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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

Reply Comments of Alaska Communications Systems

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September 8, 2014

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SUMMARY

Both Commission data and private sector analyses agree that, for many years, Alaska has hovered at or near the bottom of the nation in a variety of measures of broadband speed, performance and availability. The unique challenges of providing broadband services in Alaska – the forbidding terrain, harsh climate, vast distances, low population density, truncated state road network, remote location, and others – mean that Alaska will continue to lag the nation, probably forever, without a substantial increase in federal high-cost support.

Alaska Communications Systems ("ACS") has been a vocal and active participant in this proceeding, seeking to shape the Commission's efforts to modify its high-cost universal service mechanisms in ways that would bring the level of new broadband services to Alaska that the state so desperately needs. ACS's efforts have largely failed. The Wireline Competition Bureau ("Bureau") has rejected ACS's pleas for fact-based changes to the Connect America Cost Model ("CAM"), even as the Bureau acknowledged the CAM's continuing failure to accurately portray the costs of delivering service in Alaska. Standing behind the CAM, the Bureau refuses to accept real-world evidence that demonstrate the CAM's failings, and eventually offered the frozen support alternative rather than improve the CAM's performance in areas outside the 48 contiguous states ("non-CONUS areas").

Limited to the $19.7 million level of its historical frozen high-cost support, ACS has proposed a framework to use this support to deliver new broadband service to a fixed number of currently unserved customers, as well as those that have no competitive alternative, while also supporting its operating expenses statewide. ACS's proposals are consistent with the goals of the Act and the Commission's broadband agenda. While they will require a substantial

commitment from the company (and in fact, reflect stretch goals that require the Company to achieve new levels of efficiency), ACS is willing to undertake these commitments in exchange for the stability of the full amount of frozen support for ten more years, provided certain flexibility is afforded ACS to deploy and operate its network in an efficient manner within a reasonable timeframe, including interim buildout targets that reflect Alaska's unique conditions.

Without any increase in the level of high-cost support available, the Commission should exclude locations in the Alaska Bush from any broadband service commitment it might attach to this support. The Commission should not require ACS to elect whether to accept CAF Phase II frozen support until all service obligations are clear, including the resolution of all census block challenges that affect the geographic areas where new broadband service will "count" toward meeting the service commitment.

To succeed, ACS's service commitment should permit it to substitute unserved customer locations in otherwise ineligible census blocks; the ability to substitute 1 Gbps service to Community Anchor Institutions ("CAIs") for service to other individual customer locations; and the ability to deploy service to a lower number of locations than the full amount to which ACS initially might commit, in response to unexpected challenges that may emerge during the deployment process.

To monitor price cap carriers' use of CAF Phase II support, the Commission should establish achievable compliance milestones based on percentages of the fixed number of broadband service locations to which ACS initially commits. ACS should then confirm its progress through periodic "counting" reports, limited to the aggregate number and location of the customers it can serve with CAF Phase II support. It would be impossible, and unnecessary, for the Commission separately to track ACS's spending of each dollar of CAF Phase II support, nor should the Commission require ACS to serve a specific number of locations in any census block.

In census blocks where the Commission terminates high-cost support, it should do so for all wireline carriers simultaneously, at the same time that it terminates Section 214(e) eligible telecommunications carrier obligations, ILEC-specific obligations under Sections 251 and 252, and Section 214(a) service discontinuance requirements. The Commission should not, however, redirect this support automatically to any wireline carrier's wireless affiliates. Instead, it should simply terminate such wireline support as to all competitors in the same area.

Finally, the Commission should implement the Alaska Rural Coalition's proposal to set aside specific funds aimed at construction of middle mile transport infrastructure in Alaska. It should also adopt rigorous and enforceable nondiscrimination rules and affordability requirements that ensure that all broadband providers in Alaska, regardless of ownership of the facilities, may obtain access to the available transport capacity on such facilities. The Commission should reject GCI's proposal that the Commission subsidize capacity purchases on GCI's own transport facilities. This proposal does nothing to address the shortage of existing facilities. As an unregulated monopolist, GCI already limits supply and charges exorbitant rates for these services; the Commission should not further line GCI's pockets based on such inflated prices.

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REPLY COMMENTS OF ALASKA COMMUNICATIONS SYSTEMS

Alaska Communications Systems ("ACS")[1] hereby submits these reply comments in response to the Commission's recent Further Notice of Proposed Rulemaking (the "Further Notice") in the above-captioned dockets.[2]

INTRODUCTION

In its initial comments on the Further Notice, ACS addressed the service commitments that should accompany the election by price cap ILECs serving areas outside the 48 contiguous states ("non-CONUS" areas) to receive Connect America Fund ("CAF") Phase II high-cost support frozen at historical levels.[3] ACS also addressed the proposal to allocate support by

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

2 *Connect America Fund*, WC Docket No. 10-90, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54 (rel. June 10, 2014).

