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Ex Parte

FILED/ACCEPTED

AUG 29 2012

Federal Communications Commission
Office of the Secretary

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

Re: *Connect America Fund,* WC Docket N0. 10-90; *Universal Service Reform—Mobility Fund,* WT Docket No. 10-208; *Petition for Waiver of Windy City Cellular, LLC*; *Petition for Waiver of Adak Eagle Enterprises, LLC*

Dear Ms. Dortch:

General Communication, Inc. ("GCI") hereby provides further comment with respect to the petitions for waiver of 47 C.F.R. § 54.307(e) filed by Windy City Cellular ("Windy City") and of 47 C.F.R. § 54.302 by Adak Eagle Enterprises ("AEE"). As the Bureaus and Commission enter into their final deliberations, and upon review of the entire record to date, it is clear that Windy City has not justified the relief it requests. It is equally clear that AEE's petition fails to provide an adequate public interest rationale for the additional universal service support it requests, especially when it is unlikely that any consumers will lose service that could not be replaced. Furthermore, granting Windy City's request could freeze GCI out of competing for future high cost support for 3G mobile broadband services, and would pay Windy City over $7500 more per line served than GCI, placing GCI at a significant and unjustified competitive disadvantage.

With respect to Windy City:

- Adak Island will not lose mobile wireless service if Windy City and AEE cease operations. GCI can continue to provide mobile wireless service on Adak Island should either eventuality come to pass.
- There is no basis for granting Windy City, through the waiver process, additional high cost support to upgrade its wireless network to 3G. The Commission established the Mobility and Tribal Mobility Funds specifically for that purpose. Were the Commission to grant Windy City additional support to enable it to upgrade to 3G prior to Mobility/Tribal Mobility Funds Phases I and II, Adak would become a "served" area not subject to those mechanisms. As a result, neither GCI nor any other carrier could compete with Windy City to be Adak Island's single USF-supported 3G provider. GCI would be prematurely frozen out of 3G service on Adak Island. Thus the Commission should deny this aspect of Windy City's request.

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- Any grant of additional support to Windy City to provide wireless service in the areas in which GCI also already provides service cannot be necessary to ensure that consumers continue to receive wireless service, and also is not competitively neutral. In the areas in which nearly all Adak residents live and work, both GCI and Adak provide service, and GCI does so—and will continue to do so—receiving less than $3000 high cost support per line per year. Granting Windy City support for higher costs in serving those areas simply subsidizes inefficiency—which is not a High Cost Fund objective. Thus, this aspect of Windy City's waiver must also be denied
- With respect to the costs of providing wireless service in the areas in which Windy City is the only wireless provider (which according to Windy City constitutes approximately 10 lines), given that GCI has already said it would be willing to assume operation of the White Alice site (or the functional equivalent) and provide service for less than $3000 high cost support per line per year, additional support to Windy City for its incremental operating costs for the White Alice site also would not be necessary to ensure that consumers can continue to receive wireless service nor would it be competitively neutral; indeed, such an additional payment to Windy City again would simply be supporting inefficiency. GCI's willingness to serve these areas on a going forward basis for less than $3000 support per line per year provides a market-based test as to the reasonable level of support. Thus, this aspect of Windy City's request should also be denied.
- To the extent the Commission concludes that Windy City acted reasonably and prudently in constructing the White Alice site and supporting facilities, the logic of the *USF/ICC Transformation Order*, and particularly the Mobility Funds and Tribal Mobility Funds, suggests that this should, at most, be a one-time payment to offset these one-time capital costs (less accumulated depreciation). However, any supplemental capital support should also stipulate that if such support is accepted, the facilities supported by any supplemental support must be transferred to another ETC if Windy City ceases to operate.
- Windy City's attempts to justify its request by bootstrapping it to AEE's, based on Windy City's contribution to AEE's finances, must fail. First, these contributions are ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****. Second, and more importantly, whether AEE should receive additional support because of its costs is a logically separate question from whether Windy City should also receive extra high cost support, and the Commission can consider AEE's request both with and without continued contribution from Windy City.
- Windy City has never explained why it constructed and launched the White Alice site after the Commission had proposed, in February 2011, to limit high cost universal service support to $3000 per year per line, and then adopted that proposal in November 2011.[1] Even had the Commission continued the pre-2012 regime for

[1] *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 a Unified Intercarrier Compensation Regime; Federal-State Joint Board on*

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CETC support, cutting ILEC support to $3000 per year per line would automatically have reduced the CETC support to the same level.

