

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

To: The Commission
Chief, Wireline Competition Bureau

COMMENTS OF SPITwSPOTS, INC.

SPITwSPOTS, Inc. (“SPITwSPOTS”), pursuant to Sections 1.415 and 1.419 of the Federal Communications Commission’s Rules, hereby submits Comments in response to the Wireline Competition Bureau’s Public Notice seeking comment on Alaska Communications Systems’ (“ACS”) petition for waiver of Section 54.313(c) of the Commission’s rules (“Waiver Petition”).¹ SPITwSPOTS is a fixed broadband service provider with coverage areas in and around Homer, Alaska and areas where ACS also reports providing fixed broadband service. SPITwSPOTS urges the Bureau, to the extent it grants ACS any relief requested in the Waiver Petition, not to suspend the requirement that frozen high-cost support be “demonstrably used in areas substantially unserved by an unsubsidized competitor.”

¹ See *Wireline Competition Bureau Seeks Comment on the Alaska Communications Systems Petition for Waiver of Certain High-Cost Universal Service Rules*, Public Notice, WC Docket Nos. 10-90, 05-337, DA 13-700 (Wireline Comp. Bur., April 11, 2013) (“Public Notice”). According to ACS, the petition identifies four 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.

Background

SPITwSPOTS provides fixed wireless Internet access services to approximately 900 customers within the Kenai Peninsula Borough in Alaska. These customers represent approximately 10-14 percent of the households in Homer and 17 percent of the households within SPITwSPOTS' wireless network. SPITwSPOTS provides its customers with fixed wireless broadband services with advertised download speeds exceeding 10 Mbps.² SPITwSPOTS provides services funded solely through private investment, not through subsidies from the federal government.

For years, SPITwSPOTS regularly has reported mapping data to Connect Alaska for purposes of the State Broadband Initiative (“SBI”) data submissions and of the National Broadband Map. The National Broadband Map data indicate that SPITwSPOTS and Alaska Communications Systems Holdings, Inc. have reported providing broadband coverage to many of the same geographic areas in Alaska.³

In October 2012, ACS filed a request for waiver of Section 54.312(b) of the Commission's rules to use more than \$2.5 million in Phase I support in a manner at variance with the purposes of the program. SPITwSPOTS opposed the request on the grounds that, among other things, ACS accepted its full \$4,185,103 allocation of Phase I support based in part on a certification that the support would go to areas “unserved” by fixed broadband, despite the presence of contrary National Broadband Map data for

² As reported on the National Broadband Map. See <http://www.broadbandmap.gov/internet-service-providers/homer,-alaska/lat=59.6425000000001/long=-151.54833329999997/wireless/> (last visited May 6, 2013).

³ See the maps provided in Attachment A to these Comments, reflecting National Broadband Map data as of June 30, 2012.

SPITwSPOTS.⁴ Nevertheless, SPITwSPOTS acknowledges the challenges associated with providing broadband and voice services to rural customers in Alaska, particularly as far as legacy technologies go. ACS faces many of the same challenges as SPITwSPOTS in making these services available cost-effectively, often to extremely remote areas. For this reason, SPITwSPOTS has a significant interest in the Bureau's consideration of the ACS Waiver Petition and on the potential impact on competition in the market to provide broadband services to Alaska residents in these areas.

I. ACS SHOULD BE REQUIRED TO DEMONSTRATE USE OF FROZEN CAF PHASE I SUPPORT IN LOCATIONS SUBSTANTIALLY UNSERVED BY AN UNSUBSIDIZED COMPETITOR

ACS seeks waiver of Section 54.313(c) of the Commission's rules, which relates to the annual certification requirements applicable to price-cap recipients of frozen high-cost universal support. These requirements apply as part of the phase-out of CAF Phase I funding and the transition to CAF Phase II funding for eligible carriers. Section 54.313(c) requires recipients to certify use of a specified percentage of frozen high-cost support to build and operate broadband-capable networks for the provision of retain broadband service in areas "substantially unserved by an unsubsidized competitor."⁵

In the Public Notice, the Bureau notes that ACS

specifically seeks waiver of section 54.313(c) in either of two ways: First, ACS seeks a waiver to exclude from the repurposing requirement those portions of their frozen high-cost support derived from Interstate Common Line Support

⁴ 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; see also Opposition of SPITwSPOTS Inc. to Petition for Waiver, WC Docket Nos. 10-90 and 05-337 (filed October 12, 2012). SPITwSPOTS objected to the petition because ACS accepted Phase I support while overlooking the presence of fixed wireless broadband providers like SPITwSPOTS in areas that ACS proposed to serve; essentially seeking federal funding to directly compete with an unsubsidized provider.

