

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

In the matter of	
Connect America Fund	WC Docket No. 10-90
A National Broadband Plan for Our Future	GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers	WC Docket No. 07-135
High-Cost Universal Service Support	WC Docket No. 05-337
Developing a Unified Intercarrier Compensation Regime	CC Docket No. 01-92
Federal-State Joint Board on Universal Service	CC Docket No. 96-45
Lifeline and Link-Up	WC Docket No. 03-109
Universal Service Reform – Mobility Fund	WT Docket No. 10-208
Petition of Alaska Communications Systems for Extension of Time to Complete Broadband Deployment under Connect America Fund Phase I, Round 1 Incremental Support Program	

Petition for Extension of Time

Alaska Communications Systems (“ACS”)¹ hereby requests that the Commission grant an extension of the current July 24, 2015 deadline for ACS to complete deployment of broadband service using Connect America Fund Phase I (“CAF Phase I”), Round 1 incremental support. ACS will be unable to complete the required deployment to approximately 138 of its intended locations before the deadline because a pair of bald eagles has nested and is currently incubating at least one egg on a communications tower vital to the necessary upgrades. ACS expects to be able to complete the required work by October 31, 2015.

¹ In this Petition, “Alaska Communications Systems” signifies ACS of Alaska, LLC, ACS of Anchorage, LLC, ACS of Fairbanks, LLC, and ACS of the Northland, LLC, the incumbent local exchange carrier subsidiaries of Alaska Communications Systems Group, Inc.

Background

The Commission created the CAF Phase I incremental support program in 2011 in order to “provide an immediate boost to broadband deployment in areas that are unserved by any broadband provider,” in the period before the CAF Phase II support mechanism could be implemented.² Carriers accepting CAF Phase I incremental support are required to complete deployment to no fewer than two-thirds of the required number of locations within two years, and all required locations within three years, after filing their notices of acceptance.³

In 2012, the Commission offered ACS approximately \$4.2 million in CAF Phase I, Round 1 incremental support.⁴ ACS has indicated its intent to use a portion of that funding to deploy broadband service meeting the CAF Phase I, Round 1 requirements to 2,291 customer locations within the required buildout period,⁵ which ends on July 24, 2015, three years after ACS filed its Notice of Acceptance on July 24, 2012.⁶ ACS expects to meet the Round 1

² See *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 ¶ 137 (2011) (“*USF/ICC Transformation Order*”) (subsequent history omitted).

³ *Id.* at ¶ 147; see also 47 C.F.R. § 54.312(c)(9).

⁴ Public Notice, WC Docket Nos. 10-90, 05-337, *Wireline Competition Bureau Announces Support Amounts for Connect America Fund Phase One Incremental Support*, DA 12-639, 27 FCC Rcd 4203 (2012), at 4.

⁵ *Connect America Fund*, WC Docket No. 10-90, Letter from Richard R. Cameron, Ass’t Vice President and Senior Counsel, ACS, to Marlene H. Dortch, Secretary, FCC (filed July 24, 2013). ACS has also filed a request for waiver of certain of the CAF Phase I incremental support requirements to enable it to use the balance of its Round 1 support to deploy broadband to additional customer locations in Alaska. See *Connect America Fund*, WC Docket No. 10-90, Petition for Waiver of Alaska Communications Systems (filed Sept. 26, 2012). That request remains pending with the Commission.

⁶ *Connect America Fund*, WC Docket No. 10-90, Letter from Karen Brinkmann, Counsel to ACS, to Marlene H. Dortch, Secretary, FCC (filed July 24, 2012).

deadline for the vast majority of the 2,291 customer locations it has targeted for broadband deployment using this support.

Of those 2,291 customer locations, this request for extension of time concerns approximately 138 located in the vicinity of McNeil Canyon, located on the south coast of Alaska, east of Homer Spit, on the Kenai Peninsula. In order to initiate broadband service to these locations as planned, ACS must upgrade its middle mile microwave transmission capacity along the only middle mile transport route (which follows the only road providing access to the area) between Anchorage and the ACS central office serving McNeil Canyon. The necessary upgrades include the ACS microwave equipment located on a tower near Homer Spit. With only one middle mile transport route to the area, the Homer Spit upgrades are essential. ACS has no alternative.

