Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	

PETITION FOR WAIVER OF MATANUSKA TELEPHONE ASSOCIATION

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Matanuska Telephone Association ("MTA"), pursuant to Section 1.3 of the Commission's rules,[1] hereby requests that the Federal Communications Commission ("FCC") or its Wireline Competition Bureau ("Bureau") waive the CapEx benchmark as applied to MTA.[2]

I. INTRODUCTION AND BACKGROUND

As MTA previously explained in its August 3, 2012 letter to the Commission,[3] Paragraph 23 of the *Benchmarks Order* seeks to ensure that the Quantile Regression Model ("Model") accounts for the additional costs that providers will face when deploying and providing

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[1] 47 C.F.R. § 1.3. The Commission has considerable discretion as to whether to waive its rules. *See Office of Communication of United Church of Christ v. FCC*, 911 F.2d 803, 812 (D.C. Cir. 1990). Among other things, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972). In short, a waiver is justified when special circumstances warrant a deviation from general rules and such deviation will serve the public interest. *Allband Communications Cooperative, Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission's Rules*, WC Docket No. 05-174, *Order*, 2005 FCC LEXIS 4527 (2005). As detailed below, such circumstances exist here.

[2] To the extent the Commission needs to calculate a new CapEx benchmark, it should do so the next time it runs the regression analysis by eliminating the negative Alaskan CapEx coefficient.

[3] *See* Letter from Tom Navin, Counsel for MTA, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Aug. 3, 2012).

broadband in Alaska. This approach is consistent with the Commission's longstanding position "that the costs incurred to provide local telephone service are generally higher in Alaska than the lower 48 states."[4] And it is consistent with generally available cost information, including the Army Corp of Engineers ("ACE") Construction Cost Manual, which confirms that the cost of providing communications services in Alaska exceeds the rest of the nation.[5]

But, contrary to the Commission's stated intent, the Model—when applied to MTA—has the effect of penalizing MTA for its efforts to deploy an efficient network to serve a vast and challenging service area. Specifically, the Model uses a -0.6223 Alaskan coefficient in its CapEx regression, and using this coefficient results in a CapEx benchmark that simply punishes MTA for providing both broadband and affordable telephone service to all of the Alaskans in MTA's service area. In essence, the Model concludes that MTA's infrastructure costs are currently too high when compared to carriers in the rest of the country by extrapolating costs from the operations of other Alaska carriers that simply do not apply to MTA's operations. As detailed below, this result simply does not jibe with the facts or the full cost picture when viewed in totality. Accordingly, the Commission or Bureau should waive the CapEx benchmark as applied to MTA.

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4 *In the Matter of Arctic Slope Telephone Association Cooperative, Inc.*, Order, 13 FCC Rcd 24217, 24223, ¶ 15 (rel. Dec. 22, 1998) ("*Arctic Slope Order*").

5 *Civil Works Construction Cost Index System*, U.S. Army Corps of Engineers, EM 1110-2-1304 (Mar. 31, 2012) ("*ACE Construction Cost Manual*").

II. THE CAPEX BENCHMARK THAT THE MODEL COMPUTES FOR MTA DOES NOT ACCOUNT FOR THE HIGH COSTS OF DEPLOYING INFRASTRUCTURE IN MTA'S VAST, RURAL SERVICE TERRITORY.

MTA faces extremely high costs that preclude the provision of broadband and voice services absent adequate universal service funding. The CapEx benchmark for MTA, however, does not adequately account for these costs.

As detailed below, MTA has deployed broadband-capable networks throughout its approximately 9,000 square-mile service area including those extremely hard to serve areas recognized by the Commission in its National Broadband Report.[6] In doing so, MTA has incurred expenses that are the result of Alaska's unique geography and topography[7], low population density[8], limited infrastructure[9], and harsh climate.[10] Notably, the FCC, the Army

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[6] *See* "Connecting America: The National Broadband Plan", Federal Communications Commission, at 8.1-8.2 (rel. Mar. 16, 2010).

