

February 3, 2015

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Connect America Fund, WC Docket No. 10-90

Dear Ms. Dortch:

On Friday, January 30, 2015, representatives of Alaska Communications Systems (“ACS”) including Leonard Steinberg, Ruth Willard, Shawna Brandau, Richard Cameron and I, had a telephone conference with Carol Matthey, Katie King, Alex Minard, Talmage Cox, and Heidi Lankau of the Commission’s Wireline Competition Bureau to discuss open matters in the above-captioned docket specifically affecting universal service in high-cost areas of Alaska. Pursuant to Section 1.1206(b) of the Commission’s rules, this is a summary of the matters presented by ACS.

Frozen Support For Price Cap Areas In Alaska

The Commission has decided to adopt individually tailored service obligations associated with continuing frozen support for price cap carriers serving non-contiguous (“non-CONUS”) states or territories, such as ACS in Alaska, that have announced their intention to decline model-based support for Connect America Fund (“CAF”) Phase II.¹ ACS has proposed a set of frozen CAF Phase II service parameters for its territory to preserve and expand telecommunications and information services in Alaska.² On the call with the Bureau, ACS provided additional detail and certain refinements to its proposed plan. The relevant points are summarized below.

¹ *Connect America Fund, ETC Annual Reports and Certifications, Petition of US Telecom for Forbearance from Obsolete ILEC Regulatory Obligations*, WC Docket Nos. 10-90 *et al.*, Report & Order, FCC 14-190, ¶46 (rel. Dec. 18, 2014) (the “CAF Phase II Eligibility Order”). ACS has filed its intention to seek frozen support, under an appropriate set of obligations, rather than model-based support. *Connect America Fund*, WC Docket No. 10-90, Letter to Marlene H. Dortch from Karen Brinkmann, Counsel to ACS (filed Jan. 2, 2015).

² *See Connect America Fund*, WC Docket No. 10-90 *et al.*, Letter to Marlene H. Dortch from Karen Brinkmann, Counsel to ACS (filed Sept. 22, 2014) (“September 22 Letter”); Reply

Alaska-Specific Proposal for Frozen CAF Phase II

ACS proposes to deploy broadband to a specific minimum number of eligible customer locations in ACS's service territory, at speeds of at least 10 Mbps downstream/1 Mbps upstream and meeting the other FCC CAF Phase II parameters for latency, capacity and price ("qualifying broadband"), over a period of ten years, provided that support frozen at current levels is made available for ten years, and provided further that the Commission grants certain types of flexibility described below – flexibility that will be critical to ACS's ability to meet the broadband deployment obligations associated with CAF Phase II support. Adoption of this plan will significantly increase broadband availability in Alaska, one of the most underserved states in the nation, benefitting the public and serving the Commission's goals.

1. Providing Broadband Service In Eligible Locations.

ACS would deploy qualifying broadband to a minimum of 26,000 eligible locations. This number is consistent with the results of the most recent CAF high-cost model run, version 4.2, excluding the locations that are not on the Alaska road system.³

Locations would be "eligible" (*i.e.*, count toward satisfaction of the broadband deployment requirement for CAF Phase II) provided they meet one of the following criteria: (i) the locations are in "high-cost" census blocks (within the parameters of the model v. 4.2) deemed "unserved" at 3 Mbps downstream/768 kbps upstream according to the version of the National Broadband Map that was in effect as of December 18, 2014, the release date of the *CAF Phase II Eligibility Order*; (ii) the locations are in "high-cost" census blocks deemed "served" by a qualified competitor, but the locations themselves are certified (based on the criteria described below) as in fact unserved by any qualified competitor as of December 18, 2014; or (iii) the locations are in non-high-cost census blocks deemed "unserved" according to the National Broadband Map as of December 18, 2014. ACS provides further explanation regarding the second and third categories of eligible locations:

Unserved Locations In Partially Served, High-Cost Census Blocks. The Commission recognizes that census blocks in Alaska often are unusually large, covering not a single population center but far-flung customer locations. ACS is aware of many census blocks shown as "served" on the National Broadband Map but still containing many "stranded" customer locations that would be impossible to reach from existing competitive facilities.⁴ Where such portions of partially served census blocks can efficiently be reached while ACS is deploying service to wholly unserved census blocks, it makes good policy sense to permit ACS to also serve the unserved customers in the stranded corners of partially served census blocks using CAF Phase II support. For example, in Soldotna, a census block that is deemed "served" by a

Comments of ACS (filed Sept. 8, 2014) ("ACS Reply Comments"); Comments of ACS (filed Aug. 8, 2014) ("ACS Comments").

