

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.

**Reply Comments of ACS of Anchorage, Inc., ACS of the Northland, Inc.,
ACS of Fairbanks, Inc., and ACS of Alaska, Inc.**

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October 19, 2012

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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”) disagree with those in the wireless Internet and cable industries that oppose their Petition for Waiver of the rules governing use of Connect America Fund (“CAF”) Phase I incremental support (“the ACS Petition”).

Grant of the ACS Petition represents the best and most expedient way to put additional CAF Phase I incremental support to work in the public interest in Alaska within the framework the Commission has established. In its Petition, ACS discussed three alternatives for achieving these public interest benefits, including a waiver either of (1) the \$775.00 per location rule, in order to enable ACS to receive higher levels of per-location support for deployment beyond an initial set of 2,163 locations; (2) 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) the definition of “unserved,” to enable ACS to deploy broadband where existing service is limited to, at most, fixed wireless broadband providers. The ACS Petition does not challenge the coverage of the wireless Internet service providers shown on the National Broadband Map. In granting the waiver, the Commission may accept the data regarding these providers’ broadband services shown on the National Broadband Map for purposes of its analysis. Given this fact, ACS is puzzled that Connected Nation would compromise its position as a neutral clearinghouse for broadband mapping data by wading unnecessarily into this contested proceeding.

None of the commenters undermines the essential justifications for any of the three alternative waivers ACS seeks. With respect to a waiver of the \$775.00 per location cap, no commenter disputes the fundamental problem identified in the ACS Petition, which is that the cost of deploying broadband facilities and offering broadband service is higher in Alaska than it is elsewhere in the nation. GCI's alternative proposal – to conduct a reverse auction of CAF Phase I incremental support in Alaska – would upend the Commission's carefully constructed, measured, multi-step transition set forth in the *USF/ICC Transformation Order*. Moreover, such a step would undercut the Commission's determination to distribute support quickly on a streamlined basis during Phase I, even as it would divert critical resources from the implementation of CAF Phase II.

ACS's second alternative, a waiver of the definition of "broadband," would serve the public interest by allowing ACS to replace antiquated broadband equipment and deliver full 4 Mbps/1 Mbps service that meets the Commission's CAF requirements. Contrary to the competitive concerns raised in the comments, the waiver would raise minimal competitive issues. This waiver would create benefit for more consumers than either of the other alternatives ACS has identified. Particularly in Alaska, where the CAF Phase II model suffers from well-documented problems, the Commission should take all possible steps to deliver incremental support for broadband deployment under CAF Phase I.

With respect to a waiver of the definition of "unserved," the Commission should not rely on the presence of fixed wireless Internet service providers, particularly in Alaska, as a basis for denying support. Wireless broadband Internet access services suffer from significant technical and regulatory limitations that should preclude the Commission from relying on these providers to deliver robust, reliable service in Alaska.

Topography, capacity constraints, and even weather conditions have a dramatic effect on the availability and speed of such services. Furthermore, because wireless Internet service providers claim not to be subject to Commission regulation, the Commission has limited ability to prevent abrupt loss of service in inevitable cases where such small startup firms fail.

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ACS of Anchorage, Inc., ACS of the Northland, Inc., ACS of Fairbanks, Inc., and ACS of Alaska, Inc. (together, "ACS"), hereby submit these Reply Comments in response to arguments posed by parties commenting on ACS's Petition for Waiver (the "ACS Petition") in the above-captioned proceedings.¹

Introduction

Based on the record developed in the initial comment round, the waivers that ACS seeks are justified and would serve the public interest. Grant of the ACS Petition represents the best and most expedient way to put additional CAF Phase I incremental support to work in the public interest in Alaska within the framework the Commission has established.

¹ See Public Notice, *Wireline Competition Bureau Seeks Comment on Alaska Communications Systems Petition for Waiver of Certain High-Cost Universal Service Rules*, WC Docket Nos. 10-90, 05-337, DA 12-1573 (Oct. 2, 2012).

In its Petition, ACS discussed three alternatives for achieving these public interest benefits, including a waiver either of (1) the \$775.00 per location rule, in order to enable ACS to receive higher levels of per-location support for deployment beyond an initial set of 2,163 locations; (2) 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) the definition of “unserved,” to enable ACS to deploy broadband where existing service is limited to, at most, fixed wireless broadband providers.

