

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
<u>Universal Service Reform – Mobility Fund</u>	)	WT Docket No. 10-208

**COMMENTS OF THE ALASKA RURAL COALITION SUPPORTING ADAK EAGLE  
ENTERPRISES, LLC PETITION FOR WAIVER**

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## **I. Introduction.**

The Alaska Rural Coalition<sup>1</sup> (“ARC”) files its Comments in this proceeding pursuant to the May 31, 2012 *Public Notice* issued by the Federal Communications Commission (“Commission”) seeking comments on a petition filed by Adak Eagle Enterprises, LLC (“AEE”) d/b/a Adak Telephone Utility.<sup>2</sup> AEE requested a waiver of the limit on high cost universal service support of \$250 per month contained in section 54.302 of the Commission’s rules.<sup>3</sup> The ARC supports AEE’s Petition and urges the Commission to grant AEE interim and permanent relief.

The ARC membership consists of most of the rate of return incumbent rural local exchange carriers (“RLECs”) in Alaska,<sup>4</sup> who share unified interests regarding the impacts of further proposed changes in universal service funding and access charge revenues to the state. The ARC urges the Commission to grant AEE a waiver of the \$250 per line cap on high cost

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<sup>1</sup> The ARC is composed of Arctic Slope Telephone Association Cooperative, Inc., Bettles Telephone, Inc., Bristol Bay Telephone Cooperative, Inc., Bush-Tell, Inc., Circle Telephone & Electric, LLC, Cordova Telephone Cooperative, Inc., Copper Valley Telephone Cooperative, Inc., City of Ketchikan, Ketchikan Public Utilities, Matanuska Telephone Association, Inc., OTZ Telephone Cooperative, Inc., Interior Telephone Company, Mukluk Telephone Company, Inc., Alaska Telephone Company, North Country Telephone Inc., Nushagak Electric and Telephone Company, Inc., The Summit Telephone and Telegraph Company, Inc., and Yukon Telephone Company, Inc.

<sup>2</sup> Federal Communications Commission, *Wireline Competition Bureau Seeks Comment on Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility Petition for Waiver of Certain High-Cost Universal Service Rules*, Public Notice, DA 12-865 (May 31, 2012).

<sup>3</sup> Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility Petition for Waiver of Section 54.302 of the Commission’s Rules, Before the FCC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed May 22, 2012) (“AEE Petition for Waiver”).

<sup>4</sup> The other ILECs in the state are the ACS companies, which are all price cap, and United Utilities, Inc., a rural ILEC that is wholly-owned and controlled by GCI. Although AEE initially participated in the ARC, it discontinued its participation after the financial ramifications of the \$250 per line cap to AEE became apparent.

universal service support. The ARC also urges the Commission to grant AEE interim relief in light of the immediate impact on AEE's financial viability if interim relief is not granted.

## **II. AEE's Waiver Request is Narrowly Drafted to Remedy a Catastrophic Loss of High Cost Support.**

AEE's Waiver Request narrowly focuses on the \$250 per line high cost universal service cap instituted by the Commission in its *Transformation Order*.<sup>5</sup> The cap was intended to reinforce fiscal responsibility for the fund even though the number of small companies affected was very small and the financial impact to the overall fund was expected to be minimal.<sup>6</sup> The ARC joined many other rural companies in expressing serious reservations about the limited benefit of the cap versus the potential disaster it could pose for small rural companies serving the very highest cost areas.

The Commission adopted the cap, but did acknowledge that the waiver process would be available for carriers, such as AEE, who could demonstrate the need for the high cost support.<sup>7</sup> “[W]e will consider individual circumstances when applying the \$250 per-line monthly cap. Any carrier affected by the \$250 per-line monthly cap may file a petition for waiver or adjustment of the cap that would include additional financial data, information, and justification for support in excess of the cap using the process we set forth below.”<sup>8</sup> The waiver process has proven to be more burdensome than the Commission may have intended, but AEE's Petition

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<sup>5</sup> See *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for our Future*, Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161 (rel. Nov. 18, 2011) (“*Transformation Order*”).

<sup>6</sup> *Transformation Order* at para. 274.

<sup>7</sup> *Transformation Order* at para. 278.