3 The Bureau decided to offer non-CONUS price cap ILECs the opportunity to continue to receive support at the frozen CAF Phase I level for the duration of CAF Phase II. *Connect America* Fund, WC Docket No. 10-90, Report and Order, Da 14-534, 29 FCC Rcd 3964

competitive bidding in the event that the ILEC does not accept the right of first refusal ("ROFR") for CAF Phase II model-based support and the corresponding performance obligations. In both cases, ACS advocates Alaska-specific solutions designed to promote the universal service goal of the Communications Act of 1934, as amended (the "Act"), that *everyone*, including those living in non-CONUS areas, have access to reasonably comparable services at affordable rates.[4]

In these reply comments, ACS addresses several commenters' proposals that would inhibit rather than promote the goal of universal service. ACS supports proposals that would provide greater flexibility in order to improve the odds that non-CONUS carriers will successfully achieve their CAF Phase II service obligations and maximize the benefit of frozen support for their customers in high-cost locations. ACS agrees with commenters who urge the Commission to ensure that support and regulatory requirements are appropriately matched, so that support is sufficient to achieve the associated regulatory obligations, and those obligations are eliminated where support is phased out. ACS also urges the Commission to finalize its CAF Phase II rules *before* it establishes deadlines for electing the ROFR or, for non-CONUS carriers, the continuation of frozen support, so that price cap ILECs may fully understand what obligations and what support they would be accepting or declining.

(Wir. Comp. Bur. 2014), at ¶ 152 ("*CAM Inputs Order*"). The Further Notice, at ¶ 202, seeks comment on the service obligations that should attach to that support.

4 47 U.S.C. §254(b)(3).

DISCUSSION

I. ACS Has Proposed An Ambitious But Reasonably Achievable Build-Out Plan For Unserved Locations In Alaska Excluding the Alaska Bush

A. The CAM Results Provide a Shaky Basis at Best for Frozen Support Deployment Commitments

In its initial comments, based on the most current illustrative results of the Connect America Cost Model ("CAM"), ACS submitted an analysis of the number of unserved locations to which it estimated the Commission might require it to deploy broadband under the Further Notice's proposal that non-CONUS carrier service obligations would be the same whether the carrier were to elect frozen or model-based support.[5] Of necessity, given that the CAM results are likely to continue to change, this analysis was only illustrative. Since then, through the census block challenge process, ACS has become aware of additional locations that allegedly are served at a level meeting the FCC's CAF Phase II requirements, and thus would become ineligible for CAF Phase II support for building new facilities, if these challenges are granted. In that event, the number of locations included in ACS's CAF Phase II commitment would likely change.

To be clear, ACS believes that the CAM represents a poor tool to use in establishing CAF Phase II frozen support obligations. The CAM's shortcomings in estimating the costs of delivering service in non-CONUS areas were acknowledged by the Bureau as the very reason why it offered carriers serving those areas the option to continue to receive CAF Phase II support at today's frozen levels.[6] Having determined that the CAM is an unreliable guide to costs in non-CONUS locations, ACS sees no way for the Commission to conclude that it remains a valid

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[5] Further Notice at ¶ 208; *see* ACS Comments at 11.

[6] *CAM Inputs Order* at ¶ 152.

and useful tool for determining the number or the location of customers to whom non-CONUS carriers may reasonably be expected to deploy broadband using frozen support.[7]

If the Commission nevertheless attempts to base its CAF Phase II frozen support obligations for serving high cost customers on the results of the CAM, it should grant non-CONUS carriers flexibility to deploy broadband and use the CAF Phase II support where they most efficiently can do so, as supported by many of the comments and further discussed below. ACS further urges the Commission to recognize that the census block challenges will inevitably make the CAM results a moving target. While census block challenges nationwide could affect the level of the offer of model-based support in Alaska, the GCI challenges will have a direct effect on the number of supported locations the CAM produces in Alaska, as well as the locations where ACS investment will meet that obligation. Once the Bureau has resolved these challenges, and established the geographic scope of the areas where CAF Phase II frozen support may be used for capital investment, there should be a reasonable, fixed number of customer locations to which ACS will be able to commit to deliver service using such support. This commitment, however, as discussed in ACS's initial comment and reiterated below, should include sufficient flexibility to permit ACS to maximize the public interest benefits to be gained from such support, respond to challenges that emerge during the buildout period, and support operating costs of its entire network statewide.

[7] Indeed, it was for just this reason that ACS proposed in June to use CAF Phase II support to deploy service to community anchor institutions ("CAIs") and additional customers along the resulting fiber routes.

B. Bush Locations Cannot Be Served at Current CAF Phase II Support Levels and Should Be Excluded from Any Alaska CAF Phase II Broadband Service Commitment

Locations in the Alaska Bush, which are not served by the state's road system, are disconnected from Alaska's power grid, often lack access to commercial power, typically lack connectivity to fiber optic transport facilities, and cannot be served at current levels of CAF Phase II frozen support or the level of model-based support produced by the most recent versions of the CAM. Even putting aside the monumental challenges and cost of building the necessary infrastructure – amply described in this record on many previous occasions by ACS, GCI, and other commenters – the effort would likely raise significant questions of environmental impact, not all of which could reliably be addressed within the time constraints imposed under CAF Phase II.

As USTelecom has observed, ACS faces different challenges from other non-CONUS carriers, including far lower population density and a historically underserved service area.[8] USTelecom supports exempting off-road locations from the required CAF Phase II broadband service obligations for ACS.[9] ACS has repeatedly demonstrated over the last several years that the FCC's cost model is flawed in that it underestimates the real cost of providing service in Alaska and, if the model reflected real costs, the thousands of off-road Alaska Bush locations included today in the CAM would be characterized as very high-cost and more appropriately supported through the Remote Areas Fund.[10]

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[8] United States Telecom Ass'n ("USTelecom") Comments at 27-28.