³ ACS long has advocated excluding "bush" locations from its build-out obligations under CAF Phase II. *See, e.g.*, ACS Comments at 13.

⁴ ACS Comments at 21.

competitor covers several roads that have no broadband service and to which there is no convenient access except from neighboring, unserved census blocks for which ACS hopes to receive CAF Phase II support.⁵ This represents the best hope for those customers to obtain broadband; it also permits limited CAF dollars to be used as efficiently as possible. No more than 25 percent of ACS's total CAF Phase II eligible locations would be of this type.

The Commission naturally would seek confirmation that the locations where ACS proposes to use CAF Phase II funds to deploy broadband are unserved in fact as of a particular point in time. ACS proposes that the date should be December 18, 2014, the release date of the *CAF Phase II Eligibility Order*. Further, ACS proposes that it be required to certify as to the unserved status of those locations as of that date, to provide an efficient and verifiable method for the Commission to confirm that CAF support is not used to overbuild existing broadband facilities.

Specifically, no later than the end of the second full year of CAF Phase II implementation in Alaska (currently expected to be 2017), by which time ACS expects to have completed its broadband build-out plan for the total number of required locations, and will have had a chance to fully explore the most efficient options for network infrastructure deployment, ACS would submit a list of locations in partially served census blocks that it wishes to be deemed eligible. ACS's certification would include a statement that ACS has delivered a copy of its list to each qualified competitor shown on the National Broadband Map as providing portions of the subject census block with broadband services meeting the Commission's 3/768 and other CAF II performance standards, and that ACS has verified the unserved nature of the locations by at least two of the following methods:

- (a) ACS technicians performed an on-site investigation of the locations in question, and have found no evidence of competitor facilities that could be used to deliver voice and broadband services meeting the Commission's 3/768 and other CAF II performance standards to such locations;
- (b) A third party retained by ACS contacted the customers at the locations, who reported that they are unable to obtain voice and broadband services meeting the Commission's 3/768 and other CAF II performance standards from a competitor;
- (c) ACS has obtained confirmation from each competitor shown on the National Broadband Map as providing other portions of the census block with broadband services meeting the Commission's 3/768 and other CAF II performance standards that the competitor does not provide voice and broadband services meeting the Commission's 3/768 and other CAF II performance standards to the subject locations;
or
- (d) In the case of a group of at least 10 adjacent customer locations, market analysis shows that ACS provides service to at least 80 percent of those customer locations

⁵ See Attachment A.

and that, in the preceding two years, it has not ported a wireline telephone number to a competitor shown on the National Broadband Map as providing other portions of the census block with broadband services meeting the Commission's 3/768 and other CAF II performance standards.

ACS's certification could be audited by the Commission or USAC at any time. Because any misrepresentation could result in fine, forfeiture or other penalty, up to and including imprisonment, ACS would have a strong incentive to complete due diligence and accurately certify as to the locations it believes are unserved.

Unserved Locations In Non-High-Cost Census Blocks. The Commission's CAF cost model has not successfully captured Alaska-specific characteristics and thus yields a distorted picture of the costs of serving particular Alaska census blocks.⁶ As a consequence, ACS believes that there are several thousand customer locations in Alaska, at least several hundred of them in rural areas, in census blocks that are unserved according to the National Broadband Map but not classified as "high cost" within the confines of the model. Many such census blocks are not in urban areas – they are rural – so it is not clear why the model fails to capture them, except that the model persistently understates Alaska-specific costs and positions customer locations on road systems that do not exist. For example, in several low-density Fairbanks residential neighborhoods with costs that are, according to the FCC cost model, below the high-cost threshold, several unserved census blocks appear to be islands in the midst of high-cost census blocks for which the model identifies eligible (funded) locations.⁷ If ACS is not permitted to use CAF support to serve these isolated areas, they are unlikely to have access to broadband in the foreseeable future.