<sup>8</sup> *Transformation Order* at para. 278.

presents an opportunity for the Commission to move quickly to address a pressing problem affecting Alaskans in a very high cost area.<sup>9</sup>

The public interest is served by granting AEE's request for a waiver of the \$250 per line monthly cap in high cost support. The ARC has consistently argued that the core purpose of universal service is to ensure that every American have access to a home telephone.<sup>10</sup> Although the ARC applauds the Commission's goal to also bring broadband to rural and remote areas, the underlying premise of universal service embodied in the Telecommunications Act of 1996 cannot be lost in the process.<sup>11</sup> AEE's materials demonstrate that without adequate per line

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<sup>9</sup> See Michael J. Balhoff, Francis X. Gallagher, Jr., and Bradley P. Williams, *Briefing for FCC: Federal Reforms: Financial Insights*, before the FCC, WC Docket No. 10-90, Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, and WC Docket No. 03-109 (April 12, 2012), available at <http://apps.fcc.gov/ecfs/document/view;jsessionid=NwJ3PHXQr4IFsLLxx7dHXNpyLH7RpKJhQLzkTnKBDgQSzTmnggzG!-1221852939!-1969853125?id=7021909349>; John Eggerton, *FCC Grilled over USF Reform Impact on Telecom in Native Lands: Senators Concerned about Phasing Out Legacy Support, Question Efficacy of Waiver Process*, Multichannel News (June 7, 2012), available at [http://www.multichannel.com/article/485651-FCC\\_Grilled\\_over\\_USF\\_Reform\\_Impact\\_on\\_Telecom\\_In\\_Native\\_Lands.php](http://www.multichannel.com/article/485651-FCC_Grilled_over_USF_Reform_Impact_on_Telecom_In_Native_Lands.php) (discussing concerns that the waiver process is "costly and difficult").

<sup>10</sup> *Comments of the Alaska Rural Coalition in the matter of Connect America Fund*, WC Docket No. 10-90, 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, before the FCC (Jan. 18, 2012) ("*ARC Comments*") at p. 19 ("In shifting the focus of high cost support from voice service to broadband, the Commission does not need to abandon the fundamental premise of universal service that all Americans should have access to affordable telephone service."); *Comments of the Alaska Rural Coalition in the matter of Connect America Fund*, WC Docket No. 10-90 et. al, before the FCC (Feb. 24, 2012) ("*ARC Intercarrier Compensation Comments*") at p. 14-15 ("Voice remains the foundational service that legacy networks were designed to provide. The Commission's shift in priority to broadband does not alter the central premise that rural ILECs must still recover their legacy network investment, even if it was initially intended for voice. In Alaska, voice is likely to remain the primary service provided on ILEC networks until terrestrial middle mile becomes more affordable and available or satellite technology and capacity improves.").

<sup>11</sup> See 47 U.S.C. §§ 254 et seq. (1996). "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services

support, telecommunications service will be lost to the community.<sup>12</sup> As fellow Alaskans, we understand the extreme high costs confronted by AEE in providing reliable telecommunications services to its customers. The ARC strongly concurs with AEE that leaving a community without service fails to serve the public interest and we urge the Commission to grant AEE's Petition.

### **III. No Other Alaskan Carrier is Sufficiently Positioned to Serve Adak.**

Terrestrial telecommunications services are critical to the functioning of other modes of telecommunications in rural areas, including the community of Adak.<sup>13</sup> The potential loss of the incumbent local exchange carrier would be catastrophic to the community.<sup>14</sup> "At the simplest level, increasing the number of people connected to the telecommunications network makes the network more valuable to all of its users by increasing its usefulness to them. Increasing suscribership also benefits society in ways unrelated to the value of the network per se."<sup>15</sup> It is inconceivable that the public interest would be served by allowing customers in a high cost area lose the modern telecommunications services they have grown to rely upon. If the people of Adak can be disconnected because service is deemed too expensive, the rest of Alaska is left to wonder which remote community may be next.

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provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." *Id.*

<sup>12</sup> See *AEE Petition for Waiver* at 10-13.

