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April 9, 2015

Accepted / Filed

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

DOCKET FILE COPY ORIGINAL

APR - 9 2015

**Federal Communications Commission
Office of the Secretary**

Re: **REDACTED – FOR PUBLIC INSPECTION**
Adak Eagle Enterprises, LLC Request for Confidential and Notice of
Ex Parte

Dear Ms. Dortch:

On behalf of Adak Eagle Enterprises, LLC (“AEE”), which includes Adak Telephone Utility and Windy City Cellular, LLC (“the companies”), pursuant to the procedures outlined in the Third Protective Order adopted in the above referenced proceedings,¹ please find enclosed a Request for Confidential Treatment and two (2) copies of the Redacted version of a Notice of Ex Parte filed by Adak Eagle Enterprises on April 9, 2015. All Attachments to this Notice of Ex Parte (Attachment 1, Attachment 2, Attachment 3, and Attachment 4) are Confidential Information. The companies are also submitting one (1) copy of the Confidential version of the filing to the Office of the Secretary, and two (2) additional copies of the Confidential version of this filing are being delivered as directed by Commission staff.

¹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Third Protective Order (Aug. 23, 2010).

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Should you have any questions concerning the foregoing information, please contact the undersigned.

Respectfully submitted,



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**Federal Communications Commission
Office of the Secretary**

April 9, 2015

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

**Re: Request for Confidential Treatment – Adak Eagle Enterprises, LLC in
CC Docket No. 01-92, WC Docket Nos. 05-337, 07-135 AND 10-90
AND GN Docket No. 09-51 Before the Federal Communications
Commission**

Dear Ms. Dortch,

On behalf of Adak Eagle Enterprises, LLC (“AEE”), which includes Adak Telephone Utility and Windy City Cellular, LLC (“the companies”), and in accordance with the Third Protective Order in the above referenced proceedings¹ and Federal Communications Commission (FCC or Commission) rules – specifically, Section 0.459² of the Commission’s rules – the companies request Confidential Treatment of all Attachments to the Notice of Ex Parte (Attachment 1, Attachment 2, Attachment 3, and Attachment 4). All Attachments to the Notice of Ex Parte are Confidential Information.

(1) Identification of the specific information for which confidential treatment is sought.

All Attachments to the Notice of Ex Parte (Attachment 1, Attachment 2, Attachment 3, and Attachment 4) are Confidential Information. All of the information designated as Confidential Information being submitted herewith is confidential commercial information under Exemption 4 of the FOIA.³ The Confidential information contains proprietary commercial and financial information that is not customarily disclosed to the public or within the industry. This includes information about revenue and expense data that would cause harm to the companies if disclosed. Accordingly, pursuant to Section

¹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Third Protective Order (Aug. 23, 2010).

² 47 C.F.R. § 0.459.

³ 5 U.S.C. § 552(b)(4).

0.459(a) of the Commission's rules, the companies request that such information not be made routinely available for public inspection.

- (2) *Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.*

The information is being provided to the Commission as an update in relation to the petitions for waiver filed by AEE and WCC⁴ of Section 54.302 of the Universal Service Fund and Intercarrier Compensation reform rules adopted by the Commission as part of its November 18, 2011 Report and Order.⁵

- (3) *Explanation of the degree to which the information is commercial or financial or contains a trade secret or is privileged.*

The Confidential information contains proprietary commercial and financial information that is not customarily disclosed to the public or within the industry. This includes information about revenue and expense data that would cause harm to the companies if disclosed.

- (4) *Explanation of the degree to which the information contains a service that is subject to competition.*

The data and information contained in the Confidential Information being provided to the Commission describe the business and operational details of the companies' services provided on Adak Island in Alaska. All of the Confidential Information concerns the provision of competitive voice and broadband services. Indeed, Alaska Wireless competes to provide communications services in the downtown area of Adak.

- (5) *Explanation of how disclosure could result in substantial competitive harm.*

The presence of competition in downtown Adak and the likelihood of competitive injury threatened by release of the information provided to the Commission by the companies should compel the Commission to withhold the Confidential Information from public disclosure. The Commission has provided assurances that it is "sensitive to ensuring

⁴ 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).

⁵ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (Report and Order).

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that the fulfillment of its regulatory responsibilities does not result in the unnecessary disclosure of information that might put its regulatees at a competitive disadvantage.⁶

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.

In order to prevent unauthorized disclosure of the subject information, and pursuant to the Protective Order issued in these proceedings, the companies are filing a confidential version of this filing with the Secretary. The companies take routine measures to ensure the confidentiality of this information during normal business operations.