[9] *Id.* at 28.

[10] *See id.*

For similar reasons, the Commission should reject GCI's proposal to increase the very high cost threshold in Alaska.[11] As noted above, the CAM *already* sweeps a number of locations into the CAF Phase II support zone that more properly belong in the very high cost zone. In fact, the CAM's costs are furthest from the mark in the Alaska Bush – primarily because of the CAM's inadequate treatment of middle mile transport.[12] The Commission would simply compound this problem if it were to adopt a special "ultra-very-high" cost threshold for use exclusively in Alaska.

II. Deployment Flexibility Is Critical To the Success of CAF Phase II in Alaska

ACS does not believe that the CAM will yield sufficient support to permit ACS to accept the CAF Phase II model support ROFR, and the associated broadband service commitments. As discussed in the Further Notice, many questions remain about the way costs and support are calculated for non-CONUS areas – particularly in Alaska, with its extremes of climate and geography, thousands of off-road customer locations, and vast tracts lacking middle mile infrastructure.[13] The record supports ACS's observations that extreme conditions in Alaska have left the state underserved, and several parties question the logic of *reducing* support in the state as would occur under the Commission's CAM.[14] Indeed, a forthcoming report from Akamai

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[11] General Communication, Inc. ("GCI") Comments at 14.

[12] In fact, GCI's asking price of $7,000 to $10,000 per month per megabit for Ethernet middle mile transport capacity on its TERRA-SW network is more than double the rate for satellite capacity, and clearly supports ACS's position that the CAM grossly underestimates the cost of getting broadband into Bush Alaska.

[13] *See* Further Notice at ¶ 201.

[14] *E.g.*, GCI Comments at 1-3; USTelecom Comments at 18, 28; *Connect America Fund*, WC Docket No. 10-90, Comments of the Alaska Telephone Association on Calculation of

finds that Alaskans have the second-slowest average Internet connection speed in the nation, behind only Arkansas, and half that of the states with the fastest average connection speeds.[15]

ACS therefore has devoted considerable attention to reasonable performance requirements to accompany frozen support for ACS and other non-CONUS carriers. In particular, ACS has documented the need for flexibility if the Commission should base any part of those requirements on data produced by a model (such as the identification of census blocks eligible for expenditures using CAF II funds) that may be significantly flawed. Thus, even if ACS's CAF Phase II support is set at its historical, frozen level, ACS advocates flexibility, such as:

1. Excluding locations in the Alaska Bush from any broadband service requirement imposed on ACS, given the limitations imposed by the current frozen support level;[16]
2. Permitting non-CONUS carriers to substitute unserved locations in partially served census blocks for locations in wholly unserved census blocks;[17]
3. Permitting substitution of individual customer locations with very high-capacity service to anchor institutions;[18]
4. Permitting acceptance of less than 100 percent of the total amount of annual frozen support, with a corresponding reduction in the required locations that must be served;[19]
5. Extending frozen support and the build-out timetable in Alaska for ten years;[20] and

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Reasonable Comparability Benchmark For Broadband Services (filed Aug. 19, 2014), at 3 ("ATA Comments").

15 Fairbanks Daily News Miner, "Report: Alaska Internet speeds among slowest in nation," (Sept. 3, 2014), *available at*: http://www.newsminer.com/news/alaska_news/report-alaska-internet-speeds-among-slowest-in-nation/article_b14ada54-33a2-11e4-914f-001a4bcf6878.html.

16 ACS Comments at 13.

17 ACS Comments at 17-23.

18 ACS Comments at 17.

19 ACS Comments at 23.

6. Permitting carriers flexibility in demonstrating achievement of the build-out requirements.[21]

Other parties support these and similar proposals for reasonable flexibility to improve the efficiency of network deployment and maximize the value of the limited support resources. Some commenters oppose granting ILECs flexibility, however, or suggest restrictions that would cramp the carriers' ability to engineer their networks. ACS addresses those arguments below.

A. Substitution of Unserved Locations Is A Necessary Tool For Efficient Network Deployment, and Will Not Result In Competitive Overbuilding

In its comments, USTelecom persuasively argues that price cap ILECs require flexibility to design their networks in the most efficient way and optimize the number of locations they can serve with broadband using the aid of finite support.[22] Carriers serving non-CONUS areas and electing frozen support require flexibility to implement economically rational broadband build-out plans that suit local conditions just as much as carriers electing the ROFR.[23] The Commission should permit them to exercise this flexibility any time during the CAF II term, as their broadband deployment plans evolve over time.[24]

USTelecom observes that census blocks may be administratively convenient for modeling costs and customer locations in general, but should not be used to "penalize" individual customers who have no access to broadband but happen to live or work in a census block designated as "served" due to the availability of broadband in a few or even a single served

[20] ACS Comments at 24.

[21] ACS Comments at 18-20, 30-32.

[22] USTelecom Comments at 13.

[23] USTelecom Comments at 28; CenturyLink ("CTL") Comments at 18-19.

