

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Connect America Phase II Challenge Process)	WC Docket No. 14-93

ORDER

Adopted: March 5, 2019

Released: March 5, 2019

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) resolves a second Connect America Fund (CAF) Phase II (Phase II) challenge to 3,252 unique geocoded locations proposed by Alaska Communications Systems (ACS) to receive high-cost support as part of ACS’s obligations to extend service to unserved Alaskan consumers. The Bureau finds that 647 of these geocoded locations will be eligible for high-cost support.¹ The Bureau also grants ACS’s request to make eligible a limited number of additional census blocks for Phase II support that are no longer reported as served by a competitor. Taken together, these actions will expedite voice and broadband service to unserved areas within Alaska, while maximizing our limited universal service resources.

II. BACKGROUND

2. In the *USF/ICC Transformation Order*, the Commission reformed and modernized the universal service and intercarrier compensation systems to maintain voice service and extend broadband-capable infrastructure to millions of Americans.² As part of that reform, the Commission established Phase II to provide ongoing support to promote the deployment of voice and broadband-capable networks in high-cost areas in price cap territories, targeting Phase II support to those census blocks that are not served by an unsubsidized competitor.³

3. In the *ACS CAF Phase II Order*, the Commission adopted tailored service obligations for ACS to receive support for a 10-year term by offering voice service and broadband service to at least 31,571 locations at the same speed, latency, usage, and pricing metrics as established for Phase II model-based carriers. Eligible locations are primarily in census blocks identified as high-cost that are unserved by unsubsidized competitors.⁴ However, as an exception, the Commission granted ACS the flexibility to

¹ See *Connect America Fund*, Order, 31 FCC Rcd 12086, 12096-97, para. 36 (2016) (*ACS CAF Phase II Order*).

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 17722, para. 149. Ultimately, the Bureau implemented that decision by treating each census block as served where an unsubsidized competitor reported service to at least one location, subject to a challenge process.

⁴ *ACS CAF Phase II Order*, 31 FCC Rcd at 12088, para. 8.

deploy up to 7,900 locations that are unserved by any provider within partially served census blocks.⁵ The Commission adopted a challenge process to ensure that those locations are, in fact, unserved.⁶

4. *First ACS Challenge Process.* On February 5, 2018, the Bureau commenced a challenge process regarding 4,762 unique geocoded locations, which encompassed 6,056 locations, that ACS proposed to serve.⁷ The Bureau determined that 3,049 of the proposed locations were served by GCI, but the remaining 1,713 locations were unserved and therefore eligible for deployment with frozen support.⁸ In reaching this conclusion, the Commission relied on data provided by both parties.

5. *Second ACS Challenge Process.* Prior to the Bureau's resolution of the first challenge process, on June 21, 2018, ACS proposed an additional 4,691 locations, comprised of 3,252 unique geocoded locations, it claimed were unserved, though located in partially served high-cost census blocks.⁹ These proposed locations identified by ACS were announced by the *ACS Public Notice II* on July 19, 2018.¹⁰

6. On September 4, 2018, GCI initiated the present challenge for 2,604 of those locations.¹¹ GCI stated that it already offered "facilities-based, residential, fixed voice service and broadband service at 10/1 Mbps or higher, at prices at or below the Alaska-specific reasonable comparability benchmark."¹² In support of this second challenge, GCI provided an analysis that was supported by maps and shape files of its node boundaries, advertisements of current qualifying services offered at the locations, and declarations of persons who conducted the analyses of existing customer addresses near the proposed locations.¹³

7. GCI employees and a consultant compared ACS's proposed locations in partially served census blocks against GCI's node boundaries maps and existing GCI customer addresses to determine which locations fall within a GCI node boundary.¹⁴ GCI determined, based on its analysis, that 2,604 of the 3,252 proposed locations are located within a GCI node boundary. GCI claimed to offer voice service and Internet service with speeds in excess of 10/1 Mbps and rates below the Commission's Alaska-specific reasonably comparable benchmark rate.¹⁵ GCI conducted additional analyses of the proposed

⁵ The Commission adopted this exception to allow ACS to serve only those locations in otherwise-served census blocks that the competitor does not serve.

