

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

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

ORDER

Adopted: October 24, 2016

Released: October 31, 2016

By the Commission: Commissioner Clyburn approving in part, dissenting in part, and issuing a statement; Commissioner O’Rielly issuing a separate statement.

I. INTRODUCTION

1. In this Order, the Commission adopts tailored service obligations for Alaska Communications Systems (ACS), a carrier serving a non-contiguous area that elected to receive nearly \$20 million annually in Connect America Phase II frozen support amounts in lieu of model-based support. We find these obligations are in the public interest and will advance the Commission’s goal of ensuring universal availability of modern networks capable of providing voice and broadband service. Specifically, ACS will receive Phase II frozen support for a 10-year term and be required to offer voice service and broadband service at the same speed, latency, usage and pricing metrics as established for Phase II model-based carriers to at least 31,571 locations, primarily in census blocks identified as high-cost that are unserved by unsubsidized competitors, with limited exceptions. These service obligations strike the appropriate balance of ensuring Alaska consumers receive broadband service while also allowing ACS the flexibility to provide that service in a way that is logical, maximizes its network and is reasonable considering the unique climate and geographic conditions of its service territory.

II. BACKGROUND

2. In the USF/ICC Transformation Order, the Commission comprehensively reformed and modernized the universal service and intercarrier compensation systems to maintain voice service and extend broadband-capable infrastructure to millions of Americans.1 As part of these reforms, the Commission adopted a two-phase Connect America Fund to provide support to high-cost areas served by price cap carriers.2 In Phase I, the Commission froze high-cost support for price cap carriers and their affiliates.3 In Phase II, the Commission offered each price cap carrier the option to accept model-based support for a defined term in exchange for a state-level commitment to serve specified high-cost areas within the state that are not served by an unsubsidized competitor. Those carriers accepting model-based support are subject to specific service obligations.4

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

2 Id. at 17725, para. 156.

3 Id. at 17712, para. 128.

4 See 47 CFR § 54.309. The Wireline Competition Bureau (Bureau) adopted a methodology for determining compliance with the latency and usage capacity requirements in 2013. See Connect America Fund, Report and Order, 28 FCC Rcd 15060, 15061, para. 3 (WCB 2013) (Phase II Service Obligations Order). Price cap carriers accepting Phase II model-based support are required to offer voice and 10/1 Mbps broadband, with a usage

(continued...)

3. The Commission also recognized that price cap carriers serving specific non-contiguous areas of the United States – Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, and the Northern Marianas Islands – face different operating conditions and challenges from those faced by carriers in the contiguous 48 states.⁵ Accordingly, the Commission directed the Bureau to consider the unique circumstances of these areas when developing the cost model and to determine whether the cost model provided sufficient support to non-contiguous areas.⁶ If, in the Bureau’s determination, the model did not provide these areas with sufficient support, the Commission granted the Bureau the discretion to maintain their existing support levels without exceeding the overall budget of \$1.8 billion per year for price cap areas.⁷

4. In the *CAM Inputs Order*, the Bureau adjusted a number of inputs in the Connect America Cost Model (CAM) specific to non-contiguous areas to reflect better the unique costs and circumstances of serving those areas.⁸ Despite calibrating the model to estimate non-contiguous costs and circumstances, the Bureau recognized that a number of questions remained about the sufficiency of the model-calculated support in some non-contiguous areas.⁹ As a result, the Bureau provided the non-contiguous carriers the option of choosing either to continue receiving frozen support amounts for the Phase II term, or to elect to receive the model-determined support amount.¹⁰ ACS elected to continue receiving its frozen support in the amount of \$19,694,208.¹¹

5. In the *April 2014 Connect America FNPRM*, the Commission proposed to establish the same service obligations for non-contiguous carriers receiving frozen support as those for model-based carriers, but also sought comment on whether it was necessary for any flexibility to meet these standards.¹² The Commission proposed that support be provided for a term of five years with a 100

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allowance that evolves over the term of support, latency of 100 milliseconds (ms) or less, at rates reasonably comparable to urban areas. The support is provided for eligible locations by census block for a term of six years (2015 through 2020) and requires a buildout of 95-100% of eligible locations by the end of that term. *See Connect America Fund*, Report and Order, 29 FCC Rcd 15644, 15656-61, paras. 30-44 (2014) (*December 2014 Connect America Order*).

⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17737-38, para. 193.

⁶ *Id.* at 17737-38, para. 193.

⁷ *Id.* at 17737-38, para. 193.

⁸ *Connect America Fund*, Report and Order, 29 FCC Rcd 3964, 4019-28, paras. 126-49 (WCB 2014) (*CAM Inputs Order*) (discussing inputs related to plant mix, undersea and submarine cable, terrain methodology, state-specific inputs and company size). During the development of the cost model, ACS modeled certain Alaska-specific cost variables, which it submitted in February 2012 and in subsequent filings. *See, e.g.*, Letter from Karen Brinkmann, Counsel, ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 and 05-337 (filed Feb. 13, 2012) (*ACS Feb. 3, 2012 Letter*).

⁹ *CAM Inputs Order*, 29 FCC at 4029, para. 151. Specifically, ACS has raised questions about whether the model accurately accounts for wireline terrestrial middle mile costs in Alaska. *See, e.g.*, Letter from Karen Brinkmann, Counsel to ACS, and Leonard A. Steinberg, General Counsel and Corporate Secretary, ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337, at 4-9 (filed Mar. 28, 2014).

¹⁰ *CAM Inputs Order*, 29 FCC Rcd at 4029, paras. 152-54.

¹¹ *See* Letter from Karen Brinkman, Counsel to ACS to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Jan. 2, 2015). *See also* Comments of ACS, WC Docket No. 10-90, filed Aug. 8, 2014 at 6 (*ACS Aug. 8, 2014 Comments*). CAM v4.2 would have provided \$15,292,072 to 30,480 locations. *See Wireline Competition Bureau, Announces Availability of Version 4.2 of the Connect America Phase II Cost Model, et al.*, Public Notice, 29 FCC Rcd 16157 (2014). We will address separately the service obligations of the other carriers serving non-contiguous areas that elected to receive Phase II frozen support in lieu of model-based support.

¹² *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, 7117-21, paras. 199-211 (2014) (*April 2014 Connect America FNPRM*).

percent buildout requirement.¹³ The Commission requested that any carrier contending it could not meet one or more of the service standards submit specific alternatives.¹⁴ It noted that any alternatives should reflect the greater level of support received by electing frozen support and be consistent with the Commission's goal of ensuring universal availability of modern networks capable of providing voice and broadband service.¹⁵ The Commission also proposed compliance reporting and sought comment on how best to monitor compliance.¹⁶

6. In the *December 2014 Connect America Order*, we concluded that the best approach was to adopt tailored service obligations for each of the non-contiguous carriers that elected to continue to receive frozen support amounts for Phase II in lieu of the offer of model-based support.¹⁷ We decided that tailoring specific service obligations to the individual circumstances of each such carrier would best ensure that Connect America funding is put to the best possible use.¹⁸

7. Since the *April 2014 Connect America FNPRM*, ACS has filed multiple submissions in the record.¹⁹ Over time, ACS has altered its initial proposal several times, filing its most recent *ex parte* letter and presentation in September 2016. ACS proposes to deploy new broadband service to 26,000 locations at the same speed, latency, usage and pricing metrics as those established for Phase II model-based carriers. However, ACS requests that it receive Phase II support for a term of ten years and be provided greater flexibility than that provided to the price cap carriers that elected model-based support, including the flexibility to count some locations in partially-served and non-high-cost census blocks towards its deployment obligation.²⁰

III. DISCUSSION

8. As described below, we adopt specific service obligations for ACS as a non-contiguous carrier electing to receive Phase II frozen support. The service obligations established today maintain many of the same public interest standards as those established for model-based price cap carriers, but allow flexibility in both buildout locations and the deployment schedule to account for the distinctive geographic and climate challenges of building and providing voice and broadband service in Alaska. By adopting these standards today, we establish clear deadlines for planning and deploying new broadband services to consumers in Alaska, as well as clear obligations to maintain existing service. We find these service obligations are in the public interest as ACS will provide advanced communication service to at least 31,571 locations.

¹³ *Id.* at 7119-20, paras. 205.

¹⁴ *Id.* at 7121, para. 211.

¹⁵ *Id.*

¹⁶ *Id.* at 7118-19, para. 202.

¹⁷ *December 2014 Connect America Order*, 29 FCC Rcd at 15662, para. 46.

¹⁸ *Id.*

¹⁹ See *ACS Aug. 8, 2014 Comments*. See also Letter from Karen Brinkmann, Counsel, ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Sept. 22, 2014) (*ACS Sept. 22, 2014 Letter*); Letter from Karen Brinkmann, Counsel, ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Feb. 3, 2015) (*ACS Feb. 3, 2015 Letter*); Letter from Leonard A. Steinberg, General Counsel, ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 11, 2015) (*ACS Dec. 11, 2015 Letter*); Letter from Karen Brinkmann, Counsel, ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed June 21, 2016) (*ACS June 2016 Ex Parte*); Letter from Karen Brinkmann, Counsel, ACS, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Sept. 13, 2016) (*ACS Sept. 2016 Ex Parte*).