[24] ITTA Comments at 15.

location. Substitution imposes no costs on nearby broadband providers, who have elected for whatever reason not to serve the locations in question, particularly if the alternative broadband providers received high cost support and still failed to connect those locations. Substitution is a "win/win" according to USTelecom, permitting more effective network design and ultimately increasing the number of locations served.[25] As such, it should apply both to carriers that exercise the ROFR and to non-CONUS carriers electing to continue receiving frozen support for CAF Phase II.[26]

GCI argues that support should be used "for truly unserved areas, rather than for those that could easily be built out without support."[27] ACS does not disagree. ACS believes that a great many such locations exist in Alaska census blocks shown as "served" on the National Broadband Map. Especially in Alaska, where census blocks tend to cover extremely large geographic areas,[28] and where two vigorous competitors have received substantial federal high cost support over an extended period of time, unserved portions of partially served census blocks very likely present extraordinary obstacles to broadband service that cannot be overcome without additional support. Among possible obstacles, broadband may be delivered from a central office or node located outside the census block, with locations on the far side too distant to support broadband. Natural obstacles, such as mountains or rivers, may require circuitous routing of facilities to reach parts of the census block. Or, the census block's population may be clustered,

25 USTelecom Comments at 16.

26 USTelecom Comments at 17. See also CTL Comments at 18-19.

27 GCI Comments at 11; *see also* American Cable Ass'n ("ACA") Comments at 11.

28 *See* Alaska Rural Coalition ("ARC") Comments at 10 (services and facilities often vary dramatically within a single Alaska census block).

such that sparsely populated areas of the census block are currently uneconomical to serve. In any case, it is far from certain that the unserved portions of partially-served census blocks are any more likely to receive service through the edging out of existing carrier facilities than are locations in unserved census blocks.

Thus, the Commission should permit the CAF Phase II frozen support recipient to select the locations that can most efficiently be served with such support. By definition, in any case, unserved locations were not previously deemed economical to serve, with or without support, or one of the existing broadband competitors would have already deployed service there.

Restricting CAF recipients to locations selected by the CAM, depending on how they fall within census block boundaries bearing no relation to the underlying network architecture, is unreasonable. Moreover, broadband service is frequently available only in a portion of these large census blocks. Under a rule where a single served location can disqualify an entire census block, the remaining unserved customers should despair of ever receiving advanced services. (As GCI notes, the competitor's support will be terminated as well as that of the ILEC, casting doubt on whether either provider would find it economically viable to expand broadband service or, for that matter, maintain voice service, in the future.)[29] GCI cannot and does not assure the Commission that those remaining unserved locations will be served in any time frame – or ever –

[29] GCI Comments at 10.

particularly if universal service support cannot be used to build broadband-capable facilities in those partially served areas.[30]

Price cap carriers, particularly those electing to receive CAF Phase II frozen support, should have sufficient flexibility to determine how best to maximize support for the benefit of the most end-users while pursuing the Commission's broadband policy goals. For example, deployment to a wholly unserved census block in Alaska may require a carrier to extend facilities from a served area *through or near a partially-served census block* in order to reach the unserved area. This may create an opportunity for the provider to extend its facilities to unserved locations in the partially served census block that would not exist if the provider were prohibited from using CAF support to serve those additional locations. Moreover, the substantial last mile investment necessary to extend service to unserved customers in the partially served census block is unlikely to take place unless those locations are eligible for support. WISPA offers no justification to limit such flexibility to five percent of the total supported locations.[31] In Alaska, the public interest would be disserved by such a limitation, because it would discourage the efficient use of support and reduce the incentive of ACS to accept the full amount of frozen support and the maximum build-out obligation. Such substitution should be left to the discretion of the carrier and its network engineers.

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[30] *See also* ITTA Comments at 18 (the Commission should not make locations ineligible for support where no provider has certified its ability and willingness to provide service without support for a definite period of time).

[31] WISPA Comments at 8.

B. A Ten-Year Build-Out Term and Support Period Will Be Critical For CAF II Success In Non-CONUS Areas

In response to the Commission's query "whether to specify a five-year term for those noncontiguous carriers that elect to receive frozen support, and whether there is a need to modify the term of support for such non-contiguous carriers,"[32] ACS emphatically believes that the frozen support term, together with the build-out milestones, must be extended for non-CONUS carriers that face CAF Phase II build-out challenges far beyond those confronting price cap carriers serving the lower 48 states.

The record demonstrates support for extending *all* CAF Phase II support to a ten-year term, and extending the build-out schedule as well.[33] The longer term is especially critical for ACS.[34] *First*, due to the remote locations and the extremely challenging environments in which it provides service, ACS will be unable to deploy broadband facilities as fast as carriers serving the lower 48 states. It faces logistical constraints associated with transporting equipment to work sites around America's largest state, and a limited pool of network engineers and other labor that have experience in meeting the unique deployment challenges that Alaska poses. Moreover, Alaska's uniquely short construction season constrains the achievable pace of ACS's buildout effort. Recognizing the short construction season, USTelecom expressly supports extending a

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[32] Further Notice at ¶ 210.

[33] *E.g.*, USTelecom Comments at 4 ("Ten years is the appropriate term and buildout period of support for all CAF Phase II support recipients"); PRTC Comments at 13.