Unfortunately, factors beyond ACS's control will prevent ACS from completing the necessary upgrades to the microwave facilities located at Homer Spit before the deployment deadline. Specifically, as shown in the photographs attached as **Exhibit A**, a pair of bald eagles has begun nesting on a microwave tower holding the ACS microwave facilities. ACS has verified that the eagles have produced at least one egg, which is now in the nest. Federal law protects these eagles, their nest, and their egg against any disturbance.

ACS is committed to completing the work during the 2015 construction season, but must request an extension of time until October 31, 2015 to complete its buildout to the McNeil Canyon locations. This extension will permit ACS, once the eaglet leaves the nest, and with appropriate permit authority, to disturb the eagles and remove the nest, as set forth in 50 C.F.R. §§ 22.26-22.27. Once the nest is removed, ACS will expeditiously complete the field work necessary to finish the deployment process and initiate the offer of broadband service to its customers in the McNeil Canyon area.

Discussion

The Bald Eagle Protection Act of 1940 makes it unlawful to “take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner any bald eagle commonly known as the American eagle or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles.”⁷ For purposes of this Act, “take” encompasses actions to “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, *molest or disturb*” the eagles.⁸ Violations are punishable by severe civil and criminal penalties.⁹

Typically, a bald eagle egg must be incubated for approximately 35 days before hatching. The eaglet will then further mature and develop in the nest for approximately three months or so before flying for the first time, and leave the nest about a month later.¹⁰ While the timeline is variable, young eagles in the area of Homer Spit typically leave the nest in August, although, in past years, some have remained as late as September 1. It will thus be impossible for ACS to meet the Commission’s deployment deadline without unlawfully disturbing the nesting eagles.

Given the presence of the nesting eagles on the Homer Spit tower, therefore, ACS cannot complete the upgrades to its middle mile microwave transmission capacity necessary to serve McNeil Canyon by July 24, 2015. Indeed, proceeding with its intended upgrade plans at this time would be unlawful under the Bald Eagle Protection Act and its implementing rules. Those rules require ACS to obtain a permit before disturbing the eagles or removing their nest. The permitting

⁷ 16 U.S.C. § 668(a).

⁸ 16 U.S.C. § 668c (emphasis added).

⁹ 16 U.S.C. § 668(a-b).

¹⁰ U.S. Fish and Wildlife Service, *Bald Eagle Fact Sheet: Natural History, Ecology and History of Recovery*, available at: www.fws.gov/midwest/eagle/recovery/biologue.html (visited Mar. 28, 2015); see also *Bald Eagles in Alaska*, Wright, B. A. and P. F. Schempf, eds. (Bald Eagle Research Institute, University of Alaska Southeast 2008), at 98.

requirements obligate ACS to observe “avoidance and minimization measures to reduce the take to the maximum degree practicable.”¹¹ In this case, ACS is required to delay the work until any young eaglet has left the nest and, at that time, will be required to install bird diverters on the tower to deter the eagles from returning in the future – an action that plainly cannot be undertaken while a young eagle remains present.

Once ACS is permitted to proceed, the company is committed to completing the necessary field work at the Homer Spit tower as quickly as possible, before the end of the 2015 construction season. Meanwhile, ACS will proceed apace with all of the other work necessary to complete deployment of broadband to customers in the McNeil Canyon area and elsewhere that is unaffected by the presence of the eagles’ nest at Homer Spit. Furthermore, ACS has already ordered the microwave equipment necessary to upgrade its capacity at the Homer Spit tower, and will take delivery this summer, well in advance of the date when deployment will likely become possible. Comsearch, on ACS’s behalf, has already begun the necessary frequency coordination work to support ACS’s upcoming application for a common carrier point-to-point microwave license authorizing the work at Homer Spit.

Thus, ACS is taking all possible steps to minimize the impact of this delay, and anticipates being able to launch broadband service to the approximately 138 affected McNeil Canyon locations shortly after completing the work at Homer Spit by the end of October 2015.

¹¹ 50 C.F.R. § 22.26(e)(3).

Conclusion

For the foregoing reasons, ACS hereby requests that the Commission grant an extension of time to permit ACS until October 31, 2015, to complete the required deployment of broadband using CAF Phase I, Round 1 incremental support.

Respectfully submitted,



Digitally signed by Richard
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EXHIBIT A

Photographs of Homer Spit Tower, Showing Bald Eagle Nest and Egg



