

January 7, 2015

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Petition for Waiver of Adak Eagle Enterprises, LLC, WC Docket No. 10-90, et al. (May 22, 2012); Petition for Waiver of Windy City Cellular, LLC, WC Docket No. 10-90, et al. (Apr. 3, 2012)

Dear Ms. Dortch:

In four weeks, the interim funding granted by the Commission to Adak Telephone Utility and Windy City Cellular will run out.¹ Neither Windy City Cellular, LLC (WCC) nor Adak Telephone Utility, LLC (ATU) can survive absent a waiver of the high cost loop support limits set forth in the *USF Transformation Order*.² And without a waiver, the residents of remote Adak Island, Alaska will be left without wireline service, without broadband service, without 911 service, and without wireless coverage beyond a limited portion of downtown Adak.

Over 950 days ago, Adak Eagle Enterprises (AEE or the Company) filed petitions for waiver comprehensively providing all of the information required in connection with the process outlined by the Commission in the *USF Transformation Order*.³ Since those filings, the companies have answered over 90 additional questions posed by staff, have met with over 40 FCC staff to discuss

¹ See *Connect America Fund, Universal Service Reform – Mobility Fund, Petitions for Waiver of Windy City Cellular, LLC and Adak Eagle Enterprises, LLC*, WC Docket No. 10-90, WT Docket No. 10-208, Order ¶ 1, 2014 FCC LEXIS 3069 (Aug. 21, 2014).

² See *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (*USF Transformation Order*).

³ See *USF Transformation Order* at Section VII(G)(2011).

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the waiver, and have produced thousands of additional pages of documents in connection with new questions raised throughout the course of this proceeding.

Also pending, for over 500 days, are the Petition for Reconsideration (explaining how the companies have addressed every basis provided by the Bureaus in denying the waiver applications) and Application for Review (explaining the fundamental errors made by the Bureaus in denying the waiver applications).⁴

On December 15, 2014, in connection with another information request related to the waiver proceeding, AEE produced another 5,050 pages of materials, in a two-week timeframe as set by OIG staff, in response to a request for “all of AEE’s financial transactions, for all of its entities, for the period covering calendar year 2010 until present.”⁵

The companies have, throughout the course of this 2 ½ year process, produced every piece of information requested by staff, and have answered every single question raised by staff, and have done so quickly and comprehensively. Both the Commission and AEE have exhausted an astounding amount of resources, during a waiver process that was intended by the Commission to be “firm, predictable, yet fair.”⁶ Now, 2 ½ years later, as AEE faces yet another (new) round of questions, the waiver process appears to have been anything but predictable, as more and more time and resources are spent responding to seemingly endless lines of questioning.

Despite AEE’s demonstration that it meets all the factors outlined by the Commission in the *USF Transformation Order* for obtaining a waiver, and despite all of the additional information provided by the companies in support of its request, the Bureaus denied the petitions for relief.⁷ As detailed in the Application for Review, which remains pending, the denial raises fundamental questions that must be answered by the Commission:

(1) Was it proper for the Bureaus to conclude that a “terrestrial alternative” for the wireline and wireless services provided by the Company was “available” for consumers on Adak Island, even if not actually in existence? Can “availability” be based on the unenforceable “commitment” of a competitor to somehow just “take over” the Company’s carefully planned, taxpayer-funded investments, or be based on an unsubstantiated, equally unenforceable “commitment” to simply expand coverage at an unspecified future point in time?

⁴ Petition for Reconsideration of Adak Eagle Enterprises, LLC at 1, WC Docket No. 10-90, *et al.* (Aug. 14, 2013)(AEE PFR); Application for Review of Adak Eagle Enterprises, LLC at 5-11, WC Docket No. 10-90, *et al.* (Aug. 14, 2013)(AEE AFR).