For avoidance of doubt, these waivers describe alternative means of achieving the same end – to permit ACS to deploy additional broadband services to unserved or underserved locations in Alaska using the full amount of the Commission’s award of CAF Phase I incremental support. While ACS believes that all of them meet the Commission’s waiver standard, the Commission does not need to grant all three alternatives to provide relief. The ACS Petition thus invites a discussion of which alternative the Commission may believe best serves the public interest.

Some commenters, in zealously attempting to shout ACS down, appear to have misunderstood both this fact, and the scope of the waivers ACS seeks. In these comments, ACS will set the record straight and explain why these commenters concerns are ill-founded or misplaced.

Discussion

None of the commenters undermine the essential arguments in the ACS Petition. At bottom, ACS was forced to seek relief because the cost of deploying broadband in Alaska to locations meeting all of Commission’s criteria governing use of CAF Phase I

incremental support criteria are prohibitive, and the expected revenues would be insufficient to justify the investment that would be required by ACS and its shareholders. With costs so high at most locations that meet all of the Commission's many criteria for use of CAF Phase I incremental support, it has now emerged that there is no reasonable business case for ACS to deploy broadband in accord with the original plans that underpinned its July 24 acceptance, which included many locations that ACS has now been informed are ineligible in any event.

While it is true that ACS's analysis was initially skewed by its failure to consider the presence of fixed wireless Internet service providers on a separate layer of the National Broadband Map, this error is ultimately irrelevant to the analysis. Had ACS noticed that layer of the map sooner, it could have filed its Petition for Waiver earlier in the process, but it would not have changed the substance of the request or altered the need. As it was, the critical planning period for CAF Phase I Incremental Support coincided with the busiest planning period for the brief Alaskan construction season. As a small carrier with limited resources, this convergence contributed to ACS's error and prevented completion of the full business case until after the July 24 deadline for accepting CAF Phase I incremental support awards.²

² ACS denies any suggestion by SPITwSPOTs and WISPA that its July 24 acceptance contains any type of knowing falsehood or misrepresentation to the Commission. As is plainly demonstrated on the face of the ACS Petition, ACS's July 24 acceptance was the product of a simple error, and was not some ill-conceived attempt at deceit.

A. The Commission Should Waive the \$775.00 Per-Location Cap

No commenter disputes the fundamental problem identified in the ACS Petition, which is that the cost of deploying broadband facilities and offering broadband service is higher in Alaska than it is elsewhere in the nation. Indeed, even as it opposes the ACS Petition, GCI agrees that, “Alaska presents uniquely challenging environments for broadband deployment, and that the costs to do so in unserved areas of rural Alaska are likely to be above the costs, on average, for unserved, rural locations in the Lower 48.”³ In light of this fact, ACS was initially surprised that it had been able to accept its award of CAF Phase I incremental support when so many carriers nationwide had rejected theirs. Only after the full business case emerged, and the Bureau pointed out the ineligibility of over 2,100 of the customer locations where ACS had intended to use its support, did ACS understand the true impossibility of achieving the Commission’s deployment goal.

A waiver of the \$775.00 per-location cap is therefore the best way for the Commission to achieve the public interest benefits it seeks in Alaska. ACS agrees with GCI that the Commission should seek as much “bang for the buck” as it can,⁴ consistent with the streamlined, transitional nature of the CAF Phase I Incremental Support mechanism. ACS disagrees, however, with commenters’ assertions that the Commission should be bound by its pre-acceptance decision to withhold such relief.⁵ In seeking the

³ GCI Comments at 4.

⁴ GCI Comments at 5.

⁵ GCI Comments at 3; SPITwSPOTs Comments at 11; WISPA Comments at 6; *cf.* AlasConnect Comments at 4.

greatest “bang for the buck,” the Commission attempted in the *USF/ICC Transformation Order* to find a reasonable, but conservative, per-location amount based on limited data that would put as much of the CAF Phase I incremental support funding to work as possible while maximizing private co-investment.⁶ In rejecting pre-acceptance calls to increase the per-location support amount, the Commission continued to rely on a staff analysis that suggested acceptance would be widespread because there were “approximately 1.75 million unserved locations served by price cap carriers with costs below \$765.39.”⁷

