

April 18, 2016

VIA ELECTRONIC FILING

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

Re: Connect America Fund et al., WC Docket Nos. 10-90, 05-337, 14-58, 07-135, WT Docket No. 10-208, and CC Docket No. 01-92

Dear Ms. Dortch:

Alaska Communications applauds the commitment made by the Commission to give “serious consideration” to a regulatory framework “tailored to the unique circumstances that exist in Alaska.”¹ Bringing broadband communications capability to unserved Alaska – and in particular to Alaska’s 188 remote Bush communities – remains a unique challenge for the Commission and carriers alike. In order to ensure that the difficulties of serving remote Alaska are not exacerbated, Alaska Communications urges the Commission to address regulatory reform for Alaska’s rate-of-return local exchange carriers (“ROR LECs”) independently from the requests made by the Alaska Telephone Association (“ATA”) for extensive additional support for competitive eligible telecommunications carriers (“CETCs”).²

Alaska Communications Endorses ATA’s Proposal To Freeze Support for Alaska’s ROR LECs

As Alaska Communications has repeatedly stated on the record in these proceedings, it is appropriate to offer Alaska’s ROR LECs the opportunity to continue receiving frozen high-cost support for a period of ten years while establishing reasonably achievable broadband deployment expectations for each carrier.³ This is consistent with the pending proposal by Alaska

¹ *Connect America Fund, et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33 (rel. March 30, 2016), n. 10 (“*ROR CAF Order*”).

² *See, e.g.*, Letter from Christine O’Connor, ATA, to Marlene Dortch, FCC Secretary, WC Docket No. 10-90 (filed Feb. 20, 2015).

³ *See, e.g.*, Letter from Richard Cameron, Alaska Communications, to Marlene Dortch, FCC Secretary, WC Docket Nos. 10-90, 05-337, 07-135, 14-58 & CC Docket No. 01-92 (filed Feb. 10, 2016); Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene

Communications for Connect America Fund (“CAF”) Phase II rules for Alaska’s price cap territories.⁴ It will deliver substantial benefits to unserved Alaskans in areas of the state on the road system.

However, the ATA plan does not directly address the lack of affordable, adequate broadband capability to areas off the road system, as discussed in Alaska Communications’ white paper, “Closing the Middle Mile Gap in Alaska.”⁵ While some indeterminate amount of CETC funds may be spent on middle mile facilities to some unknown number of communities, numerous communities would remain accessible only via limited-capacity satellite connections, keeping broadband out of reach for the foreseeable future,⁶ and other communities may lack access to affordable and adequate broadband capacity despite the roughly \$1.55 billion called for by the ATA plan over ten years. The Commission therefore should proceed on a parallel track to address the lack of adequate, affordable middle-mile capability connecting areas that are not on the road system nor the electrical grid, and thus are extraordinarily costly and difficult to serve – the Alaska Bush. Otherwise, the Commission will fail to close the “rural-rural divide” in Alaska.

High-cost support urgently is needed for the establishment of publicly available, high-speed, high-quality, and affordably-priced middle-mile capability serving the Alaska Bush.⁷ ATA’s ROR LEC members themselves acknowledge this gap in critical facilities. Their own proposals for broadband deployment in rural Alaska contain a critical *caveat* concerning their dependence on the deployment of adequate and affordable terrestrial broadband middle-mile connectivity in order to achieve desired performance levels expected by the Commission. Without access to advanced middle-mile capability, the ROR LECs cannot promise to provide broadband service meeting the 10/1 Mbps end-to-end minimum speeds, or the latency and capacity parameters, that are expected by the Commission today, let alone the higher standards

Dortch, FCC Secretary, WC Docket Nos. 10-90 & 05-337 (filed Dec. 15, 2015); Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene Dortch, FCC Secretary, WC Docket No. 10-90 (filed May 15, 2015); Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene Dortch, FCC Secretary, WC Docket No. 10-90 (filed Feb. 27, 2015).

⁴ Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene Dortch, FCC Secretary, WC Docket No. 10-90 (filed Feb. 3, 2015).