⁵ 47 C.F.R. §54.313(c). The required percentage increases annually from 1/3 (by July 1, 2014) to 2/3 (by July 1, 2015) to 100% (by July 1, 2016).

(ICLS) and Local Switching Support (LSS), and to allow ACS flexibility to spend the remaining portion of frozen high-cost loop support, HCLS, in any of the service areas of the ACS ILECs, provided the support is used to build and operate broadband-capable networks in areas substantially unserved by an unsubsidized competitor. In the alternative, ACS requests waiver of the requirement that frozen high-cost support be demonstrably used in areas substantially unserved by an unsubsidized competitor.⁶

SPITwSPOTS submits these comments to urge the Bureau not to relieve ACS of the obligation under Section 54.313(c) to demonstrate that the applicable portion of frozen high-cost support is being used in areas “substantially unserved by an unsubsidized competitor.” Certain aspects of the relief requested by ACS are contrary to a critical purpose of the Connect America Fund – to fund the expansion of broadband into areas unserved by an unsubsidized competitor.

In adopting rules to implement the Connect America Fund, the FCC set forth five performance goals for its reforms of Universal Service Fund “high cost” programs:

(1) preserve and advance universal availability of voice service; (2) ensure universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions; (3) ensure universal availability of modern networks capable of providing advanced mobile voice and broadband service; (4) ensure that rates for broadband services and rates for voice services are reasonably comparable in all regions of the nation; and (5) minimize the universal service contribution burden on consumers and businesses.⁷

The Commission established CAF Phase I “to provide an immediate boost to broadband deployment in areas that are unserved by any broadband provider.”⁸ As the Commission has indicated, “[s]upport should be used to further the goal of universal voice and

⁶ Public Notice at 1.

⁷ *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 a Unified Carrier Compensation Regime; Federal-State Joint Board on Universal Service: Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 at ¶17 (rel. Nov. 18, 2011); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011).

⁸ *Id.* at ¶137.

broadband, and not to subsidize competition in areas where an unsubsidized competitor is providing service.”⁹

ACS, on the other hand, request relief that, in part, would free ACS from any obligation to demonstrate that it is using frozen CAF I support in locations “substantially unserved by an unsubsidized competitor.”¹⁰ ACS states that without a waiver it “will be required to divert operational resources to demonstrate that it is using frozen high-cost support in areas specifically deemed unserved by an unsubsidized competitor.”¹¹ As a small company that is providing ACS with “vigorous competition in an extremely challenging service area,”¹² SPITwSPOTS submits that granting this form of relief is directly contrary to the Commission’s stated goals for the Connect America Fund and ACS falls short of demonstrating hardship sufficient to justify deviation from the rule. In fact, companies of many sizes must expend operational resources to identify served and unserved areas, and ACS has provided little detail or quantification to justify why the purported hardship for ACS is so disproportionate to the hardships borne by other providers who are in compliance with the rules. For this reason, to the extent ACS seeks relief from the having to demonstrate that locations are “substantially unserved by an unsubsidized competitor,” this request should be denied.

II. THE BUREAU MUST NOT GRANT ACS “FLEXIBILITY” THAT RESULTS IN UNFAIR COMPETITION

Separately, SPITwSPOTS notes that the “flexibility” requested by ACS must not be a code word for vague service commitments that could be used for unfair competition. ACS seeks “flexibility” in how it should be permitted to use frozen high-cost funds – by

⁹ *Id.* at n. 238

¹⁰ Waiver Petition at 14.

¹¹ *Id.*

¹² *Id.*

excluding ICLS and LSS from Section 54.313(c) and providing “greater flexibility for ACS to use HCLS within any of its four ILEC service areas and six study areas.”¹³ Such flexibility should not be afforded at the expense of accountability to the Commission’s stated purposes of the Connect America Fund. To that end, to the extent that the Commission affords ACS flexibility to redirect HCLS support within the stated four ILEC service areas and six study areas, ACS should be required to make publicly available the exact amounts of frozen support that it is directing to each area and to define, with reasonable specificity, the areas that are receiving this funding. To find otherwise would harm service to the public and competition in the provision of valuable broadband services. If cost and scarce resources are of such concern to ACS, perhaps ACS could look to working with other providers to find more cost-effective ways to deliver broadband, such as through the use of fixed wireless or other cost-effective technologies in places where wireline technologies cannot be deployed at reasonable cost. Accordingly, whatever flexibility (if any) that is afforded to ACS in connection with the Waiver Petition should not extend to use of CAF Phase I resources in a manner that introduces unfair competitive advantages, particularly given the presence of unsubsidized competition in the local marketplace.

