served census block is eligible for ACS's CAF II support.

ACS makes several arguments that this standard is wrong, including that CAF Phase II support generally is intended to support service at locations not served by an unsubsidized competitor, and that the Commission's decision to permit challenges by high-cost recipients is "inconsistent with the rest of the [ACS CAF II] order as well as the CAF Phase II regime as a whole."²⁵ If ACS believes that the Commission erred either by misstating the standard or in its policy judgment, it could have filed a petition for reconsideration within the statutory timeframe for doing so. That time has passed; the Commission should not even consider these arguments.²⁶

ACS also confuses the *standard of service* required to demonstrate that a location is served with the nature of the service provider. A successful challenger must demonstrate that it "already serves the identified census blocks and specific locations with *service* meeting the Commission's standards for an unsubsidized competitor,"²⁷ meaning that the service must be facilities-based, residential, fixed, and include voice as well as broadband.²⁸ The Commission's description of the service does not negate its explicit decision in the very same paragraph that

²⁵ *Id.* at 8-9.

²⁶ See 47 U.S.C. § 405(a) (establishing a 30-day deadline for petitions for reconsideration); *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, Order on Reconsideration, 25 FCC Rcd. 11,157, 11,164 ¶ 20 (2010) (declining to consider arguments raised in comments that should have been raised in timely petitions for reconsideration); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order, 18 FCC Rcd. 7615, 7615 ¶ 2 ("By statute, Congress has limited the Commission's power to consider petitions for reconsideration to those filed within a specific time period." (footnoted omitted)).

²⁷ *ACS CAF II Order* at 12,097 ¶ 36 (emphasis added).

²⁸ See *ACS CAF II Order* at 12,097 ¶ 36; 47 C.F.R. § 54.5 (defining unsubsidized competitor).

ACS will not receive CAF II support to deploy to locations in partially served census blocks that are served by any provider, “including those that currently receive high-cost support.”²⁹

In all events, in the areas at issue in this challenge, GCI received no high-cost support at all or is in the last year of a phase-out of its high-cost support and is treated as an unsubsidized competitor. In the *Alaska Plan Order*, the Commission noted that GCI was relinquishing its wireline CETC support and, therefore, would be treated as an unsubsidized competitor in the Alaska Plan challenge process even if the phase-down of its support was still in progress.³⁰ In areas subject to the phase-down, GCI’s wireline CETC currently receives one-third of its high-cost support, and after December 31, 2018, it will receive zero high-cost support. Not only is GCI’s CETC treated as unsubsidized in the Alaska Plan, but as a practical matter, GCI’s CETC will be unsubsidized for nearly all of the term of ACS’s Phase II frozen support.

V. ACS CANNOT ADD NEW LOCATIONS IN PARTIALLY-SERVED CENSUS BLOCKS OUTSIDE THE CHALLENGE PROCESS

ACS identifies, in its response, additional locations that it claims are unserved and eligible for CAF support.³¹ As explained below, most of these locations are in census blocks identified as served in GCI’s Form 477 filings (consistently since June 2015); therefore, ACS was required to include these locations in its required list of geocodes so that they could be subject to challenge. ACS did not do that and has not in its Response provided geolocation information for these locations. ACS’s main argument seems to be that GCI appears not to serve

²⁹ See *ACS CAF II Order* at 12,096 ¶ 36.

³⁰ See *Connect America Fund et al*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 10,139, 10,152 ¶ 38 (2016) (“*Alaska Plan Order*”) (establishing challenge process); 47 C.F.R. § 54.317(g) (establishing phase-down of CETC support for certain carriers, with support ending on December 31, 2018).

³¹ See ACS Challenge Response at 6 & n.21 & Exh. 3.

every location in census blocks for which its Form 477 filings indicate that a census block is “served.”³² That is, precisely, why we are engaged in this challenge process. For purposes of Form 477, a census block is considered “served” if there is one location within the census block to which the filer offers service. For that specific reason, the Commission permitted ACS to identify specific unserved *locations* in census blocks identified as “served” in Form 477 filings.³³ Having unserved locations within a census block reported as “served” on Form 477 is entirely consistent with accurate Form 477 reporting. Having filed its proposed list of locations with geocodes, ACS cannot now start identifying other served census blocks and receive support to build out without any opportunity for those locations to be challenged.

Notwithstanding these shortcomings, GCI has compared the census blocks ACS identifies in Exhibit 3 to its Response with GCI’s own Form 477 filings and its cable node boundary maps. ACS proposed to serve 544 additional locations in 48 census blocks. Its proposals can be broken down as follows:

- Within 31 census blocks that ACS identifies for the first time in its Response, ACS proposes to serve 438 locations.³⁴ Without the lat/long information for the proposed locations, GCI is unable to evaluate whether they are in fact unserved.

³² “[C]ensus blocks that GCI identified as ‘served’ on its Form 477 filings appear now to contain hundreds of unserved customer locations” ACS Challenge Response at 6.