⁵ Filed as an attachment to Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene Dortch, FCC Secretary, WC Docket No. 10-90 (filed Nov. 19, 2015).

⁶ *E.g.*, Letter from John Nakahata, Counsel to General Communication, Inc., to Marlene Dortch, FCC Secretary, WC Docket Nos. 10-90, 11-42, 09-197 (filed March 11, 2016) at 1 (“Even under the Alaska Plan, however, some communities will remain on satellite backhaul for the foreseeable future”). As discussed in prior filings, even where adequate bandwidth is available, satellite backhaul is poorly suited to high-speed, low-latency broadband applications. *See, e.g.*, “Closing the Middle Mile Gap in Alaska,” *supra* note 5, at 4, and sources cited therein.

⁷ Roughly one in seven residents of Alaska live in the 188 Bush communities that are not served by the road system or the electrical grid, and thus lack access to fiber-based telecommunications capability necessary for broadband.

that may be adopted by the Commission in the future.⁸ Moreover, even under the ten-year support plan proposed for ROR LECs under ATA's proposal, at least 40 Bush communities would remain unserved.⁹

In short, ATA's current proposal, while putting Alaska's ROR LECs on more solid footing, does not offer a realistic solution for reaching the Alaska Bush. ATA does not endorse a specific proposal for closing Alaska's middle mile gap, with defined deployment milestones and enforceable performance standards for capacity, speed, latency, and – most important of all – service affordability (as the Commission adopted for the rest of the nation). Rather, ATA makes the extraordinary proposal to extend and expand CETC support for ten years at a cost of roughly a billion dollars. As explained below, *this* aspect of the ATA plan should *not* be adopted with ROR LEC reforms. It will do nothing to achieve the broadband expansion to which the Alaska ROR LECs aspire. Moreover, it will do affirmative harm to the Alaska market.

Alternatively, if CETC support is extended in Alaska as requested by the ATA, it should be done only under specific and enforceable regulatory requirements that will protect and safeguard the public interest. Such safeguards should include reasonable non-discriminatory access obligations, affiliate transaction rules, and cost-based pricing requirements, to ensure adequate and quality broadband service sufficient to meet current and projected demand.

The ATA Plan Is A CETC Enrichment Plan That Will Not Close the Middle Mile Gap

ATA proposes to maintain frozen support for Alaska's ROR LECs for ten years, to which Alaska Communications has expressed no objection. But ATA's plan also proposes a generous *increase* in support for wireless CETCs – nearly two times the support amount that is proposed for the ROR LECs – increased from current levels by redirecting Alaska wireline CETC support and urban CETC support to mobile wireless CETCs serving remote parts of Alaska. With about \$55 million per year proposed for the ROR LECs and roughly \$100 million per year for CETCs, the ATA plan can fairly be characterized as a *CETC* plan with some wireline LEC support included.

⁸ Several ATA members have expressed concern that they cannot guarantee their own broadband commitments due to uncertainty surrounding middle-mile availability and affordability. *See, e.g.*, Letter from Christine O'Connor, ATA, to Marlene Dortch, FCC Secretary, WC Docket No. 10-90 (filed Nov. 19, 2015), at Attachment: "Alaska Plan Performance Obligations." *See also* Letter from Karen Brinkmann, Counsel for Alaska Communications, to Marlene Dortch, Secretary, WC Dockets 10-90, 05-337 (filed Dec. 15, 2015).

⁹ The ATA's own map of projected middle mile capability shows that at least 40 Bush communities will remain off any terrestrial middle mile network. *See* Letter from Christine O'Connor, ATA, to Marlene Dortch, FCC Secretary, WC Docket No. 10-90, Attachment at 7 (filed Feb. 12, 2016).

Over ten years, ATA proposes that CETCs in Alaska would reap roughly a billion dollars. How do those carriers propose to account for that support? ATA does not propose any specific construction objectives, completion milestones, affordability parameters, or performance standards for CETCs receiving a share of that billion dollars. ATA has suggested that its members intend to deploy or enhance rural middle-mile facilities.¹⁰ However, no specifics have been provided on the record. A billion dollars with no strings attached – the Commission would be hard-pressed to justify such a scheme.

