

**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
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

To the Wireline Competition Bureau:

REPLY COMMENTS OF ADAK EAGLE ENTERPRISES, LLC

Adak Eagle Enterprises, LLC (“AEE”) submits these reply comments supporting its Petition for Waiver (“Petition”)¹ of the Commission’s implementation of the \$250 per line monthly cap on high cost loop support (“HCLS”).² There is no opposition to the Petition, and numerous entities have submitted comments and letters of support urging the Federal Communications Commission (“Commission”) to grant AEE’s Petition, based on the critical nature of its service:

¹ See Petition for Waiver of Adak Eagle Enterprises, LLC, WC Docket No. 10-90, *et al.*, at 6, filed May 22, 2012 (“AEE Petition”).

² 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, ¶¶ 274-275 (2011) (“*USF/ICC Transformation Order*”). The HCLS cap is to be codified at 47 C.F.R. § 54.302.

The City of Adak (local government for the island of Adak); the Alaska Congressional Delegation (including Sen. Mark Begich, Sen. Lisa Murkowski, and Rep. Don Young); The Aleut Corporation (“TAC”)(a for-profit corporation with over 3,000 Alaska Native shareholders primarily of Aleut descent which owns a number of subsidiary companies operating on Adak Island); the U.S. Fish and Wildlife Service (operator of a critical base in Adak that serves as a hub for all work in the Aleutian Island chain involving hundreds of researchers, technicians and crew); The Marine Exchange (a non-profit operator of a comprehensive vessel tracking network throughout Alaska, including a critical receiving site in Adak); Icicle Seafoods, Inc. (a fishing and seafood company that is one of the primary employers in the Adak area); the Adak Community Development Center (a non-profit developer of seafood harvesting and processing infrastructure for the community of Adak); the Eastern Aleutian Tribes (a non-profit tribal health organization servicing all the tribal and non-tribal members of the Adak community); and the Alaska Rural Coalition (“ARC”)(a coalition composed of nearly all of the rate of return incumbent rural local exchange carriers in Alaska).

General Communications Inc. (“GCI”), which provides wireless service to the downtown area of Adak Island under the name Alaska Wireless, filed comments that neither oppose nor support AEE’s request for waiver.³ In its comments, GCI acknowledges that it does not currently possess the required facilities and equipment to offer service equivalent to what AEE provides,⁴ and

³ Comments of General Communication, Inc., WC Docket No. 10-90 *et al.*, at 2 (filed July 2, 2012)(“GCI Comments”).

⁴ *See id.* at 2-4 (stating that “GCI could construct alternative microwave facilities if necessary;” “GCI believes that it could provide these [E-rate] services to Adak schools as well;” “GCI could provide Adak Island with largely comparable USF-supported services for no more than the total amount of high-cost support;” “GCI’s ConnectMD program, which supplies these telemedicine connections, leases two T-1s from AEE, which GCI could replicate through microwave solutions;” “GCI could deploy a WiFi-based fixed wireless broadband service;” “In the event that it could not acquire the few private line circuits necessary to reach the small number of larger enterprise users on Adak, GCI believes it could provide similar service through microwave facilities to connect those users with GCI’s satellite and switching hub”)(emphasis added).

it does not dispute that its wireless service is dependent on AEE facilities and infrastructure.⁵ GCI also acknowledges that it currently is unable to provide the expansive and more comprehensive wireless service that Windy City Cellular, LLC – AEE’s wireless affiliate – provides to Adak Island.⁶ Finally, GCI states that in order to provide service similar to AEE, it “anticipates that it may need to invest in additional coverage and/or power for indoor use, as well as either to acquire facilities from AEE’s estate or to construct new transmission paths for enterprise customers, and thus could require more support than it currently receives.”⁷

Despite the tremendous amount of speculation implicit in GCI’s comments, as well as the explicit admissions of the many steps it would have to take before it could provide service comparable to AEE, GCI nevertheless asserts that a denial of AEE’s waiver request will not cause Adak to become a new unserved area.⁸ GCI is not in a position to provide comprehensive service to Adak today. The Commission cannot risk service to the Adak community based on GCI’s speculations; grant of AEE’s waiver request is needed to preserve service.⁹

⁵ *See id.* at 2. (acknowledging that GCI would have to replicate AEE’s facilities to operate its CMRS network if it could no longer depend on AEE).

⁶ *See id.* (stating that “in the event that Windy City ceases operation, GCI would be willing to take over and operate the White Alice cell site, which would permit GCI to expand its wireless voice service to cover all or nearly all of Windy City’s existing residential customers not already within GCI’s service area.”)(emphasis added).

⁷ *Id.* at n. 2 (emphasis added).

⁸ *See id.* at 1.

⁹ AEE also disagrees with assertions made by GCI regarding its current capabilities. For example, despite GCI’s assertion that it “does not depend on AEE to provide connections to and from Adak Island,” in order to connect Adak customers on the landline side for long distance, GCI would have to use AEE’s fiber distribution. In addition, GCI would have to use AEE’s switch for special circuits necessary for telemedicine. *See id.* at 2.

I. If AEE Is Forced Out of Business, Comprehensive Service Throughout the Adak Community Will Be Threatened; Replacement Service is Speculative At Best, While Loss of Service During Any Kind of Potential Transition Appears Inevitable.