⁵ Letter from Darrell Riegel, Assistant Inspector General for Audits, Office of Inspector General, Federal Communications Commission, to Larry Mayes, President and CEO, Adak Eagle Enterprises, LLC at 2 (Dec. 1, 2014)(Audit Announcement Letter).

⁶ *See USF Transformation Order* at Statement of Commissioner Mignon L. Clyburn and Section VII(G)(2011).

⁷ *See* Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, Petitions for Waiver of Certain High-Cost Universal Service Rules, WC Docket No. 10-90, *et al.*, *Order*, DA 13-1578 (July 15, 2013)(Denial Order).

(2) Was it proper for the Bureaus to conclude that residents of and visitors to Adak Island would continue to have access to wireline service, even though there is no other wireline service?

(3) Was it proper for the Bureaus to virtually disregard AEE's substantial RUS loan and the undisputed fact that the USF reforms, without relief, will cause a default? Did the Bureaus exceed their authority by determining that default on a Department of Agriculture issued RUS loan is "acceptable"? Was it appropriate for the Bureaus to conclude that a default on AEE's RUS loan "would be far more than offset by savings to the [Universal Service Fund]" without providing any cost analysis – including any analysis of how much funding would go to the competitor that offered to simply "take over"? Was it proper for the Bureaus not to have taken into account the competitor's acknowledged practice of taking support for multiple lines per customer, in concluding that the dissolution of ATU would result in a "savings" to the USF?

(4) Did the Bureaus violate the principle of competitive neutrality, a governing principle of universal service, in choosing to favor a hypothetical future service promised by a competitor over services presently offered by the Company on the Island?

(5) Does the Commission agree that it is appropriate to support a competitor that appears to have historically taken more in universal service support, while serving fewer customers, and serving a significantly smaller coverage area on the Island?

(6) Does the Commission agree with subjecting the residents of Adak Island to the public safety risks related to forcing WCC and ATU into bankruptcy?⁸

As detailed in the Petition for Reconsideration, which also remains pending, AEE implemented significant cost reduction measures to address the Bureaus' concerns, including (1) reducing executive officer salaries; (2) eliminating staff positions and reducing the number of hours for remaining staff; (3) largely eliminating travel and training expenses; (4) cancelling construction of an additional cell site meant to create redundancy and improve service to Adak; (5) delaying construction of a warehouse essential for maintaining sensitive communications equipment and providing long-term cost savings; (6) temporarily reducing critical backhaul safety; (7) closing the WCC retail store; and (8) putting the administrative building on the market.⁹

AEE has explained its history and the difficulty of providing service to such a remote area in any number of filings over the years, but in light of this new round of questioning – which AEE notes was never contemplated in the *USF Transformation Order* as part of the waiver process – some of those points bear repeating here.

⁸ The City Manager of the City of Adak has submitted affidavits in this proceeding confirming that AEE provides the only reliable 911 service on the Island. Specifically, he noted in two separate declarations that AEE's competitor does not provide adequate 911 service, stating that he had "experimented with using" the competitor's "wireless service for the mobile 911 system," but that the City "immediately abandoned using that service less than a week later when their network went down." *See, e.g.,* AEE AFR at Exhibit 2 – Layton J. Lockett Declaration.

⁹ AEE PFR at 5.

AEE was the first private communications service provider on Adak and was established after other major telecommunications carriers refused to serve the Island.¹⁰ It is the only provider of wireline voice services to Adak Island. The infrastructure AEE created also supplies the backbone for Adak's only residential broadband service. In addition, AEE provides the only wireless service on the Island that extends outside of the limited portions of downtown area served by its competitor, and which has been critical to public safety and rescue missions on numerous occasions. For example, an 8.0 magnitude earthquake impacted Adak Island in June 2014. All of the 300 adults and children on Adak were evacuated to Bering Hill, the highest point on the Island. WCC service was the only cellular service available while evacuees awaited information regarding whether the Island would be hit by a tsunami, and whether public safety officials had cleared them to return to lower ground.¹¹ There are numerous other examples in the record demonstrating the critical importance and life-saving results of coverage outside of downtown Adak Island.¹²

