

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Service Obligations For Connect America)	DA 13-284
Phase II, Defining Unsubsidized Competitor)	

COMMENTS OF ALASKA COMMUNICATIONS SYSTEMS

Leonard A. Steinberg
General Counsel and Corporate Secretary
Richard R. Cameron
Assistant Vice President and Senior Counsel
ALASKA COMMUNICATIONS SYSTEMS GROUP, INC.
600 Telephone Avenue
Anchorage, Alaska 99503

Karen Brinkmann
Robin Tuttle
KAREN BRINKMANN PLLC
2300 N Street, NW
Suite 700
Washington, D.C. 20037
(202) 365-0325
KB@KarenBrinkmann.com

Counsel for ACS

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Executive Summary

Alaska Communications Systems comments on the Public Notice on performance metrics for recipients of Connect America Fund (“CAF”) Phase II support, and for determining who is an “unsubsidized competitor.” The performance metrics will be used to determine whether an area is “served” by an “unsubsidized competitor” and thus ineligible for CAF Phase II support. The parameters for speed, pricing, usage, and latency metrics should be set at levels that will lead to expanded access to broadband at comparable prices, but will not result in prematurely discontinuing support in areas that depend on it for basic voice telecommunications as well as broadband connectivity.

For determining if a census block is “served,” a competitor should have to provide service at 6/1 Mbps, to maximize the number of locations where CAF Phase II support may be used to reach unserved or underserved customers. The National Broadband Map as of June 2012 should be used as a reference point, so carriers may develop business and infrastructure plans in a stable environment. Pricing in rural and urban areas should be within a reasonably comparable range. Usage limits at the specified pricing levels should be sufficient to allow for anticipated uses and reasonable growth. Latency metrics must be set in light of local constraints. Unsubsidized competitors also should be identified based on the reality of the local marketplace. In Alaska, this means that cable is a subsidized competitor, while WISPs do not provide the covered services at reasonably comparable prices. The Bureau should adopt metrics designed to ensure that consumers in all areas, including Alaska, have access to advanced services at reasonably comparable prices.

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Alaska Communications Systems (“ACS”)¹ hereby submits these comments in response to the Public Notice on service obligations for Connect America Fund (“CAF”) Phase II and determining who is an “unsubsidized competitor.”² The performance metrics that the Bureau establishes for determining whether an area is “served” or whether an entity is a “competitor” are critical components of the CAF Phase II rules. The parameters for speed, pricing, usage, and latency metrics must be set at levels that will lead to expanded access to broadband, and ensure that consumers in all areas have access to comparable services at comparable prices. Equally critical is the identification of competitors who are truly “unsubsidized” for purposes of exclusion of census blocks from CAF Phase II eligibility. The goal should be maximizing the number of locations where CAF Phase II support may be used to reach unserved or underserved customers. ACS comments on appropriate tailoring of these factors for Alaska.

¹ In these comments, ACS signifies the four incumbent local exchange carrier (“ILEC”) subsidiaries of Alaska Communications Systems Group, Inc.: ACS of Alaska, LLC, ACS of Anchorage, LLC, ACS of Fairbanks, LLC, and ACS of the Northland, LLC.

² Wireline Competition Bureau Seeks Further Comment On Issues Regarding Service Obligations For Connect America Phase II And Determining Who Is An Unsubsidized Competitor, DA 13-284 (Wireline Comp. Bur., rel. Feb. 26, 2013) (“Public Notice”).

