BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Alaska Communications Systems	)	WC Docket No. 10-90
	)	
Petition for Waiver of Certain High-Cost Universal Service Rules	)	WC Docket No. 05-337
	)	

COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association ("USTelecom")[1] respectfully submits comments on the Public Notice ("*Notice*")[2] issued by the Wireline Competition Bureau ("Bureau") regarding Alaska Communications Systems' ("ACS") Petition for Waiver of Certain High-Cost Universal Service Rules ("ACS Petition"). ACS seeks waiver of section 54.313(c) of the Commission's rules. Section 54.313(c) outlines the requirements for price cap recipients of frozen high-cost universal service support to certify annually that a percentage of the frozen high-cost support received in a given year was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor.[3] In the *USF/ICC Transformation Order*, the Commission froze all support under then-existing high-cost support mechanisms for price cap

[1] USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

[2] *See* Public Notice, *Wireline Competition Bureau Seeks Comment on the Alaska Communications Systems Petition for Waiver of Certain High-Cost Universal Service Rules*, WC Docket Nos. 10-90 and 05-337 (rel. April 11, 2013).

[3] *See* ACS Petition at 1; 47 C.F.R. § 54.313(c).

carriers and their rate-of-return affiliates equal to the amount of support each carrier received in 2011.[4]

I. The Commission Should Resolve the Conflict in the Rules

Certain language in the *USF/ICC Transformation Order* and rules appears to direct companies to allocate frozen Interstate Access Support ("IAS") and frozen Interstate Common Line Support ("ICLS") annually, at amounts equal to 2011 support levels, to the calculation of interstate access charges.[5] ACS receives Local Switching Support ("LSS") as well which is also used in the calculation of interstate access charges. Other language in the *Order* and rules appears to direct carriers to spend increasingly large amounts of frozen high-cost support, defined to include IAS, ICLS, and LSS, to build and operate broadband networks in certain areas.[6] Funding cannot be applied to both purposes at the same time. The Commission should resolve this conflict by permitting the application of IAS, ICLS and LSS to the calculation of interstate access charges by all price cap carriers through either the requested waiver of 54.313(c) or a clarifying order.

Frozen IAS and ICLS, discussed in sections 54.312 and 54.313, should be used for the purpose for which they were designed: to compensate carriers for required reductions in

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[4] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17715, para. 133, 17722-23, paras. 149-150 (2011) ("*USF/ICC Transformation Order" or "Order"), pets. for review pending sub nom.* In re: FCC 11-161, No. 11-9900 (10th Cir. filed Dec. 18, 2011).

[5] *See* 47 C.F.R. § 54.312(a)(3) and *Connect America Fund et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 152 (Order), *pets. for review pending* sub nom. In re: FCC 11-161, No. 11-9900 (10th Cir. filed Dec. 18, 2011).

[6] *See* 47 C.F.R. § 54.313(c)(2)-(4). In 2013, price cap carriers are to spend one-third of their frozen high-cost support to build and operate broadband-capable networks in areas substantially unserved by an unsubsidized competitor. In 2014 and 2015, the share of frozen high-cost support that is to be spent toward broadband increases to two-thirds and 100 percent, respectively.

interstate access charges and mandated limits on end-user charges.[7] Carriers receiving LSS, including formerly rate-of-return ILECs that converted to price caps as well as rural ILECs that are treated as price cap ILECs under the *Order* because they are affiliated with a price cap carrier, require the same clarification. LSS, along with ICLS, historically helped ensure that ILECs could maintain services in rural high-cost areas without excessively burdening end-user rates.

As data filed by ACS and several other price cap carriers last month demonstrates,[8] if the Commission chooses to require carriers to apply a portion of the access replacement funding to broadband deployment, it will result in an increase in many end user charges and revenue shortfalls for price cap carriers that will diminish overall network investment. If carriers are required to apply one-third of frozen IAS toward broadband rather than toward constraining end-user charges, such carriers would be required to raise Subscriber Line Charges ("SLCs") in study areas where they are not already at the cap. However, even after raising SLCs to the caps, and in other study areas where SLCs are already at the maximum levels set by the Commission's rules, carriers would be denied appropriate recovery because of the end user charge limitations embodied in the rules. Moreover, price cap carriers who receive frozen ICLS support pursuant to the terms of price cap conversions are not permitted to make up support reductions through increases in SLCs, absent waivers, and even assuming such carriers are able to obtain waivers to

[7] Although the treatment of frozen ICLS for carriers that have converted study areas to price cap regulation is slightly different than for legacy IAS study areas, the intent of frozen ICLS is identical; to constrain end-user charges. Legacy IAS treatment is outlined in Commission rules, while price cap ICLS treatment is generally addressed in each company's respective waiver order, which is the effective rule for that company. ACS receives ICLS pursuant to its waiver order. *See* ACS Petition at page 4.