⁶ ACS has extensively documented the ways in which the model fails to capture Alaska-specific middle mile costs, Alaska's undersea cable costs, the location of Alaska customers, and other realities that substantially affect broadband deployment in the state. For example, ACS has provided detailed Alaska-specific cost inputs based on ACS's actual contracts for fiber deployment. *E.g.*, Comments of ACS in WC Docket No. 10-90 (filed Jan. 7, 2014); Comments of ACS in WC Docket No. 10-90 (filed Sept. 12, 2013); Letter from Richard Cameron to Marlene H. Dortch, WC Docket No. 10-90 (filed Aug. 5, 2013); Letter from Richard Cameron to Marlene H. Dortch, WC Docket No. 10-90 (filed July 30, 2013); Letter from Karen Brinkmann to Marlene H. Dortch, WC Docket No. 10-90 (filed July 25, 2013); Letter from Karen Brinkmann to Marlene H. Dortch, WC Docket Nos. 10-90 & 05-337 (filed July 9, 2013). ACS also provided detailed documentation of the architecture and cost of its undersea cable network linking Alaska with the nearest Internet access point. *See, e.g.*, Letter from Richard Cameron to Marlene H. Dortch, WC Docket No. 10-90 (filed Aug. 24, 2013). The Bureau adopted only a limited number of changes to its model based on the inputs proffered by ACS. *See Connect America Fund; High-Cost Universal Service Support*, Report and Order, WC Docket Nos. 10-90 & 05-337, 29 FCC Rcd 3964, ¶129 (2014).

⁷ *See* Attachment B.

These locations are unserved for a reason – the economics do not support broadband deployment in these areas.⁸ Moreover, as the Commission has acknowledged, census block boundaries do not follow network topography, and the Commission’s model is imperfect at best, especially as concerns Alaska. Thus, eligible census blocks frequently appear adjacent or in close proximity to ineligible census blocks that are nonetheless unserved, and are unlikely to be served in the absence of support. Not serving the customers in those census blocks likely will cause customer confusion as well as stranding customers that could efficiently be served with the use of support.

By the Commission’s reasoning, locations that are not in high-cost areas already should have access to broadband – support is not needed because market forces alone should be sufficient to drive broadband to them.⁹ This ought to be true particularly in Alaska, where ACS and the cable company have competed head-to-head in most population centers for many years. Yet the “facts on the ground” tell a different story from the one described by the FCC cost model. In reality, there are still thousands of unserved locations in hundreds of Alaska census blocks shown as unserved on the National Broadband Map but not deemed “high cost” by the FCC model – clearly, market forces alone have not been sufficient to stimulate broadband deployment in these areas, and support is, in fact, necessary.¹⁰

That the FCC’s cost model should fail to capture all unserved census blocks in need of support is understandable. As a practical matter, given the limited amount of funding established at the outset of this proceeding, the Commission’s cost model adopts a somewhat arbitrary funding benchmark separating census blocks deemed “high-cost” and eligible for support from those that are ineligible for support. However, in Alaska, it is more than a rare occurrence. Thousands of customers are affected, and risk becoming stranded without access to broadband nor any foreseeable path to obtaining broadband services in the future.

ACS believes that at least several hundred and possibly more than a thousand such locations are rural, and located in census blocks adjacent to or in the same census tract as census blocks that do qualify for support under the model. If ACS is deploying broadband to a “high-cost” census block that borders a census block or is in the same census tract as one not deemed high-cost, but both are unserved, it makes good economic sense to permit ACS to use CAF support to serve both. Moreover, it makes good policy sense to facilitate the deployment of 10/1 Mbps to all the unserved customer locations that can be efficiently reached in a single build-out. ACS therefore proposes that a certain number of locations in census blocks that are in fact unserved, but not designated by the model as high-cost, be eligible for CAF Phase II support in Alaska. No more than 10 percent of ACS’s total CAF Phase II eligible locations would be of this type.

