

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

In the Matter of	)	
	)	
Alaska Communications Systems	)	WC Docket No. 10-90
Application for Review of Paragraph 41	)	
Of the Connect America Phase II Service	)	
Obligations Order	)	

**COMMENTS OF THE  
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (“USTelecom”) is pleased to submit these comments in response to the Wireline Competition Bureau’s (“Bureau”) Public Notice<sup>1</sup> concerning the Application for Review (“Application”) of Alaska Communications Systems (“ACS”) of paragraph 41 of the *Connect America Phase II Service Obligations Order* (“CAF II Obligations Order”).<sup>2</sup> ACS requests that the Commission reverse, or, in the alternative, stay the Bureau’s statement in paragraph 41 of the CAF II Obligations Order that it would entertain challenges from any competitive eligible telecommunications carrier (“ETC”) that otherwise meets or exceeds the performance obligations established by that order and who high-cost support is scheduled to be eliminated during the five-year term of Phase II.<sup>3</sup> USTelecom agrees with ACS that the Bureau’s interpretation of the definition of “unsubsidized voice and broadband provider” is incorrect, inconsistent with the intent of the Commission in the USF/ICC

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<sup>1</sup> See Public Notice, *Wireline Competition Bureau Reminds Parties of Deadlines for Filing Oppositions and Replies Regarding the Alaska Communications Systems Application for Review of Paragraph 41 of the Connect America Phase II Service Obligations Order*, WC Docket No. 10-90, DA 13-2285, (rel. Nov. 27, 2013).

<sup>2</sup> *Connect America Fund*, WC Docket No. 10-90, Report and Order, DA 13-2115 (Wireline Comp. Bur. rel. Oct. 31, 2013).

<sup>3</sup> See CAF II Obligations Order, at ¶ 41.

Transformation Order,<sup>4</sup> and is bad public policy. The Commission should promptly grant the ACS Application.

**I. The USF/ICC Transformation Order is Clear on the Time Frame for Determination of the Presence of an Unsubsidized Competitor**

The Commission specifically determined that whether an area is considered as “unserved by an unsubsidized competitor” and thus eligible for CAF II support would be determined based on whether such a competitor offers qualifying service at the start of CAF II. Section 54.5 of the Commission’s rules defines an unsubsidized competitor as “a facilities-based provider of residential-fixed voice and broadband service that *does not* receive high-cost support.”<sup>5</sup> If the Commission meant to include providers that *will not* receive support at the conclusion of the phase out of such support, it could easily have said that. The USF/ICC Transformation Order states that, under CAF II, “the Commission will offer each price cap ETC a model-derived support amount in exchange for a commitment to serve all locations in its service territory in a state that, based on the model, fall within the high-cost range and *are not* served by a competing, unsubsidized provider.”<sup>6</sup> The clear meaning of that sentence is that the unsubsidized or subsidized status of the competing provider will be determined at the time the Commission makes the state-level offer.

The Commission could not have been unaware of the overlap between the competitive eligible telecommunications carrier (“CETC”) phasedown and the disbursement of CAF II support. Yet the USF/ICC Transformation Order does not include any provisions allowing carriers whose support was not phased out at the time of the CAF II election to be considered as

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<sup>4</sup> *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 *et al.*, 26 FCC Rcd 17663 (2011), *review pending sub nom. In re: FCC 11-161*, Case No. 11-9900 (10<sup>th</sup> Cir. filed Dec. 8, 2011) (“*USF/ICC Transformation Order*”).

<sup>5</sup> See 47 C.F.R. §54.5. Emphasis added.

<sup>6</sup> See USF/ICC Transformation Order at ¶ 156.

unsubsidized voice and broadband providers. The Order anticipated that the model would be completed by the end of 2012<sup>7</sup> and also that the CETC phasedown would not conclude until July 1, 2016, for most CETCs<sup>8</sup> and until July 1, 2018, for CETCs serving remote areas in Alaska.<sup>9</sup> Under that schedule, it is obvious that the CETC phasedown would not be completed prior to implementation of CAF II. At least two out of the five years of CAF II support for price cap carriers not serving remote areas in Alaska, and four out of the five years of potential CAF II support for the price cap carrier serving remote areas in Alaska<sup>10</sup> would overlap. A year's delay in completion of the model does not eliminate the overlap, which for remote areas in Alaska would still be three out of five years, or more, depending on whether the phase-down of CETC support is extended.<sup>11</sup> It strains credulity that the Commission did not recognize this overlap. Indeed, the Bureau acknowledges that the Commission's intent "was to preclude support to areas where voice and broadband *is available without burdening the federal support mechanisms.*"<sup>12</sup> The Bureau's decision to invite challenges from subsidized competitors therefore undermines that intent by precluding support in areas where there is no evidence that unsupported voice and broadband service is sustainable.