With respect to AEE's waiver request:

- As GCI has previously stated, Adak Island will not "go dark" should AEE cease operations. GCI will continue to provide voice service, will provide better Internet access than AEE is providing today, and will serve enterprise consumers, receiving $3000 per year or less in high cost support. Increased high cost support for AEE is not necessary to ensure that Adak Island continues to have telecommunications and Internet service. GCI can offer better service without the substantial increased high cost support that AEE claims is necessary.
- It is clear that a principal reason for AEE's request is its ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL**** The Commission should not be providing additional support simply because a company is sub-scale. In that situation, the provider should be looking for ways to achieve minimum viable scale, including combining with other entities.
- It is not at all clear that continued large high cost subsidies to AEE are necessary to achieve the Commission's public interest objectives:
    - Voice local and long distance services to Adak Island's 44 occupied housing units can be delivered wirelessly—the predominant mode of consumer voice service on Adak Island today.
    - While it is not clear from the record where all of Adak Island's multiline business customers are located, the likelihood is that they are concentrated within a very small geography, and can be served with wireless backhaul if need be.
    - AEE's wireline Internet access service is less robust than the wireless Internet access service that GCI operates in Dutch Harbor (another community in the Aleutian Islands) —which is an example of a much lower cost means of delivering Internet access to Adak Island.

Universal Service; Lifeline and Link-Up; Universal Service Reform--Mobility Fund; Report and Order and Further Notice of Proposed Rulemaking, ¶¶ 210-211, 26 FCC Rcd. 1766 (2011) ("*USF/ICC Transformation Order*").

Windy City has stated that the White Alice site "became operational on January 7, 2012, after significant investment and 12 months of planning." Ex Parte Notice from Monica Desai, Counsel, Windy City Cellular, to Marlene Dortch, Secretary, Federal Communications Commission, at 3, WC Docket Nos. 10-90 et al. (filed June 10, 2012) ("Windy City June 10, 2012 Ex Parte").

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GCI Will Not Let Adak Island "Go Dark"

Much of Windy City's and AEE's advocacy centers on their assertion that, in the absence of the waivers, consumers on Adak Island will lose service. As GCI has set forth in its comments and ex parte letter of August 6, 2012, this is not the case. GCI will carry out its responsibilities as an ETC and ensure that telecommunications services remain available on Adak. With respect to wireless services, GCI stands ready to take over operation of the White Alice site (or to take equivalent measures substantially to maintain wireless coverage),[2] and can ensure continued connectivity between its cell site and its earth station by constructing microwave replacement facilities.[3] With respect to long distance services, GCI uses its own facilities for off-island communications today, and is thus not dependent upon AEE to maintain long distance service. GCI would be willing to enter into necessary interconnection arrangements with AT&T Alascom to preserve the ability of callers using AT&T Alascom's services to reach end users on Adak.[4] For enterprise users, including the rural health clinic, school, and fish processing plant, GCI can also construct wireless facilities to replace any transport links that it currently purchases from AEE, or that those enterprise users would need to reach GCI.[5] With respect to repair and maintenance, GCI can hire an on-island technician and provide additional support from its statewide operations, should AEE cease to be able to provide those services.[6] Lifeline services would continue to be available through GCI, as they are today.[7]

Although GCI does not currently provide Internet access on Adak Island, were AEE to cease doing so, GCI could deploy a WiFi-based fixed wireless broadband service, similar to what it has deployed in Dutch Harbor. Such a system could provide mass market broadband service to most, if not all Adak residents—at prices and included usage that are more favorable than AEE's today.[8]

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[2] *See* Comments of General Communication, Inc., at 2, WC Docket Nos. 10-90 et al. (filed July 2, 2012) ("GCI AEE Comments"); Ex Parte Notice from John Nakahata, Counsel, General Communication, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, at 2, WC Docket Nos. 10-90 et al. (filed Aug. 6, 2012) ("GCI Aug. 6, 2012 Ex Parte").

[3] *See* GCI Aug. 6, 2012 Ex Parte at 2. The approach of winter may make the lead time slightly longer than 120 days, depending on the weather.

[4] *See id.* at n. 3.

[5] *See id.* at 2-3.

[6] *See id.* at 3

[7] *See* GCI AEE Comments at 3.

[8] *See id.* at 3, n. 4.

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As GCI has previously stated, GCI believes it can do this all as Adak's only ETC within the existing $3000 per line per year annual cap on high cost support.[9]

The Principles of the *USF/ICC Transformation Order* Necessitate Denial of Nearly All of Windy City's Requested Additional Support.

The Windy City petition differs from many of the other high cost-related waivers that the Commission is now considering. With respect to the substantial majority of Adak Island's populated areas, Windy City is one of two wireless CETCs providing service—which has been the situation since both Windy City and GCI launched mobile wireless service in 2008.[10] As the other wireless CETC, GCI is providing service subject to the $3000 per line annual cap (as well as the Remote Alaska Cap), set forth in 47 C.F.R. § 54.307. Unlike Windy City, GCI has not sought a waiver of that cap.