New information has now emerged to indicate that the Commission should revisit this conclusion. The results of its initial offer of CAF Phase I incremental support show that price cap carriers declined nearly two thirds of the offered support, and the Commission has received numerous further petitions for waiver. Based on this new information, the Commission should now revisit its earlier decision. By doing so, it can generate a “best of both worlds” solution from a public interest perspective. Having now captured the maximum benefits available from its initial offer of support at the low \$775.00 per location level, the Commission can now grant waivers that put additional CAF Phase I incremental support to work. With the Commission acknowledging that broadband deployment is at once the “great infrastructure challenge of the early 21st

⁶ *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) (“*USF/ICC Transformation Order*”) ¶ 137 n. 220 (acknowledging, among other things, that the Commission’s model “does not reliably identify precisely *how expensive* those wire centers [eligible for CAF Phase I incremental support] will be to serve”) (subsequent history omitted).

⁷ *Connect America Fund*, WC Docket No. 10-90, Second Order on Reconsideration, FCC 12-47, 27 FCC Rcd 4648 (2012) (“*Second Order on Reconsideration*”) ¶ 18.

century”⁸ and the “universal service challenge of our time,”⁹ the Commission should take all available steps to ensure that the necessary support is available on reasonable terms. Proceeding by granting the waiver ACS seeks meets these challenges far better than permitting available funding to lie fallow.

ACS disagrees with GCI’s proposal that the Commission conduct a reverse auction to allocate the \$2.5 million of CAF Phase I incremental support at issue here. GCI’s comments essentially reflect a rehash of its previous objections to the Commission’s elimination of the identical support rule.¹⁰ Far from increasing efficiency as GCI suggests, the design and execution of such a reverse auction would cause a protracted halt in the use of these funds, and upend the fundamental design of the CAF transition that the Commission adopted.

In the *USF/ICC Transformation Order*, the Commission adopted a carefully considered, multi-step process that will unfold over a period of years. This process will effect a measured transition to “a system where support in price cap territories is determined based on competitive bidding or the forward-looking costs of a modern multi-purpose network.”¹¹ The Commission’s first steps in doing so were to freeze support levels under existing mechanisms, and to create CAF Phase I incremental support for price cap carriers. Designing and executing a reverse auction for CAF Phase I incremental support would not only scramble the Commission’s carefully constructed

⁸ National Broadband Plan at 3.

⁹ *USF/ICC Transformation Order* at ¶ 5.

¹⁰ *USF/ICC Transformation Order* at ¶ 507.

¹¹ *USF/ICC Transformation Order* at ¶ 129.

transition plan, but would drain critical resources away from the design of the CAF Phase II mechanism now underway. Given the comparatively small amount of support at stake in the ACS Petition at issue here, the Commission should continue to focus its efforts on implementation of CAF Phase II.

Furthermore, any reverse auction could not be completed in a time frame consistent with the Commission's determination to use CAF Phase I incremental support to provide an "immediate boost to broadband deployment" on a "simplified, interim basis."¹² To establish and conduct an auction as suggested by GCI, the Commission could not proceed by waiver, as proposed here, but would need to adopt rules for such an auction following suitable notice and an opportunity for comment. Even if this considerable preparatory effort could be completed quickly, it would take until 2013, at the earliest, to distribute any support on this basis.¹³ ACS, in contrast, stands ready to use this support, pursuant to an appropriate waiver, on the Commission's original timeline that applies to 2012 CAF Phase I incremental support.

In opposing a grant of a waiver of the \$775.00 per location cap, WISPA and SPITwSPOTs appear to misunderstand the ACS Petition.¹⁴ If the Commission were to grant this waiver, the locations to which ACS would deploy broadband would meet the Commission's definition of "unserved," meaning that they would not overlap with the service territory SPITwSPOTs (or any other broadband Internet access provider) claims on the National Broadband Map. ACS, therefore, for purposes of this Petition, is not

¹² *USF/ICC Transformation Order* at ¶ 137, 134.

¹³ GCI Comments at 2.

¹⁴ SPITwSPOTs Comments at 11; WISPA Comments at 5.

challenging as a factual matter whether SPITwSPOTs or any other wireless Internet service provider truly offers service to any location where it claims to do so. If the Commission were to grant this waiver, ACS would deploy broadband to locations shown as unserved within the definition established by the Commission.