I. SPEED

A. Broadband Speeds Of 6 Mbps Downstream/1.5 Mbps Upstream

The NBM does not capture broadband available at 4 Mbps downstream and 1 Mbps upstream (“4/1 Mbps”) and therefore the Bureau asks what speed threshold should be utilized as a proxy for 4/1 Mbps in order to identify census blocks that are “served” by an unsubsidized competitor and thus not eligible for CAF Phase II support.³ ACS advocates setting the speed parameters at 6 Mbps downstream/1.5 Mbps upstream (“6/1.5 Mbps”) as a proxy for determining census block eligibility for Phase II support. Permitting CAF Phase II support to be used in any census blocks where 6/1.5 Mbps is not yet available would further the Commission’s goals for expanding broadband availability at higher broadband speeds to as many consumers as possible.⁴ In contrast, setting the proxy lower than the 4/1 Mbps speed required by the Commission for CAF Phase II compliance would disserve the Commission’s goal by excluding from funding eligibility some high-cost areas that lack access to a minimum level of broadband.⁵ In fact, setting the eligibility threshold at the lower 3 Mbps downstream/768 kbps upstream speed that is captured in the NBM will relegate many customers in Alaska to sub-standard service.⁶ As ACS has commented previously, using 6/1.5 Mbps for determining Phase II eligibility works in

³ Public Notice, ¶ 9.

⁴ *Connect America Fund; Procedures Relating To Areas Eligible For Funding And Election To Make A Statewide Commitment In Phase II Of The Connect America Fund*, Reply Comments of Alaska Communications Systems, WC Docket No. 10-90, DA 12-2075, DA 13-80 (filed March 4, 2013) (“ACS Eligibility Reply Comments”) at 1-2, *citing Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶¶ 5, 108, 160, 162, 187 (2011) (“*USF-ICC Transformation Order*”).

⁵ ACS Eligibility Reply Comments at 3, *citing Connect America Fund; Procedures Relating To Areas Eligible For Funding And Election To Make A Statewide Commitment In Phase II Of The Connect America Fund*, Comments of the United States Telecom Association, WC Docket No. 10-90, at 10 (filed Feb. 10, 2013).

⁶ ACS Eligibility Comments at 9.

concert with the ultimate goal of CAF Phase II support⁷ because CAF Phase II recipients ultimately will be required to demonstrate that they make available service at these speeds in some percentage of supported locations.⁸

Using 6/1.5 Mbps as the eligibility threshold should not correspondingly ratchet up the compliance requirements for carriers receiving Phase II support. The Commission clearly set 4/1 Mbps as the initial performance requirement for all areas supported by CAF Phase II, but left undetermined the number of locations that would be required to offer broadband at 6/1.5 Mbps speeds.⁹ It is not necessary to match compliance requirements for receipt of CAF Phase II support with an eligibility standard of 6/1.5 Mbps to prevent the scenario the Bureau noted in the Public Notice about a carrier using Phase II funds to overbuild an existing 4/1 Mbps network with its own 4/1 Mbps network.¹⁰ An efficient solution, which remains true to the Commission's primary directive of expanding broadband at 4/1 Mbps speeds to all locations where a carrier receives support and encouraging 6/1.5 Mbps where economically feasible, would be to allow carriers flexibility to offer service at 4/1 Mbps speeds or above, and require them in their annual showing to demonstrate the speeds they actually achieve in specific locations.

⁷ ACS Eligibility Reply Comments at 3.

⁸ ACS Eligibility Comments at 9-10, *referencing* 47 C.F.R. § 54.313(e)(2).

⁹ “By the end of the fifth year, price cap ETCs must offer at least 4 Mbps/1 Mbps broadband service to all supported locations, and at least 6 Mbps/1.5 Mbps to a number of supported locations to be specified.” *USF/ICC Transformation Order*, ¶ 160.

¹⁰ *See* Public Notice, ¶ 9.

B. Version Of The National Broadband Map

The Bureau invites interested parties to supplement the reported June SBI 2012 data, which will be utilized to assist in determining the speeds of broadband providers.¹¹ The areas set as eligible for receipt of CAF Phase II support should not be a moving target subject to updates to the NBM. ACS has advocated that eligibility determinations should be made by using the National Broadband Map (“NBM”) as of a date certain, suggesting June 2012, which facilitates a stable environment for effective business planning related to CAF Phase II support and provides certainty to the Bureau on where broadband access is truly available.¹² Similarly, relying on the NBM as of a date certain “allows all interested parties to rely on the same information, and prevents undue administrative burden that would result from ever-shifting lists of eligible census blocks.”¹³ It is not difficult to envision the opportunities for abuse that reliance on an ever-changing map would create. The Commission would need to establish a process for verifying newly submitted data that has not been vetted through the NBM process as well as make decisions on what the data changes mean for areas that were previously identified as eligible for support, all of which increases carrier and Commission costs without reasonably conserving CAF support dollars. Carriers would be reluctant to accept CAF Phase II obligations if they