ATA does not acknowledge that its proposal runs counter to the national policy phasing out unrestricted support for wireless carriers under the old “identical support” rule. Under the CAF Phase II regime for price cap LECs, as well as under the newly-adopted rules for ROR LECs (other than in Alaska), the FCC has decided that future receipt of high-cost support will require specific, enforceable commitments targeted to increasing broadband availability in unserved areas, with penalties for non-compliance.¹¹ The Commission insists upon accountability from all LECs receiving support. Both their deployment of broadband facilities and their provision of services using federal support will be monitored to ensure that the public receives the benefits intended from the subsidy program.¹² Nor are mobile wireless carriers exempt from such safeguards.¹³

The ATA proposal for CETCs fails to meet the Commission’s expectations for transparency, accountability and efficiency in the use of high-cost support. CETC support is not tied to specific deliverables or increased accountability under the ATA plan. As noted in the Commission’s orders, CETC is being phased out precisely because the “identical support rule” failed to efficiently target support where it is needed, and the program failed to impose any substantive accountability for the use of limited funds.¹⁴ Nevertheless, the ATA plan calls for perpetuating CETC support in Alaska for ten more years. It would be illogical and inefficient to subsidize multiple mobile wireless carriers in the same rural geographic areas of Alaska when such duplicative support has been phased out everywhere else in the nation. While remote areas of Alaska were allowed a longer transition period than the rest of the nation, the Commission has ordered that legacy CETC support be phased out there as well. The Commission’s recent policy choices in this area consistently prefer transparency, accountability and efficiency – qualities that simply are lacking in the outmoded CETC “identical support” program. With federal support

¹⁰ See Letter from Christine O’Connor, ATA, to Marlene Dortch, FCC Secretary, WC Docket No. 10-90 (filed Feb. 12, 2016) (affirming the intent to expand middle mile capacity, without committing to any specifics for performance or affordability of that middle mile capability).

¹¹ See 47 C.F.R. §54.309 (CAF Phase II performance obligations for price cap carriers); *ROR CAF Order* ¶162 *et seq.* (adopting defined performance obligations for ROR LECs under new CAF rules).

¹² See, e.g., 47 C.F.R. §54.313 (reporting obligations for price cap LECs under CAF Phase II).

¹³ 47 C.F.R. §54.1006 (Mobility Fund Phase I performance standards).

¹⁴ See *USF-ICC Transformation Order* ¶502.

for high-cost areas otherwise restrained by caps, it would be a reversal of Commission policy to dedicate a billion dollars of unrestricted support to CETCs under ATA's proposed terms.

Alaska Communications has experience delivering mobile wireless services in rural Alaska. That experience suggests that one billion dollars *could not* be used by CETCs exclusively or even predominantly for last-mile infrastructure upgrades in unserved portions of rural and remote Alaska. The Commission therefore should consider the likelihood that such support would be directed in large measure to middle-mile investment (if not private enrichment) under the ATA plan. In the recent experience of Alaska Communications, a single cell site typically costs in the neighborhood of \$500,000 to deploy. Even assuming dramatically higher costs of \$1 million per cell site in remote parts of Alaska in the future, and assuming that 200 sites are deployed to cover the 188 Bush communities (many of which already have mobile wireless service), it is possible to account for as much as \$200 million of the \$1 billion being requested by ATA for CETC support. What would the remaining \$800 million be used for? Alaska Communications believes much of it will be used to underwrite GCI's unregulated middle-mile monopoly.

ATA's CETC Proposal Would Affirmatively Harm Competition In Alaska

Adopting ATA's CETC support proposal, or something like it, would not only be wasteful of limited universal support dollars. It also would exacerbate a market failure that Alaska Communications has identified, with real-world consequences for end-users as well as other federal support programs. It would expand an existing middle-mile monopoly primarily for the benefit of one service provider, rather than creating publicly available infrastructure for the greater good. Again, actual experience in Alaska infrastructure deployment bears this out.

