

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

In the Matter of)
Connect America Fund) WC Docket No. 10-90
Alaska Communications Petition for Clarification)
or Limited Waiver of the Geocoded Location)
Identification Requirements of the Connect)
America Fund Phase I)

ORDER

Adopted: April 4, 2018

Released: April 4, 2018

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) denies the petition for clarification and waiver filed by Alaska Communications Services Group, Inc. (ACS) on March 14, 2017. The petition concerned a reporting requirement the Commission adopted in May 2013. ACS had until July 1, 2016 to provide the required information, but it failed to do so and filed this waiver petition on March 14, 2017 — more than nine months after the reporting deadline. We deny the petition because ACS has not shown good cause for relief from its obligation to report location data that is critical to ensuring accountability of high-cost support.

II. BACKGROUND

2. In the USF/ICC Transformation Order, the Commission comprehensively reformed and modernized the high-cost program within the universal service fund (USF). The Commission created the Connect America Fund (CAF) to support voice and broadband-capable networks in unserved and underserved high-cost areas. Connect America support has been implemented in two phases. In Phase I, the Commission froze all support for price cap carriers and their affiliates under the legacy high-cost support mechanisms, effective January 1, 2012.

3. During Phase I, the Commission decided to do more than maintain legacy support while working on implementing Phase II. Accordingly, it provided two rounds of additional incremental support to promote new broadband development. The first round authorized up to \$300 million of

1 Petition for Clarification or, in the Alternative, Petition for Limited Waiver of the Requirement to Identify by Latitude and Longitude the Locations in Which Alaska Communications Deployed Broadband to Meet the Requirements of CAF Phase I, WC Docket No. 10-90 (filed Mar. 14, 2017) (Petition). More precisely, ACS filed the petition on behalf of its four local exchange carrier subsidiaries, who are all price cap carriers operating in Alaska. Petition at 1-2. For simplicity, this Order will refer to both the parent company and the subsidiaries as "ACS."

2 Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (USF/ICC Transformation Order), aff'd sub nom. In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

3 Id. at 17715, para. 133.

additional, incremental support in 2012.⁴ Of that amount, carriers accepted approximately \$115 million to deliver new broadband service to nearly 400,000 unserved Americans.⁵ The Commission then authorized a second round of incremental funding in 2013 “to further leverage private investment in rural America and accelerate the availability of broadband to consumers who lack access.”⁶ By accepting incremental support in Round 1 and Round 2, the carriers committed to deploy broadband service within three years to a certain number of locations depending on the amount of support received.⁷ Recipients were required to certify that they had deployed service to at least two-thirds of their required locations after two years and to all required locations after three years.⁸

4. When providing for Round 2 funding, the Commission made a few minor modifications to the Phase I rules. As relevant here, the Commission decided that, in the deployment-milestone certifications, the recipient “must provide geocoded latitude and longitude location information, along with census block and wire center information, for each location the carrier intends to count toward its deployment requirement.”⁹ “[R]equiring geocoded location information will considerably improve the Commission’s ability to ensure accountability of Phase I funds.”¹⁰ Moreover, the Commission believed it “unlikely” that “this additional reporting requirement will substantially burden Phase I recipients.”¹¹ This new reporting obligation, the Commission specified, applied “both to support already accepted in the first round of Phase I and support that w[ould] be accepted in the second round of Phase I.”¹²

5. ACS accepted a total of \$1,949,325 in Phase I incremental support to deploy broadband to approximately 2,600 locations.¹³ ACS filed this petition because it says it cannot provide geocodes for some 2,300 locations deployed using CAF Phase I incremental support until October 2018, well after the due date of July 2016. ACS explains that it “would be compelled to send its technicians back to each individual location, at a cost of at least \$73,000.”¹⁴ It contends that the climate of Alaska and the remoteness of the locations (hundreds of which are not accessible by road at all) further add to the cost and risk of gathering geocoded information in the field.¹⁵

6. In its petition, ACS first asks the Commission to clarify that the geocode requirement is not an effective FCC rule or is applicable only to Round 2 funding. In the alternative, ACS asks for an extension of the reporting deadline because it expects to visit most of the 2,300 locations in the ordinary course of business by October 2018 and can provide the latitude and longitude information for the locations at that time.

III. DISCUSSION

7. Pursuant to sections 0.91 and 0.291 of the Commission’s rules, the Chief of the Wireline Competition Bureau may “[a]ct on requests for interpretation or waiver of rules” so long as the requests

⁴ *See id.*

⁵ *Connect America Fund*, Report and Order, 28 FCC Rcd 7766, 7766, para. 1 (2013) (*Round 2 Order*).

⁶ *Id.* at 7766, para. 2.

⁷ 47 CFR § 54.313(b)(1).

⁸ *Id.*

⁹ *Round 2 Order*, 28 FCC Rcd at 7780, para. 35.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 7780, para. 34.

¹³ Petition at 2-3.

¹⁴ *Id.* at 10.

¹⁵ *Id.* at 9-10.

do not “present novel questions of fact, law, or policy which cannot be resolved under outstanding precedents and guidelines.”¹⁶ As the following analysis shows, existing Commission precedents and guidelines suffice to resolve ACS’s petition.