¹¹ See Public Notice, ¶ 10. The Bureau also invites commenters to report on capacity, latency, and price metrics, which are not reported in SBI data, but are metrics relevant to CAF Phase II support. See Public Notice, note 17.

¹² *Connect America Fund; Procedures Relating To Areas Eligible For Funding And Election To Make A Statewide Commitment In Phase II Of The Connect America Fund*, Comments of Alaska Communications Systems, WC Docket No. 10-90, DA 12-2075, DA 13-80 (filed Feb. 19, 2013) (“ACS Eligibility Comments”).

¹³ ACS Eligibility Comments at 4, *citing Connect America Fund*, Comments of Alaska Communications Systems, WC Docket No. 10-90, DA 12-1961, DA 12-2001 (filed Jan. 9, 2013) and *Connect America Fund*, Reply Comments of Alaska Communications Systems, WC Docket No. 10-90, DA 12-1961, DA 12-2001 (filed Jan. 24, 2013).

could not be certain that the census blocks deemed eligible at the time they assess their ability to meet the performance metrics would remain eligible after they accept the support and begin deploying company resources as well as spending limited CAF Phase II funds. An ever-changing list of eligible census blocks simply would be unworkable.

II. PRICING

The Bureau seeks comment on what pricing metric will demonstrate that price cap carriers are offering voice and broadband in exchange for CAF Phase II support at “reasonably comparable” rates, and also seeks comment on the rates at which a competitor must be offering service in order for it to be deemed an “unsubsidized competitor” that would preclude an area from receiving support.¹⁴ The Bureau makes several proposals for evaluating the reasonable comparability of price cap carrier rates. ACS comments here on the proposal that is geographically relevant for its service offerings.

As a carrier that provides service only to customers in the state of Alaska, ACS does not support the Bureau’s national or regional pricing proposals. However, ACS supports the Bureau’s proposed presumption for carriers operating only within one state, with a qualification to address the unique service characteristics and costs for providing service in Alaska. The rates of single-state carriers should be deemed reasonably comparable if the rates within the carrier’s service footprint, including urban areas as defined by the 2010 Census, are within a reasonable range, applying a standard deviation that accounts for the carrier’s unique service characteristics and costs. The reasonable comparability requirement of Section 254(b) of the Communications Act requires rural rates not to be identical to urban rates, but only to fall “within a reasonable

¹⁴ See Public Notice, ¶ 13. ACS does not comment here on pricing that competitors must offer in order to be considered an unsubsidized carrier that can exclude an area from receiving CAF Phase II support.

range of urban rates.”¹⁵ There are many factors unique to providing service in Alaska (such as the cost of transport to remote areas) that make it difficult to offer service at exactly the same rates across the service territory of four different ACS ILECs and six different study areas. Therefore, the rule should allow ACS to demonstrate compliance so long as its rates across its service footprint are within one standard deviation.

III. USAGE

The Bureau seeks comment on an appropriate minimum monthly usage allowance for broadband capacity that must be offered by supported carriers at a price not exceeding the level deemed reasonably comparable.¹⁶ The Bureau also asks whether the required minimum usage allowance should be set at an initial level “for the first year of implementation” but then required to increase in subsequent years.¹⁷ As a threshold matter, any performance metrics should be established prior to the CAF Phase II election date, so carriers may reliably estimate the cost of broadband deployment and make an informed election. If minimum usage allowances must increase during the 5-year funding period when performance obligations apply, the increase should be specified at the outset. As for the correct levels, ACS believes that 60 GB is an appropriate minimum monthly usage allowance for CAF Phase II funding.