Recently, substantial amounts of public funds – more than \$80 million in federal Broadband Initiatives Program (“BIP”) grants and low-interest loans – were disbursed for middle-mile facilities in southwest Alaska, but the facilities deployed did not result in decreases from prior service rates. Rather, prices have remained at old levels or even increased because these facilities have been operated as an unregulated monopoly.

Nor have these monopoly facilities yielded adequate capacity in the areas targeted – *i.e.*, southwest Alaska.¹⁵ Capacity remains constrained, with no reasonable access for competitors or

¹⁵ Most of the existing and planned infrastructure deployed by GCI in southwest Alaska is comprised of long “daisy chains” of microwave hops, communications capacity that is inadequate for high-performance broadband requirements because of inherent reliability concerns, signal degradation, and network congestion accumulating over successive links. While modern microwave facilities (or hybrid-fiber plant) can be useful on a limited number of short “hops” (at most four) to cover relatively short distances between a fiber ring and a small (fewer than 300 pop.) village, longer distances and larger communities cannot effectively be served with this technology, as experts widely have acknowledged. The State of Alaska Broadband Task Force recommended the deployment of fiber rather than microwave links to villages of 300 or more inhabitants. State of Alaska, *A Blueprint for*

neighboring carriers, despite the massive influx of federal subsidy. Even the customers of the operator have failed to benefit from cost decreases: In Bethel, the best consumer service provides only 6 Mbps downstream for \$299.99 per month¹⁶ – failing to meet the Commission’s minimum standards for “reasonably comparable” service at “reasonably comparable” rates.¹⁷

At the same time, no retail broadband service is available at all in neighboring communities that are located on the same publicly-funded network but are served by competing retail carriers, because the latter (including Alaska Communications) *cannot obtain cost-based access* to the monopoly network. Without reasonable, cost-based access at the wholesale level, affordable retail broadband service is out of reach.¹⁸

It is unlikely that the BIP project described above was funded by federal authorities on the premise of substandard service at excessive rates – but that is the net result of providing funding without any regulatory accountability for the use of these funds. Essentially, lack of oversight over the use of federal subsidies has led to the use of public funds for the creation of an unchecked private monopoly.

To make matters worse, the Commission’s rules permit the service provider to charge the Rural Health Care and E-Rate programs the same high prices for terrestrial broadband middle-mile connectivity as would be charged for privately-financed satellite-based connectivity, notwithstanding the considerable federal subsidy that supported the construction and operation of the terrestrial capacity. As previously documented by Alaska Communications, GCI has charged

Alaska’s Broadband Future, Statewide Broadband Task Force (Oct. 24, 2014), excerpted in Letter from Karen Brinkmann, Counsel for Alaska Communications, to Marlene Dortch, FCC Secretary, WC Docket No. 10-90 (filed Nov. 19, 2015). FCC staff concluded that fiber is the only effective solution for transport requirements in excess of 155 Mbps. Federal Communications Commission, *The Broadband Availability Gap*, OBI Technical Paper (April 2010), at 115.

¹⁶ Rates are shown at: <http://www.uui-alaska.com/internet/>.

¹⁷ The Commission’s “reasonable comparability” benchmark is \$118.88 per month for voice and CAF Phase II-compliant 10/1 Mbps service that includes 100 GB of usage. *Connect America Fund*, WC Docket No. 10-90, Public Notice, “Wireline Competition Bureau Announces Results of 2015 Urban Rate Survey for Fixed Voice and Broadband Services and Posting of Survey Data and Explanatory Notes,” DA 15-470, 30 FCC Rcd 3687 (2015), at 1-2 (establishing a reasonable comparability benchmark of \$47.48 per month for voice service and \$71.40 per month for 10/1 Mbps broadband Internet access service with 100 GB of usage).