[7] Alaska is the largest state in the union. *State of Alaska Hazard Mitigation Plan 2010*, Division of Homeland Security and Emergency Management, at 4, *available at* http://ready.alaska.gov/plans/documents/SHMP_2010_UPDATE_ENTIRE_FINAL_COMPLETE.pdf (Oct. 2010) ("*Alaska Hazard Mitigation Plan*"). It covers 570,374 square miles – roughly one-fifth of the total land area of the continental United States. *Alaska QuickFacts from the U.S. Census Bureau*, United States Census Bureau, http://quickfacts.census.gov/qfd/states/02000.html (last visited Aug. 2, 2012) ("*Alaska QuickFacts*"). From north to south, Alaska measures 1,420 miles, about the distance between Denver, Colorado, and Mexico City, Mexico. From east to west, it measures nearly 2,400 miles, about the distance from Savannah, Georgia, to Santa Barbara, California. *Alaska Hazard Mitigation Plan* at 5. It is not uncommon for an incumbent local exchange carrier ("ILEC") in Alaska to serve numerous small exchanges, none of which are contiguous. Additionally, an ILEC in Alaska may have a service area of over one thousand square miles. The vast size of Alaska and the distance that must be traversed to reach customers create immense barriers to provisioning voice and broadband services. Additionally, Alaska has many mountainous areas, over 3,000 rivers, and 5,000 glaciers, which all add significant operational costs.

[8] Despite being the largest state in the union, Alaska supports a total population of merely 710,231 people. *Alaska QuickFacts.* The average population density of Alaska is 1.2 persons per square mile. *Id.* Given the low population level of the vast majority of rural villages and communities in Alaska (most have fewer than 2,000 residents), few businesses would be motivated to build telecommunications facilities in the state without the prospect of USF support.

Corp of Engineers, other federal agencies, and a bevy of third-party reports all agree that these factors make starting and running a business in Alaska an extremely costly endeavor—much more costly than in the rest of the country.

Consistent with the economic realities of operating in Alaska, Paragraph 23 of the *Benchmarks Order* seeks to create a Model that correctly accounts for the high costs that providers face in deploying and providing broadband in Alaska. Specifically, the order states:

> We also agree with commenters who emphasized that carriers serving particular areas such as Alaska, Tribal lands, and national parks could face unique challenges … *Alaskan commenters argued that Alaska is unique because of its harsh climate and other factors; accordingly, the methodology now includes a variable indicating whether or not the study area is in Alaska*.[11]

And Commissioner Clyburn—in remarks before the Senate Committee on Indian Affairs—affirmed that the Model was supposed to account for Alaska's high costs. Specifically,

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(footnote cont'd.)

[9] The road system in Alaska—which consists of 15,329 miles of road statewide—is also very limited, which further increases the costs of deploying and maintaining communications infrastructure. *Alaska Hazard Mitigation Plan* at 23. Alaska has approximately .04% of all roads in the United States, and one mile of road for every 38 square miles of land area. In comparison, the United States average is less than one mile of road to every one square mile of land. *Id.* As a result, the state has over 200 remote, rural locations that are accessible only by air, water or snowmobile. A work project often requires that a crew be flown in from a distance of over one hundred miles. In most rural areas, virtually every piece of plant and work equipment must be delivered by plane, seasonal barge, or "cat-train" when the ground is frozen and snow-covered. The lack of road access materially increases construction and maintenance costs.

[10] Further, the costs of Alaskan providers are significantly impacted by arctic conditions, such as: (1) the duration of the winter, which limits construction time; (2) snow effects (*e.g.*, snow cover, drifts, and loading); (3) wind load; (4) absolute temperatures (*e.g.*, extreme cold leads to brittleness of many materials); (5) "chill temperature", which affects work crews in the field; (6) freeze thaw cycles in the presence of moisture (*e.g.*, frost heaves, pole jacking); (7) permafrost; and (8) storm frequency.

[11] *Benchmarks Order*, ¶ 23 (emphasis added).