¹³ *Id.* at 11.

Conclusion

SPITwSPOTS requests that the Bureau condition relief granted under the ACS Waiver Petition (if any) to the extent described herein.

Respectfully submitted,

May 13, 2013

SPITwSPOTS, Inc.

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Attachment A

Broadband Provider Service Area

Data as of: 06/30/12

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SPITwSPOTS LLC

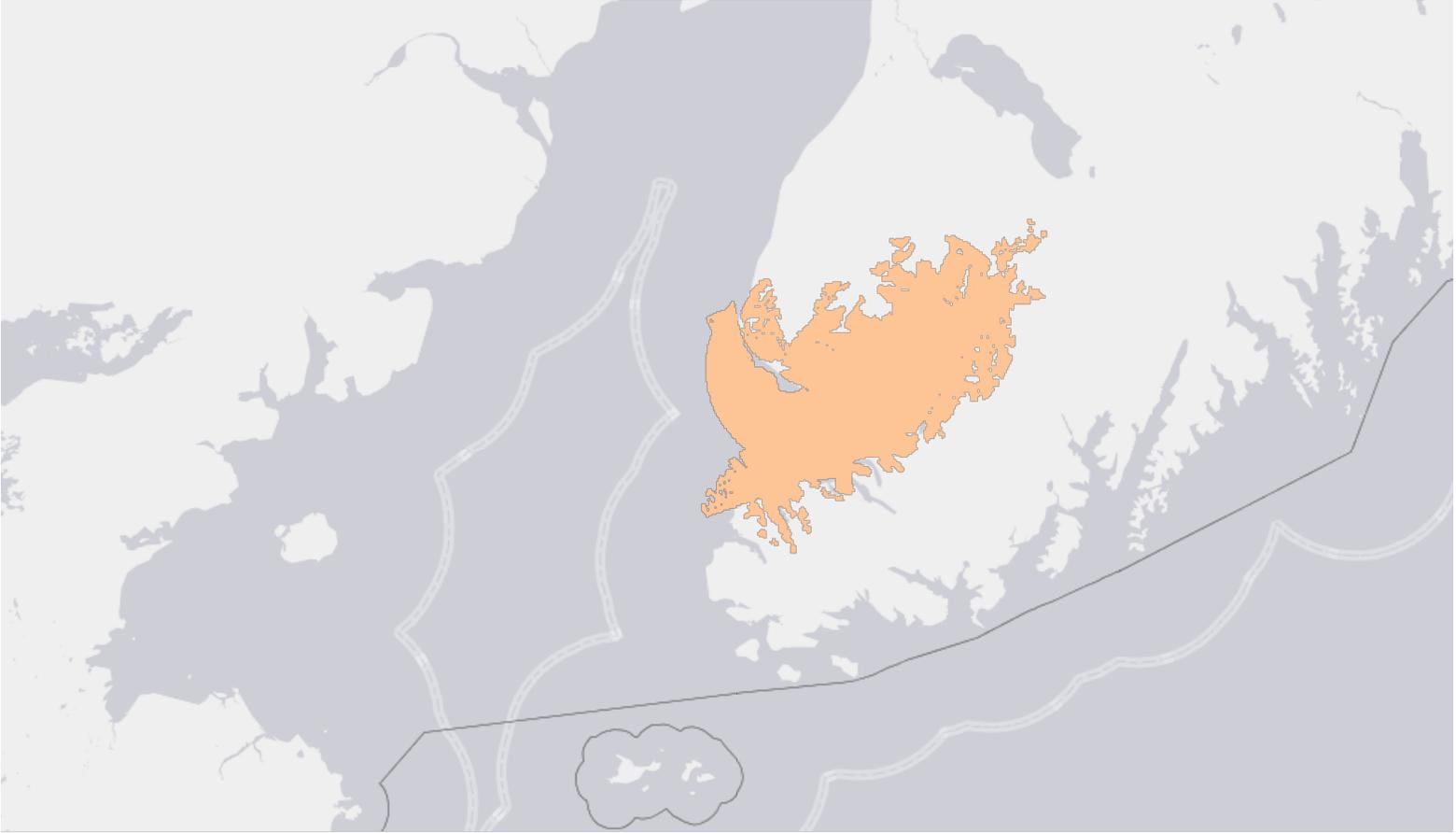
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Enter a provider name, then click **Refresh Map**.