The Commission should not, as SPITwSPOTs argues, automatically consign such high-cost areas of Alaska to the remote areas fund (“RAF”).¹⁵ Doing so would create yet more delays in broadband deployment while the Commission establishes the details of the RAF mechanism. In addition, funding limitations, as well as technical constraints on the availability of satellite service, present severe impediments to the use of the RAF to support broadband in many areas of Alaska.

B. The Commission Should Waive the Definition of “Broadband”

A waiver of the definition of “broadband” would permit ACS to replace obsolete equipment that can only provide broadband at a speed falling within the Commission’s lowest speed tier, and that cannot be upgraded, to achieve the Commission’s 4 Mbps/1 Mbps CAF mandate. ACS seeks this waiver only for areas that the National Broadband Map shows as unserved by any broadband provider other than ACS. This waiver request is therefore carefully designed to minimize any competitive impact on other providers.

ACS acknowledges, as pointed out by several commenters, that the Commission has previously considered requests to make CAF Phase I incremental support available to upgrade existing broadband service.¹⁶ Nevertheless, as with the Commission’s earlier

¹⁵ SPITwSPOTs Comments at 13.

¹⁶ GCI Comments at 6; SPTIwSPOTs Comments at 9; NCTA Comments at 4; WISPA Comments at 9.

decision to limit support to \$775.00 per location, ACS believes that the time is ripe for the Commission to revisit this determination. *First*, as discussed above, the Commission is now armed with more information that became available only when the results of its initial offer of CAF Phase I incremental support emerged. As with the waiver of the \$775.00 per location cap, the public interest will be better served by granting this waiver, which will put to use CAF Phase I incremental support that cannot otherwise be used within the Commission's existing framework. Indeed, contrary to GCI's concerns that the Commission may be "locking in an inferior technology" by granting this waiver,¹⁷ it is a *denial* of this waiver that would have precisely that effect.

Second, this waiver would be consistent with the Commission's decision to "permit carriers accepting CAF Phase I [incremental] support to satisfy their deployment requirement by deploying to locations identified on the National Broadband Map as served if the Map reflects that the only provider of fixed broadband to the location is the incumbent carrier itself, the locations are in fact unserved by broadband, and the carrier makes the certifications required by section 54.312(b)(3) of our rules."¹⁸ The only difference between the relief that ACS seeks and this relief previously granted by the Commission relates to the speed of broadband service. The broadband service ACS seeks to upgrade just barely meets the lower 768kbps threshold of the Commission's broadband definition. Were it only slightly slower, a waiver would not even be necessary. By granting a waiver of the definition of "broadband" to enable ACS to

¹⁷ GCI Comments at 2.

¹⁸ *Second Order on Reconsideration*, FCC 12-47, at ¶ 9.

replace this antiquated broadband equipment and deliver full 4 Mbps/1 Mbps service that meets the Commission's CAF requirements, the Commission will enable ACS to deliver substantial public interest benefits.

A grant of this waiver will also ameliorate the CAF II universal service crisis that is currently looming over Alaska. As discussed at length in ACS's related advocacy in this proceeding, the CAF II model currently understates costs and support levels needed in Alaska by a dramatic margin. Even as the Commission works to understand and correct the reasons for this faulty result, it is vital that the Commission take all available steps under CAF I to maximize deployment of broadband in Alaska that meets the CAF II requirements, including by providing support for upgrades to existing service.

This waiver would also allow ACS to deliver substantial public interest benefits to the greatest number of consumers. Alone among the three alternatives ACS has identified, this waiver would enable ACS to deploy or improve service to the full 5,401 locations it originally pledged to serve. Given the modicum of waiver relief necessary for ACS to deliver these benefits, a grant of this waiver would clearly serve the public interest.¹⁹

¹⁹ As with ACS's request for a waiver of the \$775.00 cap, WISPA and SPITwSPOTs appear to misunderstand ACS's request. SPITwSPOTs mistakenly argues that the Commission should not grant this waiver "in areas where [ACS] competes with SPITwSPOTs." SPITwSPOTs Comments at 9. As indicated above, ACS seeks this waiver only for locations where ACS is the only provider of broadband, by the Commission's own definition, and where ACS service falls within the Commission's slowest speed tier.

