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September 26, 2012

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SEP 26 2012

Federal Communications Commission
Office of the Secretary

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: ACS ILECs' Petition for Waiver of Sections 54.312(b)(2) and (3) of the Commission's Rules, WC Docket Nos. 10-90 and 05-337

Dear Ms. Dortch:

Enclosed for filing are the original and four copies of the Redacted Confidential version of the ACS ILECs' Petition for Waiver of Sections 54.312(b)(2) and (3) of the Commission's Rules ("Petition").[1] A copy of the Redacted Confidential Document also is being filed electronically via ECFS. Pursuant to paragraph 5 the Commission's Third Protective Order in the above referenced dockets,[2] under separate cover the Stamped Confidential version of the Petition also is being hand-delivered today under seal, along with two copies of the Stamped Confidential Document addressed to Amy Bender, Deputy Chief of the Wireline Competition Bureau's Telecommunications Access Policy Division, as instructed by the Bureau.

Each page of the Stamped Confidential Document is marked "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NOS. 10-90, 07-135, 05-337, 03-109, GN DOCKET NO. 09-51, CC DOCKET NOS. 01-92, 96-45, WT DOCKET NO. 10-208 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." Where confidential information is included, the relevant portions of the text are marked "[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]."

The redacted copies of the Petition are marked "REDACTED – FOR PUBLIC INSPECTION," and confidential portions of the Petition have been removed. Where

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1 The ACS ILECs are ACS of Anchorage, Inc., ACS of the Northland, Inc., ACS of Fairbanks, Inc., and ACS of Alaska, Inc.

2 *See Connect America Fund et al.*, Third Protective Order, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, DA 12-1418 (rel. Aug. 30, 2012) ("Third Protective Order").

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confidential information has been removed, the relevant portions of the text are marked "[REDACTED]."

Should you have any questions, please contact the undersigned at (202) 230-4962 or Richard.Cameron@acsalaska.com.

Very truly yours,

Richard R. Cameron
Assistant Vice President and Senior Counsel

Enclosures

Before the
Federal Communications Commission
Washington, D.C. 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 Section 54.312(b)(2) and (b)(3) of the Commission's Rules of	
ACS of Anchorage, Inc., ACS of the Northland, Inc., ACS of Fairbanks, Inc., and ACS of Alaska, Inc.	

Petition for Waiver

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Summary

ACS of Anchorage, Inc., ACS of the Northland, Inc., ACS of Fairbanks, Inc., and ACS of Alaska, Inc. (collectively, "ACS") or the "ACS ILECs") hereby seek a waiver of Section 54.612(d)(2) of the Commission's rules, 47 C.F.R. § 54.612(d)(2), which governs use of Connect America Fund ("CAF") Phase I incremental support. Although ACS accepted the Commission's offer of $4,185,103.00 in CAF Phase I incremental support on July 24, 2012, information emerged after that date indicating that ACS cannot utilize the full amount of that support while adhering strictly to the Commission's attendant broadband deployment obligations.

Following its acceptance, ACS completed a more detailed analysis of the market opportunity associated with the unserved locations where it planned to deploy broadband. Coupled with the high costs of deployment, this market analysis made it clear that the business case for broadband was untenable in many areas where ACS had initially intended to deploy broadband. Further compounding these issues, the staff of the Wireline Competition Bureau has informed ACS that hundreds of census blocks that ACS had initially targeted for deployment are ineligible as a result of the presence of fixed wireless broadband providers.

As a result of these changes, under the existing rule, ACS would be able to deploy broadband to only 2,163 qualifying locations, utilizing $1,676,325.00 in CAF Phase I incremental support, even when this support is coupled with a substantial investment of

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additional capital by ACS. To enable ACS to use the remaining support, ACS requests a waiver either (1) of the $775.00 per location rule, in order to enable ACS to receive higher levels of per-location support for deployment beyond the initial 2,163 locations identified above; (2) a waiver of the definition of "broadband," to enable ACS to use CAF Phase I incremental support to replace obsolete equipment that currently can deliver only the Commission's lowest broadband speed tier in areas unserved by any other broadband provider; or (3) a waiver of the definition of "unserved," to enable ACS to deploy broadband where existing service is limited to, at most, fixed wireless broadband providers that lack the capacity the necessary capacity on their networks; are limited to locations where their wireless signal can be received; and focus in many cases on the business and government markets.

Such a waiver is justified based on ACS's special circumstances, and because it would serve the public interest. ACS provides service in some of the most challenging and competitive environments in the nation, and has already deployed broadband to virtually every location where there is even a marginal business case for doing so. The discovery that so many locations it initially targeted for deployment are ineligible, the unique factors that make the business case for broadband in Alaska challenging at best, and the Commission's currently limited ability accurately to model broadband deployment costs in Alaska all favor the grant of a waiver.

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Further, a waiver would serve the public interest. By putting CAF Phase I incremental support to work in Alaska, the Commission will enable ACS to deliver the well-recognized and increasingly crucial benefits of broadband to consumers in Alaska. While all Alaskans will share these benefits, CAF Phase I incremental support will disproportionately benefit historically underserved and difficult-to-serve Alaska Native populations, also furthering the Commission's tribal outreach and engagement goals.