## **II. There is No Such Thing as a "Would-be Unsubsidized Competitor"**

There is no such thing as a "would-be unsubsidized competitor" as described in the CAF II Obligations Order.<sup>13</sup> As long as an entity is receiving support, it cannot be considered an

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<sup>7</sup> *Id* at ¶ 157.

<sup>8</sup> *See* 47 C.F.R. §54.307(e)(2)(vi).

<sup>9</sup> *See* 47 C.F.R. §54.307(e)(3)(iv)(F).

<sup>10</sup> If the price cap carrier, ACS, elects the statewide commitment.

<sup>11</sup> *See USF-ICC Transformation Order*, ¶ 519 ("If the Mobility Fund Phase II is not operational by June 30, 2014, we will halt the phase-down of [CETC] support until it is operational").

<sup>12</sup> CAF II Obligations Order, ¶ 41 (emphasis added).

<sup>13</sup> *See* N. 98 of the CAF II Obligations Order.

unsubsidized provider. Section 54.5 of the Commission’s rules defines an unsubsidized competitor as “a facilities-based provider of residential fixed voice and broadband service that *does not* receive high-cost support.”<sup>14</sup> In the remote areas in Alaska, such “would be” unsubsidized competitors will be subsidized until at least July 1, 2018, many years after the flow of CAF II funds to ACS, the price cap carrier serving those areas, is expected to commence.

**III. The CAF II Challenge Process Should Not be Used to Speculate on or Prejudice Future Commission Actions on Potential Waiver Requests**

Inviting challenges to provide an opportunity for the Commission to consider whether to “waive application of the unsubsidized element of the unsubsidized competitor definition”<sup>15</sup> does not fulfill the purpose of the challenge process – the determination of the presence of an unsubsidized competitor. It speculates on, and potentially prejudices, actions that may or may not be taken by both subsidized competitors and the Commission at some point in the future. It also needlessly adds to the burdens of carriers and the Commission in the CAF II challenge process.

**IV. Paragraph 41 of the CAF II Obligations Order is Inconsistent with the Good Public Policy Which Underlies the USF/ICC Transformation Order**

In the USF/ICC Transformation Order, the Commission clearly states its intention to promote universal availability of voice and broadband services for consumers residing in all (except extremely high-cost) price cap territories where market forces alone had not ensured the deployment of advanced services.<sup>16</sup> Obviously areas which continue to have high-cost subsidies, even if subject to a phasedown, do not qualify as such areas. The Bureau and the Commission have no reason to assume that such services will continue to be provided by CETCs after their

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<sup>14</sup> See 47 C.F.R. §54.5. Emphasis added.

<sup>15</sup> See CAF II Obligations Order, at ¶ 41.

<sup>16</sup> See USF/ICC Transformation Order, at ¶ 159.

high-cost support is phased out. If such support made the area a viable business case for the CETC, the absence of the support may cause the CETC to withdraw service since the funding would no longer match the obligation to serve. Not providing support to the price cap carrier on the assumption that a currently subsidized provider will continue providing service if unsubsidized is gambling with the provision of voice and broadband service to consumers.

## V. Conclusion

USTelecom agrees with ACS that the Bureau's interpretation of the definition of "unsubsidized voice and broadband provider" is incorrect, inconsistent with the intent of the Commission in the USF/ICC Transformation Order,<sup>17</sup> and is bad public policy. The Commission should promptly grant the ACS Application for Review.

Respectfully submitted,

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<sup>17</sup> *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 *et al.*, 26 FCC Rcd 17663 (2011), *review pending sub nom.* In re: FCC 11-161, Case No. 11-9900 (10<sup>th</sup> Cir. filed Dec. 8, 2011) (“*USF/ICC Transformation Order*”).