IV. LATENCY

The Bureau seeks comment on whether it should establish a specific numerical latency standard to implement the Commission’s latency requirement for price cap carriers receiving

¹⁵ *USF/ICC Transformation Order*, ¶113.

¹⁶ *See* Public Notice, ¶¶13, 19.

¹⁷ *Id.*, ¶24.

CAF Phase II support, as well as for determining who is an “unsubsidized competitor.”¹⁸ Having an objective standard for both measures may be an appropriate goal; however, it is difficult to determine what that standard should be in Alaska when end-to-end latency currently cannot be tested on ACS’s broadband services.

Measuring broadband latency in Alaska must take into account the long transmission facilities across the state of Alaska, which often include non-fiber transport, specifically point-to-point microwave and satellite transport, as well as the undersea cable necessary to transport Internet traffic to the peering points located over a thousand miles away in Oregon and Washington. Moreover, ACS is merely a customer on some of these facilities – notably, the satellite transmission links and the Internet access points – making testing even more difficult, and limiting ACS’s ability to improve results.

The service characteristics of these alternative forms of transport in Alaska vary significantly from the fiber transport that is predominant throughout the Lower 48. The differences in network architecture may well necessitate a different latency standard than what might be a feasible metric in the Lower 48. ACS therefore believes that a separate latency standard must be developed for CAF Phase II in Alaska.

ACS is continuing to evaluate what latency standard would be reasonable for broadband service offered to Alaska consumers, given the length and diverse architecture of middle-mile transport. The ability to effectively measure and report on latency depends on the development of automated testing solutions. ACS’s engineers are not aware of any currently available automated solutions for testing consumer broadband latency over the facilities used by ACS between each customer premise and Internet access points. It is particularly important to

¹⁸ See Public Notice, ¶ 26.

develop testing solutions not dependent on customer usage, as there is an expected increase in latency over Internet Protocol networks as customer usage nears the peak capacity of the service. Moreover, ACS would need to test from many thousands of Alaska customer locations to its Internet peering points located in other states. This would require installation of additional servers or other devices as ACS has no appropriate means to handle a large volume of latency measurements to the Internet access points today.

ACS expects that it would be able to comply with latency reporting requirements consistent with those parameters set forth in the Public Notice if vendor solutions are developed to meet those parameters and devices can be reasonably installed at Internet access points controlled by other entities. Manual testing tools available today would require time and manpower that ACS does not have, and the results would not be in compliance with the parameters set forth in the Public Notice.¹⁹ ACS will continue to evaluate what latency standard should apply in Alaska, and will work with the Bureau on a reasonable solution for testing to ensure that this performance metric can be met.

V. UNSUBSIDIZED COMPETITOR & CENSUS BLOCK CHALLENGE PROCESS

The Bureau seeks comment on varying proposals for considering census block eligibility for CAF Phase II support based on the presence of broadband services offered by different types of competitors, specifically cable broadband providers, fixed wireless providers, and mobile wireless providers. It is critical that census blocks remain eligible for support unless they are verifiably served at levels meeting the required performance metrics *and* the service provider truly is “unsubsidized.” While the goal of the challenge process should be ensuring that support is needed, in cases of doubt, support should be provided so unserved locations may be served.

¹⁹ See Public Notice ¶¶25-26.

A. Cable Broadband Providers

“The Bureau proposes to exclude from support calculations in the adopted model any census block that is served by a cable broadband provider that provides service meeting the defined speed threshold.”²⁰ This proposal assumes that a cable provider that meets the speed threshold also meets price, capacity, and latency requirements, qualifying it as an “unsubsidized competitor,” but allows the assumption to be challenged.²¹

The proposed presumption is wholly inappropriate for Alaska. The state’s self-described largest broadband provider, General Communication, Inc. (“GCI”), provides cable broadband service as well as local switched voice services and long-distance service in most of Alaska, including many locations served by ACS. In ACS’s ILEC territories, GCI is *not* an “unsubsidized competitor,” defined in the Commission’s rules as “a facilities-based provider of residential fixed voice and broadband service that does not receive high-cost support.”²² In fact, for years prior to the *USF-ICC Transformation Order*, GCI received universal service high-cost support at the same per-line rate as ACS under the “identical support” rule for competitive local exchange carriers (“CLECs”), and it will continue to receive CETC support for a number of years to come, during the phase-down established in the *USF/ICC Transformation Order*.²³ GCI’s history as a very successful CLEC in ACS’s territory is well known to the Commission.²⁴

²⁰ Public Notice, ¶ 11.