Moreover, as explained in detail through many filings, Adak Island is one of the most remote and inhospitable areas of the entire United States – making it expensive to serve. Adak is in the vicinity of an active volcano, is located in an earthquake zone, has frequent cyclonic storms, winter squalls producing wind gusts in excess of 100 knots, extensive fog storms in the summer, and an average accumulated snowfall of 100 inches. It is infested with large, Norwegian rats that chew through wires and other communications infrastructure – making expensive, armored cable necessary. Adak Island is also saturated with active bombs (dating back to World War II), making it complicated to trench and dig in the ground. The factors listed by the Commission as making a waiver particularly compelling when considering locations in Alaska including “remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season,”¹³ are all present on Adak Island.

Adak's location and weather conditions also prevent it from benefiting even where other areas of Alaska are experiencing relief, as is the case with fuel prices. Even though the cost of fuel is dropping in Alaska's metro areas (in Anchorage the price is approximately \$2.80 per gallon), fuel still

¹⁰ AEE Waiver Petition at 6; AEE AFR at 3, Exhibit 1 – Adak Telephone Utility Story.

¹¹ Adak Eagle Enterprises, LLC, *Notice of Ex Parte* at 2, WC Docket No. 10-90, et al. (June 24, 2014).

¹² WCC's resources have been used regularly in public safety/safety-of-life operations, and where, without WCC coverage outside of downtown Adak, the results may have been tragic. For example, the Company's White Alice site was instrumental in facilitating the emergency rescue of an individual lost in blizzard conditions on Adak Island. Adak Eagle Enterprises, LLC, *Notice of Ex Parte* at 2, WC Docket No. 10-90, et al. (Feb. 28, 2013). Also, the Marine Exchange of Alaska has emphasized the vital role of WCC in helping the Coast Guard rescue five fishermen stranded on a life raft after their boat caught fire in the Bering Strait. Letter from Bill Benning, Chief Technology Officer, Marine Exchange of Alaska, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 28, 2013). And, because Adak Island is saturated with bombs, EDOT workers must conduct annual bomb search, detonation and removal work on the Island, performing their mission in locations outside of downtown Adak, and serviced solely by WCC.

¹³ AEE Waiver Petition at 13; *see USF Transformation Order* ¶ 508.

costs \$5 per gallon on Adak. More and more Adak residents and companies are opting to pay the fuel costs related to creating electricity with generators rather than paying the more substantial costs to operate on the grid, which means that costs go up for residents and companies like AEE that still obtain electricity from the electric company. Unfortunately, the electric company on Adak has outages that blow out and cause substantial damage to the AEE equipment attached to AEE subscriber homes, which in turn causes the Company to spend more money working to repair and to replace otherwise functioning equipment. To illustrate, AEE's rectifier (which makes AC/DC power) is now failing because it is connected directly to the commercial power system. During just one of the electric company's power outages AEE lost 17-20 outdoor/indoor power supply boxes located at the customers' homes. These power supply boxes provide all telephone electronics to the customer, including the wall jack, for up to eight hours when a subscriber loses commercial power at his or her home. In addition, AEE has to use its generator more often, which results in more fuel costs. However, the generator does not back up customer equipment. Finally, the Company has to contract independently with an electrician (sometimes multiple electricians, depending on what types of equipment they are qualified to repair) to fix these problems because the electric company does not itself employ an electrician on Adak Island. Costs for paying an electrician to resolve these issues are significant, including travel (which is about \$1,700 from Anchorage to Adak), per diem, materials, and time. If the weather makes it impossible to work, AEE has to foot the extra cost for the contractor to sit and wait for proper working conditions or to wait for a return plane, which can take up to three to four days, all the while charging the wait time to AEE. As a result, a routine service call can cost well over \$10,000 per incident.

