

**DISSENTING STATEMENT OF  
COMMISSIONER AJIT PAI**

Re: *Connect America Fund*, WC Docket No. 10-90, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, *Connect America Fund—Alaska Plan*, WC Docket No. 16-271.

I have seen firsthand what broadband means for Alaska. I have toured the Arctic Regional Supercomputing Center in Fairbanks. I have touched the fiber optic cables that have brought high-speed Internet access and economic growth to the Mat-Su Valley. I have spoken with the board of the Alaska Native Tribal Health Consortium about how telehealth allows the Southcentral Foundation in Anchorage to connect native Alaskans statewide. I have heard what broadband means to the Gwitchyaa Zhee Gwich'in Tribal Government and have seen what it's meant for Tatitlek, a traditional Alutiiq coastal village. And I have met patrons of the Tuzzy Library and students at the Ilisagvik Tribal College in Barrow, 320 miles north of the Arctic Circle, about how the Internet has helped keep tribal communities informed and intact.

But when it comes to broadband, Alaska has a problem that most of the United States doesn't: High-capacity, terrestrial middle-mile connections between communities are few and far between. That's because the distances in Alaska are vast—the state is larger than Texas, California, Florida, and New York *combined*—and most remote villages are not accessible by road. As such, those living in the Alaskan Bush often connect to the Internet through performance-limiting satellite links at speeds of less than 1 Mbps. Those are the speeds at which most Americans accessed the Internet more than a decade ago.

The Alaska Plan (and this *Order* largely adopting it) presents a chance to fix these problems. Alaska currently receives about \$150 million a year in universal service funding. The Alaska Plan locks that money in for the next ten years, committing over \$1.5 billion to preserve and advance universal service in Alaska. That's money the state needs.

But the Alaska Plan won't help everyone. It dedicates no funding to solve the middle-mile problem. So even if every carrier does what it's promised to do over the next ten years, 21,871 rural Alaskans won't have access to 4G LTE mobile broadband (and of those, 10,202 won't even have 3G service).<sup>1</sup> 46,650 rural Alaskans won't have access to the 25 Mbps fixed broadband that is the Commission's benchmark (of those 5,971 won't even have 4 Mbps fixed broadband—the standard from 6 years ago).<sup>2</sup> In other words, tens of thousands of Alaskans will have to wait at least a decade before being connected with the broadband speeds that most Americans take for granted. That's a shame.

The problem isn't a lack of money; it's the waste of taxpayer dollars. In three separate ways, the *Order* violates basic tenets of universal service reform that we have employed since the *Universal Service Transformation Order* to maximize the value of the Universal Service Fund for consumers.<sup>3</sup>

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<sup>1</sup> See Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90, Attach. at 19 (May 9, 2016) (*ATA Ex Parte* Letter). Unfortunately, even those receiving 4G LTE service may not get access to the speeds urban Americans are accustomed to. *Compare id.* at 24, 25 (identifying 13,000 LTE users promised only 1 Mbps connections and another 42,443 LTE users promised only 2 Mbps connections in areas without fiber backhaul), with *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All America 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*, GN Docket No. 15-191, 2016 Broadband Progress Report, 31 FCC Rcd 699, 735 Table 4 (2016) (showing that 55% of urban Americans already have access to LTE service at 10 Mbps).

<sup>2</sup> See *ATA Ex Parte* Letter Attach. at 1.

<sup>3</sup> *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011).

*First*, the *Order* condones duplicative build out.<sup>4</sup> Our staff analysis shows that the Alaska Plan spends about \$12 million extra each year to subsidize two or more wireless carriers for 32,541 consumers in the Alaska Bush.<sup>5</sup> In contrast with the Alaska Plan, the *Order* maintains this support for five years and promises to consider eliminating it during the second half of the Plan’s ten-year term.<sup>6</sup>

This is a serious mistake. Faced with the expenditure of \$120 million in taxpayer funds, the *Order* guarantees that at least \$60 million will be wasted.<sup>7</sup> And the other \$60 million will likely be wasted as well. After all, the *Order* promises to evaluate overlap at the four-year mark and only eliminate duplicative support in areas where at least two wireless carriers have built out 4G service.<sup>8</sup> Since the first performance benchmark for wireless carriers doesn’t come until the five-year mark and the majority of 4G buildout doesn’t come until the ten-year mark,<sup>9</sup> there’s a substantial likelihood that the overlap eliminated after five years will be precisely zero.

Even if some overlap does emerge, the *Order* makes clear that no one has thought through what happens next. How will we identify the support associated with the overlap? We don’t know. How will we decide which wireless carrier will continue to receive support? We don’t know. How will we change the performance obligations of the carrier that loses support? We don’t know. How will the carrier that loses support maintain the 4G network it just constructed? We don’t know. How can we justify maintaining support for even one carrier when “our general policy [is] not providing funding where there is an unsubsidized provider”?<sup>10</sup> We don’t know.

*Second*, the *Order* rewards wireless carriers for serving remote areas already served by qualified competitors. Our staff analysis shows that the Fund is spending \$27 million each year on Alaskan wireless carriers that serve customers already served by unsubsidized competitors offering 4G LTE service. In line with the Alaska Plan, the *Order* eliminates \$4 million of that funding—but allows wireless carriers to retain the other \$23 million each and every year for a decade.<sup>11</sup>

What a waste of \$230 million.<sup>12</sup> The FCC’s policy has been to identify where “universal service provides more support than necessary to achieve our goals”<sup>13</sup> and eliminate any excess support so that it

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<sup>4</sup> The Commission has repeatedly declined to provide duplicative support, i.e., support to two or more carriers to build out the same area. The FCC eliminated the identical support rule in 2011. We offered model-based support to just one carrier per area in both phases of the Connect America Fund as well as in rate-of-return areas. And our reverse auctions are designed to select just one winning bidder to support in each area. The reason is obvious: Paying two carriers to construct duplicative facilities is just a waste of taxpayer funding.