[34] Further Notice at ¶ 210.

ten-year build-out and support term for non-CONUS carriers electing frozen support as well as for carriers electing the ROFR.[35]

Second, because all price cap carriers accepting CAF Phase II support will be competing for the same limited supply of labor and materials in the same time frame, it is simply unrealistic for the Commission to assume that all recipients of CAF Phase II support – whether frozen, model-based, or competitively auctioned – can simultaneously obtain materials and construct broadband facilities on the national scale the Commission contemplates within three to five years. No party has suggested any basis in the record or in the real world for such an assumption. In fact, BTOP and BIP, which together awarded less total federal financial assistance than the Commission proposes under CAF Phase II,[36] prompted significant shortages (and price spikes) for fiber optic cable and related broadband equipment.[37] Given the size and speed of deployment the Commission seeks, it is likely that similar shortages will recur under

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35 USTelecom Comments at 28.

36 Together, the Department of Commerce and Rural Utilities Service awarded approximately $7 billion in federal financial assistance under BTOP and BIP, some of which funded non-infrastructure projects, such as public computer centers and sustainable broadband adoption initiatives. Even if the Commission limits CAF Phase II to five years, it would award a total of approximately $9 billion ($1.8 billion per year for five years) to support deployment and operation of facilities to offer voice and broadband service in millions of new locations.

37 *See, e.g.*, U.S. Gov't. Accountability Office, Rep. No. GAO-12-937, Broadband Programs Are Ongoing, and Agencies' Efforts Would Benefit from Improved Data Quality (2012), at 20 ("NTIA and RUS officials told us that BTOP and BIP projects were also delayed due to fiber shortages caused by the 2011 tsunami in Japan and increased worldwide demand for fiber."); Stephen Hardy, "Fiber Shortage Likely to Continue for At Least Another Quarter," *The Lightwave Blog* (Oct. 5, 2011) ("lead time for delivery [of fiber optic cable] at an average of 22 weeks – which is an entire deployment cycle for some carriers and a real thorn in the side of broadband stimulus winners who hear the clock ticking on their completion deadlines"), *available at* http://www.lightwaveonline.com/blogs/lightwave-blog/2011/10/fiber-shortage-likely-to-continue.html (visited Sept. 8, 2014).

CAF Phase II. And, with their smaller size and remote locations, it is unrealistic to think that ACS and some other non-CONUS carriers would have the ability to command resources in their insular environments within that limited timeframe.

Third, as several parties observe, deploying 10 Mbps downstream capability requires pushing fiber farther into the network than had previously been foreseen. The increased construction demands will necessitate additional environmental analysis and state and local land use approvals, as well as changes in network architecture, and increased capital commitments from each carrier.[38] The longer build-out period, coupled with full funding over the course of the ten-year term, will add some stability that is acutely needed if price cap carriers are to undertake the substantial risks associated with the performance obligations attending the CAF II support.[39]

Further, performance benchmarks must be appropriately spread over the ten-year term; in the case of ACS, substantial engineering resources will need to be dedicated to this project in the first few years before construction can actually occur. A ten-year term, with appropriate interim performance benchmarks, will provide a more reasonable construction timetable as well as greater financial stability appropriate to the increased risk the price cap carriers would be undertaking with these increased broadband service obligations.[40]

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[38] *See* USTelecom Comments at 5; CTL Comments at 18, 20-21; ITTA Comments at 10-11; ACS Comments at 26.

[39] CTL Comments at 22.

[40] ACS advocates modification of the three-year and five-year performance benchmarks. *See* ACS Comments at 27 (in a ten-year term, carrier should have voice and broadband meeting the CAF Phase II performance standards available to 30 percent of the required locations in by the end of Year 4; 60 percent by the end of Year 7; and 100 percent by the end of Year 10).

Finally, a ten-year term will provide additional stability and predictability to ACS's flow of CAF Phase II frozen support, giving it greater ability to engage in long-term project planning. In recent years, inconsistency of high-cost support levels, combined with uncertainty about future support, have impaired ACS's efforts to modernize its network. The prospect of a steady stream of support over a ten-year period will provide lenders and shareholders with greater - security, helping to bring about the lower costs of capital that the CAM now assumes. These considerations have a substantial impact in Alaska and other non-CONUS areas, where carriers have historically received a greater proportion of their revenues through universal service support mechanisms than those in lower-cost areas. Particularly in Alaska, which has the nation's lowest population density, sufficient and predictable universal service support over a sufficiently long time period is vital to enable ACS to meet the Commission's broadband service goals in high cost areas of the state.

C. Non-CONUS Carriers Should Have the Same Flexibility To Accept Less Than 100 Percent of the Total CAF Phase II Support That Is Available To Other Price Cap Carriers

The Commission proposes to permit carriers electing the CAF Phase II model support to offer broadband service to less than 100 percent of the customer locations that they initially commit to serve, with an attendant reduction in the amount of support they would receive.[41] Many commenters support this type of flexibility.[42] Some commenters argue, however, that the minimum should be 95 percent – a modest degree of flexibility indeed. Others, including ACS, argued that setting the minimum at 90 percent (for both support and broadband service) would

[41] Further Notice at ¶ 165.