²¹ See Public Notice, note 19.

²² 47 C.F.R. § 54.5.

²³ 47 C.F.R. § 54.307(e).

²⁴ E.g., *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*, Memorandum Opinion and Order, 22 FCC Rcd 1958 (2007); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended*

The amount of support paid to GCI by USAC through the high-cost program is a matter of public record. Moreover, GCI has constructed fixed terrestrial voice and broadband facilities using other federal subsidies as well.²⁵ It therefore would be irrational to characterize GCI as an “unsubsidized” competitor in Alaska, though its network architecture is cable-based.

If the Bureau favors a presumption with respect to cable broadband providers, ACS suggests that it qualify the presumption as follows: The presence of a cable provider that offers voice and broadband at speeds, latency, capacity and pricing meeting the adopted performance requirements, *and that is not a designated ETC*, should presumptively disqualify a census block from CAF Phase II support. The presence of a cable provider that is a designated ETC should not disqualify a census block from CAF Phase II support, regardless of the speeds, latency, capacity and pricing that such cable provider offers. Alternatively, the Bureau should acknowledge that, in Alaska, the cable-based competitor is a subsidized competitor.

B. Fixed Wireless Providers

ACS agrees with the Bureau’s proposal to require fixed wireless providers make an affirmative showing that they meet speed, latency, capacity, and price criteria in order to be “counted” as “unsubsidized competitors” eliminating a census block from support eligibility.²⁶ This showing should be required to encompass voice as well as broadband services. The Commission requires that CAF Phase II eligible telecommunications carriers (“ETCs”) provide

(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, Memorandum Opinion and Order, 22 FCC Rcd 16304 (2007) (“ACS Broadband Forbearance Order”).

²⁵ See, e.g., Connect America Fund, Reply Comments of General Communication, Inc. on Design of the Remote Areas Fund, WC Docket No. 10-90 (filed Mar. 18, 2013) at 2.

²⁶ See Public Notice, ¶ 11.

voice as well as broadband services meeting the performance metrics established by the Bureau.²⁷ Fixed wireless Internet providers (“WISPs”) generally do not meet these requirements.

As discussed previously in this docket, WISPs seldom offer broadband access at performance levels meeting those required for CAF Phase II.²⁸ WISP networks tend to be technically constrained by line-of-sight requirements and third-party interference, as well as speed and capacity limits that would not satisfy CAF Phase II standards at a price that meets the Commission’s affordability and reasonable comparability standards.²⁹ Moreover, WISPs typically are not certificated as telecommunications carriers, much less designated as ETCs – most WISPs operating in Alaska lack voice capability. If CAF support were denied in rural Alaska census blocks due merely to the presence of a WISP, voice service could disappear from those areas altogether. Such a result would contravene the requirements of Section 254 of the Communications Act as well as the policies articulated in the *USF-ICC Transformation Order*. It is reasonable for the Bureau to conclude that WISPs typically would not meet the criteria for an “unsubsidized competitor” and therefore to shift the burden of proving otherwise to the WISPs themselves, before deciding whether to eliminate any census blocks from eligibility based on WISP offerings there.

C. Mobile Wireless Providers

²⁷ See, e.g., *USF-ICC Transformation Order*, ¶80 (voice service continues to be required of all ETCs).

²⁸ See, e.g., Connect America Fund, Reply Comments of ACS on Further Notice of Proposed Rulemaking in WC Docket No. 10-90 (filed Feb. 11, 2013) at 6-8.