²⁰ See *ACS Aug. 8, 2014 Comments*; see also *ACS Feb 3, 2012 Letter*.

A. Service Requirements

9. *Speed.* We adopt 10/1 Mbps as the minimum broadband speed requirement for ACS's Phase II broadband deployment.

10. ACS stated in its comments in response to the *April 2014 Connect America FNPRM* that it intends to provide speeds of at least 10/1 Mbps in its service territory and did not request a lesser speed in any location.²¹ In fact, ACS stated that it prefers a 10/1 Mbps service obligation, and planned its proposal accordingly.²² ACS explains that providing 10/1 Mbps service is more costly, however, than providing 4/1 Mbps service and requests that the 10/1 Mbps standard only be adopted if a ten-year term of support is adopted.²³

11. In the *December 2014 Connect America Order*, we adopted 10/1 Mbps as the minimum broadband speed for all ETCs subject to broadband performance obligations.²⁴ Although the Commission has determined that 25/3 Mbps reflects "advanced" capabilities, the Commission has explained that "[b]y setting a lower baseline for Connect America funding, we establish a framework to ensure a basic level of service to be available for all Americans, while at the same time working to provide access to advanced services."²⁵ Based on the record before us, we see no reason to apply a different standard to ACS. Accordingly, we adopt 10/1 Mbps as the minimum broadband speed requirement for deployment of broadband services to a specified number of locations in the ACS service territory and as a condition of receiving frozen support. While this represents the minimum, consistent with our recent decision to improve oversight over the outcomes achieved by rate-of-return carriers,²⁶ ACS will also report to us the number of locations that will receive 25/3 Mbps service so that we can track progress over time in achieving higher speeds.

12. *Latency.* We adopt a roundtrip provider network latency requirement of 100 ms or less for ACS's Phase II broadband deployment.

13. In the *April 2014 Connect America FNPRM*, the Commission proposed that non-contiguous carriers be required to meet a roundtrip provider network latency of 100 ms or less.²⁷ We proposed that non-contiguous carriers choosing frozen support conduct their latency network testing from the customer location to a point at which traffic is consolidated for transport to an Internet exchange point

²¹ *ACS Feb. 3, 2012 Letter* at 2, 5. In its initial comments, ACS requested confirmation that the relaxed broadband standards for speed, latency, and capacity applicable to areas served exclusively by satellite backhaul facilities would likewise apply to any ACS Phase II locations outside of the Alaskan Bush and served exclusively by satellite backhaul. *ACS Aug. 8 Comments* at 31; 54 CFR § 54.313(g). However, ACS now states that there are no areas outside of the Alaskan Bush where ACS relies solely on the use of satellite backhaul to deliver service. Letter from Richard Cameron, Legal Consultant, ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket 10-90 at 1 (filed Mar. 4, 2016) (*ACS Mar. 4, 2016 Letter*). Accordingly, we find this request is moot.

²² See *ACS Feb. 3, 2012 Letter* at 7-8 (stating ten-year term is required for deployment of 10/1); see also *ACS Aug. 8, 2014 Comments* at 26 (stating 10/1 makes better engineering sense).

²³ *ACS Aug. 8, 2014 Comments* at 26-27, 30-31. Given that we adopt a ten-year term, we hold ACS to its commitment to provide 10/1 Mbps to all supported locations.

²⁴ *December 2014 Connect America Order*, 29 FCC Rcd at 15648-56, paras. 13-29.

²⁵ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as amended by the Broadband Data Improvement Act*, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action To Accelerate Deployment, GN Docket No. 14-126, 30 FCC Rcd 1375, 1403, 1407-08, paras. 45, 55 (2015).

²⁶ *Connect America Fund, et al.*, WC Docket No. 10-90, Order, 31 FCC Rcd 3087, 3164-68, paras. 210-220 (rel. Mar. 30, 2016) (*2016 Rate-of-Return Reform Order*); 47 CFR § 54.316(a)(2) and (3).

²⁷ *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7120, para. 206.

in the continental United States.²⁸ We also proposed exempting non-contiguous carriers from the latency requirements to the extent the carriers rely exclusively on satellite backhaul facility and certify annually that no terrestrial backhaul options exist.²⁹

14. ACS stated in its comments that it intends to meet the Phase II parameters for roundtrip latency of 100 ms or less.³⁰ Further, ACS confirms that none of the areas where it proposes to deploy new broadband rely exclusively on the use of satellite backhaul to deliver service.³¹ Accordingly, there is no reason in the record before us to relax the latency standard for ACS' proposed Phase II deployment. We adopt the same requirement as implemented by the Bureau for model-based carriers in the *Phase II Service Obligations Order*.³² Specifically, ACS must certify that 95 percent or more of all peak period measurements (also referred to as observations) of network round trip latency are at or below 100 ms.³³ The measurements should be conducted over a minimum of two consecutive weeks during peak hours for at least 50 randomly-selected customer locations within the census blocks for which the provider is receiving frozen support using existing network management systems, ping tests, or other commonly available network measurement tools.³⁴ ACS should conduct its latency network testing from the customer location to a point at which traffic is consolidated for transport to an Internet exchange point in the continental United States.³⁵ We adopt this latency standard for deployment of broadband services in the ACS service territory and as a condition of receiving of frozen support.

15. *Usage Allowance.* We conclude that ACS will be required to provide a usage allowance that evolves over time to remain reasonably comparable to usage by subscribers in urban areas, similar to the approach adopted for price cap carriers.

16. In the *April 2014 Connect America FNPRM*, the Commission proposed that non-contiguous carriers continuing to receive frozen support be subject to the same usage allowance as that specified by the Bureau for price cap carriers receiving model-based support.³⁶ Under the approach previously implemented by the Bureau for Phase II model-based support, price cap carriers must either provide a usage allowance based on the nationwide annual urban rate survey, or a usage allowance consistent with the usage level of 80 percent of their own broadband subscribers including those subscribers that live outside of Phase II-funded areas, subject to a 100 gigabyte (GB) per month floor.³⁷ We sought comment on whether – in light of the potentially unique circumstances in non-contiguous areas – it would be appropriate to relax the 100 GB minimum usage allowance for non-contiguous carriers and instead allow them to meet their usage requirements based on a comparison to 80 percent of their entire subscriber base.³⁸ We also proposed exempting non-contiguous carriers from the usage

²⁸ *Id.*

²⁹ *See id.* *See also USF/ICC Transformation Order*, 26 FCC Rcd at 17699-700, para. 101 (relaxing the broadband public interest obligation for fixed broadband providers that are compelled to use satellite backhaul facilities to 1 Mbps/256 kbps); 47 CFR § 54.313(g).

³⁰ *ACS Feb. 3, 2015 Letter* at 2.

³¹ *ACS Mar. 4, 2016 Letter* at 1.

³² *Phase II Service Obligations Order*, 29 FCC Rcd at 15068-75, paras. 19-36. In adopting this standard, the Bureau considered several comments from ACS. *Id.* at 10569, 10573, 15075, paras. 21, 29-30, 35-36.

³³ *Id.* at 15070-71, para. 23.

³⁴ *Id.*

³⁵ *See id.* at 15075, para. 35.

³⁶ *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7119-20, para. 205.

³⁷ *See Phase II Service Obligations Order*, 28 FCC Rcd at 15068, para. 18.

³⁸ *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7119-20, para. 205.

requirements to the extent the carriers rely exclusively on satellite backhaul facility and certify annually that no terrestrial backhaul options exist.³⁹

17. ACS stated in its comments that it intends to meet the Phase II obligations for usage and did not suggest any relaxation of the usage requirement was necessary.⁴⁰ ACS also later explained that it is not its practice or policy to impose a data usage cap on its customers, and ACS has no intention of limiting usage in the future.⁴¹ ACS proposes to be subject to the same usage standard as that required for those carriers accepting the offer of model-based support.⁴²

18. Earlier this year, the Bureau announced that, based on the most recent publicly available Measuring Broadband America data, 80 percent of cable subscribers nationwide are using 156 GB, and it therefore set the 2016 minimum usage allowance for eligible telecommunications carriers subject to broadband public interest obligations at 150 GB per month.⁴³ We conclude that ACS as a non-contiguous carrier should be subject to the same general approach as implemented by the Bureau for the carriers that accepted model-based support. Like the price cap carriers receiving model-based support, we require ACS to offer at least one service option that provides a usage allowance that meets or exceeds the usage level of 80 percent of cable or fiber-based fixed broadband subscribers, whichever is higher, according to the most current publicly available Measuring Broadband America usage data.⁴⁴ This minimum will be announced annually by the Bureau. Alternatively, ACS may offer a usage allowance consistent with the usage level of 80 percent of its own broadband subscribers, including those subscribers that live outside of Phase II-funded areas, subject to a 150 GB floor. We conclude it appropriate to update the minimum floor that ACS will be subject to in light of the more current information regarding usage trends. We expect that ACS should have no problems meeting this requirement given its representation that it does not currently impose a usage limit on its customers or have any intent to do so in the future.

