

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

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

ORDER ON RECONSIDERATION

Adopted: April 25, 2018

Released: April 26, 2018

By the Commission:

I. INTRODUCTION

1. In this Order, we address the petition for reconsideration filed by Alaska Communications Systems (ACS) of the October 31, 2016 Federal Communications Commission (Commission) ACS Connect America Fund (CAF) Phase II Order. The *ACS CAF II Order* established the CAF Phase II voice and broadband service obligations for ACS.¹ In its petition, ACS seeks reconsideration of the Commission’s definition of “high-cost,” which the Commission adopted to provide ACS flexibility to meet its service commitment by deploying to certain locations within census blocks that otherwise have been identified as “low cost.”² The Commission required ACS to certify, in order to take advantage of that flexibility, that its minimum capital expenditure (capex) for each location in the “low cost” census block was at least \$5,000, whereas ACS asks that the threshold be lowered to \$2,577.79.

2. The Commission hereby denies the ACS petition. In denying the petition, we determine that the Commission struck an appropriate balance in providing ACS some flexibility in meeting its service commitment, while ensuring that high-cost support is targeted to areas that need it most.

II. BACKGROUND

3. In the *USF/ICC Transformation Order*, the Commission 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 operating conditions and challenges that differ from those faced by carriers in the contiguous 48 states.³ Accordingly, the Commission directed the Bureau to consider the unique circumstances of these areas when developing the cost model to determine whether the model provided sufficient support to non-contiguous areas.⁴ 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 existing support levels without exceeding the overall budget of \$1.8

¹ *Connect America Fund*, Order, 31 FCC Rcd 12086 (Oct. 31, 2016) (*ACS CAF II Order*).

² See Petition of ACS for Reconsideration, WC Docket No. 10-90 at 3-6 (filed Nov. 15, 2016) (ACS Petition); see also *ACS CAF II Order*, 31 FCC Rcd at 12098, para. 39.

³ See *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17737-38, para. 193 (2011) (*USF/ICC Transformation Order*), *aff’d sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17737-38, para. 193.

billion per year for price cap areas.⁵ As a result, the Bureau provided carriers in the non-contiguous areas 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.⁶ As a price cap carrier serving the non-contiguous area of Alaska, ACS elected to continue receiving its frozen support in the amount of \$19,694,208 annually in lieu of model-based support.⁷

4. In the *ACS CAF II Order*, the Commission established a 10-year term of support and required ACS to offer voice service and broadband service at the same speed, latency, usage and pricing metrics as established for Phase II model-based carriers. ACS is required to build to at least 31,571 locations, primarily in census blocks identified as high-cost that are unserved by unsubsidized competitors. The Commission provided ACS the flexibility, however, to substitute locations in high-cost census blocks with a limited number of unserved locations in census blocks that are (1) partially-served by an unsubsidized competitor; or (2) identified by the model as “low cost.”⁸ In the latter case, the Commission established a 2,714 location cap on the number of substitutions in such “low-cost” census blocks. The Commission also required that, to be eligible for support, the “low-cost” census blocks be immediately adjacent to high-cost census blocks, the locations be unserved, and that ACS certify that deployment to each location is, in fact, high-cost.⁹ Based on the model-calculated average capex for all locations in high-cost Census blocks in Alaska, the Commission adopted \$5,000 as the certification threshold.¹⁰ Thus, ACS may only substitute a location in a “low-cost” census block for a location in a high-cost census block if at least \$5,000 in capex is spent to newly serve the location.¹¹

5. ACS challenges the definition of high-cost, arguing that there is no reasonable basis to require certification to \$5,000. Instead, ACS argues that the high-cost threshold should be set at \$2,577.79, “the lower boundary of the supported ‘high-cost’ range” based on the Connect America Model (CAM).¹² ACS maintains that the higher \$5,000 threshold would deny access to locations that otherwise should be entitled to support.¹³ ACS argues the limitation on its flexibility is contrary to the public interest, will discourage investment in census blocks and will leave many locations stranded for the foreseeable future.¹⁴

⁵ *Id.*

⁶ *Connect America Fund*, Report and Order, 29 FCC Rcd 3964, 4029, paras. 152-54 (WCB 2014) (*CAM Inputs Order*).