¹⁸ *E.g.*, Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene Dortch, FCC Secretary, WC Docket Nos. 10-90, 05-337, 14-58,07-135, WT Docket No. 10-208, CC Docket No. 01-92 (filed March 11, 2016) at 3 (demonstrating that middle mile input costs in excess of \$700 per customer per month would make it impossible for Alaska Communications or any other carrier to offer affordable retail broadband service using GCI’s broadband middle mile capacity).

USAC as much as 300 times the “urban” rate, despite the fact that more than \$80 million in federal subsidies underwrote the deployment of the facilities. Thus, adoption of ATA’s proposal to extend unrestricted CETC support not only will fail to improve service and reduce costs for retail broadband customers; but it also could have far-reaching negative consequences by locking in high levels of demand for additional support from the Rural Health Care and E-Rate programs in Alaska – a result that is the opposite of what Chairman Wheeler asked the Alaska providers to address when he asked for a statewide plan in 2014.

Moreover, if the Commission adopts the CETC portions of the ATA proposal, as much as one billion dollars will be distributed among one *or several* mobile wireless carriers – *in addition to* the support flowing to the LEC – in each location, in contravention of the Commission’s policy limiting high-cost support to one provider per location.

There is no dispute that a substantial portion of the support requested under the ATA plan would be used for middle-mile connectivity. GCI has announced plans to expand its terrestrial (fiber and microwave-based) middle mile infrastructure into northwest Alaska, and acknowledged its intent to serve its own mobile wireless operations (middle mile capacity is necessary for mobile service to be upgraded to 3G and 4G) as well as the needs of local ROR LECs.¹⁹ Indeed, the ATA cautioned the Commission that failure to adopt the CETC portion of its plan could force the ATA’s ROR LECs to “scale back” planned middle mile improvements.²⁰ Yet there are no rules in place to ensure that any such subsidized middle mile connectivity would be furnished at efficient and affordable rates, or be made available to other service providers on reasonably non-discriminatory terms.

Nationwide, LEC support – whether for ROR LECs or for price cap LECs – will be capped at cost-based rates determined either by the FCC’s forward-looking Connect America cost models or based on historic costs with significant new caps on expenses. In contrast, under the ATA plan, CETC support may be used to expand monopoly control of Alaska middle-mile facilities, with no price regulation nor market forces to check the expense.

In other words, in the absence of specific and enforceable rules regarding pricing and access to middle-mile facilities constructed with federal high-cost support, the ATA proposal for CETC support in Alaska can be expected to extend the existing private middle-mile monopoly that has already proven to be a failure for Alaska Bush consumers. Competition will suffer, and

¹⁹ *See, e.g.*, Letter from John Nakahata, Counsel to General Communication, Inc., to Marlene Dortch, FCC Secretary, WC Docket Nos. 10-90, 05-337, 10-208, 14-58, 07-135, and CC Docket No. 01-92 (filed Jan. 14, 2016) at 3 (“GCI’s middle-mile investments provide infrastructure for both GCI’s mobile wireless operations and the local ILEC”). *See also* Letter from Christine O’Connor, ATA, to Marlene Dortch, FCC Secretary, WC Docket No. 10-90 (filed Feb. 12, 2016) (attaching maps indicating the intent to expand middle-mile microwave capacity in northwest Alaska).

²⁰ Letter from Christine O’Connor, ATA, to Marlene Dortch, FCC Secretary, WC Docket No. 10-90 (filed Jan. 15, 2016) at 3.

consumers will fail to gain access to the same levels of affordable broadband service that are available to other Americans.

FCC Oversight Is Needed For Subsidized Middle Mile

Unless the FCC adopts significant regulatory safeguards for this proposed billion-dollar handout, it is unlikely to be used for the purpose for which it is intended – that is, to benefit the public. It is far more likely to be used to perpetuate an unregulated middle mile monopoly in Alaska. High-cost support dollars are scarce. Perpetuating CETC support for ten years to extend the unregulated monopoly on Alaska middle mile is unlikely to lead to any measurable public gain.

In contrast, with proper FCC oversight, establishing a cost-based rate and non-discriminatory access for middle mile capacity could permit all LECs in Alaska to offer affordable and competitive consumer broadband services.