19. *Reasonably Comparable Rates.* ACS will be subject to the same obligation as all other recipients of high-cost universal service support to provide voice and broadband service at reasonably comparable rates.

20. In the *April 2014 Connect America FNPRM*, the Commission proposed to require non-contiguous carriers electing frozen support to offer both voice and broadband service at rates reasonably comparable to those services offered in urban areas.⁴⁵ We proposed the same two options for showing reasonable comparability as were adopted for model-based carriers: compliance with reasonable comparability benchmarks⁴⁶ or a certification by the carrier that it offers the same or lower rates in rural

³⁹ See *id.* at 7120, para. 206. See also *USF/ICC Transformation Order*, 26 FCC Rcd at 17699-700, para. 101 (relaxing the broadband public interest obligation for carriers providing fixed broadband, that are compelled to use satellite backhaul facilities to 1 Mbps/256 kbps); 47 CFR § 54.313(g).

⁴⁰ *ACS Feb. 3, 2012 Letter* at 2.

⁴¹ *ACS Mar. 4, 2016 Letter*.

⁴² *Id.*

⁴³ See *Wireline Competition Bureau Announces Results of 2016 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 3393 (WCB 2016) (*2016 Urban Rate Survey*).

⁴⁴ See *Phase II Service Obligations Order*, 28 FCC Rcd at 15065-68, paras. 14-18; *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7103-04, paras. 149-52. See also *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3093, para. 27 (adopting similar approach for rate-of-return carriers).

⁴⁵ *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7119, para. 204.

⁴⁶ The Bureau announced the 2016 reasonable comparability benchmark for voice services was \$41.07 and \$71.17 for broadband service providing 10/1 Mbps with 150 GB usage allowance. See *2016 Urban Rate Survey*, 31 FCC Rcd at 3394.

areas as it does in urban areas.⁴⁷ The Commission sought comment on whether non-contiguous carriers would face any challenges meeting this requirement. ACS stated in its comments that it does not anticipate challenges in meeting the statutory requirement to provide voice and broadband service at rates reasonably comparable to those offered in urban areas.⁴⁸

21. In a separate order, the Commission recently directed the Wireline Competition Bureau to establish an Alaska-specific reasonable comparability benchmark using data from its urban rate survey or other sources, as appropriate.⁴⁹ We will provide ACS the same two options for demonstrating compliance with this statutory requirement: by meeting the Alaska-specific benchmark or offering the same or lower rates in rural areas as it does in urban areas. As with model-based carriers, ACS will be required to certify annual compliance with this requirement as explained further below.⁵⁰

B. Term of Support

22. We adopt a 10-year term of support for ACS's Phase II frozen support (2016-2025). As noted above, in the *April 2014 Connect America FNPRM*, the Commission sought comment on whether to specify a five-year term for those non-contiguous carriers that elect to receive frozen support, and whether there is a need to modify the term of support for such non-contiguous carriers.⁵¹ The Commission sought comment on any specific extenuating circumstances in non-contiguous areas that would require extending the term of frozen support for longer than five years.

23. ACS stated in its proposal that it will require a 10-year term of support to complete buildout to the stated number of locations and that buildout within five years is impossible.⁵² ACS explained that due to the harsh weather conditions of Alaska it is forced into a shortened construction season of three to four summer months throughout its service territory and thus a slower pace of progress.⁵³ Further, ACS states it is challenged by decreased availability of experienced and qualified professionals knowledgeable in designing and deploying these services in Alaska - extending the time required to plan for deployment.⁵⁴ Also, due to its remote northern location and unique construction limitations, ACS claims that it also confronts higher costs for broadband deployment.⁵⁵ Ultimately, ACS argues these factors together require a 10-year term of support.⁵⁶

24. We recognize the climate and geographic challenges ACS faces in serving Alaska and find that adopting a 10-year term of support for ACS is in the public interest. While we expect ACS to use its best efforts to expedite deployment, we recognize the shortened construction season and limited availability of experienced personnel is a unique limitation for ACS in Alaska that could slow the pace of buildout. Accordingly, we adopt a 10-year term of support for ACS as a non-contiguous carrier electing Phase II frozen support, which will run from January 1, 2016, and end on December 31, 2025. For

⁴⁷ See *Phase II Service Obligations Order*, 28 FCC Rcd at 15063-64, paras. 7-11.

⁴⁸ *ACS Feb. 3, 2015 Letter* at 2.

⁴⁹ See *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-115, paras. 26-29 (rel. Aug. 31, 2016) (*Alaska Plan Order*).

⁵⁰ See *infra* paras. 40. ACS will have several reporting responsibilities as explained in detail in paras. 41-42.

⁵¹ *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7121, para. 210.

⁵² *ACS Aug. 8, 2014 Comments* at 24-26.

⁵³ *Id.* at 24.

⁵⁴ *Id.* at 25.

⁵⁵ *Id.* at 7.

⁵⁶ See *ACS Aug. 8, 2014 Comments*; *ACS Sept. 22, 2014 Letter*; *ACS Feb 3, 2014 Letter* at 7-8. ACS proposed interim buildout benchmarks in order to reach 100 percent buildout by the end of support year 10. See *infra* paras. 42-44 (discussing ACS buildout requirements and interim benchmarks).

administrative reasons, we find it necessary to conform the term of support to the calendar year, to align reporting and other monitoring activities with that of other carriers. As discussed more completely below, ACS will be required to report its proposed list of locations by October 1, 2018. In year eight, we expect the Commission will conduct a rulemaking to determine how support will be awarded to serve these locations after the end of the ten-year period.

C. Deployment Obligations

25. In the *April 2014 Connect America FNPRM*, we sought comment on the specific build out obligations that non-contiguous carriers receiving frozen support would have in those census blocks that do not currently have broadband service meeting the Commission's requirements.⁵⁷ Specifically, we asked whether non-contiguous carriers receiving frozen support should be required to deploy voice and broadband-capable networks and offer services meeting the adopted performance metrics to all locations in those funded areas, consistent with the state-level commitments required of carriers receiving model-based support.⁵⁸ In the alternative, we asked whether these carriers should be allowed to serve some subset of locations within their respective service areas where the average cost equals or exceeds the funding benchmark established by the Bureau.⁵⁹ Lastly, we asked whether they should also be required to extend broadband-capable networks to locations in census blocks determined by the model to be above the extremely high-cost threshold.⁶⁰

26. ACS elected to receive Phase II frozen support for its entire service territory, and therefore, none of the census blocks in its service territory are eligible for the Phase II competitive bidding process. Below, we address the specific geographic parameters for ACS' provision of voice and broadband service within its existing designated service territory and provide ACS with flexibility in its broadband deployment to account for the unique nature of serving Alaska. We also provide ACS with forbearance relief consistent with the relief we provided other price cap carriers.

27. *Number of Locations.* We require ACS to offer voice and broadband service to a minimum of 31,571 locations that are not served by an unsubsidized competitor at 10/1 Mbps or better to meet its Phase II obligations, subject to the flexibility described below.

28. ACS proposes to use Phase II frozen support to offer service to a minimum of 26,000 locations that are not served by any provider, which would occur in those census blocks that were identified as high-cost by the cost model with certain exceptions discussed below.⁶¹ Initially, ACS proposed to offer service to 29,418 locations but later revised that number to 26,000.⁶² ACS explains that its initial calculation was based on CAM v4.1.1 and the revision was due to a recalculation using newer data from CAM v4.2, which excluded locations served by subsidized competitors.⁶³ ACS then adjusted its initial estimate to exclude the off-road census blocks in the Alaskan Bush that ACS does not propose to serve with broadband at this time.⁶⁴

⁵⁷ *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7120-21, para. 208.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See *ACS Feb. 3, 2015 Letter* at 2; *ACS Feb. 10, 2016 Letter* at 2-3. See also *ACS Aug. 8, 2014 Comments* at 9-11 (committing to deploy to eligible locations not served by any qualifying competitor).

⁶² *ACS Feb. 10, 2016 Letter* at 2-3 n.5; see also *ACS Aug. 8, 2014 Comments* at iv, 9-16.

⁶³ *ACS Feb. 10, 2016 Letter* at 2 n.5.

