

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 Section 54.313(c) of the) WC Docket No. 05-337
Commission’s Rules, 47 C.F.R. § 54.313(c))

**REPLY COMMENTS OF ALASKA COMMUNICATIONS SYSTEMS
ON PETITION FOR FLEXIBILITY IN THE USE OF FROZEN HIGH-COST SUPPORT
IN THE ACS ILEC SERVICE AREAS**

Alaska Communications Systems (“ACS”)¹ hereby replies to comments filed in opposition to its request for a waiver of Section 54.313(c) of the Commission’s rules.² ACS has requested that the Commission allow it to exclude the portion of the frozen high-cost support that is derived from Interstate Common Line Support (“ICLS”) and Local Switching Support (“LSS”) from the broadband spending obligations of Section 54.313(c). It has also requests that the Commission provide it with flexibility to spend the broadband-repurposed portion of frozen high-cost support in any of the service areas of the ACS incumbent local exchange carriers that are substantially unserved by an unsubsidized competitor.

Three commenters – NCTA,³ GCI,⁴ and SPITwSPOTS⁵ – opposed the ACS Petition For Flexibility In The Use Of Frozen High-Cost Support In The ACS ILEC Service Areas

¹ In this proceeding, 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 47 C.F.R. § 54.313(c).

³ *Connect America Fund; Alaska Communications Systems Petition for Waiver of Section 54.313(c) of the Commission’s Rules, Opposition Of The National Cable & Telecommunications Association, WC Docket No. 10-90 (filed May 13, 2013) (“NCTA Opposition”).*

(“Petition”).⁶ None of the oppositions have provided a basis to deny the Petition and in some instances the oppositions have incorrectly stated the law. If the Commission does not grant the waiver ACS will have insufficient support to maintain its networks in high-cost areas and customers will lose access to reasonably comparable voice services at reasonably comparable rates.

I. A WAIVER IS NECESSARY UNTIL CAF PHASE II IS IMPLEMENTED

A. Frozen Support Is Still Legacy Support That Keeps Voice Rates Affordable

In the *USF/ICC Transformation Order*⁷ the Commission froze legacy universal service support at 2011 levels, recognizing that transitional support was necessary until the new Connect America Fund (“CAF”) Phase II support regime could be implemented. CAF Phase I has two support components: frozen support and incremental support. Contrary to the general claim of SPITwSPOTS that the “Commission established CAF Phase I ‘to provide an immediate boost to broadband deployment in areas that are unserved by any broadband provider,’”⁸ the Commission was much more specific that it intended to provide an immediate boost to broadband deployment

⁴ *Connect America Fund; Alaska Communications Systems Petition for Waiver of Section 54.313(c) of the Commission’s Rules*, Comments of General Communications, Inc., WC Docket Nos. 10-90 and 05-337 (filed May 13, 2013) (“GCI Comments”).

⁵ *Connect America Fund; Alaska Communications Systems Petition for Waiver of Section 54.313(c) of the Commission’s Rules*, Opposition Of The National Cable & Telecommunications Association, WC Docket No. 10-90 (filed May 13, 2013) (“NCTA Opposition”).

⁶ *See Wireline Competition Bureau Seeks Comment on the Alaska Communications Systems; Petition for Waiver of Certain High-Cost Universal Service Rules*, Comments of SPITwSPOTS, Inc., WC Docket Nos. 10-90 and 05-337 (May 13, 2013) (“SPITwSPOTS Comments”).

⁷ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (“*USF/ICC Transformation Order*”).

⁸ SPITwSPOTS Comments at 4

with *incremental* CAF Phase I support.⁹ Specifically, the Commission stated that “[t]o spur immediate broadband buildout, we will provide *additional* funding for price cap carriers to extend robust, scalable broadband to hundreds of thousands of unserved Americans beginning in early 2012.”¹⁰ Frozen CAF Phase I support is not additional support. Rather, it is the same support that price cap carrier previously received, but frozen as transitional support until CAF Phase II is implemented.

In overhauling the universal service support system the Commission acknowledged that it was replacing a regulatory system that supported the ILECs’ performance of their legacy obligations as service providers of last resort, including requirements to provide universal, affordable voice services.¹¹ Yet, during the transition to the new support regime, the Commission maintained legacy obligations and legacy support to price cap carriers. Notably, frozen CAF Phase I support historically has been used to keep voice rates affordable as ILECs met these and other related service obligations. Contrary to NCTA’s assertion, common line support is essential to network-based services that the ACS ILECs are required to make universally available to their customers.¹² Support that has been used to offset common line costs cannot be diverted to broadband expansion in a fraction of the study area without putting upward pressure on rates for voice services throughout the affected study area. The Commission continues to explicitly require that voice services be made available at affordable rates, and has

⁹ See *USF/ICC Transformation Order*, ¶ 137 (emphasis added).