[42] *See, e.g.*, USTelecom Comments at 13; WISPA Comments at 8

better balance the need for flexibility with the imperative to ensure meaningful progress toward advancing the Commission's broadband deployment goals.[43] USTelecom notes that the added flexibility would "vastly increase the efficiency of network design" while helping to compensate for "the CAM's shortcomings in identifying the precise number of [actual customer] locations in census blocks."[44] When measuring the percentage of its commitment that a price cap carrier has met, both locations in the original funded area and any locations served through permissible substitution should be counted.

However the Commission resolves this question, the non-CONUS price cap carriers should receive at least the same amount of flexibility than is available to those serving the lower 48 states. While the frozen support option does not permit the Commission to unilaterally reduce a non-CONUS carrier's frozen support, such flexibility should be offered as an option to the non-CONUS carrier itself. The non-CONUS price cap carriers face additional broadband deployment challenges beyond those faced by those serving the lower 48 states, and the CAM suffers from acknowledged shortcomings in modeling service costs and customer locations in non-CONUS areas. Given that it is not even clear that the CAM can accurately identify the unserved locations in non-CONUS areas that are within the "Goldilocks" high-cost zone the Commission seeks, it would serve the public interest for the Commission to provide this flexibility in order to allow a "margin of error." Such flexibility would serve the Commission and the public by encouraging the use of frozen support to offer services the Commission deems beneficial.

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[43] USTelecom Comments at 15; ITTA Comments at 13; CTL Comments at 17-18; Missouri PSC Comments at 3.

[44] USTelecom Comments at 13, 15.

D. CAF Phase II Should Support Operating Costs, As Well As Capital Investment

As ACS explained in its comments, the Commission should clarify that, so long as they meet the service commitment imposed as a condition of CAF Phase II frozen support, recipients may also use a portion of that support to fund operating expenses of their statewide network. Section 254(e) requires the Commission to ensure that support is available "for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[45] Like the historical mechanisms on which the frozen support amount is based, the CAM results are based on the total estimated annual cost of delivering voice and broadband in the areas it covers, including both capital and operating expenses.[46] It would represent a significant disconnect for the Commission to determine ACS's CAF Phase II support amount based on total annual costs, but require the entire amount to be devoted to capital investment.

Further, while the Commission has an interest in monitoring price cap carriers' progress toward meeting their commitments to offer broadband service to a required *number* of eligible customer locations, it would be infeasible and unnecessary for ACS to document precisely where it spends every dollar of CAF Phase II frozen support. The Uniform System of Accounts provides no generally accepted way to assign costs by census block, particularly for facilities that may serve multiple census blocks, and for operating expenses that support the statewide network generally. Clearly, the costs associated with maintaining provisioning and billing systems, redundant network operations centers, a customer contact center, sales and marketing channels,

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[45] 47 U.S.C. § 254(e).

[46] *See, e.g., CAM Inputs Order* at ¶ 11 ("The cost-to-serve module considers both capital expenditures (in the capex sub-module) and operating expenses (in the opex sub-module).").

purchasing core capacity, Internet POP agreements, etc., are necessary to provide broadband service but are not census block specific. The Commission should recognize that carriers will use CAF Phase II support for a mix of capital expenditures and network operating expenses across their networks.[47] Some recipients of CAF Phase II frozen support may use a portion of their support for middle mile infrastructure benefitting many parts of their service area, while others may focus only on last mile facilities.[48] To the extent that a CAF II recipient meets its CAF Phase II statewide broadband service commitments, all such flexibility should be permitted.

E. Reasonable Reporting Requirements Will Help Ensure the Success of CAF Phase II

If the Commission adopts CAF Phase II frozen support service commitments that, like those associated with model-based support, require ACS to offer broadband service to a specific number of currently unserved customer locations, then compliance reporting should require ACS only to identify the extent of its progress toward achieving those numbers. To the extent that the Commission imposes structured location-counting metrics on price cap carriers accepting CAF Phase II frozen support, it should limit its compliance reports solely to those metrics.

In making these reports, the Commission should require non-CONUS carriers to demonstrate only that they have met the build-out obligation for the minimum required number of locations at the aggregate level, rather than on a census block basis.[49] As explained by several commenters, even in areas where the overall statewide results of the model may be reasonable,

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[47] ACS Comments at 27-28.

[48] ACS supports the use of CAF Phase II support for middle mile as well as last mile infrastructure. *See* ACS Comments at 6-7.

[49] ACS Comments at 19.

the model frequently fails at the census block level accurately to capture both the correct number of end-user locations that exist, as well as the cost of middle mile facilities necessary to reach those end-users.[50] CenturyLink observes that, in analyzing the CAM results and what CenturyLink knows about its own network, "there is a dramatic difference between CAM funded locations and CenturyLink's internal geo reference location data. CenturyLink is not claiming its internal data is perfect to the real world either, rather for modeling and analysis, close enough works but for actual network deployment flexibility is essential."[51]

USTelecom concurs that it would administratively burdensome – perhaps even impossible – to demonstrate precise capital expenditures at specific locations in the census blocks chosen by the model. For one thing, the model is not sufficiently accurate in identifying the location and count of actual customers in any given price cap service territory.[52] For another, it makes good administrative sense to permit price cap carriers during the course of their multi-year build-out to use the knowledge and experience that they gain as they design and build out new infrastructure for the improvement of their remaining deployment.[53]

Carriers should be expected and encouraged to adjust their build-out plans to maximize the use of the available support, and incorporate the available technology as it continues to evolve, over the course of the ten-year CAF Phase II term. The goals of CAF Phase II will be met when carriers meet the broadband service commitments at the required minimum number of

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[50] *Id.*

[51] CTL Comments at 15.