The Petitions have received significant support from those who understand how valuable and important the Company's service is and how difficult and costly it is to provide service in such a remote, insular area. For example, AEE has received letters of support from the Alaskan Delegation (on three separate occasions), as well as from numerous local, state, and federal government entities and private entities. Many of the entities that have filed in support rely on AEE's service for significant communications needs, including the United States Department of the Interior Fish and Wildlife Service, the Eastern Aleutian Tribes, the Aleut Corporation, the City of Adak, the Adak Police Department, the Marine Exchange of Alaska, the Adak Community Development Corporation, the Alaska Maritime National Wildlife Refuge, Icicle Seafoods, and the United States Geological Survey. Letters of support have also been filed by the United States Department of Agriculture Rural Utilities Service, the National Telecommunications Cooperative Association, the Southwest Alaska Municipal Conference, the Alaska Telephone Association, the Alaska Rural Coalition, and the Minority Media & Telecom Council.¹⁴

¹⁴ See Letter from David Honig, President, Minority Media & Telecom Council, to Commissioner Mignon Clyburn, Federal Communications Commission (Oct. 28, 2013)(stating that "Larry Mayes, the owner of both [WCC and ATU], is one of the few minority owners and operators of a rural communications provider in the nation," and explaining further that "[t]he Commission should consider ways to support – rather than penalize minority or women-owned businesses . . . that enter into a competitive communications ecosystem. AEE and WCC are two of the few minority-owned businesses and companies in general that bring telecommunication services to rural America. As stated, these companies are also recipients of government-backed RUS grants that are designed to

Over the course of this proceeding, AEE has worked diligently to be responsive to all of the Commission's many requests for detailed information. Notwithstanding its willingness to cooperate with the continuing cycle of questions posed by staff, AEE is perplexed by this latest round of questioning through which the OIG will now evaluate the *projected allocations of costs* under different financial scenarios, which are based on assumptions related to *projected financials*. AEE reiterates that, as with any company, those factors change regularly, and that small companies like AEE located in remote, hard-to-serve areas like Adak Island are even more susceptible to the vagaries of business operations impacting financial projections.

The waiver process has been stressful, expensive, and resource intensive. However, just as it stepped up to the plate and provided service to Adak Island when no other company was willing, AEE will continue to reinvest in Adak by maintaining essential services, such as 911, wireline, and broadband, unless it is forced to shut down operations based on the Commission's ultimate decision. The Company emphasizes that, without action – or at least another extension while this new batch of information is evaluated – the FCC will have eliminated critical communications to remote Adak Island. The Company remains hopeful that upon reviewing this most recent submission of information, and the other information submitted by the Company in this docket, the Commission will agree that granting a waiver is in the public interest, and is consistent with goals and promise of Universal Service.

Respectfully submitted,



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help MWBEs and small businesses become more economically viable and sustainable. Given that AEE and WCC do not have a history of consumer complaints/harms or compromised services, the denial of their petitions would send a larger message to other MWBEs that desire to do the same in unserved and under-served communities.”).

Joseph Seresso
Roger Sherman
Suzanne Yelen

DECLARATION OF ANDILEA WEAVER
ADAK EAGLE ENTERPRISES, LLC; ADAK TELEPHONE UTILITY, LLC; AND
WINDY CITY CELLULAR, LLC

I, Andilea Weaver, declare the following is true and correct to the best of my knowledge and belief:

I am the Chief Operations Officer of Adak Eagle Enterprises, LLC; Adak Telephone Utility, LLC; and Windy City Cellular, LLC (collectively, the Companies). I have reviewed the Companies' letter dated January 6, 2015, and attest – under penalty of perjury – that the facts contained therein are known to me and are accurate.

Executed on this 5th day of January 2015.



Andilea Weaver
Chief Operations Officer
Adak Eagle Enterprises, LLC; Adak
Telephone Utility, LLC and Windy City
Cellular, LLC