Flexibility In Total Number of Locations Served. In the *CAF Phase II Eligibility Order*, the Commission granted price cap carriers serving contiguous areas the flexibility to deploy to

⁸ ACS Comments at 20.

⁹ *USF-ICC Transformation Order*, 26 FCC Rcd 17663, ¶167 (2011).

¹⁰ ACS Comments at 20.

between 95 percent and 100 percent of the total funded locations, with a prescribed reduction in support, provided that they must identify by a certain date early in the planning process any census blocks where they do not intend to deploy, covering at least two percent of their total eligible locations in the affected state,¹¹ and they may identify by the end of their deployment process up to three percent more of their total eligible locations that they do not plan to serve.¹²

As the Commission recognized, “there may be some variance between the number of funded locations specified by the forward-looking cost model adopted by the Bureau and the actual number of locations in a given area.”¹³ ACS certainly has found this to be true in Alaska. In light of the high degree of variance between the model’s results and “facts on the ground” in Alaska – higher for Alaska than for contiguous areas – Alaska previously requested that the Commission grant ACS similar flexibility for up to 10 percent of funded locations, permitting ACS the option of deployment to only 90 percent of locations identified by the model.¹⁴ However, ACS here modifies its position, because it believes that the two types of flexibility described above (permitting deployment in partially served census blocks, and permitting deployment in unserved census blocks not deemed high-cost) and the ten-year funding term and build-out period together will provide the most important types of flexibility ACS needs to deploy broadband in high-cost, unserved locations. Therefore, if those aspects are incorporated into the ACS broadband deployment obligations, ACS proposes that it be given the same flexibility as price cap carriers serving the contiguous areas to deploy to between 95 percent and 100 percent of the total required locations, with the same reduction in support.¹⁵

The Commission should not restrict this flexibility by requiring that ACS identify early in the planning process census blocks covering at least two percent of the total eligible locations in the state to which it does not intend to deploy broadband. As noted below, the planning process for Alaska is likely to take longer than in CONUS price cap areas. ACS hopes that it will have sufficient flexibility to identify 26,000 locations, but it will need at least two full years to complete its deployment plan. Moreover, ACS believes that any eligible locations where it ultimately may decide not to deploy will be unlikely to attract bids in a competitive bidding process.

Clarifying the Relationship Between CAF Phase I and Phase II Obligations. In CAF Phase I, Round 2, ACS accepted incremental support to deploy broadband to 316 locations. ACS is commencing the engineering work to complete this deployment on schedule. However, it has come to ACS’s attention that 217 of these locations are among those deemed eligible for CAF Phase II support under the Commission’s model. ACS seeks clarification that even if the model indicates that these 217 locations are eligible for CAF Phase II support, ACS will not be required to identify alternative unserved locations to satisfy its CAF Phase I, Round 2 broadband

¹¹ The Commission then may make available support for those census blocks through competitive bidding. *CAF Phase II Eligibility Order*, ¶39.

¹² *Id.*

¹³ *Id.*, ¶38.

¹⁴ ACS Reply Comments at 15-16.

¹⁵ *CAF Phase II Eligibility Order*, ¶42.

deployment obligation.¹⁶ Any such alternative locations would be far more expensive on a per-location basis, and ACS has no way of knowing at this time for what locations ACS ultimately will be receiving CAF Phase II support.

In addition, ACS seeks clarification that, assuming it successfully deploys 4/1 Mbps broadband as part of its incremental CAF I, Round 2 build-out, the CAF II build-out specifications do not prohibit it from using a portion of frozen CAF Phase II support to upgrade any of those 217 locations to 10/1 Mbps.