⁶⁴ See *id.* at 2-3, n. 5. ACS claims CAM v.4.2 estimates roughly 30,000 eligible locations, including approximately 4,000 off-road locations in the Alaskan Bush. ACS argues the CAM is flawed as to non-contiguous areas and

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29. While ACS proposes to establish a deployment obligation with a minimum number of locations, it does not provide a specific list of proposed census blocks or locations at this time. Instead, ACS suggests that two years will be necessary for planning, coordination and identifying the total number and precise locations for buildout.⁶⁵ ACS claims that it needs this time to “fully explore the most efficient options for network infrastructure deployment.”⁶⁶ Once the pre-planning and coordination stage is completed, ACS intends to submit a list to the Commission of its proposed locations.⁶⁷

30. Based on our review of June 2015 FCC Form 477 data for the number of high-cost locations, we find that requiring ACS to serve 31,571 locations is reasonable, given the other flexibility provided in this Order.⁶⁸ While we hope that ACS will find after it engages in this planning process that it is possible to offer broadband services to more than 31,571 locations with the amount of funding provided, we adopt this number as a strict minimum.⁶⁹ Additionally, while ACS has proposed to select these locations using coverage data from the 2014 National Broadband Map, we instead require ACS to select its locations in blocks not served by a qualifying competitor using the June 2015 FCC Form 477 data. We also adopt a challenge process for locations in blocks where another provider is reporting service, and for those blocks we require ACS to utilize more recent publicly available data. This will ensure that support is targeted appropriately to those areas where there are no other providers offering broadband service meeting the Commission’s requirements for high-cost support.⁷⁰

31. Consistent with the approach taken with respect to other price cap carriers, we do not dictate which *specific* locations ACS must serve within its eligible areas, so long as it provides voice and broadband service meeting the obligations described in this Order to the minimum number of required locations, subject to the specific parameters adopted below.⁷¹ We emphasize, however, that we will hold

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produces an insufficient amount of support to deploy broadband to the number of locations the cost-model identifies as “high-cost” in Alaska. *ACS Aug. 8, 2014 Comments* at 2-3.

⁶⁵ See *ACS Feb. 3, 2015 Letter* at 3 (explaining that ACS will need two full years to plan); *ACS Aug. 8, 2014 Comments* at 25-27 (explaining that ACS will need at least one year to plan).

⁶⁶ See *ACS Feb. 3, 2015 Letter* at 3.

⁶⁷ See *id.*

⁶⁸ See also *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7118, para. 201. We estimate that there are 31,571 high-cost locations in census blocks lacking a qualifying competitor based on the June 2015 FCC Form 477 data. This figure does not include extremely high-cost locations. As with other price cap carriers that accepted Phase II support, ACS may choose to substitute some extremely high-cost locations in adjacent census blocks for locations in eligible census blocks, provided that the total number of locations served is equal to or greater than the number of supported locations in the eligible census blocks. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17729 n.279.

⁶⁹ See *infra* paras. 44-45 (discussing compliance with buildout obligations and conditions for reduction of support). If, after this planning process, ACS is unable to identify a minimum of 31,571 locations, ACS will be required to repay support pursuant to the rules for non-compliance with deployment obligations as outlined below and in the *December 2014 Connect America Order*. See *infra* paras. 43-44; *December 2014 Connect America Order*, 29 FCC Rcd at 7120-21, paras. 142-54.

⁷⁰ Total locations will be as specified by the Bureau following resolution of the challenge process. To the extent less than 31,571 locations remain, ACS is expected to identify new locations in order to meet its deployment obligation.

⁷¹ In its filings, ACS discusses in particular anticipated challenges in deploying broadband service to locations in the Alaskan Bush, pointing to approximately 4,000 off-road Alaskan Bush locations. *ACS Aug. 8, 2014 Comments* at 13-16; *ACS Feb. 3, 2015 Letter* at 2 n. 3. ACS states the middle-mile cost of building to these locations is not accurately reflected by the model, and the CAM should have never included them in its areas eligible for Phase II funding. We provide flexibility to ACS to identify the areas where it can most effectively provide broadband service to consumers; we do not take the unusual step of specifying specific locations for new service within the eligible areas.

ACS to its commitment to continue providing voice service throughout the Phase II term of support to all locations where it currently provides voice service, including those in the Alaskan Bush.⁷²

32. *Partially-served Census Blocks.* In satisfaction of its Phase II deployment obligations, we will allow ACS the flexibility to deploy to up to 7,900 locations unserved by any provider within census blocks that also have locations served by an unsubsidized competitor, which we refer to as “partially served census blocks,” subject to the conditions described below.

33. In the *April 2014 Connect America FNPRM*, we proposed that non-contiguous carriers receiving frozen support not use such support in any areas where there is a terrestrial provider of fixed residential voice and broadband service that meets our Phase II performance requirements.⁷³ However, the Commission also asked whether allowing substitution in partially-served census blocks could enable more effective network deployment and bring service to unserved consumers in those partially-served census blocks.⁷⁴ In the *December 2014 Connect America Order*, the Commission declined to adopt the flexibility for non-contiguous carriers receiving frozen support to use support in any census block where there is a competitor providing service of 10/1 Mbps or greater to at least one location within the census block, and instead required them to relinquish the relevant Phase II frozen support for those areas.⁷⁵ At the same time, we acknowledged that all parties potentially interested in Connect America support have an interest in building economically efficient networks, which may not neatly align with census boundaries, and we encouraged stakeholders to work together towards proposals that help ensure unserved consumers in partially served census blocks are not left behind.⁷⁶

34. ACS requests the flexibility to substitute up to 25 percent of its eligible locations with unserved locations in partially-served census blocks.⁷⁷ ACS explains these substitutions are necessary, because even though the census block is treated as served, due to the geography and topography of the census block, some specific locations within a census block are not in fact served by any carrier.⁷⁸ Compared to other states, Alaska has relatively large census blocks.⁷⁹ ACS argues it would be more logical and economically efficient for ACS to serve these “stranded” customer locations, because in many cases these locations are very near or contiguous to ACS service territory and are clearly not easily served by the competitor given the particular geography of the census block.⁸⁰ ACS proposes a public challenge process to ensure the substituted locations are actually unserved.⁸¹ ACS promises the substitutions would

⁷² *ACS Feb 10, 2016 Letter* at 3. Although ACS has stated it will continue to offer voice throughout its area, below we relieve it of its federal high-cost obligation to do so in certain areas, consistent with the forbearance granted to other price caps that accepted Phase II model-based support.

⁷³ An unsubsidized competitor is defined as a facilities-based provider of residential terrestrial fixed voice and broadband service that does not receive high-cost support. *USF/ICC Transformation Order*, 26 FCC Rcd at 17701, para. 103; *see also* 47 CFR § 54.5 (defining “unsubsidized competitor”).

⁷⁴ *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7108-9, para. 167.

⁷⁵ *December 2014 Connect America Order*, 29 FCC Rcd at 15662-3, para. 49.

⁷⁶ *Id.* at 15661, para. 44.

⁷⁷ *ACS Feb. 3, 2015 Letter* at 2-5.

⁷⁸ *Id.* at 2-3; *ACS Aug. 8, 2014 Comments* at 20-23.

⁷⁹ *ACS Aug 8, 2014 Comments* at 38.

⁸⁰ *See ACS Feb. 3, 2015 Letter* at Attach. A (maps showing examples of areas ACS would use this flexibility to serve partially-served census blocks). For example, ACS explains that Soldotna is a census block where the competitor’s service territory covers several roads, but where the competitor has not provided broadband service and to which there is no easy access except from neighboring unserved census blocks. ACS hopes to receive support for those neighboring census blocks so that it can also serve those unserved locations. *Id.* at 3.

⁸¹ *ACS Feb. 3, 2015 Letter* at 3; *ACS Aug 8, 2014 Comments* at 22-23. ACS proposes a challenge process similar to the type the Bureau has conducted in the past to determine whether a census block is truly served or unserved, but

(continued....)

be made conservatively and would be limited to unserved locations in eligible census blocks in outlying areas – primarily surrounding Fairbanks and on the Kenai Peninsula.⁸²

35. In the *USF/ICC Transformation Order*, the Commission decided to target Phase II support to those census blocks that are not served by an unsubsidized competitor.⁸³ However, the Commission did not foreclose other ways of supporting high-cost locations within partially-served census blocks. Where, as here, there are physically isolated and distinct unserved locations within large census blocks, we are willing to implement an approach that allows the Commission to extend service to unserved consumers, while balancing our policy goal of not providing high-cost support to overbuild locations that are already served by another competitor. We have recognized in other contexts that the fact a competitor reports service on FCC Form 477 does not mean it serves all of the locations within a census block.⁸⁴ Therefore, we find that it is in the public interest to permit ACS to substitute unserved locations in partially-served census blocks for eligible model-based locations, because such locations may not otherwise receive service from ACS or a competitor. However, as suggested by ACS, we limit ACS to no more than 7,900 unserved locations in partially-served census blocks.⁸⁵ We also require ACS to certify that it does not itself serve the locations in such blocks at the time it submits its list, no later than October 1, 2018.