⁷ See Letter from Karen Brinkman, Counsel to ACS, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Jan. 2, 2015) (*ACS Jan. 2, 2015 Letter*). CAM v4.2, the last version of the cost model released prior to ACS’s election of frozen support, would have provided \$15,292,072 to serve 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).

⁸ See *ACS CAF II Order*, 31 FCC Rcd at 12095-12098, paras. 32-39.

⁹ *Id.* at 12098, para. 39.

¹⁰ *Id.* (stating the model-calculated average is \$5,007.95). This calculation averaged investment for high-cost locations for ACS in Alaska in 1442 census blocks. The lowest block investment per location is calculated at \$2,423.43 and the highest block investment per location is calculated at \$11,850.57.

¹¹ *Id.*

¹² ACS Petition at 4, n. 13.

¹³ *Id.* at 5.

¹⁴ *Id.* at 5-6.

6. Under the CAM, high-cost support is provided for locations that result in a monthly cost of providing service between at least \$52.50 and \$198.60.¹⁵ ACS argues that, based on its own analysis of CAM 4.2, the capex threshold for substituting locations in “low cost” census blocks should instead be \$2,577.79, because ACS calculates that as the least amount of capex that would be required to serve a location in a high-cost census block at the \$52.50 funding threshold.¹⁶

III. DISCUSSION

7. We deny ACS’ petition to reconsider the conditions the Commission placed on the flexibility it granted ACS. In structuring support, the Commission adopted a tailored approach that reflects the unique challenges of serving Alaska, while preserving and adhering to its fundamental universal service principles and policies – including targeting support to locations that are truly in need of support. In its petition, ACS states that it “objects to none of [the] conditions [of substituting high-cost locations in low-cost census blocks], but seeks reconsideration only of the meaning of ‘high-cost’ in [that] context.”¹⁷

8. As a matter of policy, the Commission decided that the minimum capex for permitting ACS to substitute a location in a low-cost census block for a location in a high-cost census block would be \$5,000 as a way of prioritizing support going to higher-cost unserved locations even when allowing ACS to forego deploying to locations in model-identified eligible census blocks. Setting the threshold at or near the lower bound of what ACS estimates is the capex required to serve a location in a high-cost census block would counter the Commission’s objective in the *ACS CAF II Order*, because it would allow funding to be re-directed to relatively lower cost locations while leaving higher cost locations unserved. These relatively lower cost locations that would be eligible under the revised threshold are precisely the locations that are more likely to be served even in the absence of universal service support. Particularly given that ACS does not propose that their support levels be adjusted to account for the fact that they would be serving relatively lower cost locations, granting the ACS request would work against the Commission’s efforts to efficiently serve the higher cost locations which are least likely to be served apart from universal service support. Therefore, the Commission chose to set the minimum threshold at the average capex for locations in high-cost areas otherwise available to ACS, instead of at the lower bound otherwise used for determining funded locations. This decision thus made sure such flexibility was available to ACS only in instances where the location is among the more costly to serve.

9. As the steward of the limited Universal Service Fund (USF), the Commission has discretion to tailor high-cost support to areas that are the most costly to serve.¹⁸ It is reasonable and entirely within the Commission’s authority to limit the flexibility by prioritizing deployment to locations with a greater need for funding, based on the amount of capex ACS actually spends. ACS seems to concede this is a lawful and proper exercise of the Commission’s discretion as it seeks even greater

¹⁵ *Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband*, Public Notice, 30 FCC Rcd 3905, 3905, n. 1 (WCB 2015).

¹⁶ See ACS Petition at 4, n. 13. Using the ACS formula, the high-end capex threshold would be \$9,751.23. See *Wireline Competition Bureau Announces Availability of Version 4.2 of the Connect America Phase II Cost Model and the First Version of an Alternative Cost Model Being Developed For Potential Use in Rate-Of-Return Areas*, Public Notice, 29 FCC Rcd 16157 (WCB 2014)

¹⁷ See ACS Petition at 1-2. In the *ACS CAF II Order*, the Commission acknowledged and addressed ACS’s earlier, more general challenge to the Commission’s cost model. See *ACS CAF II Order*, 31 FCC Rcd at 12097-98, paras. 38-39. We note that the Commission has not determined *any* locations in low-cost census blocks to be “high-cost” under our rules. The Commission’s rules define “high-cost” only in relation to support received through high-cost support mechanisms. See 47 C.F.R § 54.5.