⁶ *ACS CAF Phase II Order*, 31 FCC Rcd at 12096, para. 36.

⁷ *See Connect America Fund and Connect America Phase II Challenge Process*, WC Docket Nos. 10-90 and 14-93, Order, DA 18-999 at 5, para. 19. (WCB 2018) (*ACS First Challenge Process Order*) (citing *Wireline Competition Bureau Commences Alaska Communications Systems Connect America Fund Phase II Challenge Process*, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 963 (WCB 2018) (*ACS Public Notice I*)).

⁸ *Id.* at 19.

⁹ *See* Letter from Ruth Willard, Senior Director, Revenue Management, ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed June 21, 2018).

¹⁰ *See* *Wireline Competition Bureau Continues Alaska Communications Systems Connect America Fund Phase II Challenge Process*, WC Docket No. 10-90, Public Notice, DA 18-744 (WCB 2018) (*ACS Public Notice II*).

¹¹ *GCI Communication Corp.'s Challenge to Alaska Communications Systems' Second Set of Proposed Eligible Locations in Partially Served Census Blocks*, WC Docket Nos. 14-93 and 10-90 (Sept. 4, 2018) (*GCI Second Challenge*).

¹² *GCI Second Challenge* at 4.

¹³ *See generally* *GCI Second Challenge*.

¹⁴ *GCI Second Challenge* at 4; *see* *GCI Second Challenge*, Attachs. A, B, and C.

¹⁵ *GCI Second Challenge* at 4.

3,252 locations using existing customer addresses and determined that 1,537 of those locations subscribed to GCI Internet service.¹⁶

8. ACS did not file a response to GCI's second challenge of the 2,604 locations, nor provide any evidence that these locations were in fact unserved. ACS, however, requested that the Bureau include an additional 19 census blocks to its list of funded census blocks after GCI stated it no longer served them and would not object to ACS deployment to eligible locations in the blocks.¹⁷

III. DISCUSSION

9. Based on a review of the evidence for this second challenge, the Bureau concludes that GCI met its burden of persuasion that it serves 2,604 of the 3,252 locations ACS identified as unserved. The Bureau also grants ACS's requests to include 14 census blocks, out of a total of 19 blocks requested, on its Phase II funded list of blocks based on GCI's representation that it no longer serves those locations and Form 477 data.

A. GCI Challenge to ACS's Second Round of Proposed Locations

10. *Service at Proposed Locations.* In the Phase II challenge process, the Bureau adopted a preponderance of the evidence standard for determining whether it is more likely than not, based on all the evidence, that the status of a location is "unserved" by any competitor.¹⁸ Therefore, to show that a location is served in this challenge, GCI must show that all of the Commission's criteria are met, while ACS need only show that any one of the criteria is not met to demonstrate that the location is unserved.¹⁹ ACS must provide, for each challenged location, concrete and verifiable evidence supporting its claim that the challenge should not be granted.²⁰

11. In order to qualify as "served," a location must have voice and broadband service with pricing that is reasonably comparable to that of similar services in an urban area.²¹ In addition, a location will be considered "served" if a provider can show that the provider: (1) actually offers voice and broadband service at the location, (2) has physical assets in or adjacent to the location, and (3) currently has or previously had voice or broadband customers at the location.²² Moreover, a respondent must provide, for each challenged location, concrete and verifiable evidence supporting its claim that the challenge should not be granted.²³

¹⁶ *Id.* at 7.

¹⁷ See Letter from Karen Brinkmann, Counsel for ACS, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90 and 14-93 (Dec. 5, 2018) (ACS Dec. 5 Letter); Letter from Karen Brinkmann, Counsel for ACS, to Marlene Dortch, Secretary, FCC WC Dockets Nos. 10-90 and 14-93 (Dec. 19, 2018).