This situation presents an important question: When is it reasonable to provide greater support to one CETC serving an area than to another CETC serving the same area? The principles set forth in the *USF/ICC Transformation Order* suggest that the answer should be nearly never. The *Order*, for example, does not support broadband deployment in areas served by an unsubsidized competitor.[11] In the situation in which two CETCs are competing head-to-head to serve a particular customer with wireless service, it is not competitively neutral to provide more support to one than the other. Windy City never justifies why, in the areas of Adak Island served by both Windy City and GCI, Windy City should receive more than three times the support per line that GCI receives. Yet that would be the result of granting its requested waiver.

Upgrading to 3G cannot be a reason to pay Windy City greater support during the transition to the Mobility Funds and Tribal Mobility Funds.[12] The express purpose of these new support mechanisms is to support upgrades to 3G where there is no such service today, and to have a fair and efficient method to determine which entity will receive such support for a given area. As discussed above, paying Windy City, but not GCI, extra support during the transition to permit an upgrade to 3G would preempt the Mobility Funds processes. Granting Windy City's waiver would be essentially the same as awarding 3G support to Windy City on a sole source

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[9] To the extent that any future high cost waivers might be requested with respect to service on Adak Island, GCI anticipates that they would be only with respect to, for Adak Island, the per line support reduction imposed on Remote Alaska CETC lines to stay within the Remote Alaska cap. *See* GCI Comments at n. 2 (stating that if GCI has sole responsibility for all ETC services on Adak Island, "it would… make sense to remove Adak Island from the Remote Alaska CETC Cap").

[10] *See* Ex Parte Notice from John Nakahata, Counsel, General Communication, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, at 1-2, WC Docket Nos. 10-90 et al., (filed June 11, 2012).

[11] *See CAF/ICC Transformation Order*, ¶ 24.

[12] *Cf.* Windy City June 10, 2012 Ex Parte at 3.

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basis without an auction or other competitive process. Such a result would be completely contrary to the letter and spirit of the *Order*.

The fact that Windy City may have higher costs per subscriber in the areas served by both carriers ("overlap area") should not justify a waiver with respect to those subscribers. One of the core goals adopted by the Commission is that it should "minimize the universal service contribution on consumers and businesses."[13] Paying Windy City more for serving subscribers in the overlap area does not do that. At the same time, within the overlap area, it is not necessary to pay Windy City more in order to "ensure universal availability of modern networks capable of providing advanced mobile voice and broadband service"[14]—one of the Commission's other goals—because consumer can also obtain service from GCI. Windy City's Petition itself appears to recognize this, as it justifies its request for waiver almost entirely based on areas for which Windy City is the only mobile wireless provider.[15]

Given that Windy City serves some areas that GCI does not serve today—with approximately ten subscribers in these areas[16]—the question arises whether Windy City should receive additional support for the incremental costs of serving these areas (*i.e.*, costs incurred for serving these areas that were not already incurred by serving the overlapping areas). Logically, the areas that Windy City serves—that GCI does not—can be divided into two groups. There are some areas that Windy City may serve because its 850 MHz band spectrum has better propagation characteristics than does GCI's 1900 MHz band spectrum. In these areas, there is no incremental cost of service, and thus no additional support would be justified.

For the areas served by the White Alice site, assuming that the Commission concludes that the coverage added by that site serves the public interest, there is no justification for providing WCC interim support exceeding the reasonable and prudently incurred incremental costs of (i) constructing and (ii) operating the site. All other costs—including common costs—are covered by the support for the rest of the area, which is subject to market-based competition. Construction and operation, however, also can and should be evaluated separately as construction costs are sunk and operating costs are ongoing.

Ideally, if the White Alice site were not already constructed, the Commission could hold a reverse auction or some other competitive mechanism, as it has proposed for the Mobility and Tribal Mobility Funds, to determine the appropriate amount of incremental support for construction and operating costs. However, given that the White Alice site has already been constructed, another approach is necessary. In this case, GCI's willingness to extend coverage (through operation of the White Alice site or otherwise) provides a market-based indication that

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[13] *USF/ICC Transformation Order,* ¶ 17.

[14] *Id.*

[15] *See* Petition of Windy City Cellular, LLC, at 13-14, WC Docket Nos. 10-90 et al. (filed Apr. 18, 2012).

[16] *See Connect America Fund, Universal Service Reform—Mobility Fund, Petition for Waiver of Windy City Cellular, LLC,* Order, ¶6 n. 15, 27 FCC Rcd. 6224, DA 12-923 (2012).

the existing per line support levels are sufficient to cover operating costs. An advantage of using another ETC's willingness to provide service at the same level of support as a guide for determining whether to provide incremental support is that it takes into account all of the ongoing costs, including corporate operations expenses, and imposes the same type of fiscal discipline as an unsubsidized competitive market. Accordingly, there is also no justification for providing Windy City with additional support for the ongoing operating costs of the White Alice site.