36. *Challenge Process.* We will conduct a challenge process to ensure that all of the selected locations in partially served blocks in fact are unserved by any provider at 10/1 Mbps or better. The coverage data utilized in the cost model was State Broadband Initiative data as of June 2013.⁸⁶ We find that it is in the public interest to ensure that the locations selected are unserved by any fixed, terrestrial competitors, including those that currently receive high-cost universal service support, before allowing ACS to build and deploy services to those locations.⁸⁷ ACS suggested a format for conducting challenges for partially-served census blocks similar to the Phase II challenge process. We conclude the process can be streamlined by using an approach similar to that previously adopted by the Commission for reporting changes to planned deployment for Phase I incremental support.⁸⁸ Under this approach, we require ACS to submit its proposed list of geocoded locations in partially served census blocks as soon as possible, but no later than October 1, 2018, along with certification of notice filed on any carrier that reports service in the relevant census block according to the most recent FCC Form 477 data available at that time, the

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with a shortened time period in consideration of the shortened construction season in Alaska. See *ACS Aug. 8, 2014 Comments* at 22-23. See also *Wireline Bureau Commences Connect America Phase II Challenge Process*, Public Notice, 29 FCC Rcd 7986 (WCB 2014); *Connect America Fund*, Report and Order, 28 FCC Rcd 7211 (WCB 2013) (*Phase II Challenge Process Order*).

⁸² *ACS Feb. 10, 2016 Letter* at 3; *ACS Feb. 3, 2015 Letter* at 2-3.

⁸³ *USF/ICC Transformation Order*, 26 FCC Rcd 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.

⁸⁴ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3133-39, paras. 122, 131, 135.

⁸⁵ We note that we adopt this exception to allow ACS to serve only those locations in otherwise-served census blocks that the competitor does not serve.

⁸⁶ See *CAM Inputs Order*, 29 FCC Rcd at 3974-77, 3994-95, 4041, paras. 23-28, 62, 183.

⁸⁷ ACS committed to deploy service to locations not served by any competitor. See *ACS Aug. 8, 2014 Comments* at 9-11 (arguing it is in the public interest to allow subsidized areas to also be considered eligible as subsidized carriers may not serve all locations in their territory – especially if it is not economically advantageous for them).

⁸⁸ See *ACS Aug. 8, 2014 Comments* at 22-23. *Connect America Fund*, Order on Reconsideration, 28 FCC Rcd 10488, 10489-91, paras. 5-7 (2013) (*Phase I Reconsideration Order*).

Regulatory Commission of Alaska, and any relevant Tribal government.⁸⁹ To ensure that the public is aware of the proposed deployment plan, we direct the Bureau to issue a public notice announcing the proposed deployment plan, census blocks and geocoded locations.⁹⁰ This will give any existing provider the opportunity to notify ACS and the Commission that the provider already serves the identified census blocks and specific locations with service meeting the Commission's standards for an unsubsidized competitor, thereby furthering the Commission's objective of not supporting areas where there are competitors already offering service. We conclude that it is reasonable and most efficient to provide potential existing providers 45 days from the release of the Bureau's public notice to file a response notifying ACS and the Commission that they are currently providing service meeting the requisite requirements to the locations selected by ACS. Any identified locations that receive no response will automatically be deemed eligible for deployment with Phase II frozen support. We delegate to the Bureau the authority to implement this process consistent with prior delegations regarding other challenge processes.

37. *Non-High-Cost Census Blocks.* We adopt the additional flexibility for ACS to deploy to unserved locations within census blocks that were not identified as high-cost by the adopted version of the CAM, subject to the several limitations described below.

38. ACS requests the flexibility to substitute up to 10 percent of its eligible locations with unserved locations in census blocks that were not deemed high-cost by the cost model.⁹¹ ACS argues that the cost model did not accurately capture all of the costs of serving particular census blocks in Alaska, and excluded unserved areas and customers that are truly rural and where the cost to deploy service is in fact high.⁹² For example, ACS explains there are several instances where all the census blocks surrounding a location are identified as high-cost, i.e., eligible for support, but the middle "land locked" census block is not identified as such. ACS argues these census blocks are not served today, leaving hundreds of stranded customers without broadband service or the opportunity to be served in the future.⁹³ ACS argues that it makes good policy and economic sense to let ACS deploy services to the unserved non-high-cost locations that can efficiently be reached during deployment to the eligible high-cost locations.⁹⁴ ACS suggests a 10 percent cap on such substitutions.⁹⁵

⁸⁹ Thus, if ACS includes in its list of proposed locations submitted in 2018 a number of locations in partially served blocks, it must serve notice on competitors reporting service based on whatever data set is publicly available at that time in 2018. *See also Phase I Reconsideration Order*, 28 FCC Rcd at 10489-90. *See also* 47 CFR § 54.313(b)(2). ACS should ensure that a copy of its proposed deployment plan is posted to the Commission's Electronic Comment Filing System (ECFS) under the Connect America Fund Phase II Challenge Process docket (Docket No. WC 14-93), and should provide a courtesy copy of its filing to the Wireline Competition Bureau.

⁹⁰ To expedite the issuing of the public notice for partially served census blocks, ACS should provide a courtesy copy of its proposed deployment plan to the Bureau in addition to posting those plans to ECFS.

⁹¹ *ACS Feb. 3, 2015 Letter* at 2-5.

⁹² *Id.* at 4. *See also, e.g., ACS Jan. 7, 2014 Comments*, Comments of ACS, WC Docket No. 10-90, filed Sept. 12, 2013 (*ACS Sept. 12, 2013 Comments*); Letter from Richard Cameron, Legal Consultant, ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Aug. 5, 2013); Letter from Richard Cameron, Legal Consultant, ACS, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed July 30, 2013); Letter from Karen Brinkmann, Counsel, ACS, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed July 25, 2013); Letter from Karen Brinkmann, Counsel, ACS, to Marlene H. Dortch, FCC, WC Docket Nos. 10-90 & 05-337 (filed July 9, 2013).

⁹³ ACS argues it is unlikely these areas would ever be served by anyone else if not ACS. *See ACS Feb. 3, 2015 Letter* at 4-5.

⁹⁴ *Id.* at 5.

⁹⁵ *Id.*

39. We grant ACS the flexibility to count towards its service obligation up to 2,714 locations in census blocks identified by the model as low-cost, so long as those locations are unserved with broadband by either ACS or a competitor, and the “low-cost” census block is immediately adjacent to high-cost census blocks. We find that it is in the public interest to permit ACS to use its Phase II frozen support to deploy to these unserved locations given the unique geographic characteristics of Alaska. However, as suggested by ACS, we find a limitation is appropriate. The model calculates that there are 2,714 low-cost, unserved, on-road locations, using June 2015 FCC Form 477 data. As such, we find it is reasonable and in the public interest to limit ACS to no more than 2,714 location substitutions in such census blocks that are not identified as high-cost by the model. Further, for each location ACS substitutes under the terms of this flexibility, we require ACS to certify that deployment to that location was, in fact, high cost. Specifically, we require ACS to certify that the capital expenditures (capex) it incurs to build out to each location within a qualifying “low-cost” census block was at least \$5,000. According to the model, the average capital expenditure for high-cost locations in Alaska is at least \$5,007.95, so we conclude that ACS should only be able to count towards its total these locations if they in fact require at least this amount of capex to newly serve the location. This certification will be due along with the annual location report.⁹⁶ ACS may be required to produce documentation regarding its actual capex for such locations to support its certification when USAC validates completion of its deployment obligations or in the course of an audit. Any location that cannot meet this certification will not be counted toward the minimum location requirement.

40. *Forbearance.* We take the opportunity today to adopt the same forbearance for ACS as we did for other price cap carriers in the *December 2014 Connect America Order*.⁹⁷ As we did in that order and for the same reasons, we now conclude that it is in the public interest to forbear, pursuant to section 10 of the Communications Act of 1934, as amended (the Act) from enforcing a federal high-cost requirement that ACS offer voice telephony service throughout its service territory pursuant to section 214(e)(1)(A) in three types of geographic areas: (1) census blocks determined by the adopted cost model to be low-cost, (2) census blocks served by an unsubsidized competitor, to the extent ACS does not identify locations within partially-served census blocks to meet its deployment obligation,⁹⁸ and (3) in census blocks where another ETC is receiving high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations.⁹⁹ ACS will be able to avail itself of this forbearance upon the conclusion of the Bureau’s review of ACS’s submitted locations, and finalization of the specific census blocks containing locations to be served.¹⁰⁰

41. *Phase I Obligations.* ACS seeks clarification regarding the relationship between Phase I and Phase II obligations with regard to the issue of upgrading facilities. ACS asks whether it can use Phase II frozen support to upgrade locations built in Phase I that are currently served with 4/1 Mbps broadband, and are in census blocks eligible for support in Phase II.¹⁰¹ We find it is not in the public interest for ACS to use Phase II funding to upgrade Phase I locations. Consistent with Commission goals of universal service, we find it is an economically inefficient use of funds at this time to provide support to deploy service to a location and then provide support to upgrade that location while other locations remain unserved entirely. Instead, the Commission’s goals are better served by reaching new customers

⁹⁶ See *infra* paras. 49-51.

⁹⁷ *December 2014 Connect America Order*, 29 FCC Rcd at 15663-71, paras. 50-70.

⁹⁸ These census blocks are determined according to current Form 477 data, and as modified by the Alaska challenge process described above. See also *id.* at 15663-64, para. 51 n.113.

⁹⁹ *Id.* at 15663-64, para. 51 n.114.

¹⁰⁰ We note that forbearance will not extend to any low-cost block in which ACS seeks to build to and count as high-cost locations pursuant to the flexibility to substitute locations allowed in this order.