¹⁸ *ACS First Challenge Process Order* at 4, para. 14 (citing *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211, 7215, para. 21 n.48 (*Phase II Challenge Process Order*)).

¹⁹ *Id.*

²⁰ *Id.* (citing *Phase II Challenge Process Order* at 7214-15, paras. 8-9).

²¹ *Id.* at 4, para. 15 (citing *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 15060, 15061-65 (*Phase II Service Obligations Order*); *Connect America Fund*, WC Docket No. 10-90, Report and Order, 29 FCC Rcd 13485 (WCB 2014)).

²² *Id.* (citing *Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 7505, 7507-8 (WCB 2014) (*Challenge Process Guidance Public Notice*); FCC, *A Basic Guide to the Challenge Process* at 9 (July 31, 2014) (*Challenge Process Basic Guide*), available at <http://www.fcc.gov/encyclopedia/connect-america-phase-ii-challenge-process> (last visited Mar. 1, 2019)).

²³ *Id.* (citing *Phase II Challenge Process Order*, 28 FCC Rcd at 7214-15, paras. 8-9).

12. The Bureau evaluated the uncontested evidence submitted by GCI in this second challenge process and finds GCI's declaration that it serves an area to be persuasive, when coupled with network boundary maps, publicly available descriptions and advertisements of service offerings in partially served census blocks, and similar documents. In making this finding, we place significant weight on evidence that network facilities are in place and service is advertised throughout an area.²⁴

13. The Bureau specifically reviewed the 2,604 geocoded locations challenged by GCI in comparison to its cable node boundaries. The Bureau observed that all 2,604 locations fall within the node boundaries depicted by its shape files.

14. For these challenged locations, GCI provided marketing and service materials to further support its claim that it offers service meeting the Commission's required service requirements standards at the proposed locations.²⁵ This evidence supports our conclusion that GCI meets the first prong of the three-part standard – that GCI holds itself out to the public as able and willing to provide service to the locations.²⁶ Similarly, GCI provided maps for the 2,604 locations to show where it has node boundaries, demonstrating that it meets the second prong of the three part standard—that GCI has plant in or adjacent to the challenged locations. Lastly, GCI provided the results of a comparative analysis of the addresses of its existing customers against the challenged locations, supported by declarations, to demonstrate the third prong—that GCI currently has or previously had voice or broadband customers at the locations.

15. The Bureau therefore concludes that all 2,604 challenged locations should be treated as served based on the totality of the circumstances, given the evidence presented by GCI in the current challenge, as well as the lack of any substantive evidence or response by ACS to demonstrate that the locations are unserved.²⁷ The remaining 647 locations ACS identified as unserved, and not challenged by GCI, are automatically deemed eligible for deployment with frozen support.²⁸

B. Census Blocks No Longer Reported as Served by GCI

16. As part of the challenge processes, ACS initially identified certain locations in a few census blocks that were not challenged even though GCI previously reported the blocks as served on its FCC Form 477.²⁹ ACS subsequently notified the Commission that it “intend[ed] to submit for the Bureau's consideration additional high-cost census blocks initially deemed ‘served’ by the Bureau, which [it] now believes are either unserved or only partially served by GCI.”³⁰ In separate filings in December 2018, ACS identified a total of 19 census blocks that it states are no longer served by GCI.³¹

²⁴ *Id.* at 5, para. 16 (citing *Connect America Fund et al.*, WC Docket Nos. 10-90 and 14-93, Order, 30 FCC Rcd 2718, 2731, para. 38 (WCB 2015)).

²⁵ GCI Second Challenge at Attach. E. See *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211, 7213-14, para. 7 (WCB 2013) (concluding “that it is reasonable to presume that providers that provide broadband of the required speed also meet the non-speed broadband criteria, with that presumption subject to rebuttal in particular instances”).