ACS is required to identify *by February 24, 2015* the precise locations (by latitude and longitude) where it intends to deploy broadband to satisfy its CAF Phase I, Round 2 obligations. It would be patently unjust to penalize ACS for completing its CAF I, Round 2 deployment in a timely manner. Moreover, the timing of the Phase II rules is in the hands of the Commission, not ACS. Accordingly, ACS respectfully urges that the Commission promptly grant the requested clarification.

2. Completing the Mandatory Build-Out Over a Ten-Year Term.

In the *CAF Phase II Eligibility Order*, the Commission established a six-year support term (which may be extended to seven years in some circumstances) and deployment milestones also spread out over six years.¹⁷ The Commission recognized that carriers accepting Phase II support will require substantial time for initial planning, engineering and other field work before broadband can be efficiently deployed to significant numbers of end-user locations.¹⁸ Therefore, the Commission rejected its earlier requirement of 85% completion in three years, and adopted the more realistic timetable of 40% in three years and 100% in six years.

Just so, the Commission should adopt a realistic build-out schedule for ACS, and extend support for ten years.¹⁹ As ACS has stated consistently in its filings with the Commission, ten years' support is necessary for ACS to comply with the Commission's increased broadband

¹⁶ This is one possible reading of the Commission's order adopting rules for Incremental CAF Phase I, Round 2, but ACS will not know what locations are supported by CAF Phase II at the time it is fulfilling its Phase I, Round 2 obligations. *Connect America Fund*, WC Docket No. 10-90, 28 FCC Rcd 7766 (2013), ¶21 ("Also, in order to use Connect America funds in the most efficient manner possible and avoid providing excess support to an area, we direct the Bureau to ensure the funding is not provided to the same census blocks under both Phase I incremental support and Phase II. No carrier should be allowed to satisfy its Phase I obligations in any census block where it receives Phase II support. If a carrier accepts Phase II support in a census block where it had initially planned to deploy broadband-capable networks to locations in order to meet its Phase I obligations, it must identify and deploy to the requisite number of locations in another census block for which it did not receive Phase II support") (footnotes omitted).

¹⁷ *CAF Phase II Eligibility Order*, ¶¶31, 36.

¹⁸ *Id.* ¶36.

¹⁹ September 22 Letter at 2.

speed mandate of 10/1 Mbps.²⁰ Moreover, the realities that compelled the Commission to extend the broadband deployment schedule for CONUS carriers are present in even harsher form in Alaska. Performing the up-front planning and advance field work will be even more time-consuming for ACS than for CONUS carriers due to the limits of available maps, the extremes of weather, climate and geography of the state, and the far-flung target locations. Depending on when the Commission issues final rules for Alaska, ACS expects that the first two years will be largely consumed with this type of planning and advance work. Hiring qualified engineers and other workers willing to come to Alaska also will be all the more challenging than in other parts of the nation.²¹ Alaska's uniquely short construction season exacerbates all of these difficulties. Thus, ACS anticipates a slower start in the first four years of the term, but its progress should accelerate in latter part of the term. ACS will satisfy the following broadband deployment milestones to the required number of eligible locations during the term of CAF Phase II: 30% by the end of Year 4, 60% by the end of Year 7, 100% by the end of Year 10.²²

3. Supporting Overall Broadband Operations, Not Merely New Deployment.

As noted above, ACS requests flexibility to use a portion of CAF Phase II support in partially served census blocks. In addition, ACS has demonstrated that a portion of CAF II support must be used for operating expenses.²³ Therefore, it is important that the rules for frozen Phase II support not be drafted in such a way as to prohibit the use of a portion of Phase II support for expenses in particular census blocks.²⁴ ACS will commit to meet the target number for deployment to the target number of eligible locations, and will agree not to use CAF Phase II support to deploy new broadband in any location not deemed eligible by the Commission.

ACS should remain free to use the support not only to deploy last-mile broadband to eligible locations, as defined above, but also to improve middle mile transport as well as other facilities that are not specific to a customer location or even a census block. Many examples of necessary broadband expenditures defy categorization as expenses for a particular location or census block, including routers and switches, fiber transport facilities, and undersea cable systems. There is no justification for the Commission to require the allocation of such network-wide expenditures by census block.