Commissioner Clyburn highlighted "the unique challenges of serving remote areas of Alaska"[12] and explained that "we included an Alaska specific variable to reflect different costs within that area."[13]

A. The FCC Repeatedly Has Concluded that Alaskan Communications Providers Face Extremely High Costs.

The *Benchmarks Order* was not the first time the Commission acknowledged the high costs of serving Alaska. The Commission has long-emphasized "that the costs incurred to provide local telephone service are generally higher in Alaska than the lower 48 states."[14] The Commission has recognized "the significant challenges that carriers serving Alaska face,"[15] noting that "Alaska has very different attributes and related cost issues than do the continental

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[12] *Universal Service Fund Reform: Ensuring a Sustainable and Connected Future for Native Communities*, Before the S. Comm. on Indian Affairs, 112th Cong., Oral response of Commissioner Clyburn to question posed by Senator Udall (2012), *available at* http://www.indian.senate.gov/hearings/hearing.cfm?hearingid=7c8d7cc581c286db1a78617d93320ce1&witnessId=7c8d7cc581c286db1a78617d93320ce1-1-1.

[13] *Id.* (written statement of Commissioner Clyburn), *available at* http://indian.senate.gov/hearings/upload/Mignon-Clyburn-testimony060712.pdf.

[14] *Arctic Slope Order* at 24223, ¶ 15; *see In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8918, ¶ 255 (rel. May 8, 1997) ("We require that mechanisms developed and selected for rural carriers reflect the higher operating and equipment costs attributable to lower subscriber density, small exchanges, and lack of economies of scale that characterize rural areas, *particularly in insular and very remote areas, such as Alaska*. We also require that cost inputs be selected so that the mechanisms account for the special characteristics of rural areas in its cost calculation outputs. We recognize the unique situation faced by carriers serving Alaska and insular areas may make selection of cost inputs for those carriers especially challenging.") (emphasis added); *id*. at 8945, ¶ 314 ("The Joint Board noted that ... carriers serving Alaska have limited construction periods and serve extremely remote rural communities.").

[15] *In the Matter of Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Third Order on Reconsideration, 27 FCC Rcd 5622, 5633, ¶ 29 (rel. May 14, 2012) (stating that the Commission "appreciate[s] the significant challenges that carriers serving Alaska face").

states."[16] When it comes to universal service reform, the Commission has explained that "it is important to ensure [its] approach is flexible enough to take into account the unique conditions in places like Alaska, ... such as its remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season."[17]

B. The Army Corp of Engineers ("ACE") Construction Cost Manual Concludes that Alaska Has the Highest Costs in the Nation.

The ACE's recently-released "Civil Works Construction Cost Index System" manual highlights that construction costs in Alaska are higher than anywhere else in the country.[18] The purpose of the engineering manual is to "provide historical and forecasted cost indexes for use in escalating [ACE] civil works project costs."[19] Specifically, the manual contains indexes that the ACE uses to escalate or inflate project costs to current or future price levels. This is accomplished by using the "State Adjustment Factors" contained in the manual, which enable

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16 *In the Matter of High-Cost Universal Service Support et al.*, WC Docket No. 05-337, *et al.*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, 6505, ¶ 13 (rel. Nov. 5, 2008) ("The requirements that we adopt for disbursement of high-cost universal service support do not apply to providers operating in Alaska, Hawaii, or any U.S. Territories and possessions. We find that these areas have *very different attributes and related cost issues* than do the continental states.") (emphasis added).

17 *In the Matter of Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17828, ¶ 508 (rel. Nov. 18, 2011) ("[I]t is important to ensure our approach is flexible enough to take into account the unique conditions in places like Alaska, ... such as its remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season.").

18 *ACE Construction Cost Manual*.

19 *Id*. at 1.

users to estimate the project cost in one state by adjusting it based on the cost from another state.[20]

According to the ACE's indexes, the lowest cost state in 2012 is North Carolina with a factor of 0.77 *while Alaska is the highest cost state with a factor of 1.19.* Using the ACE's formula, if a project in North Carolina costs $1, that same project would cost $1.55 in Alaska. In other words, for every dollar a carrier must spend to construct infrastructure in North Carolina, it would be expected to spend $1.55 in Alaska.

C. Other Sources Confirm the High Cost of Doing Business in Alaska.

Wireless Deployment "Cost Estimator". The high deployment costs in Alaska are also confirmed by a commonly-used, vendor-based resource that estimates the costs of deploying wireless equipment in different geographic areas. Specifically, the "cost estimator" available at the URL cited below helps vendors estimate deployment costs on a state-by-state basis.[21] Not surprisingly, Alaska is the highest cost state.