¹⁰ *USF/ICC Transformation Order*, ¶ 22 (emphasis added).

¹¹ The Commission states that it adopted “necessary measures to transition carriers from existing support to CAF.” *USF/ICC Transformation Order*, ¶ 116. See also *USF/ICC Transformation Order*, ¶¶ 118 and 165.

¹² NCTA is simply inaccurate in stating that ACS has no obligation to spend support on common line facilities. See NCTA Opposition at 5. This statement ignores the operation of networks in providing services and the need for support that allows the services that ride over the network to be offered on an affordable basis.

declined to preempt state provider-of-last-resort requirements even where ILEC support is being phased down.¹³ In order to do that during the transitional phase of CAF Phase I, price cap carriers must continue spending non-optional frozen support as it was intended – to keep rates affordable throughout their service territories.

B. Imposing A Dual Purpose On All Frozen Support Requires ACS To Spend The Same Money In Two Mutually Inconsistent Ways

Rule 54.313(c) overlays a new spending requirement on legacy support without removing the associated legacy obligations. Therefore, the rule imposes a dual purpose for portions of frozen CAF Phase I support – the legacy purpose of keeping voice rates affordable throughout a carrier’s service territories, on the one hand, and offering broadband in the targeted unserved areas, on the other.¹⁴ The *USF/ICC Transformation Order* only briefly discusses the continuation of frozen CAF Phase I support and the broadband repurposing of that support if CAF Phase II is not implemented by the beginning of 2013,¹⁵ suggesting that the Commission did not fully appreciate the impact of the rule on ILEC rates and FCC pricing policies.

The tension in complying with rule 54.313(c) has been created by the delay in implementation of CAF Phase II and the need to continue with frozen CAF Phase I support, but

¹³ ACS disputes NCTA’s claim that legacy support was less efficient in directing funds and claiming that frozen support “more efficiently directs funding ... by explicitly requiring that supported broadband-capable networks be located in ‘areas unserved by an unsubsidized competitor.’” The Commission has always required accountability for the use of universal service funds for supported service under the Communications Act. *See e.g., Connect America Fund, Fifth Order on Reconsideration, 27 FCC Rcd 14549, ¶ 20 (2013) (“Fifth Order on Reconsideration”); USF/ICC Transformation Order, ¶ 540.*

¹⁴ NCTA ignores the duality of the requirements of Section 54.313(c), focusing on the use of frozen support as necessary to fulfill the Commission’s long-term CAF broadband goals while disputing the legacy obligations of common line spending to build and maintain networks that provide affordable voice service. *See generally* NCTA Opposition.

¹⁵ The Commission expected CAF Phase I to terminate on January 1, 2013, which is when it expected CAF Phase II to be implemented. *See USF/ICC Transformation Order, ¶ 148.*

with new broadband obligations that were never intended to be supported by legacy funding. The ACS ILECs require the full amount of former ICLS and LSS support in order to comply with their federal and state carrier of last resort obligations to build, operate, maintain, and upgrade voice-grade networks at regulated rates throughout their service areas, and they still require the full use of the frozen support that replaces the legacy ICLS and LSS while they are subject to legacy obligations to furnish voice service at affordable rates. When CAF Phase II is implemented, price cap carriers will have the choice to accept that new support amount and its corresponding regulatory obligations focused on broadband expansion, or to forego the support and obligations and instead participate in the “multi-year transition” from frozen CAF Phase I support.¹⁶ Price cap carriers do not have the option to refuse frozen CAF Phase I support, however; they remain bound to their legacy obligations, as carriers of last resort, to provide voice services at affordable rates until CAF Phase II is implemented. For this reason, the public interest would be served by permitting the ACS ILECs exclude the portion of the frozen high-cost support that is derived from ICLS and LSS from the broadband spending obligations of Section 54.313(c).

C. Broadband Will Be Expanded With Frozen Support Not Subject To The Waiver

As a transitional support mechanism it is appropriate that the portions of frozen CAF Phase I support needed for the ACS ILECs to comply with their legacy voice service obligations remain dedicated to that purpose. This, however, does not mean that all frozen CAF Phase I support will be exempt from use on broadband expansion. ACS has not sought a waiver of the rule 54.313(c)’s requirements that price cap carriers spend an increasing percentage of their High-Cost Loop Support (“HCLS”) on expanding broadband in areas that are substantially

¹⁶ See *USF/ICC Transformation Order*, ¶ 180.

unserved by an unsubsidized competitor. This broadband spending will be targeted as required under Commission's rules, based on the Commission definition of areas that are substantially unserved by an unsubsidized competitor, and ACS will report on its deployment as required by the rules. The flexibility that ACS seeks is not "code" for vague service commitments or lack of accountability in an effort to compete unfairly.¹⁷