²⁰ September 22 Letter at 1-2; ACS Reply Comments at 12-15; ACS Comments at 26.

²¹ ACS Comments at 25.

²² September 22 Letter at 2.

²³ ACS Comments at 27-28.

²⁴ For example, in the *CAF Phase II Eligibility Order*, the Commission prohibits non-CONUS carriers from using Phase II frozen support "in any census block where there is a competitor providing service of 10/1 Mbps or greater," and states that carriers that cannot "meet this requirement in certain areas" must "relinquish the relevant Phase II frozen support for those areas." *CAF Phase II Eligibility Order*, ¶49. It is not clear what this means.

Moreover, the FCC should not restrict how much support is devoted to capital as opposed to operating expenditures.²⁵ Consistent with assumptions made under the Connect America Model, where approximately 50 percent of supported costs are assumed to be operating expenses, ACS is modeling approximately 50 percent of CAF Phase II support to be devoted to OpEx overall, though the mix of CapEx and OpEx is expected to change each year. All manner of operations-related expenses may be supported in some part by CAF dollars, including back-office systems and software, electricity costs, personnel, and transportation, to name a few. Moreover, in addition to deploying and maintaining broadband service, ACS will have a continuing obligation to maintain voice service throughout the areas where ACS is an eligible telecommunications carrier.

The Commission's rules should require that ACS meet the total broadband deployment objective of providing broadband to the prescribed minimum number of eligible locations, and that ACS certify to how many such locations it has deployed each year. ACS may be asked to report the amount of support used each year in total, statewide. Within these parameters, ACS should be free to invest the support to serve as many unserved eligible locations as it deems feasible in the manner it deems most efficient, so long as it does not use the support outside the Commission's parameters for eligible locations (*e.g.*, ACS would not use the support to overbuild a competitor offering qualifying broadband as of December 18, 2014). Thus, ACS believes that the scope of the reporting obligation adopted in the *CAF Phase II Eligibility Order*, which require recipients of CAF Phase II support to file annual reports of the number of eligible locations to which they have deployed service in a state, and the amount of support that they used for capital expenditures, but does not require a particular division between capital and operating expenses, nor require support to be allocated below the state level, is appropriate and can be readily adapted to ACS's CAF Phase II frozen support commitment.²⁶

* * *

²⁵ As ACS and other carriers have urged, the Commission should remain neutral on the tax treatment of CAF support, and not prescribe a specific amount of support for capital investment. *See, e.g., Connect America Fund*, WC Docket No. 10-90, Letter from Karen Brinkmann on behalf of ACS, Consolidated Communications, FairPoint Communications, and Frontier Communications Corp., to Marlene H. Dortch, FCC Secretary (filed Nov. 14, 2014).

²⁶ *CAF Phase II Eligibility Order*, ¶¶ 125-28.

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ACS looks forward to finalizing a tailored approach for CAF Phase II that reflects the unique circumstances of providing voice and broadband capability within ACS's service footprint in Alaska.²⁷ Crafting a plan for Alaska that includes the features described herein will help set the state on a surer footing for access to advanced capabilities.

Please direct any questions concerning this filing to me.

Very truly yours,



Karen Brinkmann

Counsel for ACS

cc: Carol Matthey
Katie King
Alex Minard
Talmage Cox
Heidi Stack Lankau

²⁷ In addition to the details summarized here, ACS urges the Commission to adopt the other rules essential to successful CAF Phase II implementation that ACS has advocated in this proceeding. *E.g.*, ACS Comments at 31 (relaxed broadband standards should apply in areas served by satellite backhaul); *id.* at 32 (ETC obligations should follow support and should be terminated in areas where support may not be used to deploy broadband); *id.* at 35 (wireline and wireless ETC support should terminate simultaneously in areas not eligible for broadband deployment support in CAF Phase II); *id.* at 37 (competitive bidding rules should reflect unique Alaska circumstances). However, those other topics were not revisited on the January 30 call.