KPMG Report. KPMG recently released a study that compared the costs of doing business in over 110 cities worldwide. The study reported that Alaska is a very expensive place to do business, reporting that "Anchorage and Honolulu—the two cities examined that are not in

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[20] In developing these indexes, the ACE used data for "actual" labor, equipment, and materials along with data from several sources including OMB, Producer Price Indexes and other publically available data. The data provided in the manual reflects the CapEx costs present in the telecommunications industry. Much of what drives costs where there is a need to build or maintain infrastructure on a large scale are labor costs, transportation costs, and existing infrastructure (*e.g.*, roads, housing). With Alaska relatively isolated from the rest of the United States, along with a lack of basic infrastructure, the cost for labor and materials to construct anything in the State is very high.

[21] *Pricing Variances*, WirelessEstimator, http://www.wirelessestimator.com/zipintro.cfm# (last visited August 3, 2012).

the Lower 48 US states—both have business costs that are significantly higher than in other US cities and represent the most expensive U.S. cities examined in this study."[22]

U.S. Department of Agriculture "Cost of Doing Business in Alaska" Issue Paper. The U.S. Department of Agriculture's Forest Service recently emphasized the unique costs of conducting business in Alaska. Specifically, the Forest Service explained that "[i]n order to manage national forests in Alaska to a standard consistent with the rest of the agency, 'Unit Cost Funding' for the Alaska Region must be higher than regions in the Lower 48."[23] Specifically, "[h]igher salaries, higher cost of materials and supplies, and higher transportation costs all combine to increase our unit costs of providing goods and services to our customers and reduce the portion of our budget we can 'get to the ground.'"[24]

III. THE COMMISSION SHOULD WAIVE THE CAPEX BENCHMARK BECAUSE IT IS IRRECONCILABLE WITH MTA'S ECONOMIC REALITY.

As explained above, Paragraph 23 of the *Benchmarks Order* seeks to ensure that the Model accounts for the high costs of serving Alaska. But, contrary to this intention, the Model—by using a negative Alaskan coefficient for the CapEx regression—results in a CapEx benchmark for MTA that simply does not jibe with the higher deployment costs that MTA faces in its vast, rural service area in Alaska.

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[22] *Competitive Alternatives: KPMG's Guide to International Business Location Costs*, KPMG LLP, at 53 (2012), *available at* http://www.competitivealternatives.com/reports/2012_compalt_report_vol1_en.pdf; *see America's Top States for Business 2011*, CNBC (2011), http://www.cnbc.com/id/41666606 (last visited Aug. 3, 2012) (CNBC compared states based on 43 measures of competitiveness. Alaska was ranked 49th worst for doing business.).

[23] *Cost of Doing Business in Alaska*, U.S. Department of Agriculture – Forest Service, at 1 (2010), *available at* http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5252557.pdf.

[24] *Id.*

Alexicon, an independent consulting firm, recently analyzed how the negative Alaska CapEx coefficient impacts the CapEx limit calculation for MTA's HCLS. Specifically, based on Alexicon's analysis, the -.6223 Alaska CapEx coefficient translates into a cost of deploying capital infrastructure in MTA's service area that is approximately 46% less costly than deploying the same infrastructure in the rest of the country.

Such a result cannot be reconciled with the Commission's and Bureau's recognition "that the costs incurred to provide local telephone service are generally higher in Alaska than the lower 48 states."[25] It also runs counter to the ten-year study by the U.S. Army Corp of Engineers, as well as the other data sources discussed above, which show that capital projects cost significantly more in Alaska than the rest of the country.

Practically speaking, the Commission could rectify the harms caused by the coefficient by simply waiving the CapEx benchmark as it applies to MTA. This is because MTA is the only Alaskan carrier whose support is prematurely cut-off by the CapEx coefficient. The Commission assumed that the costs of deploying broadband under the CAF program would resemble the costs of deploying service under the legacy high cost mechanism. The Commission also assumed that historical cost data for Alaska would serve as a good estimate for future deployment costs and that the historical costs of Alaskan providers were largely interchangeable. But comparing MTA's historical costs with the costs of other Alaskan providers is not an apples to apples comparison.