ACS engaged independent consultants to analyze the costs involved in providing middle mile service over the publicly subsidized network in southwest Alaska. Their analysis indicates that a reasonable rate for a 50-Mbps middle mile circuit would be between five and 20 percent of the current \$372,400 monthly rate. At ten percent of the current rate, the price for a 50-Mbps circuit would be \$37,240/month, yielding a per-customer middle-mile input cost of \$74.48/month for 10/1 Mbps service in a typical community. Thus, imposing a cost-based methodology on subsidized middle mile would yield an end-user price that *would be affordable* within the Commission’s “reasonable comparability” benchmark.²¹ This would be substantial progress for remote Alaska.

Regulation Is Needed In the Absence Of a Market-Based Solution

Alaska Communications believes that the FCC should allow the CETC phase-down to resume and be completed in the planned time frame, freeing up precious support for other purposes, such as middle mile deployment. Under the plan proposed by Alaska Communications, a not-for-profit entity could construct and operate wholesale middle-mile capacity for use by all Alaska’s carriers, on reasonable and non-discriminatory terms, for the benefit of all consumers.²² However, should the FCC not pursue such a solution, but continue to fund Alaska CETCs instead, including permitting them to extend monopoly middle-mile facilities, the Commission should adopt specific, enforceable regulations to ensure that competing service providers have access to that middle mile at affordable, cost-based rates and on reasonably non-discriminatory terms, with no preference for their own affiliates.

²¹ As long as the retail rate for broadband and voice service is under is \$118.88 per month, the service would qualify as “affordable” within the FCC benchmark. *See supra*, note 17.

²² Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene Dortch, FCC Secretary, WC Docket No. 10-90 (filed Nov. 19, 2015).

In light of the unique circumstances presented by Alaska's middle mile gap, and the urgent need for a solution to bring broadband capability to the Alaska Bush, the Commission should conduct further rulemaking to consider the alternatives proposed by the ATA and Alaska Communications. The Commission should not simply extend funding for CETCs without an adequate regulatory framework to ensure that middle mile capability is deployed for the *public* benefit.

Conclusion

Alaska Communications urges the Commission to expedite action on both a price cap plan and a ROR LEC plan that are "tailored to the unique circumstances that exist in Alaska."²³ Both Alaska Communications and the Alaska ROR LECs need predictability as to the support they may expect and the Commission's expectations for the use of that support. Alaska consumers need the improved access to broadband services that will result from these decisions.

However, the Commission should carefully scrutinize those aspects of the ATA plan that would continue and expand Alaska CETC support for ten more years. The Commission should require transparency, accountability and efficiency in any support program, including one that will largely be devoted to expanding middle mile in Alaska. Adoption of ATA's proposal without adequate safeguards could negatively impact the Rural Health Care and E-Rate programs in addition to the high-cost program.

Rather than conferring a windfall on CETCs, with uncertain benefits for the public, the Commission should adopt a comprehensive set of rules designed to achieve specific and enforceable middle mile goals, and confer greater benefits much more broadly throughout Alaska. Whether such a program takes the form of an independent middle-mile operator providing broadband capability on non-discriminatory terms, as advocated by Alaska Communications, or new regulations imposed on CETCs using universal service support, to ensure that the support is used for the benefit of the public, the Commission's regulations should prohibit the use of federal support to extend an unregulated monopoly or create a new one.

High-cost support is urgently needed for the establishment of publicly available, affordably-priced middle mile capability serving the Alaska Bush. The Commission should ensure that limited universal service support is efficiently deployed for the maximum public benefit.

²³ See *supra* note 1.

Marlene H. Dortch, Secretary
April 18, 2016
Page 10 of 10

Please direct any questions concerning this filing to me.

Very truly yours,

/s/

Karen Brinkmann
Counsel to Alaska Communications

cc: Ruth Milkman
Stephanie Weiner
Amy Bender
Nick Degani
Rebekah Goodheart
Travis Litman
Matthew DelNero
Carol Matthey
Alex Minard
Jon Wilkins
Jim Schlichting
Sue McNeil