

April 9, 2012

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

Re: **Ex Parte Notice – Windy City Cellular, LLC Petition for Waiver of the 84% Reduction in Per-Line Support in WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208**

Dear Ms. Dortch:

On April 5, 2012, Larry Mayes, President and CEO of Windy City Cellular, LLC (“WCC”) and Andilea Weaver, its Chief Operations Officer, together with WCC’s counsel, Monica Desai of Patton Boggs, LLP, met with Michael Steffen (legal advisor to Chairman Julius Genachowski), staff in the Wireless Telecommunications Bureau including Jane Jackson (Associate Bureau Chief), Margaret Wiener (Chief, Auctions & Spectrum Access Division), Sue McNeil (Special Counsel, Auctions & Spectrum Access Division), Stephen Johnson (Attorney Advisor), and staff in the Wireline Competition Bureau including Carol Matthey (Deputy Bureau Chief), Patrick Halley (Legal Advisor, Office of the Bureau Chief), Trent Harkrader (Chief, Telecommunications Access Policy Division), Amy Bender (Deputy Chief, Telecommunications Access Policy Division), Gary Seigel (Public Utility Specialist), and Joseph Cavender (Attorney Advisor).

WCC discussed the Petition for Waiver it filed on April 3, explaining that the Commission’s recent flash-cut implementation of an annual cap on per-line support for competitive eligible telecommunications carriers, which went into effect without any prior notice on January 1, 2012, has severely impacted WCC. WCC has only **12 weeks** left before it must shut down operations.

WCC had no opportunity to plan in advance for the Commission’s actions, which resulted in an immediate 84% decline in funding for WCC. WCC explained that the funding slash has already crippled operations, and that if the Bureau fails to act quickly, this will be tantamount to an order to shut down service, further stranding consumers and critical public safety operations. As explained to staff, WCC had to cut off back-up communications due to the funding cut, resulting in a communications outage last week after 60-100 mile per hour winds and wet snow temporarily knocked out the only satellite remaining in use. As a result, customers of WCC including consumers, governmental entities and businesses were left without E911, email,

Internet and phone service for one full day. The only customers who could make and receive calls were those who could afford expensive satellite phones for basic phone service.

Hidden in footnote 880 of the order is the Commission's determination that an annual cap of \$3,000 per line cap explicitly applies to CETCs that are serving remote areas in Alaska. Instead of a two-year delay in implementation, and a five-year phase-in, which the Commission adopted for other USF reforms for remote areas of Alaska, this change took place, without any warning, six weeks after the *USF/ICC Transformation Order* was released.¹ WCC and its counsel discussed with Commission staff that this rule change is not only contrary to the Commission's approach with respect to other USF reforms for Alaska (an approach that the Commission characterized as affording greater certainty and stability for carriers in remote areas of Alaska until Mobility Fund Phase II support is available), but it also is in violation of the principles set forth in the National Broadband Plan. According to the National Broadband Plan, there were to be no flash-cuts in universal service reforms because "Policymakers must give service providers and investors time to adjust to a new regulatory regime."²

In WCC's case, because of the flash-cut implementation of the cap, WCC's universal service disbursement declined from \$136,344 in December 2011 to \$22,356 in January 2012. This sudden slash in funding has put the critical wireless service provided by WCC, the first in the area, in jeopardy. WCC has halted work on deployment of a new cell site in Clam Lagoon that would have afforded more coverage and redundancy for the wireless system, redundancy which is critical given the volatile climate in the Adak area. And, as emphasized, WCC was forced not to renew a contract with its backup provider of backhaul service.

WCC emphasized that if a waiver of the annual cap is not expeditiously granted, the results will be catastrophic for the Adak area: (1) WCC will be forced to cease operating, causing some consumers to lose service with no terrestrial alternative, and roaming ability throughout the Adak area will be lost; (2) critical services, government functions, and public safety will be jeopardized; and (3) WCC will become insolvent, causing the loss of jobs in the Adak area.

During the meeting, WCC discussed that the Adak area is one of the most remote and insular areas of the United States, located in an earthquake zone, in the vicinity of an active volcano, and frequented by tsunamis and cyclonic winds. As discussed in the waiver, WCC is the only carrier that provides voice service, wireless or wireline, throughout the entire Adak area, including the sea and Aleutian Wilderness where critical services, public safety operations and industries operate. The WCC White Alice cell tower, which provides the only coverage available for

¹ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663, ¶ 14 (2011) ("USF/ICC Transformation Order").