¹⁰¹ *ACS Feb. 3, 2015 Letter* at 6-7.

that do not currently have any advanced communication. Therefore, we conclude it is not in the public interest to allow ACS to use its Phase II frozen support funds to upgrade the existing Phase I locations served with 4/1 Mbps to 10/1 Mbps service.

42. *Timeline.* ACS supports interim buildout milestones and requests a timeline that reflects its proposed ten-year term of support.¹⁰² As discussed above, ACS suggests that it needs two years to determine its broadband buildout plan before ACS can begin deployment.¹⁰³ Accordingly, ACS suggests buildout milestones that are “backloaded” as compared with the model-based timeline – 30 percent completion by year four, 60 percent completion by year seven, and full completion by year ten.¹⁰⁴

43. Above we adopted a 10-year term of support.¹⁰⁵ We also acknowledged the unique challenges that ACS confronts as a non-contiguous carrier building in Alaska.¹⁰⁶ However, we also want to ensure that ACS begins construction no later than 2019. Accordingly, we adopt a timeframe that requires ACS to complete its planning by October 1, 2018, with the remaining time to complete deployment of voice and broadband-capable networks. As such, we will require ACS to complete initial planning and submit its proposed list of census blocks and locations to the Commission by October 1, 2018.¹⁰⁷ Thereafter, as explained above, we will conduct an efficient challenge process for those locations in partially served blocks to determine final deployment locations, which we anticipate will be completed during first quarter 2019.¹⁰⁸ ACS will then be able to commence deployment in those partially served census blocks no later than the summer of 2019. Full completion of the planning process is not a requisite, however, for it to begin deployment in the high-cost census blocks not subject to a challenge process. We emphasize that ACS is not precluded from, and indeed it is encouraged to begin, extending broadband to unserved locations in those high-cost blocks (the high-cost blocks lacking an unsubsidized competitor according to the June 2015 FCC Form 477 data).

44. We are not persuaded that ACS should only be subject to two intermediate milestones for the 10-year term. We recently adopted evenly spaced interim deployment milestones for rate-of-return carriers electing to receive Phase II model-based support.¹⁰⁹ For similar reasons, we conclude here that annual interim milestones are appropriate for ACS. This will enable the Commission to monitor ACS’ progress throughout the term of support. Accordingly, we adopt the following timeline for offering broadband service meeting the Commission’s requirements: 30 percent of all locations by the end of 2018, 40 percent by the end of 2019, 50 percent by the end of 2020, 60 percent by the end of 2021, 70 percent by the end of 2022, 80 percent by the end of 2023, 90 percent by the end of 2024, and all locations by the end of 2025.

¹⁰² See ACS Sept. 22, 2014 Letter at 2, ACS Feb. 3, 2015 Letter at 7-8.

¹⁰³ See *supra* paras. 23-24 (Number of Locations); see also ACS Feb. 3, 2015 Letter at 3; ACS Aug. 8, 2014 Comments at 27.

¹⁰⁴ See ACS Aug. 8, 2014 Comments at 26-27; see also *Phase II Service Obligations Order*, 29 FCC Rcd at 15075-76, paras. 37-38 (requiring 85% buildout by year three and full buildout by year five).

¹⁰⁵ See *supra* paras. 22-24 (discussing Term of Support).

¹⁰⁶ See *supra* para. 11.

¹⁰⁷ ACS may request to modify its location count at that time if, after completion of that initial planning, ACS determines that there is a materially different number of locations unserved by 10/1 Mbps in eligible census blocks. The Commission does not intend to require ACS to serve more locations in total than the number of locations in eligible census blocks. If such a scenario arises, we direct the Bureau to adjust ACS’s obligations and support accordingly, using the same methodology adopted for price cap carriers. *December 2014 Connect America Order*, 29 FCC Rcd at 15660-61, para. 42; see also *infra* para. 47.

¹⁰⁸ See *supra* para. 30 (outlining the challenge process).

¹⁰⁹ See 47 CFR § 54.311; *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at para. 32

45. *Standard for Meeting Deployment Obligation.* ACS asks that it be allowed to serve between 95-100 percent of its minimum required number of locations, with a reduction in support for the locations not served if those locations are identified by a date certain in the planning process.¹¹⁰ ACS argues this flexibility is needed due to the inaccuracy of the cost model to determine proper high-cost census blocks in Alaska, and due to the lack of interest in building to these locations should ACS not deploy services there.¹¹¹ ACS explains that while the substitution flexibilities will go a long way to correcting the alleged imprecisions of the cost model to provide service to those consumers that need it most, it simply is not enough flexibility.¹¹²

46. In the *December 2014 Connect America Order*, the Commission allowed price cap carriers the flexibility of deploying to between 95-100 percent of required locations subject to a required refund of support based on the number of required locations left unserved at the end of the support term.¹¹³ We recognized that there may be a variety of unforeseen factors, after the initial planning stage, that can cause significant changes as a network is actually being deployed in the field. We balanced our goal of advancing the availability of broadband to these high-cost locations with this flexibility and adopted a metric to recover support.¹¹⁴ This metric was based on the assumption that many of the locations left unserved would have higher than the average costs calculated by the model. In particular, we calculated the factor based on the average support for the top five percent of the funded locations nationwide compared to the average support for all funded locations. We then divided that nationwide figure by one-half, in recognition that the average could vary widely between carriers and states.¹¹⁵

47. Consistent with the general approach adopted for price cap carriers accepting model-based support in the *December 2014 Connect America Order*, we accept the ACS proposal and allow ACS the flexibility to build to between 95-100 percent of its minimum required locations, subject to the requirement to refund support based on the number of unserved locations as the end of the 10-year support term. Accordingly, we establish a similar metric for refunding support calculated specifically for Alaska. The average support for the top five percent of ACS high-cost locations is 8.2 times the average for all of ACS' funded high-cost locations. We do not divide that figure in half, as this is an Alaska-specific and carrier-specific number. Therefore, should ACS fail to build to 100 percent of its required minimum locations at the end of its support term, we will require ACS to refund a support amount based on the number of locations left unserved times \$51,152 – the average per-location Phase II frozen support ACS receives multiplied by 8.2.

D. Accountability and Oversight

48. We require ACS to comply with our existing high-cost reporting and oversight mechanisms, unless otherwise modified as described below. In the *April 2014 Connect America FNPRM*, we sought comment on how to monitor and enforce compliance by non-contiguous carriers receiving frozen support once we determined their specific service obligations.¹¹⁶ We asked about measures that must be in place to ensure that we have the ability to monitor compliance with these service obligations.¹¹⁷

¹¹⁰ *ACS Feb. 3, 2015 Letter* at 6 (explaining those census blocks would then be available for support in through competitive bidding). This represents a change from its initial proposal where ACS asked for 90% flexibility. *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *December 2014 Connect America Order*, 29 FCC Rcd at 15659-61, paras. 38-42.

¹¹⁴ *Id.* at 15660-61, para. 42.

¹¹⁵ *Id.*

¹¹⁶ *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7121, para. 209.

¹¹⁷ *Id.*

We asked whether there were considerations specific to non-contiguous areas that we should account for when determining whether these carriers have complied with their service obligations.¹¹⁸

49. *Annual Reporting Requirements.* Pursuant to section 54.313 of the Commission's rules, ACS must continue to file its FCC Form 481 on July 1 each year.¹¹⁹ ACS supports monitoring and enforcement measures and did not request accommodations with regard to compliance standards.¹²⁰ Further, consistent with the relief granted to other price cap carriers in the *2016 Rate-of-Return Reform Order*, we also eliminate the requirement that ACS file the five-year service quality improvement plan and annual updates, as it instead will be filing annual progress updates throughout the term.¹²¹ We also adopt the same reporting obligation for ACS as required of the model-based price cap carriers to report the total amount of Connect America Phase II support, if any, it used for capital expenditures in the previous calendar year.¹²²

50. *Location Reporting Requirements.* In the *December 2014 Connect America Order*, we required all price cap carriers accepting model-based support to include in their annual reports a list of the geocoded locations to which they have newly deployed facilities using Connect America support in the prior year.¹²³ We also required those companies to report with their first list (i.e. the one due on July 1, 2016) geocoded locations where the carrier already was offering service meeting the Commission's requirements. The list must identify which locations are located in a Phase II-funded block and which locations are located in extremely high-cost census blocks.¹²⁴ In the *2016 Rate-of-Return Reform Order*, we updated the Phase II location reporting obligations – moving this data collection out of the annual report and revising deadlines for submission.¹²⁵ Specifically, instead of reporting geocoded location information in the annual report, due July 1 for the prior calendar year, we concluded that it will serve the public interest for price cap carriers to report on deployment by March 1 every year with respect to the prior calendar year, rather than six months later. We also required all rate-of-return ETCs to report annually to the Commission on the number of geocoded locations where they are offering 4/1 Mbps, 10/1 Mbps or 25/3 Mbps.¹²⁶ We directed the Bureau to work with USAC to develop an online portal that will

¹¹⁸ *Id.*

¹¹⁹ 47 CFR § 54.313. ACS should complete and file its 2016 FCC Form 481 on or before July 1, 2016, consistent with its high-cost obligations for calendar year 2015.