²⁹ See *id.* at 7 and comments cited therein.

Mobile wireless service providers should not be allowed to participate in the challenge process in order to qualify as “unsubsidized competitors” or exclude areas from CAF Phase II support.³⁰ The reason is that they are not deemed effective competitors to ILECs. The Commission consistently has found that the voice services offered by mobile wireless providers are not reasonably comparable to those offered by ILECs.³¹ (If the Commission were to change its views, ACS would welcome the deregulation that surely must follow such a finding, but that much-anticipated day has not yet dawned.) The Commission also holds mobile wireless providers to a lower standard for broadband services.³²

Allowing mobile wireless providers to participate in the challenge process also could result in nonsensical disqualification of census blocks, and ultimately force consumers to rely on sub-standard mobile wireless voice and broadband services, if such services are available at all. The Commission intended for consumers to have access, at a minimum, to at least one fixed terrestrial service provider and at least one mobile provider for voice and broadband services.³³ The Connect America Fund already provides support for mobile wireless services; mobile wireless providers should not interfere in the determination of supported census blocks for fixed terrestrial broadband services.

D. Date For Establishing Challenge

³⁰ See Public Notice, ¶ 11.

³¹ See, e.g., ACS Broadband Forbearance Order, ¶¶ 28, 36-38.

³² Mobility Fund Phase I requires only 3G (300 kbps/50 kbps) or 4G (768 kbps/200 kbps) for supported mobile broadband service. *USF/ICC Transformation Order*, ¶322.

³³ See *id.*, ¶¶ 1, 5, 10, 15, 60, and note 194.

Bureau asks if challenge process by an unsubsidized competitor should be based on meeting requirements as of its June 30, 2012 offerings, or some later date.³⁴ As already noted, ACS has urged the Bureau to determine eligibility as of a date certain, June 30, 2012, creating a stable environment that allows thoughtful business decisions.³⁵

E. Consequence of Census Block Ineligibility

Finally, ACS reiterates its concern that it may be unable to continue to support public voice services in census blocks where support is withdrawn. The Commission has acknowledged the role historically played by ILECs, investing in facilities throughout the mandatory service area, often in locations where other providers found no economic basis to do so, providing services on demand as longtime carrier-of-last-resort (“COLR”), and remaining in the marketplace until states grant permission to withdraw.³⁶ Universal service funding helped make it possible for ILECs to perform this role, so the withdrawal of universal service funding necessarily will have consequences for future services. Moreover, if the Bureau’s premise is correct, and a census block is declared ineligible due to the presence of an unsubsidized competitor, there should be no hesitation to relieve the ILEC from mandatory service obligations. The Bureau therefore should take this opportunity to clarify that ILECs may not be required to provide service on request, or subjected to other COLR-type obligations, in previously supported areas that are deemed ineligible for CAF Phase II funding.

³⁴ See Public Notice, ¶ 12.

³⁵ See ACS Eligibility Comments at 5.

³⁶ *USF/ICC Transformation Order*, ¶¶175, 177.

VI. CONCLUSION

The Bureau should adopt CAF Phase II parameters that will encourage price cap carriers to accept the funding and expand broadband availability, not hinder them with performance metrics that cannot be satisfied or bear no relation to local conditions. The rules should be designed to ensure that consumers in all areas, including Alaska, gain access to comparable services at comparable prices, and should not render a location ineligible unless it is served by a competitor that is truly “unsubsidized.”

Respectfully submitted,

Leonard A. Steinberg
General Counsel and Corporate Secretary
Richard R. Cameron
Assistant Vice President and Senior Counsel
ALASKA COMMUNICATIONS SYSTEMS GROUP, INC.
600 Telephone Avenue
Anchorage, Alaska 99503

/s/
Karen Brinkmann
Robin Tuttle
KAREN BRINKMANN PLLC
2300 N Street, NW, Suite 700
Washington, D.C. 20037
(202) 365-0325
KB@KarenBrinkmann.com

Counsel for ACS

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