8. *Petition for Clarification.* ACS “seeks clarification that the [geocode] requirement . . . is not an effective FCC rule, at least not with respect to . . . Round 1 incremental locations.”¹⁷ Specifically, ACS advances two arguments. It first suggests that the geocode “requirement was introduced for Round 2, not for Round 1.”¹⁸ It then questions “whether the requirement of geo-location-specific coordinates for incremental support ever was codified in an effective FCC rule.”¹⁹ Neither argument has merit.

9. First, although the geocode requirement did originate in the *Round 2 Order*, the Commission was clear that the requirement applied to all Phase I incremental support locations across both rounds of funding. As noted above, the *Round 2 Order* explicitly states that the new requirement applies “both to support already accepted in the first round of Phase I and support that will be accepted in the second round of Phase I.”²⁰ ACS’s petition fails to address this unambiguous language.

10. Second, the geocode requirement is an effective FCC rule. By its reference to the requirement not being “codified,” we understand ACS to contend that the requirement is ineffective because it was never codified in the *Code of Federal Regulations*.²¹ But lack of codification does not render the requirement ineffective. The Administrative Procedures Act does not require Commission rules to be codified in the *Code of Federal Regulations* to become effective; publication in the *Federal Register* suffices, as made clear in both judicial and Commission precedents.²² The *Round 2 Order* was properly published at 78 Fed. Reg. 38,227; therefore, the geocode requirement contained within that Order is an effective FCC rule.²³

11. *Petition for Waiver.* Section 1.3 of the Commission’s rules permits waiver of any rule “if good cause therefor is shown.”²⁴ “The FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”²⁵ The Bureau finds that ACS has not shown special circumstances that prevent it from collecting geocoded location information.

¹⁶ 47 CFR §§ 0.91(b), 0.291(a)(2).

¹⁷ Petition at 1.

¹⁸ *Id.* at 4.

¹⁹ *Id.*; see also *id.* at 7 (“[I]t is not clear that the geocode requirement adopted in 2013 ever became a Commission rule.”).

²⁰ *Round 2 Order*, 28 FCC Rcd at 7780, para. 34.

²¹ See Petition at 7 & n.10.

²² See 5 U.S.C. § 552(a)(1); *McLean v. Crabtree*, 173 F.3d 1176, 1184 (9th Cir. 1999) (deferring to and upholding an agency rule that proceeded through notice and comment, was published in the *Federal Register*, but was not codified in the *Code of Federal Regulations*); *Applications for Consent to the Transfer of Control of Licenses et al.*, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12420-22, para. 157-61 (finding that a prohibition on merger that was published in the *Federal Register*, but not codified in the *Code of Federal Regulations*, was “a binding rule”).

²³ Federal Communications Commission, *Connect America Fund*, 78 Fed. Reg. 38,227 (June 26, 2013); Federal Communications Commission, *Connect America Fund*, 78 Fed. Reg. 44,893 (July 25, 2013) (announcing effective date of July 25, 2013 upon OMB approval of information collection for six months); Federal Communications Commission, *Connect America Fund*, 79 Fed. Reg. 34,639 (June 18, 2014) (announcing effective date of June 18, 2014 upon OMB approval of information collection for three years).

²⁴ 47 CFR § 1.3.

²⁵ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

12. ACS correctly points out that the geocode requirement was not in effect when it began deploying Round 1 locations²⁶ and asserts that it “began collecting geocodes for CAF Phase I locations following adoption of the requirement in 2013.”²⁷ However, ACS does not explain why it is missing geocodes for its 316 Round 2 locations, all of which should have been served after the Commission adopted the requirement in May 2013.²⁸ Nor does it specify how many of the 2,063 Round 1 locations for which it lacks geocodes (out of a total 2,291 Round 1 locations for which it accepted support) had been served after the requirement came into effect.²⁹

13. In any event, ACS’s petition rests on the assumption that it would have to send technicians to visit each location in order to obtain latitude and longitude data. But there exist at least two other methods for collecting geocodes. As the Universal Services Administrative Company (USAC) has explained, instead of visiting each location, carriers may also use “web-based maps and imagery” to pinpoint locations or employ “an address geocoder program to convert addresses into [latitude and longitude] coordinates.”³⁰ ACS emphasizes the costs and hazards of sending technicians to each location, but its petition never explains why it cannot follow a different process to collect the geocodes.

14. For the foregoing reasons, the Bureau does not find good cause to waive the geocode requirement and therefore denies ACS’s petition. Accordingly, ACS must file the required geocoded location information within six weeks, using web-based maps or any other reasonable technique to collect the required information, as set forth by USAC and employed by other CAF Phase I recipients. USAC should then proceed with normal validation of the submitted data.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), and 254, and to the authority delegated in sections 0.91, 0.291, 1.2, and 1.3 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 1.2, and 1.3, that the petition for clarification or alternatively waiver filed by Alaska Communications Services Group, Inc. on March 14, 2017 IS DENIED.

16. IT IS FURTHER ORDERED, pursuant to sections 0.91, 0.291, 1.2 and 1.102(b)(1) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 1.2, and 1.102(b)(1), that this Order and Declaratory Ruling IS ADOPTED and SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

²⁶ Petition at 8.

²⁷ *Id.* at 5.

²⁸ *Id.*

²⁹ *Id.* at 3, 5.

³⁰ Universal Services Administrative Co., Geolocation Methods at 2, *available at* http://usac.org/_res/documents/hc/pdf/tools/HUBBGeolocationMethods.pdf.