[52] USTelecom Comments at 14.

[53] USTelecom Comments at 13-14.

eligible locations in the state, and meet the reasonable interim milestones (as discussed above). The Commission should not attempt to micro-manage the deployment process beyond such goals.

III. Regulatory Requirements Should Be Appropriately Tied To CAF Support

In the Further Notice, the Commission seeks comment on the relationship between ETC obligations and participation in CAF Phase II.[54] Several commenters address the importance of tying appropriate service obligations to the level of support that a carrier receives – and the equal importance of discontinuing such obligations where support is not provided. This is no less important in states where non-CONUS carriers accept frozen support in lieu of the ROFR.

A. Certain ETC and ILEC Obligations Should Terminate When Support Is Terminated

The Commission appropriately suggests that eligible telecommunications carrier ("ETC") obligations could cease after the CAF Phase II funding term expires and the carrier has fulfilled its build-out obligations.[55] Many parties agree.[56] For example, ARC asks that ETCs no longer receiving support be relieved from future performance as well as reporting obligations.[57] It is unrealistic and contrary to the dictates of the Act to expect an ETC to maintain service without sufficient and predictable support.[58] USTelecom concurs, "Universal service support should match ETC obligations. Where universal service support is not received there should be no ETC designation or associated obligations . . . . This policy should apply regardless of the derivation

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[54] Further Notice at ¶¶ 195-98.

[55] Further Notice at ¶ 184.

[56] *See, e.g.,* USTelecom Comments at 18-19; ARC Comments at 17; WISPA Comments at 10.

[57] ARC Comments at 17-18.

[58] *See* 47 U.S.C. §254 (b)(5).

of the support – whether it is awarded through competitive bidding, the RAF, frozen support elected in non-CONUS areas in lieu of model-based support or via the state level [ROFR] election."[59] As USTelecom explains, the Commission's recent universal service reforms attempt to target support more narrowly to clearly-defined areas where it is most needed; regulatory obligations should be similarly constrained to avoid inefficient market distortions.[60]

For the same reasons, ACS believes it is incumbent upon the Commission to forbear from enforcing Section 214 discontinuance rules and ILEC-specific obligations under Section 251 and 252 of the Communications Act in areas where the ILEC receives no support, either because a competitor is receiving support instead, or because an area is deemed already served by a qualifying provider. In all such cases, it is unreasonable, and would violate Section 254, to require ILECs to underwrite competitive entry, or to continue to provide service in areas where termination of support has made it uneconomic to do so. At the very least, continued enforcement of these requirements will discourage continued network investment by the ILEC. At the most extreme, it will drive the ILEC from the market altogether.

For example, USTelecom states that if the Commission determines that a census block is ineligible for CAF Phase II support due to the presence of a qualifying competitor, the Commission should terminate all wireline support – both that of the incumbent and that of any competitive ETCs – in order to avoid market distortions in the affected census blocks.[61]

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[59] USTelecom Comments at 23.

[60] *See* USTelecom Comments at 23-24.

[61] USTelecom Comments at 18-19.

ACS has grave concern with GCI's proposal to redirect support withdrawn from competitive wireline ETCs in Alaska to its own commercial mobile radio service ("CMRS") affiliates to spend "in areas not receiving LTE service from AT&T or Verizon."[62] GCI fails to explain how the public would benefit from this peculiarly idiosyncratic proposal. Rather than risk creating a new regulatory advantage for wireless service providers over their wireline competitors, ACS recommends that the Commission simply terminate such wireline support as to all competitors in the same area.[63]

B. The CAF Phase II Rules, Including Census Block Challenges, Must Be Finalized Prior To Requiring Carriers To Elect Frozen Support

After the initial comment deadline on the Further Notice, GCI submitted a series of census block challenges, seeking to exclude areas it claims to serve with voice and broadband service meeting CAF Phase II requirements from the offer of CAF Phase II support available to ACS.[64] These challenges create uncertainty as to the potential scope of ACS's CAF Phase II obligations, not only as to the number of locations to which ACS might be required to offer service meeting the CAF Phase II requirements, but also as to the geographic areas where that service will "count" toward ACS's satisfaction of that requirement.

In its Order adopting the CAM, the Bureau pledged that "[t]o provide non-contiguous carriers with the requisite information to make an informed decision about whether to elect to receive frozen support or model-based support, we anticipate that the service obligations for

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62 GCI Comments at 7.

63 ACS Comments at 37-38.

64 *Connect America Phase II Challenge Process*, WC Docket No. 14-93, Letter from Jennifer P. Bragg, Counsel to General Communication, Inc. (filed Aug. 14, 2014).

carriers receiving frozen support would be determined prior to their having to make a decision whether to receive frozen support."[65] The census block challenges have a direct and inextricable link to these service obligations, and the Commission should clarify that it will consider ACS's frozen support obligations to be "determined" only after the census block challenges have been resolved *and* the Commission has resolved the other frozen support issues raised in the Further Notice. The geographic scope of the areas where ACS's CAF Phase II service offerings will count toward meeting its commitment is no less important than the required broadband speed or performance, the total number of required service locations, and other parameters of the service commitment associated with CAF Phase II support.