MTA's historical capital costs are higher when compared to other Alaskan RLECs because MTA's service territory is significantly larger in comparison; its customers are disbursed over greater distances; and MTA has deployed broadband capable facilities to serve over 90% of

[25] *Arctic Slope Order* at 24223, ¶ 15.

its customer base. To deploy broadband, MTA had to install fiber deeper into its network. By extending fiber further into its network, MTA shortened "last mile" copper loops to offer the types of broadband speeds customers required. Most other Alaskan RLECs faced a different set of deployment challenges because of their remoteness. For example, without access to high capacity middle mile facilities, additional improvements closer to the end user customer do not necessarily increase Internet speeds or network performance. As such, any cost comparison between MTA and other Alaska RLECs is like comparing apples to oranges because the networks are designed to solve fundamentally different problems.

Simply put, MTA upgraded its network over the past decade in response to the Commission's emphasis on deploying broadband-capable infrastructure.[26] Because of MTA's commitment, its customers now have access to much higher broadband speeds than customers in other parts of Alaska. Indeed, MTA's network now has the potential to offer to *approximately half of MTA's service area broadband services with 10 Mbps download speeds*. By contrast, the

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[26] The Commission has urged carriers to deploy broadband to every American. *See*, *e.g.*, *Connecting America: The National Broadband Plan*, Federal Communications Commission, at XIV (rel. Mar. 16, 2010) ("Every American should have affordable access to robust broadband service …."); *Connect America Fund*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, ¶ 2 (2011) ("The principle that all Americans should have access to communications services, a concept referred to as universal service, has been at the core of the Commission's mandate since its founding."); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Sixth Broadband Deployment Report, 25 FCC Rcd 9556, ¶ 6 (2010) (citations omitted) ("The fact remains, however, that to ensure the realization of section 706's goal that *all* Americans may benefit from the full range of services described in the statute, much more remains to be done to foster broadband deployment."); *id*. at ¶ 28 ("The goal of the statute, and the standard against which we measure our progress, is universal broadband availability."); *High-Cost Universal Service Support*, Order, 23 FCC Rcd 8834, ¶ 24 (2008) ("Indeed, high cost universal service support may be used to invest in facilities to provide broadband service if those facilities are also necessary to provide voice grade access.").

recently-released *8th Broadband Report* highlights that Alaskan fixed broadband providers, when taken as a whole, have only deployed 6 Mbps/1.5 Mbps services to *1.3% of Alaskans*.[27] As such, MTA had higher historical capital costs than other Alaskan providers.[28]

Finally, it is worth nothing that when MTA's capital and operating expenses are added together, the resulting amount ($821 total cost per line) is lower than the total costs that MTA could be reimbursed for under its current CapEx and OpEx benchmarks if added together ($833 total cost per line).[29] Indeed, while MTA's actual capital cost per line is $103 more than the CapEx benchmark, its actual operating cost per line is $115 less than the OpEx benchmark. This difference in spending results from MTA's conscious decision to reduce its operating expenses over the past few years and use the savings from cost-cutting to deploy broadband-capable infrastructure, which is a capital expenditure. At all times, MTA operated as efficiently as possible, consistently finding ways to mitigate the unique costs of deploying broadband in its service area.

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[27] *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Eighth Broadband Progress Report, FCC 12-90, at Appendix G (2012).

[28] MTA's data shows that MTA incurred high capital expenses, which were—and are—necessary to deploy broadband-capable networks, especially in an area as harsh as Alaska. To offset these new capital expenses, however, MTA aggressively trimmed its operating costs wherever possible, and the NECA data reflects these cuts in OpEx spending. *See Benchmarks Order* at Appendix B, pg. 59.

[29] Specifically, if MTA's actual capital and operating expenses are added together ($430 + 391), MTA would have $821 in total expenses per line. This is less than the total expenses that are reimbursable under MTA's capital and operational benchmarks ($327 + $506 = $833). *Id*.

All told, the public interest supports waiving the CapEx benchmark as it applies to MTA. In doing so, the Commission will ensure that MTA has enough support to continue its efforts to bring high speed broadband to all corners of Alaska.

IV. CONCLUSION

For the foregoing reasons, the Commission or Bureau should waive the CapEx benchmark as it applies to MTA.

Respectfully submitted,

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