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Washington, D.C. 20554

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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 Section 54.312(b)(2) and (b)(3) of the Commission's Rules of	
ACS of Anchorage, Inc., ACS of the Northland, Inc., ACS of Fairbanks, Inc., and ACS of Alaska, Inc.	

Petition for Waiver

ACS of Anchorage, Inc., ACS of the Northland, Inc., ACS of Fairbanks, Inc., and ACS of Alaska, Inc. (together, "ACS" or the "ACS ILECs"), hereby request that the Commission grant a partial waiver of Section 54.312(b)(2) of its rules, 54 C.F.R. § 54.312(b)(2), which requires each recipient of Connect America Fund ("CAF") Phase I incremental support to deploy new broadband service to a number of locations shown as unserved by fixed broadband on the then-current version of the National Broadband Map equal to the amount of incremental support it accepts divided by $775.00.[1]

[1] To the extent necessary to effectuate the relief sought in this Petition, the ACS ILECs also request a waiver of the election deadline for CAF Phase I incremental support contained in Section 54.312(b)(3) of the Commission's rules, 47 C.F.R. § 54.312(b)(3).

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Introduction and Background

The Commission created the CAF Phase I incremental support mechanism to "spur immediate broadband buildout" by price cap carriers to currently unserved customer locations beyond what these carriers otherwise would be able to undertake as a result of funding constraints where the high cost of deployment makes the business case for broadband marginal at best.[2] To do so, the Commission imposed a requirement that those ILECs accepting CAF Phase I incremental support must deploy broadband meeting the Commission's CAF requirements (4 Mbps/1 Mbps) to one unserved location for every $775.00 of CAF Phase I incremental support that the ILEC accepts.

In doing so, the Commission recognized that CAF Phase I incremental support is not intended necessarily to cover the entire cost of deploying broadband facilities necessary to launch service to a new customer location.[3] Rather, CAF Phase I incremental support is intended to spur private co-investment by the recipient ILECs by improving the business case for broadband in areas where the service is marginally uneconomic today.[4]

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[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 ¶ 22 (2011) ("*USF/ICC Transformation Order*") (subsequent history omitted).

[3] *USF/ICC Transformation Order*, at ¶ 137 n. 220.

[4] News Release, *FCC Kicks-Off "Connect America Fund" With Major Announcement: Nearly 400,000 Unserved Americans In Rural Communities In 37 States Will Gain Access To High-Speed Internet Within Three Years* (Jul. 25, 2012), at 1 (CAF Phase I incremental support "will be coupled with tens of millions more in private investment.").

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The ACS ILECs are committed to making affordable broadband available to as many customers in Alaska as economically feasible, and making prudent capital investments that will expand and improve broadband offerings within their service areas in the coming years. Especially in insular areas like Alaska that are physically separated from the lower 48 contiguous United States, broadband delivers critical and well-recognized benefits that enrich the fabric of Alaskan life, including improved economic, educational, social, cultural, civic, public safety, and health care opportunities.

On July 24, 2012, demonstrating their commitment to delivering these benefits in Alaska, and despite the challenges they face in doing so, the ACS ILECs accepted the Commission's full award of $4,185,103.00 in CAF Phase I incremental support precisely to enable them better to expand and accelerate their broadband deployment efforts. The ACS ILECs recognizes the Commission's expectation that they will supplement the award of CAF Phase I incremental support with their own capital co-investment.

Nevertheless, the ACS ILECs' decision to accept the full award of CAF Phase I incremental support resulted from the company's best efforts to complete their due diligence review. Only after the deadline passed did additional information emerge that revealed that broadband deployment to 5,401 locations would be far more difficult and economically infeasible than the ACS ILECs initially had anticipated.

First, further market analysis revealed that the return on ACS's capital investment necessary to bring broadband to many of the locations ACS originally intended to serve

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would be far lower than originally expected and below the level that can be justified by the market opportunity.[5] In making broadband investment decisions, ACS evaluates a series of factors, including the cost of procuring and deploying the necessary facilities, the number of customers that those facilities can serve, and the potential incremental revenue that those customers may be expected to generate given an affordable rate for broadband Internet access service. While these calculations are often tailored to take into account facts and circumstances appropriate to a specific investment, in general, the ACS ILECs base these decisions on assumed monthly recurring charges for 4/1 broadband service of **[REDACTED**********]**, after taking into account promotional discounts, customer acquisition costs, and the like. Given that revenue opportunity, and after accounting for anticipated take rates, as well as ongoing expenses (such as repair and maintenance, customer service, billing, and others operational costs), ACS can economically deploy broadband facilities necessary to initiate broadband service at a cost to the company of up to **[REDACTED**********]** on average, per location to be served. This figure would be in addition to any CAF Phase I incremental support available to make deployment economically feasible where it is not today.

Broadband deployment costs in the target areas are extremely high, not only as a result of the cost of fiber, network nodes, and related "second mile" physical infrastructure

[5] *See* Declaration of Amy L. Gardner, attached hereto as **Attachment A.**

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necessary to upgrade ACS's local loop plant, but also because qualified installers and network technicians are always in limited supply and command high rates during Alaska's short construction season. The analysis at the time of filing, based on costs alone, was incomplete. Full market analysis, including evaluation of the retail price the market would support, anticipated take rate, resulting revenue opportunity, and necessary return on investment were only available after ACS had made its July 24 election.

