

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

In the Matter of)
)
Connect America Fund) WC Docket No 10-90
)

ORDER

Adopted: June 8, 2015

Released: June 8, 2015

By the Deputy Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) grants a petition filed by Alaska Communications Systems (ACS) requesting a limited extension of its July 24, 2015 deadline to complete deployment of broadband services using Connect America Fund Phase I (CAF Phase I), Round 1 incremental support.¹ Under section 54.312 of the Commission’s rules, an eligible telecommunications carrier (ETC) accepting CAF Phase I, Round 1 incremental support, must complete deployment of broadband-capable infrastructure to two-thirds of the required number of locations within two years of its acceptance, and to all required locations within three years.²

2. ACS filed its Notice of Acceptance of the CAF Phase I, Round 1 incremental support on July 24, 2012.³ ACS states that it intends to use the CAF Phase I, Round 1 incremental support within the required build out period, which ends on July 24, 2015, three years after its Notice of Acceptance.⁴ ACS expects to meet that deployment deadline for the vast majority of its required locations.⁵ However, the nesting of a pair of bald eagles, which have produced one egg, on one of ACS’s microwave towers affects the deployment of broadband service to 138 of ACS’s 2,291 locations.⁶ ACS states that this tower is included in the only middle mile transport route providing access to these locations; ACS has no alternative way of working around the tower.⁷ Federal law makes it unlawful to “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb” a bald eagle.⁸ As a result, ACS states that it will be unable to meet the deployment deadline of July 24, 2015 without disturbing the eagles in violation of federal law. Therefore, ACS requests an extension of time until October 31, 2015 to complete its

¹ Alaska Communications Systems Petition for Extension of Time, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, 10-208, CC Docket Nos. 01-92, 96-45, GN Docket 09-51 (filed Apr. 2, 2015) (ACS Petition).

² 47 C.F.R. § 54.312(c)(9); *see also Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and/or FNPRM*), *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

³ *See* ACS Petition at 2.

⁴ *See id.*

⁵ *See id.* at 3.

⁶ *See id.*

⁷ *See id.*

⁸ 16 U.S.C § 668(c); *see also* ACS Petition at 4.

deployment for those 138 locations. ACS states that it intends to complete its build out before the end of the 2015 construction season.⁹

3. We grant ACS's petition for extension of time as it has demonstrated unique circumstances beyond its control that preclude it from meeting the deadline.¹⁰ The protection of bald eagles constitutes special circumstances justifying an extension, and the grant of such is in the public interest.¹¹ The Bureau therefore grants a limited waiver of section 54.312(c)(9) and extends ACS's deployment deadline to October 31, 2015.

4. Accordingly, IT IS ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the Request for Extension of Time filed by ACS IS GRANTED to the extent described above.

5. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, section 54.312(c)(9) of the Commission's rules, 47 C.F.R. § 54.312(c)(9), IS WAIVED to the extent described above.

6. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol Matthey
Deputy Chief
Wireline Competition Bureau

⁹ See ACS Petition at 5 (stating that ACS has already ordered the necessary equipment to continue deployment in the affected area and will continue working in areas not affected by the eagles' presence).

¹⁰ See 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166. "[D]eadlines can only be waived under 'unusual or compelling circumstances.'" *NetworkIP, LLC v. FCC*, 548 F.3d 116, 126 (D.C. Cir. 2008) (citation omitted).

¹¹ See 16 U.S.C. § 668 (protecting bald eagles against any disturbances); see also *Connect America Fund; CenturyLink Request for Extension of Time and Petition for Waiver*, WC Docket No. 10-90, Order, 27 FCC Rcd 15007, 15008 (Wireline Comp. Bur. 2012) (granting extension of time for certification deadline due to Hurricane Sandy).