AEE has made substantial investments, with the help of RUS loans, to single-handedly build a fiber network and maintain infrastructure in order to physically reach every home and business in Adak. There is no question and no dispute that GCI relies on AEE's facilities and infrastructure, including fiber and switch, for the interconnection necessary to provide its wireless service.¹⁰ GCI also relies on AEE's technicians for support. Unlike GCI, which operates on a statewide basis and relies on AEE's infrastructure for the interconnection necessary to provide its wireless service in downtown Adak, AEE operates only on Adak Island, employs staff stationed on Adak, and relies on the infrastructure built through its own investments. This presence and comprehensive level of commitment have allowed AEE to provide quality and reliable service to the remote Adak area consistent with universal service goals.

Even if another carrier would be willing to provide service to Adak in the event AEE is forced out of business, the amount of time and effort it would take a carrier located outside of Adak to "replicate" the necessary facilities and infrastructure would inevitably result in some period of service loss during the transition process, particularly if it involves the disposition of AEE's property through a bankruptcy proceeding. Furthermore, it is not certain that another carrier would undertake the task of assuming all telecommunications operations in Adak once the challenges of comprehensively serving such a remote, inhospitable area are fully understood. If history is any guide, AEE was the only carrier willing to take on the monumental task of bringing a modern telecommunications system to Adak, after larger, established telecommunications providers rejected

¹⁰ Although GCI makes several speculative statements regarding how it "could provide" service or "replicate" facilities if AEE ceases operations (assertions that are questioned by the ARC in its Comments at 6), it does not deny that its current wireless service is dependent on AEE facilities and infrastructure. *See id.*

requests by TAC to become the first private communications service provider on Adak.¹¹

Moreover, unless a carrier is also willing to commit to maintaining an active presence in Adak, the way AEE has always done, it is unclear that the level of service the Adak community has come to rely upon will continue. Indeed, AEE shares the concern raised by the Alaska Rural Coalition (“ARC”), that “[t]he 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.”¹²

If, as history demonstrates, no other carrier is willing or able to undertake the beyond cost-prohibitive and labor-intensive effort to provide service similar to what AEE has provided to Adak, the service that the people of Adak have come to rely upon since AEE accepted TAC’s challenge will no longer exist. This places the Adak community in the untenable position of having to base continued communications access on the uncertain hope that another carrier “could replicate” AEE’s facilities, “would be capable” of providing the same services as AEE, and “could deploy a WiFi-based fixed wireless broadband service.”¹³ The public interest is not served if speculation regarding a potential future service becomes the basis of deciding an entire community’s comprehensive access to critical communications services.

II. If AEE Is Forced to Default on its RUS Loan and Declare Bankruptcy, the Public Interest Will Be Harmed.

Without a waiver, AEE will be forced to default on its Rural Utilities Service (“RUS”) loan and declare bankruptcy. AEE has made substantial investments through RUS loans in order to serve the remote Adak area. It would be contrary to the public interest for the Commission to allow

¹¹ See AEE Petition, at 6.

¹² See *id.* at 6.

¹³ See GCI Comments, *supra* n. 4.

its USF reforms to force AEE into bankruptcy and default so that other carriers might potentially buy their USF and RUS-subsidized assets out of bankruptcy for pennies on the dollar.¹⁴

Furthermore, as pointed out by the ARC, bankruptcy cases often are very time-intensive, involve complex creditor issues, and place tremendous financial burdens on lenders. As a result, the ARC urges that “the Commission should move with great caution regarding any suggestion that issues of continued service can be resolved through bankruptcy proceedings.”¹⁵ In this case, an RUS loan default would result in lost principle and interest payments, as well as the likely added pressure of providing bridge financing while the bankruptcy issues are resolved. AEE agrees with the ARC that the impacts of a bankruptcy “will reduce [RUS’s] ability to fund broadband infrastructure elsewhere and harm the Commission’s goal of providing funds for broadband expansion in unserved areas.”¹⁶ Such results clearly run counter to the Commission’s explicit goal of increasing broadband access and will directly harm consumers.

¹⁴ See Letter from John T. Nakahata, Counsel, General Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, 3, filed June 11, 2012 (“Staff also inquired as to whether GCI’s wireless services on Adak could remain operational even if Adak Eagle Enterprises, the wireline incumbent LEC, were to shut down its operations. GCI believes it could do so, 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.”)(emphasis added); *see also* GCI Comments at n.2 (“GCI anticipates that it may need to invest in additional coverage and/or power for indoor use, as well as either to acquire facilities from AEE’s estate or to construct new transmission paths for enterprise customers, and thus could require more support than it currently receives”)(emphasis added).

¹⁵ See Comments of the Alaska Regulatory Coalition, WC Docket No. 10-90 *et al.*, at 7 (filed July 2, 2012)(“ARC Comments”)(stating also that it “sincerely hopes the Commission would avoid deferring its regulatory discretion to the courts regarding telecommunications policy”).

¹⁶ *See id.*

Accordingly, for the reasons set forth above and in the Petition, as well as those described in the numerous letters and comments in support of AEE's request for waiver, the Bureau should grant a minimum two year delay in implementation of the \$250 HCLS cap.

Respectfully submitted,

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