C. The Commission Should Waive its Definition of “Unserved”

As a final alternative, ACS seeks a waiver of the definition of “unserved” to permit it to deploy broadband service to locations that the National Broadband Map shows as served exclusively by fixed wireless Internet service providers. While Connected Nation’s comments rise in strong defense of its mapping efforts, ACS views its comments as unnecessary. While, as discussed below, the data shown on the National Broadband Map are far from unassailable, the ACS Petition does not require the Commission to make any particular finding as to the accuracy of the Map. Indeed, ACS has requested this waiver precisely because, for purposes of this Petition, ACS has assumed the presence of the wireless Internet service providers at the locations shown on the Map.²⁰

While the wireless Internet service provider commenters oppose this request, they do not refute ACS’s central points. First, technological and capacity limitations prevent wireless Internet service providers from offering the unbroken, universal coverage to which they aspire. Although SPITwSPOTs contends that it is “not subject to capacity constraints,”²¹ it confirms in virtually the next breath that, “[c]onducting a site survey is common practice in the fixed wireless industry so that promises about the ability to provide service can be kept.”²² Particularly in Alaska, as ACS knows all too well, challenging topography and weather conditions create inevitable difficulties in delivering

²⁰ For these reasons, ACS is puzzled that Connected Nation would compromise its position as a neutral clearinghouse for assembling and verifying broadband mapping data by wading unnecessarily into this contested proceeding.

²¹ SPITwSPOTs Comments at 7.

²² SPITwSPOTs Comments at 8.

service using wireless technologies. If this were not the case, of course, site visits would be unnecessary. Perhaps it is for these reasons that SPITwSPOTs serves so few customers. Although the National Broadband Map indicates that the service area of SPITwSPOTs covers 9,183 customer locations,²³ its comments state that it has only 885 customers. This represents some 9.6 percent of the locations in its wireless service area, far short of the 17 percent claimed in its comments.²⁴

Further, based on its own comments, in compiling the National Broadband Map, Connected Nation has largely accepted the self-serving representations of SPITwSPOTs, AlasConnect, and other providers as to their coverage.²⁵ For example, Connected Nation states that it verified SPITwSPOTs coverage at only eight field validation points in November 2010. Since that time, although Connected Nation states that SPITwSPOTs has provided four separate updates to its speed and coverage data,²⁶ Connected Nation's comments discuss no further efforts to validate these data. Similar faults emerge with respect to the other wireless Internet service providers discussed in the Connected Nation comments.

Second, none of the commenters refute ACS's argument that wireless Internet service providers' claims to unregulated status undermine the Commission's ability to prevent abrupt loss of service in inevitable cases where such small startup firms fail. Indeed, although SPITwSPOTs has been in business since April 2005, its customer base

²³ See <http://www.broadbandmap.gov/about-provider/spitwspots-llc/nationwide/>.

²⁴ SPITwSPOTs Comments at 1.

²⁵ See, e.g., Connected Nation Comments, Attachment B, at 16.

²⁶ *Id.*

remains small, as discussed above. Further, in discussing its business prospects, among other challenges, SPITwSPOTs admits that,

[A]s an infant company with rampant growth, SPITwSPOTs did not have access to borrowed capital at competitive interest rates. Hence, SPITwSPOTs has a manageable but unnecessary sum of high-interest debts than need to be either paid off with new investor capital or refinanced through a mainstream bank or government small business development lender.”²⁷

Should SPITwSPOTs fail to be successful in attracting further investment, of course, it might be forced to terminate its business operations. While AlasConnect, with the backing of a local electric utility,²⁸ may have greater access to financial support, the fundamental risks surrounding any potential discontinuance of service remain.

By waiving the definition of “unserved,” the Commission would enable ACS to deliver superior wireline service to hundreds of additional customers that are currently limited only to such startup wireless Internet service providers. Doing so would be consistent with the Commission’s broadband deployment and economic development goals, improving service to hundreds of Alaskan residential customers in remote, rural areas.

²⁷ SPITwSPOTs Information for Investors, available at <http://spitwspots.com/investors.html> (visited October 18, 2012).

²⁸ AlasConnect Comments at 2.

Conclusion

For the foregoing reasons, ACS respectfully requests 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 the ACS Petition.

Respectfully submitted,

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