

**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
To: Chief, Wireline Competition Bureau		

**REPLY COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION TO
PETITION FOR WAIVER**

The Wireless Internet Service Providers Association (“WISPA”), pursuant to Sections 1.415 and 1.409 of the Commission’s Rules, hereby submits Reply Comments regarding the Petition for Waiver (“Petition”) filed by ACS of Anchorage, Inc., ACS of the Northland, Inc., ACS of Fairbanks, Inc. and ACS of Alaska, Inc. (collectively, “ACS”) on September 26, 2012.¹ There is no support in the record for grant of the Petition, and it therefore should be dismissed or denied. Moreover, in response to the suggestion of one party, the Commission should not make any determination on how to apply declined Connect America Fund (“CAF”) Phase I funds until it has developed a complete record.

Discussion

I. THERE IS NO SUPPORT IN THE RECORD FOR GRANT OF THE REQUESTED WAIVERS.

In its Petition, ACS argues that it should be permitted to retain CAF Phase I funds that it erroneously accepted under one of three separate scenarios. Under the first scenario, ACS

¹ See Public Notice, “Wireline Competition Bureau Seeks Comment on Alaska Communications Systems Petition for Waiver of Certain High-Cost Universal Service Rules,” DA 12-1573, rel. Oct. 2, 2012 (“Public Notice”). The Public Notice established October 19, 2012 as the deadline for filing Reply Comments. Accordingly, WISPA’s Reply Comments are timely filed.

proposes to apply these additional funds so it can deploy at subsidy levels that far exceed the \$775 per-location limit the Commission established. Alternatively, ACS asks the Commission to change the definition of “broadband” so ACS can upgrade service to its own customers. As its final waiver request, ACS requests that the Commission waive the definition of “unserved” so ACS can use its additional subsidy allocation to deploy service where fixed wireless broadband providers are accurately depicted on the National Broadband Map.

In addition to WISPA,² six other parties opposed grant of the Petition, and no party – not even ACS’s fellow price cap carriers and their trade associations – support it.³ In opposing ACS’s request for a nine-fold increase in the per-location subsidy, NCTA stated that “[t]here is no justification for allowing ACS to spend limited universal service dollars in such an excessive manner.”⁴ GCI explained that “the Commission has no marketplace test to determine whether ACS’ projected deployment costs for these areas are accurate or far too high” and thus has “no way to tell if the proposed six to ten-fold increase in the per-location threshold is actually warranted.”⁵ Similarly SPITwSPOTS, one of the fixed wireless broadband providers named in the Petition, stated that “ACS provides no information in its Petition on how it arrived at these exorbitant amounts.”⁶ SPITwSPOTS also questioned ACS’s claim that its own failure to make a

² See Opposition of WISPA to Petition for Waiver, WC Docket Nos. 10-90 & 05-337, filed Oct. 12, 2012.

³ See Opposition of General Communication, Inc., WC Docket Nos. 10-90 & 05-337, filed Oct. 12, 2012 (“GCI Opposition”); Opposition of the National Cable & Telecommunications Association to ACS Petition for Waiver, WC Docket Nos. 10-90 & 05-337, filed Oct. 12, 2012 (“NCTA Opposition”); Opposition of SPITwSPOTS Inc. to Petition for Waiver, WC Docket Nos. 10-90 & 05-337, filed Oct. 12, 2012 (“SPITwSPOTS Opposition”); Comments of AlasConnect, Inc. on ACS’ Petition for Waiver, WC Docket Nos. 10-90 & 05-337, filed Oct. 11, 2012 (“AlasConnect Comments”); and Comments of Connected Nation, Inc. on ACS’ Petition for Waiver, WC Docket Nos. 10-90 & 05-337, filed Oct. 9, 2012 (“Connected Nation Comments”).

⁴ NCTA Opposition at 4.

⁵ GCI Opposition at 5.

⁶ SPITwSPOTS Opposition at 13.

business case for service to the unserved locations at \$775 per location is grounded in ACS's reliance on high-cost wireline costs.⁷

There was no support for ACS's request to allow it to use a portion of its allocated subsidy to upgrade service to its own existing broadband customers. Both NCTA⁸ and GCI⁹ pointed out that the Commission rejected this same argument in the *Second Order on Reconsideration*.¹⁰ SPITwSPOTS stated that allowing CAF funds to be used to upgrade service to those that are already receiving broadband service would hurt competition, stating that it "fails to see how using subsidies to fund improved service to ACS's own customers in areas where it competes with SPITwSPOTS and other fixed broadband providers is consistent with the Commission's objectives in subsidizing new broadband service to 'unserved locations.'"¹¹ SPITwSPOTS added that "[f]ederal funds should not be used in contravention to the rules to help destroy competitors."¹²

Likewise, no party agreed that ACS should obtain the benefits of a waiver so it can provide service to areas shown as "served" on the National Broadband Map. Both AlasConnect¹³ and SPITwSPOTS¹⁴ confirmed that their service territories are accurately depicted on the National Broadband Map. Significantly, Connected Nation "reaffirm[ed] its confidence in the validity of the broadband service inventory depicted on the National

⁷ See *id.*

⁸ See NCTA Opposition at 4.

⁹ See GCI Opposition at 6.

¹⁰ See *In the Matter of the Connect America Fund, A National Broadband Plan for Our future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service – Mobility Fund*, WC Docket Nos. 10-90, *et al.*, Second Order on Reconsideration, 27 FCC Red 4648 (2012) ("*Second Order on Reconsideration*").

¹¹ SPITwSPOTS Opposition at 9.

¹² *Id.* at 10.

¹³ See AlasConnect Comments at 3

¹⁴ See SPITwSPOTS Opposition at 7.

Broadband Map for these four providers and across the State of Alaska.”¹⁵ Connected Nation also confirmed that, contrary to ACS’s unsupported conjecture, all four of the named fixed broadband providers offered residential service at the speed tiers shown on the Map. ACS had a fair opportunity to review the National Broadband Map, and its “lack of proper planning and due diligence should not justify ACS receiving a waiver.”¹⁶

II. THE COMMISSION SHOULD INVITE PUBLIC COMMENT ON HOW TO APPLY UNUSED CAF PHASE I FUNDS.

A few parties offered comment on what the Commission should do with unused CAF Phase I funds. On numerous occasions, WISPA has recommended that the Commission should apply these funds to the Remote Areas Fund, given the extremely high level of support ACS and others have claimed. GCI suggested that all unused support should be subject to a reverse auction that, presumably, would be available only to Eligible Telecommunications Carriers.¹⁷ NCTA generally offered that unused Phase I funds could be repurposed for other uses such as broadband adoption programs or reducing the contribution factor, as stated in the *USF/ICC Transformation Order*.¹⁸

WISPA requests that the Commission invite public comment on how it should apply the declined CAF Phase I funds. There is at least \$185 million in unused Phase I funds and there is the possibility of a second Phase I funding round. Further, there are differing views on how use of those funds would best support the public interest, but there is no complete record on which the Commission can make a reasoned and informed decision. By inviting public comment, the Commission can best determine how unused CAF Phase I funds should be used.

¹⁵ Connected Nation Comments at 3.

¹⁶ AlasConnect Comments at 5.

¹⁷ See GCI Opposition at 8.

¹⁸ See NCTA Comments at 4.

Conclusion

The record unequivocally confirms that ACS's Petition should be denied. ACS has not demonstrated "special circumstances" and has not shown that grant of the waiver would promote the public interest. The Commission also should invite public comment and develop a complete record on how it should apply unused CAF Phase I funds.

Respectfully submitted,

October 19, 2012

**WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION**

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