²⁶ GCI provides website marketing screen shots for the communities of Anchorage, Fairbanks, Homer, Soldotna, and Kenai for the challenge locations to support its claim that it offers service at the requisite performance metrics. See GCI Second Challenge at Attach. E.

²⁷ See *Phase II Challenge Process Resolution Order*, 30 FCC Rcd at 2733, para. 48.

²⁸ See *ACS CAF Phase II Order*, 31 FCC Rcd at 12097, para. 36.

²⁹ See Letter from Karen Brinkmann, Counsel for ACS, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90 and 14-93, at 6 (Apr. 20, 2018).

³⁰ Letter from Karen Brinkman, Counsel for ACS, to Marlene Dortch, Secretary, FCC WC Dockets Nos. 10-90 and 14-93, at 2 (May 7, 2018).

17. In response to the discrepancy concerning the census blocks, GCI stated that it corrected its FCC Form 477 to reflect that service was no longer offered in certain census blocks that ACS identified as part of the challenge processes, as well as other census blocks GCI voluntarily identified.³² Regarding the census blocks for which GCI previously reported service but has since changed to unserved, GCI stated that it does not object to ACS “deploy[ment] to otherwise eligible locations in satisfaction of its build-out requirements.”³³

18. The Bureau reviewed the 19 census blocks identified by ACS that are no longer reported as served by GCI. With regard to its first request, the Bureau confirmed that 12 of the 15 census blocks ACS initially identified as no longer served are included among the blocks that GCI stated it no longer reports service and does not object to ACS deployment,³⁴ and are indeed high-cost based on the adopted cost model. The Bureau likewise reviewed ACS’s second request to include four census blocks that could be served consistent with *ACS CAF Phase II Order*. The Bureau determined that two of the four census blocks were previously identified as unserved by ACS’s first request, and the remaining two census blocks are indeed high-cost based on the cost model and were no longer identified as served by an unsubsidized competitor in the December 2017 FCC Form 477 filings. In light of the recent data provided by GCI and Form 477 data, the Bureau finds that deployment by ACS to unserved locations that is consistent with the parameters the Commission established in the *ACS CAF Phase II Order* within 14 eligible census blocks is in the public interest in order to provide advanced communication service to Alaskan consumers. Accordingly, these census blocks will be added to the list of the eligible high-cost census blocks consistent with the *ACS CAF Phase II Order*.

IV. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), 5, 214, and 254 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 154(i), 154(j), 155, 214, 254, 1302, sections 0.91, 0.291, 1.3 and 1.102 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 1.102, and the authority delegated to the Wireline Competition Bureau in paragraph 36 of the *ACS CAF Phase II Order*, 31 FCC Rcd 12086 (2016), that this Order, IS ADOPTED.

20. 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.

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³¹ See ACS Dec. 5 Letter (citing GCI May 23, 2018 Reply); Letter from Karen Brinkmann, Counsel for ACS, to Marlene Dortch, Secretary, FCC WC Dockets Nos. 10-90 and 14-93 (Dec. 19, 2018).

³² Reply of GCI Communication Corp. to Challenge to Alaska Communications Systems’ Proposed Eligible Locations in Partially Served Census Blocks, WC Docket Nos. 14-93, 10-90, at 11-12 (filed May 23, 2018) (identifying a total of 21 census blocks in which GCI no longer reports providing service).

³³ *Id.*

³⁴ See *id.*

21. IT IS FURTHER ORDERED that ACS submit its proposed deployment plan 60 days from the effective date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Kris Monteith
Chief
Wireline Competition Bureau

APPENDIX A
Final Second Challenge Decisions

(List showing the designation of served or unserved for each challenged location)
This list can be found at: <https://docs.fcc.gov/public/attachments/DOC-356434A1.xlsx>

APPENDIX B
Additional ACS Census Blocks Eligible for Support

(List showing approved census blocks no longer reported as served by GCI)
This list can be found at: <https://docs.fcc.gov/public/attachments/DOC-356434A1.xlsx>