

State of Florida



# Public Service Commission

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**DATE:** December 21, 2018

**TO:** Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

**FROM:** Sakina Deas, Public Utility Analyst I, Office of Industry Development & Market Analysis

**RE:** Docket No. 20180000-OT- GTC, Inc. d/b/a Consolidated Communications/GTC's Notification to the FCC of its intent to file for a Waiver of FCC Phase II Connect America Fund reporting requirements if needed due to Hurricane Michael.

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Attached is GTC's letter to the FCC regarding it's intent to file for a waiver is necessary due to Hurricane Michael. Please add to the undocketed file. If you have questions please contact me at 413-6504.

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COMMISSION  
CLERK

November 30, 2018

By Electronic Filing

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

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

Dear Ms. Dortch:

The Commission requires that price cap carriers accepting Phase II Connect America Fund (“CAF”) support for any state meet defined broadband deployment milestones in that state. Under the Commission’s rules, such carriers must report annually the list of census blocks and locations to which they deployed broadband meeting CAF II minimum performance standards.<sup>1</sup> The first such report was required July 1, 2016, reflecting CAF II-qualifying deployment through calendar year 2015.<sup>2</sup> Subsequent reports have been due July 1<sup>st</sup> of each year, reflecting deployment through the end of previous calendar year, until the end of the build-out period as of December 31, 2020.<sup>3</sup> To the extent that the carriers fail to achieve the applicable milestones in any given year, or miss the annual certification and data submission requirements, additional reporting requirements and withholding of CAF Phase II support may be imposed.<sup>4</sup>

GTC, Inc. d/b/a Consolidated Communications/GTC (hereinafter “Consolidated”), met the deployment milestone specified by the FCC for calendar year 2017 (40 percent), and timely filed its data and certifications, respectively, on July 1, 2016, July 1, 2017, and July 1, 2018, as required under the Commission’s rules.<sup>5</sup> In fact Consolidated deployed CAF-qualifying broadband to over 60 percent of the total required locations by year-end 2015, and the company would have been prepared to certify by July 1, 2019, that the 60 percent calendar year 2018

<sup>1</sup> *Connect America Fund et al.*; WC Docket Nos. 10-90 *et al.*, Report and Order, 29 FCC Rcd 15644, ¶125 (2014) (“Connect America Fund Dec. 2014 Order”); 47 C.F.R. §54.313(e)(1).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* See also *Connect America Fund Dec. 2014 Order*, ¶36 & Table 1.

<sup>4</sup> *Connect America Fund Dec. 2014 Order*, ¶¶130, 140, 142-152.

<sup>5</sup> *Connect America Fund Dec. 2014 Order*, ¶36 & Table 1.

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deployment milestone was met. However, it has come to Consolidated's attention that, as a result of Hurricane Michael making landfall in Florida in mid-October 2018, a number of the locations to which the company had deployed CAF Phase II-qualifying broadband no longer may be habitable. While Consolidated remains able to deliver CAF II-qualifying broadband to these locations, should customers rebuild, at some locations there may be no habitable structures to which service could be delivered at this time.

The Commission's rules and orders do not address the situation in which a price cap carrier has satisfied a defined CAF Phase II deployment milestone in a particular state in a given year, timely submitted its location data, and timely certified as to its performance, but *subsequently* falls below that milestone through unforeseeable causes beyond the carrier's control, as may have occurred in Florida as a result of Hurricane Michael. Rather, the rules only address the circumstance where a carrier fails to timely complete these requirements in the first instance. The Commission stated, the extent a carrier is aware that it "*will not* meet a build-out milestone," it must "notify the Commission, USAC, and the relevant state or U.S. Territory, and Tribal government as appropriate, *no later than ten business days after the relevant deadline*, rather than waiting until the filing of the next annual report."<sup>6</sup>

Nevertheless, the Commission has instructed USAC to verify that price cap carriers are meeting their CAF Phase II deployment requirements.<sup>7</sup> If a field audit were to be conducted today, the required number of locations may not be found, as the storm may have destroyed a number of these structures. And it is unclear whether, having initially met such requirements, carriers that subsequently fall short – even as a result of an Act of God – might be subject to reporting, withholding of support, or other sanctions.

Out of an abundance of caution, therefore, Consolidated hereby notifies the Commission, USAC, the state of Florida, and any affected Tribal governments of these circumstances. Consolidated does not believe a waiver is required, but will continue to report as more specific location information becomes available, and will seek a waiver of the applicable deployment requirements to the extent necessary under the Commission's rules.<sup>8</sup>

Moreover, it is possible that this potential loss of locations also will impact Consolidated's ability to meet its year-end 2018 deployment milestone of 60 percent cumulative CAF II locations. If Consolidated determines that to be the case, the company will promptly

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<sup>6</sup> *Connect America Fund Dec. 2014 Order*, ¶145 (emphasis added).

<sup>7</sup> *Connect America Fund Dec. 2014 Order*, ¶144.

<sup>8</sup> The Commission may waive a rule for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where, due to special circumstances, deviation from the general rule would better serve the public interest than strict adherence to the general rule. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969). The Commission may take into account consideration of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

seek a waiver of the applicable deployment requirements due to these unique circumstances beyond the company's control.

The Commission has acknowledged the unique service challenges faced by companies affected by recent hurricanes.<sup>9</sup> The loss of locations described herein is similar to the destruction faced by Puerto Rico and the U.S. Virgin Islands in that it was caused by an Act of God, and not in any way under the control of the CAF recipient. Moreover, Consolidated remains ready and able to deliver CAF II-qualifying broadband and voice services to the locations potentially affected by Hurricane Michael, should customers reestablish residence there. Thus, USAC should not deem this possible after-the-fact destruction of CAF-eligible locations in any way relevant to Consolidated's timely achievement of annual or total CAF Phase II service deployment requirements.

Please direct any questions concerning this filing to me.

Respectfully submitted,



Karen Brinkmann

*Counsel for Consolidated*

cc: Preston Wise, Office of Chairman Pai  
Kris Monteith, Chief, Wireline Competition Bureau  
Ryan Palmer, Chief, WCB Telecommunications Access Policy Division  
Alexander Minard, Deputy Chief, WCB Telecommunications Access Policy Division  
Victor Gaither, Vice President, USAC High-Cost Program  
Braulio Baez, Executive Director, Florida Public Service Commission

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<sup>9</sup> See, e.g., *The Uniendo a Puerto Rico Fund and the Connect USVI Fund; Connect America Fund; ETC Annual Reports and Certifications*; WC Docket Nos. 18-143, 10-90, 14-58, Order and Notice of Proposed Rulemaking, FCC 18-57 (rel. May 29, 2018) (granting extraordinary funding and related CAF relief to aid in restoration of communications networks in Puerto Rico and the U.S. Virgin Islands destroyed by Hurricanes Irma and Maria in 2017).