(7) Identification of whether information is available to the public and the extent of any previous disclosure of the information to third parties.

The data and information contained in the Confidential Information are not available to the public or to any third parties.

(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure.

As noted in response (1) above, all the data and information being submitted herewith is confidential commercial information under Exemption 4 of the FOIA.⁷ Consequently, the companies would never make this information available publicly due to its sensitive and proprietary nature. For this reason, the companies respectfully request that the Commission protect this information from public disclosure in perpetuity.

(9) Any other information that the party seeking confidential information believes may be useful in assessing whether its request for confidentiality should be granted.

The Confidential Information contains proprietary commercial and financial information, which the companies will forever keep confidential. Because of the competitive sensitivity of the Confidential Information, the companies seek confidential treatment indefinitely.

Should you have any questions concerning the foregoing request, please contact the undersigned.

⁶ *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, ¶ 8 (1998).

⁷ 5 U.S.C. § 552(b)(4).

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April 9, 2015

Ms. Marlene H. Dortch
Federal Communications Commission
445 12th Street NW
Washington, D.C. 20554

Re: Notice of Ex Parte – WC Docket No. 10-90 and WT Docket No. 10-208
Adak Eagle Enterprises and Windy City Cellular

Dear Ms. Dortch,

On Monday, April 6, Monica Desai of Squire Patton Boggs (US) LLP, counsel to Adak Eagle Enterprises, LLC (AEE) and Windy City Cellular, LLC (WCC) (collectively, “the companies”) informed staff of the Federal Communications Commission that AEE is in violation of its RUS requirements and without interim or permanent relief, the companies will not make the next RUS payment, will not make payroll or other obligations, and will likely dissolve in short order. Ms. Desai communicated with the following staff of the FCC: in the Office of the Chairman – Ruth Milkman (Chief of Staff), Philip Verveer (Senior Counselor), Daniel Alvarez (Legal Advisor); in the Wireline Competition Bureau – Julie Veach (Chief), Carol Matthey (Deputy Chief), Suzanne Yelen (Assistant Division Chief, IATD), and Michael Janson (Legal Advisor).

The companies understand and appreciate the enormous staff effort expended in analyzing the issues raised in their request for waiver, Petition for Reconsideration (PFR), and Application for Review (AFR). The companies also believe that it is not staff’s intent to allow the companies to dissolve as a result of inaction on the merits of these issues.

Unfortunately, financial realities necessitate that the companies consider sale or dissolution of WCC and Adak Telephone Utility (ATU). Rural Utilities Service (RUS) informed AEE that it is out of compliance with its TIER requirement in its RUS loan agreement. A copy of the e-mail from RUS is affixed hereto as Attachment 1. Yesterday, April 8, the companies met with a potential buyer to discuss the sale of WCC. The companies must also seriously consider the dissolution of ATU. Absent a waiver of the high cost loop support limits established by the Commission, or a continuation of interim relief, the simple fact is that these companies cannot remain solvent. For the last three years, while the Commission has been evaluating the companies request for a waiver,

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PFR and AFR, the companies have been surviving on interim relief granted by the Bureaus.¹ That relief expired in February. The companies understand that the Bureau does not intend to renew that relief while the important issues raised continue to remain pending – as they have been for over 600 days. The companies ask the Commission to please reconsider, and to at least allow for interim relief while you continue to evaluate the issues that the companies have raised.

It seems fundamentally unfair to us for the Commission to choose to allow the companies to dissolve based on the Commission's inability to make a decision on the merits – particularly when these issues have been before the Commission for three years. The companies have submitted all information requested in a timely and comprehensive manner. Three years ago, Adak Eagle Enterprises (AEE) filed petitions for waiver that provided every piece of information required by the Commission in the *USF/ICC Transformation Order*.² Since that time, the companies have met with over 40 FCC staff, and have bent over backwards to diligently respond to extremely taxing requests. The companies have answered more than 90 additional questions posed to AEE beyond the requirements set forth in the *USF/ICC Transformation Order*, and have never protested regarding a single request for information, even when staff requests required us to work through the night, over weekends, or delay other important work. The companies have submitted thousands of pages of supporting documents. As recently as this past December, AEE produced an additional 5,050 pages of materials – in the two-week timeframe as set by staff.

The companies have demonstrated through numerous filings that they took on the difficult task of building a network after every other company that was asked refused to serve Adak Island. The companies have demonstrated that they have diligently planned buildouts with RUS approval and have carefully invested USF support in infrastructure and equipment, including constructing cell sites, laying fiber, repairing roads after construction, providing satellite equipment, employing technicians and a mechanic on the island, and purchasing trenching equipment, switches, four-wheel drive vehicles, fiber blowers, transformers, generators, and other equipment necessary to provide reliable service. No other company has provided this type of investment into the island. The companies have been forthright in their responses and have never “gamed” the system to take advantage of loopholes.

Most importantly, the companies have submitted a detailed PFR and an AFR that explain how AEE has addressed every single one of the cost concerns raised by the Bureaus, and also explained the fundamental errors made by the Bureaus in denying the waiver applications. Almost two years later, there has been no Commission response.

For these last three years, Larry Mayes and Andilea Weaver, CEO and COO of the companies, have been pulled in two directions. They have scrambled to carry on service to Adak

¹ See *In the Matter of Connect America Fund et al.*, Order, WC Docket No. 10-90 and WT Docket No. 10-208 (Aug. 21, 2014) (granting AEE and WCC “limited, interim relief”); see also Application for Review of Adak Eagle Enterprises, LLC & Windy City Cellular, LLC, WC Docket No. 10-90 and WT Docket No. 10-208 (Aug. 14, 2013); Petition for Reconsideration of Adak Eagle Enterprises, LLC & Windy City Cellular, LLC, WC Docket No. 10-90 and WT Docket No. 10-208 (Aug. 14, 2013).

² 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).

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Island through the companies that they love and that they have built from scratch – some parts literally with their own hands. They have also focused their time, energy and resources educating regulators in Washington, D.C. about the challenges of providing service to a remote Alaska island with volatile, unpredictable climate conditions, skyrocketing energy costs, unpredictable delivery schedules, and numerous logistical challenges. This has involved long hours, extensive travel, and time away from their families. They are not alone in this regard, though – it has been a difficult process for all, and they appreciate the many long hours that FCC staff has dedicated to their small island.

Without a waiver, the residents of remote Adak Island will also be left without wireline service, without 911 service, without wireless coverage, and without broadband service. This could not have been what the Commission intended when it acknowledged in the *USF/ICC Transformation Order* that carriers serving “the very remote and very high-cost areas in Alaska” – such as Adak Island – warrant special consideration when evaluating how to preserve current service and facilitate investment.³

The companies remain committed to providing quality communications service to Adak Island, Alaska. They understand the staff effort that has been expended in analyzing these issues, and the companies believe that it is not the intent of staff for these companies to dissolve as a result of inaction the merits of issues. In light of this new information, we respectfully request that the Commission address the merits of the companies’ AFR and PFR, or that the Bureaus extend interim relief while you continue to evaluate the information submitted.

Attached find an e-mail from the RUS to AEE [Attachment 1 – Confidential], which states that as of December 31, 2014, AEE was not in compliance with its TIER requirement as stipulated in its telephone contract with RUS. Find also attached financial information showing the current financial situation of the companies [Attachment 2, Attachment 3, and Attachment 4 – all Confidential]. We note that even with the financial cutbacks and at the levels of the extended waiver, AEE still fell below the TIER. Without extension of interim relief or a decision on the merits of AEE’s PFR and AFR, AEE will not be able to continue to meet its financial obligations, including the next RUS payment, which is due in two weeks.

We remain ready as always to answer any questions that you may have, and reiterate that it is imperative that the Commission act swiftly to address these issues.

³ See *Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order et al., 26 FCC Rcd 17663, ¶ 529 (2011).

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Respectfully submitted,



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Nicholas Degani
Rebekah Goodheart
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ATTACHMENT 1 – CONFIDENTIAL:

**EMAIL FROM THE RURAL UTILITIES SERVICES TO LARRY
MAYES OF ADAK EAGLE ENTERPRISES**

[CONFIDENTIAL]

Squire Patton Boggs (US) LLP

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ATTACHMENT 2 – CONFIDENTIAL:

**MOSS ADAMS AUDIT OF ADAK EAGLE ENTERPRISES AND
SUBSIDIARY**

[CONFIDENTIAL]

Squire Patton Boggs (US) LLP

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4849-9543-6323.2

ATTACHMENT 3 – CONFIDENTIAL:
CONSOLIDATED USDA-RUS OPERATING REPORT FOR
PERIOD ENDING DECEMBER 2014

[CONFIDENTIAL]

Squire Patton Boggs (US) LLP

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4849-9543-6323.2

ATTACHMENT 4 – CONFIDENTIAL:
UNAUDITED USDA-RUS OPERATING REPORT FOR PERIOD
ENDING DECEMBER 2014

[CONFIDENTIAL]

Squire Patton Boggs (US) LLP

REDACTED – FOR PUBLIC INSPECTION

April 9, 2015

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