Granting the requested waiver will not hinder the Commission's broadband expansion goals. CAF Phase I has both transitional and incremental components. The Commission focused broadband expansion in Phase I through the use of incremental support and this effort is already underway with incremental support having been awarded and accepted.¹⁸ To the contrary, the Commission did not appear to anticipate that frozen Phase I support would be used, at least in any significant way, for expanding broadband since it expected CAF Phase II to be implemented prior to the date by which any price cap carriers would be required to spend even the first third of their frozen CAF Phase I support for broadband.¹⁹ Granting the requested waiver would maintain the use of the ICLS and LSS portions of frozen support as intended – keeping voice rates affordable – and not interfere with the Commission's expectations for broadband expansion during CAF Phase I through incremental CAF and frozen HCLS.²⁰

¹⁷ See SPITwSPOTS Comments at 5-6.

¹⁸ See *USF/ICC Transformation Order*, ¶¶ 22 and 137.

¹⁹ See *USF/ICC Transformation Order*, ¶ 148.

²⁰ Granting the request waiver would not result in less broadband investment in areas that do not have broadband today, as NCTA suggest, or result in overbuilding areas where an unsubsidized competitor already offers broadband, as GCI suggests. See NCA Opposition at 4 and GCI Comments at 6.

II. THE PUBLIC INTEREST AND WAIVER STANDARD HAVE BEEN MET

A. A Waiver Allows Consumers To Continue Receiving Voice Service At Affordable Rates

Absent a waiver the costs of the network will not be offset and ACS would be forced to raise end-user rates where permissible through subscriber line charges (“SLCs”) and access recovery charges (“ARCs”). The Commission’s requirement that carriers offer services at affordable rates seeks to avoid harm to consumers from increased rates and decreases in services offered, but carriers are not able to avoid this harm if support is insufficient. Notably, increases in SLCs and ARCs will not provide price cap carriers with the ability to recover all support that has been repurposed to broadband. Importantly, price cap carriers like the ACS ILECs remain subject to state regulation of rates and costs and cannot simply raise rates to make up the difference. Even if states permit a carrier to increase rates, often after a long and expensive rate case, and even if rates are raised on services not regulated by the state, it is counterproductive to raise rates when competition requires that carriers continually aim to lower their rates.²¹

B. The Commission Has Not Required A Costs And Earning Review To Justify A Waiver Of Section 54.313(c) of the Commission’s Rules

ACS has met the burden for grant of a waiver of Section 54.313(c). It has demonstrated good cause for the use of frozen ICLS and LSS to maintain affordable voice rates, and detailed the special circumstances that justify deviation from strict enforcement of the rule. NCTA is incorrect in stating that the applicable waiver standard here, where there has been no reduction in support, should be determined by the Commission’s “total costs and earnings review” test for

²¹ NCTA’s suggestion that ACS can recover its costs through its retail rates reveals the association’s ignorance of market conditions in Alaska. *See* NCTA Opposition at 6.

carriers seeking waivers due to reductions in support.²² If the Commission had wanted to establish this kind of a test for a waiver of Section 54.313(c), it could have done so. It did not.

C. A Waiver Is Consistent With The Commission's Transitional Goals For Frozen CAF I Support

As written, Section 54.313(c) requires carriers to comply with legacy obligations to keep voice rates affordable and to expand broadband, but with the same amount of support that has been necessary just to keep voice rates affordable. Frozen CAF Phase I support was intended to bridge the gap between the legacy support regime and the new broadband focused support regime. The Commission did not intend to flash cut using support for broadband expansion, evidenced by the Commission's development of incremental CAF Phase I support that is intended solely for broadband expansion. Transitional support is just that, transitional. Because there are conflicting obligations for the same support a waiver that will only affect one portion of the use of frozen support serves the public interest allowing ACS to comply with its legacy obligation of keeping voice rates affordable by exempting ICLS and LSS from broadband requirements, but also allows ACS to comply with the Commission's graduation to its longer term goal of using support for broadband expansion.

III. CONCLUSION

For these reasons, ACS urges the Commission to grant its requested waiver of the Commission's rule 47 C.F.R. § 54.313(c). A waiver is consistent with the Commission's universal service goal of supporting the network that keeps rates for voice services affordable without the need to reduce existing services. A waiver is also consistent with the Commission's transitional broadband expansion goals, incrementally increasing broadband requirements on

²² See NCTA Opposition at 3-4.

portions of frozen CAF Phase I support that do not impact rate affordability. ACS continues to urge the Commission to take prompt action on this Petition.

Respectfully submitted,

/s/

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