¹²⁰ *ACS Aug. 8, 2014 Comments* at 26.

¹²¹ *See 2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3163-68, paras. 209-220. *See also infra* para. 49; 47 CFR § 54.313(e)(2) (requiring price cap carriers to file information as part of their service quality improvement plan progress reports).

¹²² *See generally* 47 CFR § 54.313. For the purposes of § 54.313(e)(1)(ii)(B) we will treat ACS as if it elected model-based support; *December 2014 Connect America Order*, 29 FCC Rcd at 15689, para 127. *See also* Letter from Karen Brinkmann, Counsel, ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 4 (filed Nov. 14, 2014) (stating that the Commission “may require” price cap carriers to report how much support in a given year is used for network deployment, but should not prescribe the precise division).

¹²³ *December 2014 Connect America Order*, 29 FCC Rcd at 15688-89, para. 125.

¹²⁴ *Id.*

¹²⁵ *See 2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3167-68, paras. 218-220. *See also* 47 CFR § 54.313 (e)(3)-(e)(6). In light of our unification of reporting obligations, we deleted the section of our rules regarding price cap ETCs' deployment obligations and certification of compliance (47 CFR § 54.313(e)(2)(i), (e)(2)(iii), (e)(3)-(e)(6)), and we moved price cap ETCs' existing geocoding and certification obligations to the new section 54.316, which now contains all ETCs' deployment and the majority of ETCs' public interest certification obligations).

¹²⁶ *See 2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3164-67, paras. 210-217. Rate-of-return carriers accepting model-based support are required to report on all pre-existing locations that are served with 10/1 Mbps service, while those that remain on the reformed legacy mechanisms are required only to report on newly served locations.

enable all carriers to submit their geocoded information on a rolling basis throughout the year.¹²⁷ Further, we decided that price cap carriers will continue to make annual certifications that they are meeting their public interest obligations, but will do so when submitting the information to USAC by this deadline, rather than in their annual reports.¹²⁸

51. Additionally, price cap ETCs' geolocation data and associated deployment certifications no longer be are provided pursuant to the deadlines specified in section 54.313. The penalties in section 54.313(j) for failure to timely file that information do not apply absent additional conforming modifications to our rules. Therefore, as is the case for rate-of-return ETCs, the penalties for price cap ETCs to fail to timely file geolocation data and associated deployment certifications are located in new section 54.316(c).¹²⁹

52. We adopt similar reporting obligations for ACS as a recipient of Phase II frozen high-cost support.¹³⁰ ACS will be required to submit the requisite information to USAC no later than March 1 of each year, for locations where they offered service in the prior year.¹³¹ Similar to the rate-of-return carriers, ACS will be required to separately identify the number of locations where it is offering speeds of at least 10/1 Mbps or 25/3 Mbps. While ACS's deployment obligation is to offer at least 10/1 Mbps broadband to the requisite number of locations, depending on network design, some of those locations may receive better than 10/1 Mbps service, and we see value in tracking progress at the higher speed tier as well. As with other carriers subject to obligations to report their progress in broadband deployment, ACS is encouraged to submit information on a rolling basis throughout the year, as soon as service is offered, to avoid filing all of its locations at the deadline.¹³²

53. *Reductions in Support.* Today, we adopt specific defined deployment milestones for ACS. Based on the record before us, we find no reason to relax our compliance standards for ACS as a non-contiguous carrier electing frozen support. The table below summarizes the regime previously adopted by the Commission for non-compliance with defined deployment milestones.¹³³

¹²⁷ *Id.* at 3166, para. 214.

¹²⁸ *Id.* at 3167-68, para. 219.

¹²⁹ To the extent price cap ETCs must continue to make certifications in their annual July 1 filing, the penalties in section 54.313(j) for failure to file that information in a timely manner will continue to apply.

¹³⁰ See 47 CFR § 54.316. For the purposes of this rule we will treat ACS as if it elected model-based support; see also *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3164-68, paras. 210-220 (identifying all location reporting obligations).

¹³¹ ACS thus will be required to report by the March 1, 2017 deadline the geocodes for the locations it already served in 2016.

¹³² See *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3167-68, para. 219. We envision that ACS, like all other Connect America Fund recipients subject to defined broadband deployment obligations, will submit its information to USAC through the same online portal, once it is implemented.

¹³³ *December 2014 Connect America Order*, 29 FCC Rcd at 15694-700, paras. 142-52.

Non-Compliance Measures

Compliance Gap	Non-Compliance Measure
5% to less than 15%	Quarterly reporting
15% to less than 25%	Quarterly reporting + withhold 15% of monthly support
25% to less than 50%	Quarterly reporting + withhold 25% of monthly support
50% or more	Quarterly reporting + withhold 50% of monthly support for six months; after six months withhold 100% of monthly support and recover percentage of support equal to compliance gap plus 10% of support disbursed to date

54. *Appropriate Uses of Support.* We clarify, at ACS's request, that ACS may use Phase II frozen support for middle mile costs and reasonable operation expenses, so long as it otherwise meets the obligations to offer service meeting the requirements of this Order to 31,571 locations.¹³⁴ Recipients of model-determined support are free to use such support to defray the cost of middle mile transport necessary to deliver broadband service meeting the Commission's requirements to end-user customers. We see no reason to treat ACS differently because it is receiving Phase II frozen support as opposed to Phase II support calculated by the cost model.

55. We also find that ACS's Phase II frozen support is sufficient to carry out its deployment obligations as well as maintain existing voice service in the high-cost and extremely high-cost census blocks in its territory, and we clarify that ACS may use its support for either such purpose.¹³⁵

IV. PROCEDURAL MATTERS**A. Paperwork Reduction Act Analysis**

56. This Order contains a modified information collection, which will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirement contained in this Order. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002,¹³⁶ we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Supplemental Final Regulatory Flexibility Analysis (FRFA) in the Appendix, *infra*.

B. Congressional Review Act

57. The Commission previously sent a copy of the *December 2014 Connect America Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act and will supplement this filing with a copy of this Order.¹³⁷

¹³⁴ ACS Aug. 8, 2014 Comments at 27-29; ACS Feb. 3, 2015 Letter at 8-9.

¹³⁵ See ACS Aug. 8, 2014 Comments at 29-30; ACS Feb. 3, 2015 Letter at 9. The Commission previously decided that census blocks that are served by price cap carriers that serve non-contiguous areas and elected to receive frozen support in lieu of model-based support for Phase II will not be eligible for the Phase II auction. *Connect America Phase II Auction Order*, 31 FCC Rcd at 5968, n.109.

¹³⁶ Pub. L. No. 107-198, see 44 U.S.C. § 3506(c)(4).

¹³⁷ See 5 U.S.C. § 801(a)(1)(A).

C. Supplemental Final Regulatory Flexibility Analysis

58. As required by the Regulatory Flexibility Act of 1980, as amended, we have prepared a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) as set forth in the Appendix, addressing the actions taken in this Order.¹³⁸

D. Additional Information

59. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

60. *Additional Information.* For additional information on this proceeding, contact Alexander Minard of the Wireline Competition Bureau, Telecommunications Access Policy Division, Alexander.Minard@fcc.gov, (202) 418-7400.

V. ORDERING CLAUSES

61. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 160, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.427, and 1.429 of the Commission's rules, 47 CFR §§ 1.1, 1.427, and 1.429, that this Order, IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register, except for the certification in paragraph 39, which contains information collections subject to PRA review and SHALL BECOME EFFECTIVE immediately upon announcement in the Federal Register of OMB approval.

62. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

63. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹³⁸ 5 U.S.C. §604.

APPENDIX

Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA),¹ as amended, an Initial Regulatory Flexibility Analyses (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking* adopted in November 2011 (*USF/ICC Transformation FNPRM*) and the *Further Notice of Proposed Rulemaking* adopted in April 2014 (*April 2014 Connect America FNPRM*) in this proceeding.² The Commission included a Final Regulatory Flexibility Analysis (FRFA) in Appendix B of the *December 2014 Connect America Order*.³ This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFA to reflect the actions taken in this Order and conforms to the RFA.⁴

A. Need for, and Objective of, the Order

2. In this Order, we adopt tailored public service obligations for Alaska Communications Systems (ACS), a price-cap carrier serving Alaska, to support the deployment of voice and broadband-capable networks in Alaska.