¹⁸ See 47 U.S.C. § 254(b); see also 47 U.S.C. § 151; *USF/ICC Transformation Order*, 26 FCC Rcd at 17670, 17710-12, paras. 10, 121-126.

flexibility.¹⁹ The \$5,000 minimum threshold ensures that ACS is meeting its obligation to serve the locations in model-determined high-cost areas, while allowing ACS some flexibility to exchange some unserved locations in adjacent census blocks for which the cost model did not calculate support, but which nevertheless ultimately are among the costliest for ACS to serve. As the flexibility to swap locations is an exception based on the unique circumstance of ACS in Alaska, we find that establishing this limit is reasonable and consistent with our overarching universal service principal and policies. We are not persuaded by ACS's arguments that there is no reasonable basis for the \$5,000 minimum capex certification requirement or that this obligation is contrary to the public interest.

10. ACS is also misguided in arguing that the \$5,000 minimum threshold will leave certain locations unserved and deny support to locations that are otherwise entitled to it.²⁰ ACS is not required to substitute any locations, and regardless of whether it does, must still deploy to 31,571 locations by the end of the term of support. The Commission made a limited exception in the *ACS CAF II Order* that allows ACS to use high-cost support in model-determined low-cost census blocks where the population is lacking service and where it is very costly.²¹ Although the level of the threshold will affect which specific locations are served and counted toward the requirement, the public interest is served because the number of locations ACS is required to serve remains the same.

11. ACS has long argued that the CAM does not appropriately account for the significantly higher costs required to build and operate in Alaska.²² It is due, in part, to this advocacy that the Commission adopted an ACS-specific order.²³ However, accepting ACS's premise that the CAM underestimates locations' costs would counsel *against* establishing a threshold at the lower end of what ACS's own analysis of the CAM would define as a high-cost location. To use a threshold at such a level would imply that we should allow ACS the flexibility to substitute locations that may not even require support while abandoning locations that are clearly in need of high-cost support. This is because accepting the premise that the CAM underestimates costs would suggest the lower bound threshold ACS proposes is likely too low. By setting the threshold at \$5,000 per location, the Commission was able to allow for some flexibility while also reducing subsidization of lower cost locations. Based on ACS' representations regarding capex costs in Alaska and the costs to build to these unserved locations, meeting this threshold should not be problematic.²⁴ Therefore we find the Commission's decision was reasoned and serves the public interest. ACS provided nothing in its Petition that persuades us to alter this requirement.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(j), 214, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(j), 214, 254, and 405 and section 1.429 of the Commission's rules, 47 CFR § 1.429, that this Order IS ADOPTED.

¹⁹ See ACS Petition at 4-6.

²⁰ See ACS Petition at 5.

²¹ See *ACS CAF II Order*, 31 FCC Rcd at 12097-98, paras. 38-39.

²² See ACS Petition at 2-3, n. 8; *ACS Aug. 8, 2014 Comments* at 2-3, 13-14; Reply Comments of Alaska Communications Systems, WC Docket No. 10-90, filed Sept. 19, 2013 at 3-4 (*ACS Sept. 19, 2013 Comments*); Comments of Alaska Communications Systems, WC Docket No. 10-90, filed Jan. 7, 2014 (*ACS Jan. 7, 2014 Comments*). See also *ACS CAF II Order*, 31 FCC Rcd at 12097, para. 38, n. 92; *CAM Inputs Order*, 29 FCC Rcd at 4029, para. 151, n. 435.

²³ *ACS CAF II Order*, 31 FCC Rcd at 12087, para. 3; see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17737-38, para. 193.

²⁴ See *ACS Feb. 3, 2015 Letter* at 4-5 (stating ACS believes there are thousands of unserved locations in low-cost blocks that should be eligible for support).

13. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 4(j), 214, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(j), 214, 254, and 405, and section 1.429 of the Commission's rules, 47 CFR § 1.429, the Petition for Reconsideration of the Commission's Order, filed by Alaska Communications, IS DENIED as discussed herein.

14. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 1.103 of the Commission's rules, 47 CFR § 1.103, this Order SHALL BE EFFECTIVE 30 days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary