Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-84

COMMENTS OF ARCTIC SLOPE REGIONAL CORPORATION

Arctic Slope Regional Corporation ("ASRC"), by its attorneys, hereby submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") *Notice of Proposed Rulemaking and Notice of Inquiry*[1] and *Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment*[2] in the above captioned proceedings.

I. INTRODUCTION.

ASRC is pleased that the FCC is investigating approaches to make more efficient and accelerate the deployment of wireline and wireless broadband facilities. As the FCC evaluates the proposals submitted in this proceeding, it must consider the unique challenges faced in Alaska's North Slope. The North Slope desperately needs middle-mile facilities to connect its communities and villages to backhaul connections, including the new Quintillion Fiber hubs in Nome, Kotzebue, Point Hope, Wainwright, Barrow, and Prudhoe Bay.

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[1] Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, *Notice of Proposed Rulemaking and Notice of Inquiry*, 32 FCC Rcd 3330 (2017). These Comments are timely filed. The FCC extended the deadline to file initial comments to June 15, 2017. *See* Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, *Order*, DA 17-525, WT Docket No. 17-79 (rel. May 26, 2017).

[2] Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, *Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment*, 32 FCC Rcd 3266 (2017).

II. THE HISTORY AND MISSION OF ASRC.

ASRC was established pursuant to the Alaska Native Claims Settlement Act ("ANCSA") of 1971. Incorporated in 1972, ASRC's headquarters are located in Barrow, Alaska with administrative and subsidiary offices located in Anchorage and throughout the United States. ASRC is a private, for-profit corporation owned by and representing the business interests of its 13,000 Iñupiat Eskimo shareholders in the villages of Point Hope, Point Lay, Wainwright, Atqasuk, Barrow, Nuiqsut, Kaktovik, and Anaktuvuk Pass. Some of the corporation's shareholders live in other parts of Alaska, with a small number residing in the continental United States. The past 45 years have been a time of growth and diversification for ASRC; today it is the largest locally-owned and operated business in Alaska.

ASRC owns title to nearly five million acres of land on Alaska's North Slope, which contain a high potential for oil, gas, coal and base metal sulfides. Additionally ASRC owns subsurface rights to certain lands, and has surface rights to other lands. ASRC, as a steward of the land, continuously strives to balance management of cultural resources with management of natural resources. Consistent with the goals of the ANCSA, ASRC's earnings are employed for the benefit of its shareholders. Each year, a significant amount of Arctic Slope Regional Corporation's earnings – approximately 40 percent – are distributed directly to its shareholders through dividends and other benefits. The remainder is reinvested in the company to ensure sustainable economic growth for current and future generations of Iñupiat.

III. ALASKA'S NORTH SLOPE FACES UNIQUE CHALLENGES WHEN DEPLOYING WIRELESS AND WIRELINE INFRASTRUCTURE.

Alaska's North Slope region is located in the Arctic and slopes from the Brooks Range north to the Arctic Ocean. Like the rest of Alaska, the North Slope's sheer size, dispersed

population, unforgiving terrain, and extreme climate makes the deployment of wireless and wireline networks difficult.

Alaska's size and uncompromising terrain are critical factors in deploying telecommunications infrastructure. Alaska is by far the largest state in the country. It is bigger than the next three largest states (Texas, California, and Montana) combined. The North Slope alone is approximately the size of Minnesota. At the same time, the terrain in the North Slope can be difficult to traverse. Lakes, rivers, and mountains abound. However, these beautiful natural resources isolate many communities and villages. Often the only way of reaching any of the remote areas in the North Slope is by plane, helicopter, or boat. The state's harsh climate also does not help. In addition, Arctic Alaska experiences relatively low temperatures in the summer and frigid cold in the winter. This leads to substantially shorter construction and repair seasons.

Alaska's dispersed population complicates the matter. Alaska is the least densely populated state in the country. Approximately half of the state's population resides in three cities: Anchorage, Fairbanks, and Juneau. Meanwhile, the North Slope's estimated population is 9,703. The scant population throughout the North Slope, exacerbated by the region's geographic and weather issues, makes deploying new networks difficult. Without changes to the FCC's rules, communities across the North Slope – and their health care clinics, schools, government offices, and other anchor institutions – will remain unserved by the modern, high-speed networks that are prevalent throughout the lower 48 states.

IV. THE FINNISH GOVERNMENT'S EFFORTS TO DEPLOY WIRELESS AND WIRELINE BROADBAND NETWORKS HAVE FAR EXCEEDED EFFORTS IN ALASKA.

Finland, like the North Slope, faces geographic and environmental challenges to deploying wireless and wireline broadband infrastructure. If Finland were a state, it would be

the fifth largest in the United States. Finland has a population density of 41.4 people per square mile.[3] The Lapland region, which is the closest analog to Alaska's North Slope, has a population density of 4.6 people per square mile.[4] Notwithstanding its challenges, Finland has made a concerted effort to promote the deployment of wireless and wireline broadband infrastructure.

Finland's telecommunications infrastructure, nevertheless, has far exceeded those constructed in the North Slope. An astounding 97 percent of Finland has 4G coverage.[5] Likewise, 97 percent of Finland has access to fixed broadband service.[6] These high deployment rates are the result of Finland's "Fast Broadband project," which launched in December 2008. The goal of the "Fast Broadband project" was to provide, by the end of 2015, permanent connections within two kilometers from a network that enables 100 Mbps broadband to 99 percent of homes and businesses.[7] To meet this goal, the project provided funding to encourage broadband network construction in areas where commercial operators were unlikely to construct networks, and specifically targeted that funding to the least-densely populated areas, where approximately five percent of the Finnish population resides.[8] Although the project fell short of the goal, by the end of 2015, approximately 52 percent of homes and residences were within two kilometers of a 100 Mbps broadband connection.[9] However, because the Finnish population has chosen, instead, to subscribe to the nearly ubiquitous 4G service, in lieu of the fixed broadband alternatives.

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[3] *Finland*, Wikipedia (Jun. 11, 2017), https://en.wikipedia.org/wiki/Finland.
[4] *Lapland (Finland)*, Wikipedia (Apr. 30, 2017), https://en.wikipedia.org/wiki/Lapland_(Finland).
[5] *Europe's Digital Progress Report (EDPR) 2017 Country Profile*, European Commission 3 (2017), *available at http://ec.europa.eu/newsroom/document.cfm?doc_id=44302*.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*

Alaska has a population density of 1.26 people per square mile.[10] The North Slope Borough has a population density of 0.1 people per square mile.[11] As mentioned above, Alaska and the North Slope specifically face tremendous difficulties in deploying infrastructure. Those challenges have limited wireline construction to far less than in Finland. The FCC, in 2016, found that 26 percent of Alaskans did not have access to fixed broadband and that number rose to 67 percent in rural Alaska.[12] Last year, the Commission adopted a plan to promote the deployment of fixed and mobile broadband service in high-cost areas of Alaska.[13] The Commission, however, must take additional steps to facilitate the deployment of modern networks in Alaska, and should look to Finland as a model for how to support network deployment.

V. THE FCC MUST TAKE STEPS TO PROMOTE THE DEPLOYMENT OF MIDDLE MILE FACILITIES.

As the Commission has recognized, Alaska is uniquely challenged by the lack of essential infrastructure connecting over a hundred "Bush" communities. In particular, the Commission has acknowledged the "critical need in remote Alaska for new terrestrial middle-mile deployment."[14] Indeed, each of the current Commissioners has spoken recently on the need to further deploy middle-mile facilities in Alaska.[15] Middle-mile facilities will enable new fixed

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[10] *Alaska*, Wikipedia (Jun 8, 2017), https://en.wikipedia.org/wiki/Alaska.
[11] *North Slope Borough, Alaska*, Wikipedia (May 31, 2017), https://en.wikipedia.org/wiki/North_Slope_Borough,_Alaska.
[12] Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, *2016 Broadband Progress Report*, 31 FCC Rcd 699, 764 Appx D (Jan. 29, 2016).
[13] Connect America Fund – Alaska Plan, *Report and Order and Further Notice of Proposed Rulemaking*, 31 FCC Rcd 10139 (Aug. 31, 2016).
[14] Connect America Fund; Universal Service Reform – Mobility Fund; Connect America Fund – Alaska Plan, *Report and Order and Further Notice of Proposed Rulemaking*, 31 FCC Rcd 10139 (2016).
[15] *Id.* at 10205 (Commissioner Clyburn stating "some carriers likely cannot even deploy basic broadband service to their current voice customers without better middle-mile support); *id.* at

and mobile voice and broadband offerings, including 5G, in remote areas of Alaska, and improve the performance of existing services. The FCC, therefore, must be dedicated to promoting the construction and operation of middle-mile facilities connecting remote areas of Alaska that lack effective access to affordable, high-speed broadband middle mile facilities.

Never has the potential to interconnect the North Slope been so great. Quintillion recently launched a terrestrial fiber system connecting Fairbanks with the North Slope. Quintillion also will install new fiber hubs in Nome, Kotzebue, Point Hope, Wainwright, Barrow, and Prudhoe Bay. The Quintillion network will for the first time enable competitive retail providers to bring affordable, modern broadband internet access to communities in Northwestern and Northern Alaska. Quintillion's service to the rural coastal Alaska communities is expected to begin by December 1, 2017.