<sup>13</sup> See *Transformation Order* para. 101, n. 158 ("Even if the modest speeds of 4 Mbps down and 1 Mbps up are adopted by the FCC as target throughput speeds, *substantial construction of terrestrial facilities* and expansion of satellite capacity will be needed to create the backhaul capability that will be necessary to deliver broadband at those speeds in Alaska.") (emphasis added).

<sup>14</sup> *AEE Petition for Waiver* at 23-24 (describing essential connections to Anchor Institutions, dependence by the electric utility and critical distance learning services).

<sup>15</sup> *Report and Order in the matter of Federal-State Joint Board on Universal Service*, before the FCC, CC Docket No. 96-45 (rel. May 8, 1997) at para. 8.

Ex partes filed by General Communication, Inc. (“GCI”) suggest that it could provide service if AEE ceased to operate.<sup>16</sup> GCI argued that it could continue to provide its wireless services in Adak even if the wireline incumbent were to shut down its operations, “as it does not believe it relies on Adak for telecommunications facilities that could not be replaced, if not acquired from the debtor’s estate.”<sup>17</sup> Although the ARC finds it unlikely that wireless service could continue in a meaningful way without the terrestrial network infrastructure, the lack of wireline service and infrastructure would abandon the Commission’s goal to improve access to advanced services. GCI makes no proposal to actually provide wireline service or take over the existing broadband services currently offered by AEE. It is also important to note that there is no evidence in the record that any telecommunications provider could provide reliable service without the underlying AEE wireline infrastructure. To the contrary, AEE provides evidence in its Petition that if the AEE network ceased to operate, all telecommunications would fail to function.

The Commission runs a real risk of losing critical rural telecommunications infrastructure if it accepts the premise that wireless companies without adequate network resources in outlying areas can fulfill the role of the carrier of last resort. Significant investments have been made and service extended on the premise that all rural Americans deserve at least basic telephone service. As AEE points out, these investments were made with the understanding that high cost support would be predictable and sufficient to support the cost of construction and maintenance.<sup>18</sup> To allow an entire community to lose service because the cost is deemed to be too high and the

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<sup>16</sup> General Communication, Inc., *Ex Parte Re: Connect America Fund; Windy City Cellular Petition for Waiver*, before the FCC, WC Docket No. 10-90, WT Docket No. 10-208 (June 11, 2012) (“*GCI June 11 Ex Parte*”).

<sup>17</sup> *GCI June 11 Ex Parte* at 3.

<sup>18</sup> *AEE Petition for Waiver* at 21-23.

people not worth the investment would represent a huge step backward in universal service.

Given that granting AEE's waiver would make virtually no impact on the overall fund, the ARC believes there is little justification for denying it.

The ARC believes the Commission should move with great caution regarding any suggestion that issues of continued service can be resolved through bankruptcy proceedings.<sup>19</sup> Sound public policy and Commission advocacy should not include allowing a high cost community to lose its incumbent carrier and selling its assets to the highest bidder. Bankruptcy cases can drag on for years in terms of the ultimate disposition of the assets, can involve a number of complex creditor issues and ultimately transfer policy control from the regulator into the hands of a bankruptcy judge. The ARC sincerely hopes the Commission would avoid deferring its regulatory discretion to the courts regarding telecommunications policy. Furthermore, bankruptcy proceedings place significant financial burdens on lenders such as the Rural Utilities Service due to the lost interest and principal loan payments on the defaulted loan, as well as the need to provide bridge financing to the bankrupt company in order to "keep the lights on." This burden will reduce the lender's ability to fund broadband infrastructure elsewhere and harm the Commission's goal of providing funds for broadband expansion in unserved areas.

## **VI. Conclusion.**

The Petition before the Commission seeks a limited remedy anticipated by the Commission when the \$250 per line monthly cap was created. The information and argument put forth by AEE demonstrates that absent the requested waiver, the community of Adak would lose telecommunications services. To deny the Petition would be to embrace a public policy that

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<sup>19</sup> *GCI June 11 Ex Parte* at 3.

not every American deserves basic services, a position that is contrary to years of precedent and federal law. The ARC urges the Commission to grant interim and ongoing relief to AEE to preserve the status quo in Adak and allow its citizens to enjoy the modern communications that so many other Americans take for granted.

Respectfully submitted on this 2nd day, July, 2012.

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