³³ “We have recognized in other contexts that the fact a competitor reports service on FCC Form 477 does not mean it serves all of the locations within a census block.” *ACS CAF II Order* at 12,096 ¶ 35 (footnote omitted).

³⁴ The 31 census blocks are 021220010002018, 020900007003016, 020900007003018, 020900009001004, 020900009001008, 020900009001043, 020900010002048, 020900012001000, 020900012001016, 020900012001017, 020900012001018, 020900012001022, 020900014001002, 020900014001009, 020900014001010, 020900014001017, 020900014002025, 020900014003020, 020900014005014, 020900014005016, 020900014005017, 020900014005026, 020900015001000, 020900015001013, 021220005001035, 021220005001038, 021220005002000, 021220006005000, 021220006005003, 021220006006001, and 021220007002023.

- Within six census blocks that ACS had included in its original list of partially served census blocks with proposed unserved locations, ACS states that there are 49 additional eligible locations beyond those identified in its filed list.³⁵ Without the lat/long information for these locations, GCI is unable to evaluate whether they are in fact unserved.
- ACS proposes to serve 41 locations in 10 newly identified census blocks that GCI has not reported as served blocks in its Form 477 filings.³⁶ It is therefore not clear why ACS is identifying the blocks as partially served, unless they have been reported as served by another provider.
- Within one newly identified census block—020900019001112—ACS proposes to serve 16 locations. While GCI included this block in its Form 477 filings as served, on closer inspection, GCI has no objection to ACS deploying to otherwise eligible locations in this census block in fulfillment of its obligations.

VI. GCI DOES NOT OBJECT TO ACS DEPLOYING TO LOCATIONS IN CENSUS BLOCKS UNSERVED BY GCI

ACS also notes that GCI did not challenge certain locations in five blocks it previously reported as “served” on Form 477.³⁷ However, GCI corrected its Form 477 filings to reflect that it does not offer service in these blocks. Starting with data reflecting service as of June 30, 2017 (which is not yet available to the public and to which ACS did not have access at the time it filed its geocodes), GCI does not report that it offers service in these census blocks. As such, GCI does not challenge ACS’s proposed locations in these blocks and has no objection to ACS

³⁵ The census blocks in ACS’s Exhibit 3 are 020900009002004, 020900019002030, 020900019005048, 021220009002009, 021220009002029, and 021220009002037.

³⁶ If ACS believes that these blocks are partially served, then it should have served the providers that filed Form 477 data with a copy of its list of proposed locations. These blocks are 020900002002042, 020900009001011, 020900009001014, 020900009001044, 020900009001046, 020900009001061, 020900009002022, 020900012001009, 020900012001023, and 0020900012001024.

³⁷ ACS Challenge Response at 6 & Exh. 2. Although ACS mentions six blocks in the text of its Challenge Response, it identifies only five by census block number in Exhibit 2. The specific census blocks are 021220009002012, 021220011003000, 021220011004007, 021220011004005, and 021220011004002. ACS added an extra digit to the second of those census block numbers, but based on the maps in Exhibit 2, the correct number appears to be as stated here.

deploying to otherwise eligible locations in satisfaction of its build-out requirements. In addition, GCI reviewed its Form 477 filings after December 2016 to see whether any additional populated census blocks where ACS is the incumbent LEC have been changed from “served” to “unserved.” In addition to the five identified by ACS, GCI identifies 4 others: 021220009002013, 021220011004006, 021500001003060, and 021220011004013.

GCI also reviewed its Form 477 submissions to identify any additional census blocks for which it reported service as of June 2015 but has since changed that status to “unserved.” GCI found 10 such blocks: 020200018024001, 021100006001072, 020900012002001, 020900012001012, 020900013001010, 020900013002002, 022900002002309, 021220006002006, 022400004003110, 022400004003117, 021980001001191, and 21980001002021. GCI has no objection to ACS deployment in these blocks to otherwise eligible locations.³⁸

GCI continually strives for 100% accuracy in its Form 477 filings and therefore, from time to time, makes improvements that result in a census block that was previously reported as served not being reported as such in later filings. Given that GCI processes data for thousands of census blocks just for its cable modem service, its accuracy rate is very high.

³⁸ GCI also does not object to ACS deployment to otherwise eligible locations in census block 02090001905029. GCI’s service does not extend to the locations ACS identified, which is why GCI did not challenge those locations. *See* ACS Challenge Response at 5 n.17 & Exh. 1.

VII. CONCLUSION

The Commission should conclude that the locations identified by GCI as already served are not eligible for ACS to deploy to in fulfillment of its *ACS CAF II Order* obligations. ACS should not be permitted to identify additional locations in partially served census blocks at this stage, with no opportunity for other providers to review the locations to determine whether they are in fact unserved.

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CERTIFICATE OF SERVICE

I, Remington Pool, hereby certify that on this 23rd day of May, 2018, I caused true and correct copies of the foregoing Reply of GCI Communication Corp. to Challenge to Alaska Communications Systems' Proposed Eligible Locations In Partially Served Census Blocks to be served by U.S. mail, first-class prepaid and electronic mail upon:

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