Second, after reviewing the list of census blocks and wire centers where the ACS ILECs had planned broadband deployment, the staff of the Wireline Competition Bureau ("Bureau") contacted ACS with the news that hundreds of the census blocks identified by ACS contained no eligible unserved locations based on the data contained in the Commission's National Broadband Map. This discrepancy rendered nearly half (over 2,100) of the customer locations originally targeted by ACS ineligible for CAF Phase I incremental support, because of the purported presence of a number of small providers of fixed wireless broadband service. Although these providers have few customers and limited capacity, rely on line-of-sight technology that cannot serve every location, appear to focus in some cases on providing service primarily to business customers, and do little or no advertising in the market, the "Terrestrial Fixed Wireless" layers of the National Broadband Map shows these providers as having unbroken coverage across many of the census blocks where ACS had intended to deploy new wireline broadband Internet access services. This new information also affected the ACS ILECs' calculated costs of

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deploying broadband to many additional locations where facilities to be constructed were slated to support both eligible locations and those subsequently found to be ineligible as a result of the presence of these fixed wireless providers.

The changed circumstances in which ACS now finds itself make it impossible for ACS to use its entire award of CAF I incremental support, absent a waiver of the Commission's build-out requirement. In connection with its original election of CAF Phase I incremental support, ACS had already worked to identify the lowest-cost unserved locations that would be eligible for support. Given that thousands of these locations have either been ruled ineligible, or have been found to present an insufficient market opportunity to support the substantial investment required, ACS cannot make use of the full award of CAF Phase I incremental support it received, and cannot identify any alternative locations – which would necessarily be even less economically reasonable to serve – to replace those that have been eliminated.

Request for Waiver

Within these parameters, updated analysis indicates that the ACS ILECs will be able economically to initiate broadband Internet access service to 2,163 currently unserved locations within the Commission's existing framework for CAF Phase I incremental support, rather than the 5,401 initially proposed. These 2,163 locations show cost characteristics such that the incremental $775.00 of support, when added to reasonable ACS co-investment averaging up to **[REDACTED**********

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**********] per location, would make it possible for ACS economically to deploy new broadband Internet access service. The ACS ILECs therefore reiterate their acceptance of $1,676,325.00 of CAF Phase I incremental support on the terms originally offered by the Commission.[6]

In order to utilize the remaining $2,508,778.00 of CAF Phase I incremental support offered by the Commission, the ACS ILECs respectfully request a waiver of the Commission's Section 54.312(b)(2) requirements. If the Commission grants a waiver to the ACS ILECs as requested herein, ACS is prepared to invest substantial additional sums, beyond the level of CAF Phase I incremental support it receives, to deploy broadband to additional locations. As with other locations where the ACS ILECs have deployed broadband, ACS is committed to investing as much as **[REDACTED*** ********** per location, on average, in addition to the CAF Phase I incremental support offered by the Commission. Though ACS believes that, even at this level of investment, the business case was challenging, the company understands the Commission's expectations that all CAF Phase I incremental support should be targeted to broadband deployment. Thus, ACS is seeking to do everything feasible to maximize the benefit that could be derived from the available CAF Phase I incremental support for Alaska.

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[6] For these 2,163 locations, ACS anticipates investing a total of over **[REDACTED**** ********** of its own capital.

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ACS has identified three potential alternatives for structuring this waiver that would enable it to deploy additional broadband Internet access service, and believes that any of them would represent a significant improvement over the status quo, which will cause the funding to lie fallow, delivering no benefits in Alaska whatsoever. The alternatives are:

1. A waiver of the $775.00 per location limit. As indicated above, even with $775.00 per location in support, the ACS ILECs cannot support a business case for broadband to the majority of the locations that would be required under a strict application of Section 54.312(b)(2) of the Commission's rules.[7] Based on ACS's analysis, it could use the remainder of the support offered to deploy broadband service to 363 additional locations, if the Commission granted a partial waiver of that rule to provide additional per-location support, as follows:

Support per Location	Number of Additional Locations	Total Support Required
$775.00 (baseline rule)	2163	$1,676,325.00
$5,000.00	115	$575,000.00
$7,800.00	248	$1,933,778.00
Total	**2,526**	**$4,185,103.00**

In making these broadband investments, ACS would continue to invest as much as **[REDACTED**********]** per location, on

[7] *See* Declaration of Amy L. Gardner, attached hereto as **Attachment A.**

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average, as it would in the case of locations funded at the baseline $775.00 level. By granting this waiver, the Commission would enable the ACS ILECs to deploy broadband to the largest possible number of currently unserved locations, consistent with the purpose of CAF I incremental support and, indeed, the purpose of the *USF/ICC Transformation Order* generally. ACS echoes the challenges articulated in the recent Petition for Waiver filed by FairPoint Communications, and observes that this request is generally consistent with the level of per-locations support sought by FairPoint, taking into account the greater deployment and service challenges presented in Alaska.[8]

2. *A waiver of the definition of "broadband."* Under the *USF/ICC Transformation Order*, the Commission defined broadband as having a speed of at least 768 kbps in at least one direction. That is the speed used to define where broadband is "available" on the National Broadband Map. The ACS ILECs serve numerous locations with aging Nortel modems that provide broadband service with a speed of 768 kbps, but that cannot provide any faster service. Further, because the customers receiving service using this equipment already have a form of broadband, albeit slow, the ACS ILECs cannot at this time justify the significant expense associated with tearing out this existing

[8] *See Connect America Fund*, WC Docket Nos. 10-90 and 05-337, FairPoint Communications, Inc. Petition for Waiver of Sections 54.312(b)((2) and (3) of the Commission's Rules and Conditional Election of Incremental CAF Support, (filed Sept. 10, 2012), at 11 (proposing to use $2,831,783 in CAF Phase I incremental support to deploy broadband service to 697 locations in Maine, an average of over $4,000.00 per location).