[8] *See*, Letter from Jonathan Banks, Senior Vice President, Law and Policy, United States Telecom Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (March 28, 2013), with attached data illustrating the potential fiscal effects of the tension between the conflicting rules on support, access, and subscriber charges.

raise end user rates, as with IAS, they would be constrained in many study areas by the SLC, PICC and CCL limitations. Carriers receiving frozen LSS will no longer be able to use that support to reduce the Eligible Recovery amount associated with the intercarrier compensation transition,[9] and the higher Eligible Recovery amount will lead to higher Access Recovery Charges ("ARCs") and, where ARCs are already at the allowed maximum, higher Connect America Fund ("CAF") ICC support amounts. As ACS explains, even with added CAF ICC, such carriers would experience revenue shortfalls. ACS estimates a revenue shortfall of approximately $3,495,000 in 2013 *after* raising the SLCs to the cap.[10]

II. Waiver or Clarification Would Prevent Undue Hardship to ACS and Other Price Cap Carriers and Their Customers

Absent waiver or clarification of the conflict in the rules, ACS and other price cap carriers would be unable to recover sufficient revenues to continue investing in their networks at current levels, and would likely raise end-user rates to the extent permitted to make up a portion of the amount they are forced to divert to broadband deployment.[11] Neither of these impacts is beneficial for voice or broadband customers.[12] The overall purpose of the *Order* is best achieved by continuing to use IAS, ICLS and LSS to compensate carriers for required reductions in interstate access charges and mandated limits on end-user charges. Absent waiver or clarification ACS would be forced to raise multi-line business SLCs (its single-line SLCs are already at the cap), and would face under-recovery of nearly $4,779,000 million for 2013 alone.[13] Likewise, AT&T, CenturyLink, Consolidated, FairPoint, Verizon and Windstream

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[9] *See* 47 C.F.R. §§ 51.915, 51.917.

[10] *See* ACS Petition at pages 7-8.

[11] *Id* at page 8.

[12] *Id* at pages 7-8.

[13] *Id* at page 9.

combined would face under-recovery of almost $95 million in 2013, and many of their residential and business customers will face substantial rate increases.[14]

III. ACS Should Be the Granted Flexibility To Spend Frozen High-Cost Support In Any of the Service Areas of the ACS ILECS To Build and Operate Broadband-Capable Networks in Areas Substantially Unserved By an Unsubsidized Competitor

ACS should be granted the flexibility to spend High Cost Loop Support ("HCLS") (if the Bureau permits ACS to continue to apply IAS, ICLS and LSS to interstate access) or all elements of its frozen support (if the Bureau denies such relief) in any of the service areas of the ACS ILECs to build and operate broadband-capable networks in areas substantially unserved by an unsubsidized competitor.[15] Forcing ACS to spend HCLS in the particular ILEC service area for which it was calculated will make it impossible for ACS to certify to that expenditure due to the reported presence of unsubsidized competitors in nearly all of some of its study areas' census blocks.[16] Lack of the certification will cause the carrier, and thus customers in areas substantially unserved by an unsubsidized competitor, to forego the support, leading to diminished broadband investment in contravention of the Commission's goals.

The Bureau should provide a real opportunity for ACS to fully use its HCLS by permitting it to certify on a holding company level, rather than at the study area level, that the

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[14] *See*, Letter from Jonathan Banks, Senior Vice President, Law and Policy, United States Telecom Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (March 28, 2013), with attached data illustrating the potential fiscal effects of the tension between the conflicting rules on support, access, and subscriber charges.

[15] Since HCLS is included in the definition of frozen support, but is not used in the calculation of interstate access charges, there is no conflict in the rules as to how HCLS funding should be spent – it should be used for the broadband purposes specified in the *Order* in compliance with Section 54.313(c).

[16] *See* ACS Petition at 12, referring to its situation in year one of the three-year transition, where ACS of the Northland, in its Glacier State study area, is purportedly "served" by an unsubsidized competitor, and is thus unable to make the requisite certification. ACS will be in that situation for three of its four ILECs in year two of the transition.

applicable amount of HCLS is being used to build and operate broadband networks in areas substantially unserved by an unsubsidized competitor. Waiver would serve the public interest by encouraging efficient use of scarce high-cost support to maximize broadband availability.

Absent waiver (or *sua sponte* clarification by the Commission) for ACS and all other price cap carriers of the rule requiring expenditure of IAS, ICLS, LSS on broadband build out, the Bureau should permit all price cap carriers to certify the expenditure of frozen support at the holding company level, rather than at the study area level. This will provide a real opportunity for price cap carriers to fully use those funds – and will benefit a greater number of currently unserved subscribers in the service area of the price cap carrier.

IV. Conclusion

For the foregoing reasons, the Commission should issue on its own motion an order clarifying the rules conflict discussed above and adopting the same substantive solution for all price cap ILECs as is requested in the instant *Petition*: the application of frozen IAS, ICLS and LSS to the calculation of interstate access charges, and exclusion of these categories of support from the Section 54.313(c) requirement. In the absence of such a *sua sponte* clarification, the Commission should promptly grant the ACS petition and grant identical relief to all price cap ILECs.

If the Commission chooses not to issue such a clarification or waiver, it should, on its own motion, permit all price cap carriers to certify the expenditure of frozen support at the holding company level, rather than at the operating company or study area level.

Respectfully submitted,

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