Note: Some providers may only offer either wireline or wireless technologies.



The **National Broadband Map** is a tool to search, analyze and map broadband availability across the United States. Created and maintained by the **NTIA**, in collaboration with the **FCC**, and in partnership with 50 states, five territories and the District of Columbia.



Broadband Provider Service Area Data as of: 06/30/12

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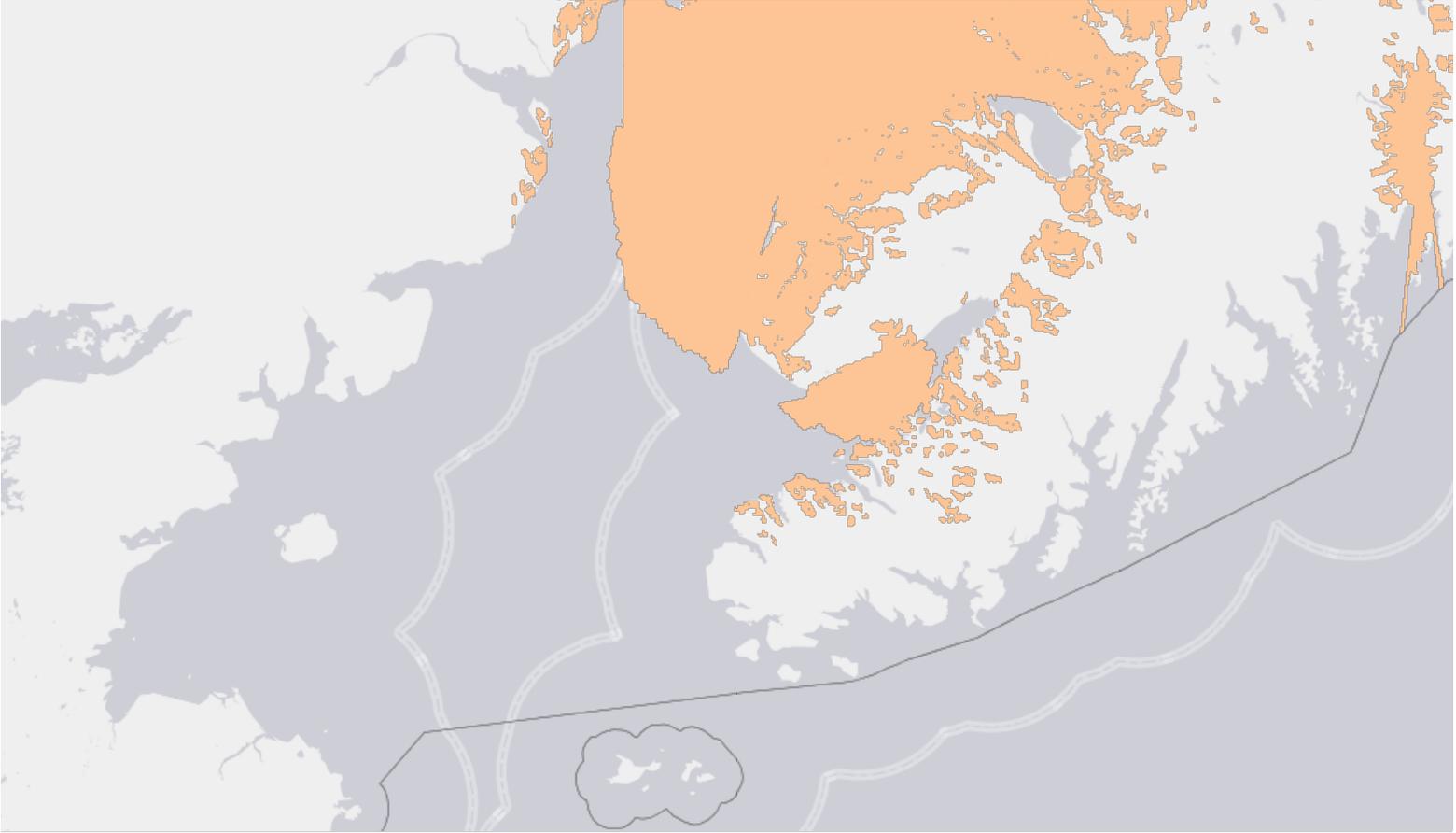
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CERTIFICATE OF SERVICE

I, Jonathan Allen, an attorney with Rini O’Neil, PC, hereby certify that I have caused copies of the foregoing “Comments of SPITwSPOTS, Inc.” to be sent via email (unless otherwise indicated*) this 13th day of May, 2013, to:

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