<sup>5</sup> The overlapping wireless carriers are Arctic Slope Telephone Association Cooperative, Copper Valley Wireless, Cordova Wireless, General Communications Corporation, OTZ Wireless, TelAlaska Cellular, and Windy City Cellular.

<sup>6</sup> *Order* at para. 94.

<sup>7</sup> That is \$12 million per year for ten years and five years, respectively.

<sup>8</sup> *Order* at para. 94 (“[W]e will assess 4G LTE deployment and any overlap in subsidized areas based on deployment at the end of year four (i.e., as of December 31, 2020), as reflected in the March 2021 Form 477 filing. Thereafter, . . . the Commission will implement a process, at the beginning of the sixth year, to eliminate duplicative support to areas where there is more than one provider offering subsidized 4G LTE service.”).

<sup>9</sup> ATA *Ex Parte* Letter Attach. at 19 (showing that 41.1% of 4G build out will occur by year five and 58.9% by year ten).

<sup>10</sup> *Order* at paras. 109, 111.

<sup>11</sup> See *Order* at note 184. The \$4 million eliminated comes entirely from Matanuska Wireless.

<sup>12</sup> That is \$23 million a year for ten years.

<sup>13</sup> *Universal Service Transformation Order*, 26 FCC Rcd at 17766–67, para. 280.

can be either deployed more efficiently elsewhere or returned to the taxpayer. Earlier this year, for example, the Commission adopted a “phased reduction in disaggregated support for competitive areas” so that rate-of-return carriers would not receive support to build out areas already served by unsubsidized competitors.<sup>14</sup> And yet the *Order* declines to follow that path here, allowing wireless carriers to keep nearly a quarter-billion-dollar windfall without any indication of what we—or more importantly Alaskan consumers—are getting for this money. It’s one thing to let carriers keep their funding where *necessary* to preserve and advanced universal service. It’s another thing entirely to reward those that arbitrage the system.

*Third*, the *Order* carves out a special funding stream for one carrier with no discernible public policy purpose. Specifically, the Alaska Plan proposed that Alaskan wireless carriers not participating in the plan face a three-year phase down of support. The *Order* adopts that plan for most carriers<sup>15</sup> but delays that phase down for a “12 month period from the release data of the Report and Order” for AT&T and only for AT&T.<sup>16</sup> That delay will cost taxpayers an extra \$15.8 million. The *Order* claims this a “reasonable” accommodation but cannot explain why the nation’s second largest wireless carrier needs “additional transition time to reduce any disruptions.”<sup>17</sup>

All together these wasted payments total \$365 million, or about one quarter of the total Alaska Plan pot. That’s \$365 million that could be used to link off-road communities to urban Alaska as requested by the Alaska Federation of Natives, the Bering Straits Native Corporation, the Chugachmiut rural healthcare organization, and many others.<sup>18</sup> That \$365 million is more than eight times the \$44 million grant from the Broadband Initiatives Program that launched the TERRA Southwest middle-mile network that connected 65 off-road communities in 2011.<sup>19</sup> That money could provide real digital opportunities for tens of thousands of rural Americans with just a little more FCC oversight of the Alaska Plan.

That’s why I proposed to my colleagues in early July to correct these problems and set this money aside to fund middle-mile construction in remote Alaska. I am grateful that Commissioner Clyburn—herself an ardent supporter of fixing Alaska’s middle-mile problems—agreed to support my plan and spent the last month working with my office to persuade our colleagues to fix these flaws. Unfortunately, we fell just one vote short.

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<sup>14</sup> *Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3131, para. 116 (2016).

<sup>15</sup> *Order* at para. 98.

<sup>16</sup> *Order* at para. 99.

<sup>17</sup> *Id.*

<sup>18</sup> See Letter from Julie Kitka, President, Alaska Federation of Natives, to the Honorable Lisa Murkowski, the Honorable Daniel Sullivan, and the Honorable Don Young, WC Docket No. 10-90, at 1 (June 15, 2016); Letter from Gail R. Schubert, President & CEO, Bering Straits Native Corporation, to the Honorable Senator Murkowski, the Honorable Senator Sullivan, and the Honorable Congressman Young, WC Docket No. 10-90, at 1 (June 9, 2016); Letter from Angela J. Vanderpool, Executive Director, Chugachmiut, to the Honorable Senator Murkowski, the Honorable Senator Sullivan, and the Honorable Congressman Young, WC Docket No. 10-90, at 2 (June 2, 2016); see also, e.g., Letter from Susan Edwards, Finance Officer, Lake and Peninsula Borough, to the Honorable Senator Murkowski, the Honorable Senator Sullivan, and the Honorable Congressman Young, WC Docket No. 10-90, at 1 (May 27, 2016); Letter from Glen R. Alsworth, Sr., President, Lake Clark Air, Inc. & The Farm Lodge, Inc., to the Honorable Senator Murkowski, WC Docket No. 10-90, at 1 (May 18, 2016); Letter from Cameron Poindexter, Manager, Bristol Bay Development Fund, to the Honorable Senator Murkowski, the Honorable Senator Sullivan, and the Honorable Congressman Young, WC Docket No. 10-90, at 1 (May 17, 2016).

<sup>19</sup> GCI TERRA, <http://terra.gci.com/project> (Aug. 22, 2016).

To put it another way: We had a once-in-a-generation opportunity to solve Alaska's middle-mile problem. But rather than address the real flaws in the Alaska Plan, the FCC has told tens of thousands of rural Alaskans to wait another ten years for another shot at digital opportunities. I cannot support that decision.

For all these reasons, I respectfully dissent.