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broadband-capable equipment and replacing it with facilities capable of meeting the Commission's requirement to achieve 4 Mbps/1 Mbps service.

Therefore, as an alternative to a waiver of the $775.00 per location requirement, the ACS ILECs would request a waiver of the definition of "broadband" to enable them to upgrade facilities that currently provide service falling within the Commission's lowest broadband speed tier, with a speed between 768 kbps and 1.5 Mbps, to achieve the Commission's 4 Mbps/1 Mbps mandate. ACS could make these investments for the full balance of 3,238 customer locations at the $775.00 per location level for customers that are currently unserved by any other broadband provider. By doing so, ACS would minimize any impact on competition, and provide substantially improved service to customers that would otherwise be limited to minimum broadband speed.

ACS believes that such a waiver would advance the Commission's broadband deployment goals. Although the Commission has previously concluded that the purpose of CAF Phase I incremental support is to bring broadband to those that currently have no broadband whatsoever, rather than to improve service to those that currently do, new information has emerged that should alter the Commission's calculus. Specifically, because less than 40 percent of CAF Phase I funding overall was accepted, the mechanism is currently falling substantially short of achieving the Commission's goals. Furthermore, given that the ACS ILECs are unable to deploy broadband to new, currently unserved locations at the Commission's prescribed $775.00 per location level, the

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majority of the CAF Phase I incremental support offered in Alaska will go unused, benefitting no one, absent a waiver. By permitting the ACS ILECs to upgrade broadband that currently falls within the lowest Commission speed tier, the Commission would deliver a sizable incremental benefit to at least 3,238 additional customer locations, as an alternative to bringing new broadband service to only 363 additional customer locations under the waiver proposed above. By doing so, the Commission would allow ACS's award of CAF Phase I incremental support to deliver meaningful benefit to the full original total of 5,401 locations, even if only some of those locations would receive new broadband service at locations that were previously completely unserved.

3. A waiver of the definition of "unserved." As indicated above, many customer locations that the ACS ILECs initially targeted for broadband deployment using CAF Phase I incremental support have subsequently been identified as "served" by certain fixed wireless providers. As discussed in greater detail below, after investigating the service offered by these providers, ACS believes that the presence of these providers, even if true, should not preclude investment by the ACS ILECs in wireline broadband facilities using CAF Phase I incremental support. The service offered by these providers appears to utilize unlicensed spectrum and their facilities lack sufficient capacity to deliver substantial service to any significant portion of the locations covered by their service territories shown on the National Broadband Map. In addition, at least one of the

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providers, AlasConnect, primarily serves business and government customers, offering little benefit to small businesses and residential consumers.

If the Commission were to grant this waiver, the ACS ILECs would be able to deliver new wireline broadband service to still more customer locations, again assuming that the ACS ILECs would also invest up to **[REDACTED**********] per location, on average, of its own capital, as follows:

Support per Location	Number of Additional Locations	Total Support Required
$775.00	3,063	$2,373,825.00
$3,200.00	567	$1,811,278.00
Total	**3,630**	**$4,185,103.00**

Although this total is short of the 5,401 that ACS originally thought it could serve, it would represent a greater total than ACS could serve under a waiver of the $775.00 per location rule alone. Further, because many customers located in areas served only by fixed wireless broadband providers likely consider themselves unserved, in that broadband service is neither marketed to them nor available in sufficient quantity to reach any substantial portion of the potential customers identified as "served" on the National Broadband Map.

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Discussion

The Commission may waive its rules for "good cause shown."[9] More specifically, the Commission may exercise its discretion to waive a rule where special circumstances warrant a deviation from the general rule and such deviation would serve the public interest, or where the particular facts make strict compliance inconsistent with the public interest.[10] In making this analysis, the Commission may take into account consideration of hardship, equity, or more effective implementation of overall policy on an individual basis.[11] This request amply meets that standard.

A. Special Circumstances Warrant a Deviation from the General Rule

Special circumstances warrant a partial deviation from Section 54.612(b)(2). Not only are the ACS ILECs' study areas some of the most challenging to serve in the nation, the Commission has repeatedly found that they are also among the most competitive.[12]

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[9] 47 C.F.R. § 1.3.

[10] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

[11] *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

[12] *See, e.g., Petition of ACS of Anchorage, Inc., ACS of Alaska, Inc., and ACS of Fairbanks, Inc. for Pricing Flexibility Pursuant to Sections 69.709 and 69.711 of the Commission's Rules*, WCB/ Pricing File No. 10-02, Order, DA 10-1007, 25 FCC Rcd 7128 (Wir. Comp. Bur. 2010), at ¶ 12 (competitive triggers met for Phase I and Phase II pricing flexibility); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Memorandum Opinion and Order, FCC 07-149, 22 FCC Rcd 16304

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As a result of this competition, for over a decade, the ACS ILECs have deployed broadband facilities and launched retail broadband Internet access services to locations where it is marginally economically possible to do so. Deployment of broadband facilities necessary to deliver broadband to the remaining locations within their study areas, for the most part, will require the ACS ILECs to surmount substantial hurdles that generally involve extraordinary costs.

The ACS ILECs initially welcomed the Commission's offer of additional CAF Phase I incremental support, both as a vehicle for expanding their broadband service offerings to new customers and in order to help defray anticipated costs of complying with the Commission's CAF Phase II broadband service mandates. The ACS ILECs initially hoped that an incremental $775.00 per line, when added to an ACS co-investment commensurate with historical levels, would support a business case for broadband service offerings at affordable retail rates based on anticipated levels of uptake for the locations it identified for CAF Phase I incremental support.

(2007), at ¶ 3 ("ACS faces extraordinary facilities-based competition in the Anchorage market."); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, WC Docket No. 05-281, Memorandum Opinion and Order, FCC 06-188, 22 FCC Rcd 1958 (2006), at ¶ 28 ("Retail competition in the Anchorage study area is robust."); *ATU Telecommunications Request for Waiver of Sections 69.106(b) and 69.124(b)(1) of the Commission's Rules*, File No. CPD 98-40, Order, FCC 00-379, 15 FCC Rcd 20655 (2000), at ¶ 14 (granting waiver request after finding that "the level of competition in the Anchorage market is sufficient to conclude that special circumstances exist").

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1. Ineligibility of Over 2,100 Customer Locations Initially Targeted by ACS

It has become clear that the level of CAF Phase I incremental support the Commission has offered to the ACS ILECs is far too low to support broadband deployment to the full 5,401 locations required under a strict application of the Commission's rules. The Bureau staff has now informed ACS that hundreds of census blocks, covering over 2,100 of the locations ACS had initially targeted for new broadband service, are actually shown as "served" by fixed wireless providers on the National Broadband Map. In finding that these addresses are ineligible, this new information has also increased deployment costs to many additional locations, as some planned network nodes located near the edge of these census blocks would reach far fewer eligible customer locations than ACS originally anticipated.

The "Terrestrial Fixed Wireless" providers that purportedly serve these census blocks appear on a different layer of the National Broadband Map than the wireline service providers, and ACS initially overlooked these providers when making its plans. Although ACS regrets the error, it is unable to identify any additional addresses within the ACS ILECs' service areas where it could deploy broadband at a support level of $775.00 per line to replace the addresses that have now been found ineligible.

Moreover, the data shown on the National Broadband Map notwithstanding, ACS believes that the presence of these fixed wireless providers alone should not render these census blocks ineligible. As a general matter, the wireless technology they employ has

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severe capacity constraints and, in fact, they appear to serve limited numbers of customers at rates much higher than those ACS would charge. In its recent comments on the Commission's Broadband Deployment NOI,[13] the Wireless Internet Service Providers Association ("WISPA") trumpets that fixed wireless Internet service providers (WISPs") are the only source of broadband for over 5 percent of households in Alaska,[14] even as it highlights the many shortcomings and limitations of the service offered by its members. WISPA readily concedes that the vagaries of terrain, foliage and other obstructions, as well as the power levels and propagation characteristics of various frequency bands, limit the coverage its members can offer.[15] Further, WISPs "are not considered to be providers of 'telecommunications' under the Act,"[16] meaning that they are not subject to the Commission's rules governing market entry or, more importantly, exit. Precisely such concerns led the Commission, in 2009, to extend its service discontinuance rules to Voice

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[13] *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*, GN Docket No. 12-228, Comments of the Wireless Internet Service Providers Association (filed Sept. 20, 2012) ("WISPA Broadband NOI Comments").

[14] WISPA Broadband NOI Comments at Exhibit 1.

[15] *Id.* at 2.

[16] *Id.* at 6.

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over Internet Protocol ("VoIP") providers,[17] after incidents involving the high profile shuttering of VoIP start-ups left many customers abruptly without service.[18] As a result, when assessing broadband availability and making decisions as to where to support additional deployment, the Commission cannot rely on fixed wireless as a reliable and stable source of broadband service.

In any event, even today, fixed wireless service benefits relatively few consumers. Ace Tekk Wireless, for example, which is listed as the service provider in nearly 100 census blocks initially targeted by ACS, offers a top speed of 768 kbps/512 kbps at a monthly rate of $89.99,[19] just barely meeting the Commission's definition of broadband. Although the National Broadband Map indicates that its service area covers an area encompassing 90,444 individuals and 37,638 housing units,[20] ACS believes that it actually serves only about 600-700 customers near Fairbanks. Further, the service offered by these providers does not appear to be universally available. Ace Tekk, for example, warns on the front page of its web site, that, "[t]o find out whether service is

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[17] 47 C.F.R. § 63.60(b)(3); *IP Enabled Services*, WC Docket No. 04-36, Report and Order, FCC 09-40, 24 FCC Rcd 6039 (2009), at ¶ 14.

[18] *See, e.g.,* Marguerite Reardon, "SunRocket closes its doors," CNET News (July 16, 2007) (abrupt failure of VoIP provider left up to 200,000 customers without service), available at: http://news.cnet.com/8301-10784_3-9745629-7.html (visited Sept. 22, 2012).

[19] *See* http://www.acetekk.com/services.

[20] *See* http://www.broadbandmap.gov/about-provider/ace-tekk-wireless-internet/nationwide/.

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available at your home or place of business, please request a free site survey. We'll come to your location and check the signal strength of our network, which will determine whether we can provide service to you."[21]

AlasConnect, identified as the service provider to over 200 census blocks initially targeted by ACS, offers similar service to that of Ace Tekk Wireless in terms of speed, capacity, and price, with a "premium" offering of 1 Mbps download speeds at $85 per month, with $200 in additional nonrecurring charges for activation, antenna installation, and site optimization.[22] Like Ace Tekk, an individual site survey is required to verify coverage.[23] According to the National Broadband Map, its service area covers some 94,995 individuals and 39,455 housing units,[24] but ACS understands AlasConnect actually serves only approximately 800 customers within that area. Many of its customers appear to be business or government entities, as the AlasConnect website touts its data center services, "specialized IT network solutions," managed Ethernet, MPLS

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[21] *See* http://www.acetekk.com/.

[22] *See* https://www.acwireless.com/ebpp/PlansExternal.do.

[23] *See* https://www.acwireless.com/ebpp/FAQExternal.do ("How do I get connected at my house? It is a simple process . . . . After a site survey is completed a technician will call to schedule an install with you.") ("What happens if my signal strength is too low? . . . . If we cannot deliver acceptable signal strength you will receive a full refund . . . .").

[24] *See* http://www.broadbandmap.gov/about-provider/alasconnect-inc./nationwide/.

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WAN, TDM/SONET, digital microwave, and private wireless networks, and related IT consulting services.[25]

According to the National Broadband Map, the smaller providers, SPITwSPOTS[26] and Yukon Tech[27] only even purport to cover 9,183 and 872 customer locations, respectively, and their customer bases are likewise considerably smaller. Their services suffer from the same limitations identified above for AlasConnect and Ace Tekk.

2. The Business Case for Further Deployment Under the Existing Rules is Untenable

As it was evaluating the opportunity offered by CAF Phase I incremental support, ACS recognized early that the costs of broadband deployment to additional unserved locations in Alaska would be high. But, that fact is only one half of the analysis. ACS's conclusion that it cannot fully utilize the Commission's award of CAF Phase I incremental support is driven equally by its analysis of the other half of the business case – the revenue opportunity – for broadband, which emerged much later in the assessment process. Even after accounting for the Commission's CAF Phase I incremental support, the business case of deployment to the initial 2,163 locations for which ACS is maintaining its commitment to use CAF Phase I incremental support is highly challenging. ACS's request for a substantial increase in per-line support for the

[25] *See, e.g.,* http://alasconnect.com/network/.

[26] *See* http://www.broadbandmap.gov/about-provider/spitwspots-llc/nationwide/.

[27] *See* http://www.broadbandmap.gov/about-provider/yukon-tech-inc./nationwide/.

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remaining locations is driven by its conclusion that the business case simply cannot be made for those locations under the existing rules.

Beyond a limited number of unserved locations, extensive fiber optic transmission facilities and network nodes must be deployed to support broadband in much of ACS's local service territory. Customers are generally located far from the nearest access to fiber optic transmission facilities, generally located at the central office and essential to support the transport demands of broadband access. ACS will need to deploy considerable new "second mile" fiber optic transmission lines on the loop side of the central office, as well as new network nodes in closer proximity to the customer. Further, many locations are off the road system and some are not connected to the power grid.[28] Not only do the costs of deployment in these areas escalate dramatically, but the necessary facilities serve diminishing numbers of eligible locations, meaning that the potential revenue opportunity shrinks rapidly. Factoring into the analysis ongoing operations, maintenance, and repair expenses, as well as anticipated take rates, it became plain that ACS stands no reasonable chance of recovery of its investment or earning a

[28] Compounding the challenging business case is the need to meet the Commission's aggressive build-out schedule despite Alaska's very short summer construction season. During this period, qualified deployment crews are in high demand and command premium rates, when they are available at all. To meet the CAF Phase I incremental support deployment schedule, the ACS ILECs must compress their ordering, delivery, and deployment efforts into a few short summer months, raising labor and equipment costs, constraining ACS's deployment flexibility, and amplifying the impact of even short project delays.

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return under the current rules. As a result, ACS cannot go forward in those locations in a manner consistent with its business judgment.

Although ACS did its best to quantify the costs and revenue opportunities in the limited 90-day period offered by the Commission, the timing of the election coincided with the peak of the engineering planning and deployment cycle for the summer 2012 construction season. As a result, the full analysis of the business case for broadband across all 5,401 locations, which demonstrated its economic irrationality at many locations, did not emerge until after the deadline had passed and ACS had made its election.

3. Inadequacy of the $775.00 per Location Mandate in Alaska

In establishing the $775.00 per location support level, the Commission lacked detailed Alaska data. Even with respect to the rest of the nation, the Commission conceded in the *USF/ICC Transformation Order* that it was acting conservatively based on limited data.[29] Given that price cap carriers were able to accept less than 40 percent of the initial $300 million offered, it appears that, even for the rest of the nation, the $775.00 per location offer materially undershoots the level that would have enabled CAF Phase I incremental support delivered the maximum public interest benefit possible.

Further compounding ACS's difficulty, the Commission's ability to take costs in Alaska into account was much more limited than it was for most other price cap carriers.

[29] *USF/ICC Transformation Order*, at ¶ 137 n. 220.

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Because the ACS ILECs only converted to price cap regulation in 2009,[30] its study areas were never incorporated into the Commission's high cost universal service support model. While the ACS ILECs were able to provide cost information to the Commission for use in allocating CAF Phase I incremental support among price cap ILECs, these data may not have produced cost results that were directly comparable to those available for other price cap carriers.[31]

The ACS ILECs simply cannot offer broadband to new customer locations where the costs of doing so are so disproportionate to the anticipated revenue stream from broadband service that the company stands little or no chance of ever recovering its investment or earning any reasonable return. In addition to meeting its state and federal regulatory obligations, ACS must observe its fiduciary obligations to shareholders. While ACS understands its "carrier of last resort" obligation to provide voice services upon request within its service area, even that obligation is subject to the payment of special construction charges, where substantial additional network facilities are required beyond the current limits of the ACS ILECs' networks. There is no analogous "shareholder of last resort" available to fund uneconomic broadband investments, no

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[30] *ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc., and ACS of the Northland, Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief*, WC Docket No. 08-220, Order, DA 09-854, 24 FCC Rcd 4664 (Wir. Comp. Bur. 2009).

[31] *See* 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 (Wir. Comp. Bur. 2012).

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matter how fervently the company and regulators may wish to deliver the attendant benefits to consumers.

Thus, even though ACS has accepted the Commission's offer of CAF Phase I incremental support in full, the changed circumstances that have emerged since July 24, 2012 mean that it cannot now justify the necessary co-investment beyond the core 2,163 locations identified above. Absent a waiver, ACS will therefore be forced to forego at least a portion of the award.

B. A Waiver of Section 54.312(b)(2) Would Serve the Public Interest

In making up to $300 million in CAF Phase I incremental support available to price cap ILECs for deployment of broadband to currently unserved locations, the Commission intended to "provide an immediate boost to broadband deployment in areas that are unserved by any broadband provider . . . . We intend for CAF Phase I to enable additional deployment beyond what carriers would otherwise undertake, absent this reform."[32]

So far, CAF Phase I incremental support is underperforming its potential. Of the $300 million the Commission made available, only approximately $115 million was accepted by the July 24, 2012 deadline. As a result, the majority of 2012 CAF Phase I incremental support will never be put to use pursuing the public interest goals the Commission has articulated for this support mechanism, despite the well-recognized

[32] *USF/ICC Transformation Order*, at ¶ 137.

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public interest benefits of affordable broadband Internet access services. To the extent that the ACS ILECs find themselves unable to meet the Commission's lofty deployment mandate encapsulated by Section 54.312(b)(2), this failure would represent a further setback for the public interest goals of the Commission's CAF Phase I incremental support mechanism.

In the *USF/ICC Transformation Order*, the Commission acknowledged the limitations of its methodology for choosing the $775.00 per location mandate. Acknowledging that its existing cost model is intended to calculate the costs of providing voice services rather than broadband, the Commission nevertheless found the use of that model reasonable, among other reasons, because, "our funding threshold is determined by our budget limit of $300 million for CAF Phase I incremental support rather than by a calculation of what amount we expect a carrier to need to serve that area. That is, this interim mechanism is not designed to 'fully' fund any particular wire center—it is not designed to fund the difference between (i) the deployment cost associated with the most expensive wire center in which we could reasonably expect a carrier to deploy broadband without any support at all and (ii) the actual estimated deployment cost for a wire center."[33] But that is, of course, precisely the calculation that a price cap carrier must make in determining whether to accept CAF Phase I incremental support, and thus

[33] *USF/ICC Transformation Order*, at ¶ 137 n. 220.

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precisely the calculation on which achievement of the Commission's public interest goals for the CAF Phase I incremental support mechanism rests.

In light of the fact that price cap ILECs found that they could not even attempt to meet the Commission's deployment mandate with respect to a sizable majority of the support the Commission offered, it appears that the Commission's deployment mandate was based on an overly optimistic estimate of the benefits that could be extracted from the CAF Phase I incremental support budget. Indeed, given the limitations of the record before the Commission when it established this rule, this result is entirely consistent with the Commission's understandable cautious approach as a responsible steward of universal service funding when setting deployment goals for this support mechanism.

The Commission now has the benefit of understanding that many carriers were unable to make a reasonable business case to accept the amount of CAF Phase I incremental support offered subject to the $775 per-line build-out requirement. The Commission therefore should grant waivers, in appropriate cases, to ensure that it captures as large a portion as possible of the broadband deployment benefits that CAF Phase I incremental support was intended to generate. The fact that the ACS ILECs require greater support levels to deploy broadband to a particular location than the $775.00 in CAF Phase I incremental support that the Commission initially offered does not indicate a problem with the goals of the mechanism or with the ACS ILECs' deployment plans. It merely indicates that, to achieve the public interest benefits of the

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Commission's broadband deployment goals will be more expensive in Alaska than the Commission initially predicted – an understandable result given that Alaska is not integrated into the model on which the Commission otherwise relied in allocating CAF Phase I incremental support among the price cap ILECs.

Even if the ACS ILECs no longer believe that they can reach all 5,401 currently unserved locations they initially hoped, it would produce greater public interest benefits now for the Commission to allow the ACS ILECs to keep the full award of CAF Phase I incremental support that they have accepted and to deploy broadband to as many currently unserved customer locations as possible. Further, such a waiver in Alaska will disproportionately benefit historically underserved and difficult-to-serve Alaska Native populations, also furthering the Commission's tribal outreach and engagement goals.

Finally, no party will be harmed, either by the grant of this waiver or by permitting the ACS ILECs to decline a portion of its CAF Phase I incremental support. The Commission's offer of support was specific to ACS so, by initially accepting it, ACS denied support to no other carrier. In any event, the fact that price cap carriers, as a whole, accepted less than 40 percent of the $300 million offered by the Commission indicates that there is likely little or no unmet demand for CAF Phase I incremental support under the Commission's current terms. Further, because ACS has not yet initiated broadband deployment to any customer using CAF Phase I incremental support and, as described above, cannot use the full award to do so within the existing constraints of Section

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54.312(b)(2), no customer will lose broadband access as a result of this waiver. To the contrary, grant of this waiver will enable ACS to deploy broadband to the maximum number of customers possible using its CAF Phase I incremental support award.

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Conclusion

For the foregoing reasons, the ACS ILECs respectfully request that the Commission partially waive Section 54.312(b)(2) and (b)(3) of its rules, 47 C.F.R. § 54.312(b)(2) and (b)(3), as described in this Petition.

Respectfully submitted,

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ACS OF THE NORTHLAND, INC.,
ACS OF FAIRBANKS, INC., AND
ACS OF ALASKA, INC.

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September 26, 2012

Attachment A

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DECLARATION OF AMY L. GARDNER

I, Amy L. Gardner, make the following declaration, under penalty of perjury, in support of the Petition of ACS of Anchorage, Inc., ACS of the Northland, Inc., ACS of Fairbanks, Inc., and ACS of Alaska, Inc. (collectively, "ACS") in the above-captioned proceeding:

1. I am Vice President, Revenue Assurance, for Alaska Communications Systems Group, Inc. As such, I am familiar with ACS's incumbent local exchange carrier ("ILEC") broadband operations, including the costs and revenues associated with network deployment by the ACS ILECs. Working closely with ACS's network engineers and our revenue assurance team, I participated in the development of ACS's internal cost estimates and revenue projections performed in connection with the FCC's decision to make $4,185,103 in Phase I Connect America Fund ("CAF") incremental support available to the ACS ILECs.

2. ACS initially analyzed the options for deploying broadband to unserved locations as identified using the National Broadband Map, on the basis of the costs of deployment; ACS was looking for the most cost-efficient locations that satisfied the rules of the CAF Phase I incremental funding program. The result of this analysis was the identification of a group of 5401 locations where our best estimates indicated that ACS could deploy broadband for a reasonable incremental company investment in addition to the $775 per location that was being made available through the program. While the per-

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location costs were very high, we thought there was at least a marginal business case for these deployments, especially in light of the FCC's directive that future CAF funding be devoted to further broadband deployment.

3. At the time that ACS was required to submit its CAF Phase I incremental support election, we had not yet completed our full market analysis, including evaluation of the retail price the market would support and the anticipated take rate by customers in these locations, many of which are low-income communities in very sparsely populated rural areas. Following ACS's election, we became concerned that

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4. Subsequently, ACS was informed by FCC staff that hundreds of census blocks from the list that we had submitted with our incremental support election appeared to be ineligible for support because they are served in some fashion by fixed wireless service providers. As we have worked through this new information, we have become even more concerned about the additional costs that would be required to deploy broadband in unserved areas. Not only did this new information render ineligible nearly half of the locations identified by ACS (over 2,100 locations), but it also affected ACS's calculation of the costs of deploying broadband to other locations. This is because some of the core facilities to be constructed under our original build-out model would have supported both eligible locations and those subsequently found to be ineligible because of

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the presence of fixed wireless providers. Without those 2,100 locations, the per-location costs of ACS's planned deployment of broadband, including the costs of first mile and second mile fiber, network nodes, and middle mile transport, all increase, as do the per-location costs of maintaining and operating broadband networks. At the same time, the revenue opportunities are not as attractive at the locations ACS would select to replace the 2,100 now deemed ineligible.

5. Revenue opportunities are projected based on the size of the market, the market price, the anticipated take rate by customers to whom the network is extended, and the margin of revenues above costs that reasonably can be expected. Our revenue projections for the original 5,401 locations were still being developed at the time ACS was required to make its Phase I CAF incremental support election. The business case for many of those locations appears to be

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6. Based on all of the circumstances described above, ACS management determined that the costs of broadband deployment in these areas and the potential revenue opportunity do not appear to justify broadband build-out to 5,401 unserved locations based on incremental support of just $775 per location and a 4 Mbps/1Mbps build-out requirement under the current FCC rules.

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The foregoing is true and complete as of the date hereof, to the best of my information, knowledge and belief.

Date: September 25, 2012