VI. THE FCC SHOULD TAKE STEPS TO STREAMLINE STATE AND LOCAL ZONING AND PERMITTING ACCESS TO REDUCE DEPLOYMENT TIMELINES AND COSTS.

Section 230 of the Communications Act makes clear that the development of the Internet provides great benefits to all Americans and that it is the policy of the U.S. "to promote the continued development of the Internet" and "preserve the vibrant and competitive free market that presently exists for the Internet … unfettered by Federal or State regulation."[16] Section 253(a)[17] and Section 332(c)(7)[18] of the Communications Act ban State or local regulations that "prohibit or have the effect of prohibiting" service. The Commission should modify its rules to

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10207 (Commissioner Pai noting Alaska has a problem that most of the United States doesn't: High-capacity, terrestrial middle-mile connections between communities are few and far between); *See also* Statement of Commissioner O'Rielly acknowledging the need to improve middle mile availability. *Id.* at 10211.

[16] 47 U.S.C. § 230.

[17] 47 U.S.C. § 253(a).

[18] 47 U.S.C. § 332(c)(7).

eliminate excessive delays in negotiations and approvals for rights-of-way agreements and permitting for telecommunications services.

In particular, the Commission has ample authority to adopt rules that would deem wireless facilities applications that are not acted upon within a specified timeframe as granted. Section 332(c)(7)(B)(ii) specifically requires local authorities to act "within a reasonable period of time" after an application is filed,[19] and the Commission's authority to adopt deadlines for action already has been affirmed.[20] A "deemed granted" rule is simply a type of deadline for action.

While the *2009 Declaratory Ruling* declined to adopt a deemed granted rule on the ground that Congress intended judicial review to be the remedy for violations of Section 332(c)(7)(B), there was no basis for that conclusion.[21] As the *NPRM* explains, the Fifth Circuit in affirming other elements of the decision did not find any clear evidence of Congressional intent.[22] Indeed, there is no indication in the statute that the Commission is precluded from adopting rules that spell out the consequences of a local jurisdiction's actions in violation of Section 332(c)(7)(B) or failure to act, and in the absence of such evidence, the Commission is entitled to adopt any reasonable interpretation of the statutory language.[23]

Moreover, the Commission's adoption of a rule granting applications automatically does not divest the courts of enforcement authority. For instance, if a municipality fails to act on an application, a wireless provider begins construction, and the municipality then seeks to impose a

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[19] 47 U.S.C. § 332(c)(7)(B)(ii).
[20] *City of Arlington v. FCC,* 668 F.3d 229 (5th Cir., 2012), *aff'd,* 133 S. Ct. 1863 (2013) ("*City of Arlington*").
[21] Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review, *Declaratory Ruling*, 24 FCC Rcd 13994, 14009 (2009) ("*2009 Declaratory Ruling*").
[22] *NPRM* at 3335 ¶ 11, *citing City of Arlington,* 668 F.3d at 250-51.
[23] City of Arlington, Tex. V. F.C.C., 133 S. Ct. 1863, 1875 (2013).

stop work order on the wireless provider, the wireless provider would have recourse in the courts to overturn the stop work order. Thus, adoption of a deemed granted rule would not read the judicial review provision out of the statute.

Finally, the existence of a requirement to grant applications under Section 4904(a), but not under Section 332(c)(7)(B)(ii), does not suggest that the Commission lacks authority to adopt a deemed granted rule for applications that do not fall under Section 4904(a). Section 4904(a) creates a substantive obligation to grant applications in certain circumstances, while Section 332(c)(7)(B)(ii) addresses procedural considerations. Consistent with that distinction, a deemed granted rule would not require a particular result from a local authority's consideration of an application, and instead would require only that the local authority act promptly, with an automatic enforcement mechanism if it does not. A municipality always can avoid having an application automatically granted by acting in time and, as the Commission decided in the *2009 Declaratory Ruling*, the deadline can be flexible if the applicant and the local authority can reach a mutual agreement to extend it.[24]

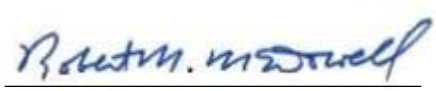
[24] *2009 Declaratory Ruling* at 14013.

VII. CONCLUSION

ASRC encourages the FCC to take the necessary steps to reduce the burdens that delay the deployments of wireless and wireline network infrastructure. In particular, the FCC must take steps to promote further construction of middle mile facilities in Alaska's North Slope.

Respectfully submitted,

ARCTIC SLOPE REGIONAL CORPORATION



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June 15, 2017