IV. Alaska Middle-Mile Infrastructure

Several parties support the Alaska Rural Coalition's proposal to allocate additional support for middle-mile facilities in Alaska.[66] There is a critical shortage of middle mile transport in Alaska. It is the most costly barrier to broadband deployment in the vast areas of the Alaska Bush that, as discussed above, are beyond the reach of many types of infrastructure – such as roads, power, water, etc – that are customarily available in most other parts of the nation.[67] The allocation of funding above and beyond CAF Phase II dedicated to this purpose could be an important step toward overcoming that obstacle, but only if the Commission imposes

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[65] *CAM Inputs Order* at ¶ 154.

[66] ARC Comments at 42-51; Cordova Wireless Comments at 7-8; ACS Comments at 29-30.

[67] Cordova Wireless Comments at 7. *See also* ATA Comments at 3 ("Alaska companies should not be penalized for a lack of middle mile facilities. […] Until sufficient, affordable middle mile facilities are available, providers must have the flexibility to offer broadband service which can be supported by existing infrastructure without facing penalties for failing to meet unrealistic benchmarks.").

and enforces a strict non-discriminatory access requirement with respect to such facilities.[68] Recipients of middle-mile funding should be required to provide non-discriminatory access at affordable rates, to ensure that the public benefits from the subsidy of middle mile construction; the proposals offered in the Further Notice, such as to use the rates for comparable connectivity in urban areas of the state as a cap,[69] appear sensible, and would extend market discipline to rates that, today, are limited only by the boundless imagination of the unregulated monopolist, GCI. In the past, this has not been the case.[70]

GCI's proposal that, in lieu of funding for construction of middle mile facilities, the Commission should permit ETCs to use CAF Phase II support to purchase capacity on existing

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68 *See* Further Notice at ¶ 307.

69 *Id.*

70 *See*, *e.g.*, ARC Comments at 49 ("The ARC believes the Commission should impose strong non-discrimination and fair pricing requirements on any recipient of middle mile infrastructure support. The ARC has discussed with the Commission the frustration of its members attempting to gain access to the TERRA-SW project in Alaska. The prices charged by GCI for backhaul capacity on the TERRA project exceed the ability of other carriers to pay."); *Connect America Fund*, WC Docket No. 10-90, Letter from Richard R. Cameron, ACS, to Marlene H. Dortch, Secretary, FCC, (filed Mar. 28, 2014), at 2 fn. 4 ("A few of the Bush communities included in CAF II are served by GCI's TERRA-Southwest network, constructed with some $88 million in federal Broadband Initiatives Program grant award funds and loan guarantees, but GCI has declined to make affordable wholesale capacity available to unaffiliated providers on these facilities."); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, *Ex Parte* Letter from Karen Brinkmann, Counsel to ACS, to Marlene H. Dortch, Secretary, FCC (filed Sept. 24, 2012), Attachment at 3 ("Terra SW provides the only terrestrial middle mile access to 65 communities in southwestern Alaska; the only alternative is via satellite. Despite the public subsidy, only small amounts of bandwidth are available to competitors at excessively high wholesale prices; by keeping prices high, GCI is able to foreclose market competition for its broadband services . . . . As a largely unregulated monopoly provider of terrestrial transport services, GCI can inflate prices for service to rural health care providers above those for satellite service and far above any reasonable cost-based prices.").

middle mile facilities, misses the mark.[71] This proposal would do absolutely nothing to alleviate the critical shortage of middle mile facilities. There are many parts of Alaska that GCI does not serve. Further, GCI's proposal attempts to neatly side-step the problem that GCI has built its TERRA-SW middle-mile transport facilities in southwest Alaska using $88 million in public funding without any accountability to wholesale or retail customer.[72] In defiance of BIP nondiscrimination and interconnection rules, GCI has consistently rebuffed ACS's requests for meaningful capacity, claiming that it faces capacity constraints after allowing for its own traffic, and quoting exorbitant rates that exceed the price of satellite service and make it impossible for ACS to compete with GCI's low retail rates.

The better approach is to provide non-CONUS carriers with additional funding beyond CAF Phase II and RAF funds to implement ARC's middle mile fund for Alaska and, if appropriate, other non-CONUS areas.

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71 GCI Comments at 18-19.

72 *See, e.g.*, *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Comments of the Alaska Rural Coalition (filed July 15, 2014), at 11 ("GCI received a substantial federal grant/loan to build the TERRA-SW middle mile project through its subsidiary United Utilities. TERRA-SW has been completed and GCI is now working on Phase 3 of TERRA NW. This construction means that parts of Alaska are currently served by unregulated monopoly infrastructure owned and operated primarily by GCI.").

CONCLUSION

For the foregoing reasons, ACS urges the Commission to implement reasonable, achievable, and flexible service mandates to accompany CAF Phase II frozen support, as described more fully above.

Respectfully submitted,

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September 8, 2014