² Federal Communications Commission, Omnibus Broadband Initiative, Connecting America: The National Broadband Plan, GN Docket No. 09-51, at 143 (2010) ("National Broadband Plan").

incoming sea vessels and for the far side of Adak Island, is only reachable by snowmobile. There is only one police officer on the island, and he depends heavily on the service provided by WCC. Residents include former military personnel that stayed in Adak after the closure of a large Naval base, government researchers, experts that specialize in deactivating bombs, and employees of businesses in the fledgling economy on the island.

Because of the remoteness of the location and the volatility of the climate, it is very expensive to build out and provide a reliable communications system on the island. A barge only services the island once per year at most, and there is significant planning and coordination involved with trying to bring equipment and other items to the island by barge. There is airplane service to the island only twice a week at most, but even that service is inconsistent given the volatile weather. Adak Eagle Enterprises (the parent company of WCC) invests in having technicians on Adak. The other carrier on the island, which only serves the downtown Adak area, relies on Adak Eagle's technician in the first instance for addressing service-related issues. Adak Eagle and WCC are the only carriers that have fully invested in providing services throughout the entire island, despite the high cost of providing service and the related challenges involved.

WCC discussed that if it is forced to shut down service, there are grave implications for critical government and public safety entities including the Marine Exchange (which operates one of the most important vessel tracking sites in Alaska), the USGS Albuquerque Seismological Laboratory, the Alaska Volcano Observatory, the U.S. Fish and Wildlife Service, and the City of Adak (which works with WCC for E911 service), as well as for government contractors, researchers, tourists, subsistence hunters and subsistence fisherman. There are also serious consequences for environmental clean-up efforts in the area. As WCC discussed, it was contacted to provide service on the on the sea close to the shore related to preparation for incoming debris from last year's Japanese tsunami. WCC is the only company that is able to readily provide such service. If WCC is forced to shut down, and even if the FCC only approves a waiver at a bare bones minimum operating level, there will be no cellular service available for this effort, posing a significant public safety risk.

WCC recognizes that the Commission would like to move away from the identical support rule. Accordingly, the parties discussed that it requested a limited waiver to cover only the most basic operations until Mobility Fund Phase II support is available. WCC also discussed that alternatively, if the Commission staff feels it is important for WCC to continue investing in redundant communications for the Adak area, and to afford the area's residents, businesses and government operations more reliable E911 and other coverage in the face of the severe and unpredictable climate, then it would be appropriate to delay the implementation of the flash cut and afford the same relief here that the Commission afforded in the *USF/ICC Transformation Order* for other universal service reforms for Alaska – a two-year delay and a five-year phased-in implementation. WCC would welcome this result and supports whatever alternate relief the Bureau can afford given the expedited timeframe required. However, the relief set forth in the Petition for Waiver is the absolute minimum WCC requires to simply continue bare bones operations with limited redundancy, and with no way to avoid situations like last week's service outage.

If WCC becomes insolvent, its wireless service will cease and the wireline service provided by its affiliate, Adak Eagle Enterprises (“AEE”), will suffer. WCC and AEE each rely on the same small staff, which is shared between the companies. If WCC is forced to go out of business, AEE will not be able to afford the full cost of keeping shared employees. Moreover, schools and libraries funding and services will be impacted.

As discussed during the meeting, AEE, the only local exchange carrier in the Adak area, also will be filing a waiver request with respect to the *USF/ICC Transformation Order* in the coming weeks. Without such a waiver, AEE will be out of business by the end of the year and it will default on Rural Utilities Service loans which were granted, in part, on the FCC’s determination that AEE is eligible for and would be receiving USF support at certain levels.

In summary, as discussed in the meeting, the immediate implementation of a \$3,000 per line annual cap on WCC, without notice or opportunity to plan, has already had immediate consequences for individuals and entities dependent on WCC service. Without an expeditious waiver, the results will be catastrophic to both WCC and to the Adak community.

Respectfully submitted,

/s/ Monica S. Desai

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