3. In the *USF/ICC Transformation Order*, the Commission recognized that price cap carriers serving specific non-contiguous areas of the United States, including Alaska, face difference operating conditions and challenges from those faced by carriers in the contiguous 48 states.⁵ In April 2014, the Commission proposed to establish the same service obligations but sought comment the flexibility required for non-contiguous carriers to meet the standards.⁶ In December 2014, the Commission concluded tailored service obligations for each non-contiguous carrier was the best approach.⁷

4. In this Order, we adopt targeted changes to the price cap model-based support public service obligations to accommodate the unique circumstances of ACS service in Alaska. Specifically, we make an adjustment to the term of support, establish a minimum number of locations where service must be offered, establish a planning phase deadline, adopt revised interim deployment milestones, and allow a limited number of location substitutions – allowing ACS to use its support to provide service in locations that are in partially-served census blocks and “high-cost” locations in “low-cost” census blocks. We establish a challenge process for determining the substitute locations in partially-served census blocks, and amend the location certification requirement to effectively monitor substitutions in “low-cost” census blocks. We also forbear from the federal high-cost universal service obligation of ACS to offer voice service in low-cost areas where it does not receive high-cost support, in areas served by an unsubsidized competitor, and in areas where ACS is replaced by another eligible telecommunications carrier (ETC).

5. The actions we take today allow us to continue to advance down the path outlined in the *USF/ICC Transformation Order*.

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² *USF/ICC Transformation Order*, 26 FCC Rcd at 18364-95, paras. 1-97; *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7216-44, paras. 1-91.

³ See *December 2014 Connect America Order*, 29 FCC Rcd at 15712-739, Appendix B.

⁴ See 5 U.S.C. § 604.

⁵ See *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 17737-38, para. 193.

⁶ See *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7117-21, paras. 199-211.

⁷ See *December 2014 Connect America Order*, 29 FCC Rcd at 15662, para. 46.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. There were no comments raised that specifically addressed the proposed rules and policies presented in the *USF/ICC Transformation FNPRM* IRFA or *April 2014 Connect America FNPRM* IRFA.⁸ Nonetheless, the Commission considered the potential impact of the rules proposed in the IRFA on small entities and reduced the compliance burden in order to reduce the economic impact of the rules enacted herein on such entities.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

7. Pursuant to the Small Business Jobs Act of 2010,⁹ which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

8. As noted above, a FRFA was incorporated into the *December 2014 Connect America Order*. In that analysis, we described in detail the small entities that might be significantly affected by the rules adopted in the *Order*.¹⁰ Those entities may be found in a number of services including, e.g.: wired telecommunications carriers, local exchange carriers, incumbent local exchange carriers, competitive local exchange carriers, interexchange carriers, local resellers, toll resellers, wireless telecommunications carriers, broadband personal communications service, advanced wireless services, satellite telecommunications, cable companies and systems, cable system operators, internet service providers, and all other information services. In this Order, we hereby incorporate by reference the descriptions and estimates of the number of small entities from the previous FRFA in this proceeding.

9. The rule changes in this Order will affect one entity, Alaska Communications Systems, which fits the descriptions of entities outlined in the FRFA.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

10. The data, information and document collection required by the *December 2014 Connect America Order* as described in the previous FRFA in this proceeding is hereby incorporated by reference.¹¹ The actions taken in this Order amend the collection by altering the reporting milestones, adding one reporting requirement, and adding one certification requirement.

11. In this Order, the Commission amends the reporting requirements by requiring ACS to file a report at the conclusion of its planning phase, and no later than October 1, 2018.¹² This report will provide the Commission with a list of the proposed locations to which ACS intends to offer service over the 10-year support term.

12. In this Order, the Commission amends the interim milestones reports to accommodate the extended term. ACS will be provided support for a 10-year term and will be required to offer voice and broadband service meeting certain latency, data usage, speed and reasonably comparable rate obligations

⁸ See *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18333-34, paras. 38-39.

⁹ 5 U.S.C. § 604(a)(3).

¹⁰ See *December 2014 Connect America Order*, 29 FCC Rcd at 15714-35, paras. 11-66.

¹¹ *Id.* at 15735-37, paras. 67-73.

¹² See *supra* para 43.

to a certain number of locations. Accordingly, ACS will be required to report that it has built 30 percent of all locations by the end of 2018, 40 percent by the end of 2019, 50 percent by the end of 2020, 60 percent by the end of 2021, 70 percent by the end of 2022, 80 percent by the end of 2023, 90 percent by the end of 2024, and all locations by the end of 2025.¹³ Should ACS fail to meet these milestones, it will be subject to certain non-compliance measures, including support reductions and reporting.

13. Lastly, in this Order, the Commission amends the collection to include a new cost certification requirement. In that certification, ACS must certify that the capital investment cost incurred to newly extend service to a location in a “low-cost” census block is at least \$5,000.¹⁴ ACS may be required to maintain documentation regarding this certification. We conclude that requiring this certification will ensure that the Commission can monitor compliance with the section 254(b) principle that “[c]onsumers in all regions of the Nation...including...those in...high cost areas, should have access to telecommunications and information services...”¹⁵

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

14. The analysis of the Commission’s efforts to minimize the possible significant economic impact on small entities as described in the previous FRFA in this proceeding is hereby incorporated by reference.¹⁶ It is unchanged by this Order, save the addition of the reporting and certification obligations described in section (E) above. This increased burden is outweighed by the importance of monitoring the use of the public’s funds and ensuring support is used for its intended purpose.

15. We note that the reporting and certification requirements we adopt for ACS are tailored to its unique circumstance. Additionally, the information that we are requiring ACS report and certify is information we expect the company will already be tracking to ensure its system is built economically and effectively.

G. Report to Congress

16. The Commission will send a copy of this Order, including this Supplemental FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.¹⁷ In addition, the Commission will send a copy of this Order, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.¹⁸

¹³ See *supra* para 44.

¹⁴ See *supra* para. 39.

¹⁵ 47 U.S.C. § 254(b)(3).

¹⁶ See *December 2014 Connect America Order*, 29 FCC Rcd at 15737-39, paras. 74-80.

¹⁷ 5 U.S.C. § 801(a)(1)(A).

¹⁸ See *id.* § 604(b).

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN
APPROVING IN PART AND DISSENTING IN PART**

Re: *Connect America Fund*, WC Docket No. 10-90.

Just over a month ago, the Commission adopted an Order—from which I dissented—that gave hundreds of millions of dollars in universal service support to overlapping wireless providers, instead of using the excess money to improve the paucity of middle-mile capacity in Alaska.

Now, we are on the cusp of approving another Order that fails to improve service to Bush Alaska. This Order is further evidence that we got the Alaska Plan wrong. If we got it right, we could have used that as a basis for requiring Alaska Communications Services (ACS) to bring broadband to the Bush. But without improved middle-mile, it is financially infeasible for them to do so. I am deeply disappointed that we cannot bring these rural communities out of the digital darkness. Duplicate funding elsewhere means no broadband for the neediest in rural Alaska.

Nonetheless, I am opting to support this Order, generally. Thousands of Alaskans who did not have broadband will be connected as a result of this Order and I applaud my fellow Commissioners, particularly Commissioner Pai, for pushing the envelope on the number of locations that ACS must serve with broadband. This is a win for Alaska.

I must dissent, however, from the grant of forbearance from eligible telecommunications carrier (ETC) obligations that I previously objected to in 2014 for the lower-48 price cap carriers. The item forbears from ETC obligations in three broad areas: (1) census blocks that the cost model determines are “low cost;” (2) census blocks served by an unsubsidized competitor; and (3) census blocks where another ETC receives support likely due to winning the competitive bidding process. These are all problematic, but particularly concerning is the forbearance for low-cost census blocks.

As I have said before, granting forbearance from this category puts an incredible amount of faith in the cost model’s projection. This is belied by the record. Here, we require ACS to certify that certain locations the model says are low cost, are indeed high cost. And yet we still have confidence that the model is accurate for other “low cost” blocks?

Nevertheless, I want to thank the staff of the Wireline Competition Bureau not only for the hard work that went into presenting this Order, but their efforts to help bring broadband to the citizens of Alaska.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Connect America Fund*, WC Docket No. 10-90.

Today, the Commission fulfills one of its remaining commitments to expand universal service for Alaskan consumers by adopting broadband buildout and performance requirements for the state's price cap carrier, Alaska Communications Systems (ACS). In doing so, the Commission endeavors to address the unique challenges of serving Alaska, while still preserving and adhering to its fundamental universal service principles and policies. Specifically, the item maximizes the number of locations that will be served while ensuring that funding is directed to locations that are truly high-cost, including by implementing a certification process.

As with most compromises, there are a couple aspects that I would have handled differently. While the Commission decided, in this particular instance, to provide flexibility to include partially served areas, this should be seen as a one-time exception given the unparalleled size and terrain of Alaskan census blocks. In addition, the Commission should have conducted a more fulsome forbearance analysis, even though it has already provided similar relief to other carriers. Taken as a whole, however, the reforms adopted today will ensure demonstrable progress in serving Alaskan consumers, while including appropriate oversight, accountability, and targeting of ratepayer funding. ACS should fully be on notice that the Commission expects USF dollars to be used wisely and efficiently for broadband expansion, and expects the company's commitments to be honored in a timely manner.

Finally, I appreciate that my colleagues were willing to consider my views and that we were generally able to find consensus on this order. I hope that we will continue to work together and find common ground on the remaining high-cost components, including the Mobility Fund, the Remote Areas Fund, and the Connect America Fund Phase II reverse auction. Working together, we can achieve more thoughtful and sustainable outcomes.