This leaves as the only remaining issue the sunk costs of construction for the White Alice site (including radios). To the extent that it serves the public interest to have the site, the Commission could provide support for the incremental sunk costs of construction on a one time basis. However, the Commission should limit any such incremental support only to the reasonable and prudently incurred costs, and it should reduce those costs by the amount of accumulated depreciation. Moreover, if the Commission was to provide incremental support for past construction, it should also make clear that, to the extent the ETC receiving support for construction did so it would be obligated to transfer the site to another ETC in the event that it ceased operations. This is because the site will effectively have been paid for entirely by USF support.

Accordingly, because GCI has said that it would be willing to take over operation of White Alice (or to take equivalent measures) and serve Adak with mobile service at the existing per line support levels, the Commission should deny WCC's waiver request except potentially with respect to the reasonable and prudently incurred incremental construction costs of the White Alice site.

AEE's Waiver Raises Significant Questions as to the Best Way to Allocate Scarce USF High Cost Resources.

With respect to AEE, the question should be whether additional support is necessary to support the Commission's voice and broadband goals on Adak. GCI has already established that it can prevent the island from "going dark" with a few months lead time. The Commission should be wary of pumping more USF money into a network that appears to be delivering little incremental benefit and only the barest of Internet access services. In 2011, USAC data indicates that AEE received approximately $2.68 million in high cost support disbursements. Granting AEE's petition would result in shielding AEE from phasing down its high cost support by approximately $2.2 million per year.[17] This raises a substantial question of whether this is the best way for the Commission to spend $2.2 million per year. For example, $2.2 million per year

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[17] USAC reports that Adak Telephone Utility has 155 working loops. *See* Appendix HC05, Fourth Quarter 2012, *available at*: http://www.usac.org/about/tools/fcc/filings/2012/Q4/HC05%20-%20High%20Cost%20Loop%20Support%20Projected%20by%20State%20by%20Study%20Area%20–%204Q2012.xls. This equates to $465,000 in annual high cost support at $3000 per line per year.

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could alternatively support mobile wireless deployments to villages in Alaska with no mobile wireless service today.

According to the 2010 Census, there are 44 occupied housing units on Adak Island (only ****BEGIN CONFIDENTIAL****[redacted] ****END CONFIDENTIAL****, with 33 more identified as "vacant due to seasonal use" meaning they likely house fisherman in the summer fishing season. AEE has, to date, not identified any units that can receive wireline service, but that cannot receive wireless service. If this is correct, then AEE is seeking approximately $28,600 in additional high cost support for every occupied or seasonally occupied housing unit, even though all of these are within wireless coverage.

Moreover, it is not at all clear that substantial support is necessary to serve enterprise customers. According to the line count data submitted, AEE served ****BEGIN CONFIDENTIAL****[redacted] ****END CONFIDENTIAL**** These enterprises are likely concentrated in the "downtown" portions of Adak Island, in addition to the fish processing plant.

The data also leads to the conclusion that AEE is operating below minimum viable scale, and thus is inefficient. For example, ****BEGIN CONFIDENTIAL****[redacted] ****END CONFIDENTIAL**** Rather than providing continuing additional subsidies for sub-scale operations, the Commission should be pushing these small operations to combine with other entities to gain scale.

To the extent the Commission is concerned about how best to support Internet access service on Adak Island, rather than simply granting AEE a waiver of 47 C.F.R. § 54.302, it should conduct a reverse auction or RFP for high cost support to provide a specified level of broadband service. The Commission could specify the speeds to be achieved and end user rates/included usage and the period for which support is being determined (which should not be less than five years). Then it could seek bids for the level of support necessary for provision of broadband Internet access under those conditions. Given that this would involve only a single service area with only two ETCs, this could be conducted relatively quickly. It would also not reduce the Commission's flexibility with respect to a future broadband-oriented CAF for the areas served by rate-of-return ILEC, but it could provide some insight for the Commission as it considers such mechanisms. As described above, GCI believes that it could deploy a WiFi-based wireless Internet access service on Adak similar to that deployed in Dutch Harbor, with similar rates and included usage, all of which is superior to AEE's current Internet access offerings.[18]

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[18] *See* GCI AEE Comments at 3-4.

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GCI urges the Commission to consider the Windy City and AEE petitions for waiver from the perspective of what services will be available to consumers in the absence of the waiver, rather than simply bailing out Windy City's and AEE's finances. If the Commission's goal is truly to bring broadband services—and the attendant economic, health, educational, and public safety benefits—to as many rural Americans as possible, it should focus on that goal. The Commission should not provide additional support where it would not result in additional service, and would adversely impact a more efficient competitor by foreclosing it from offering 3G services in the future.

Sincerely

John T. Nakahata
Counsel for General Communication, Inc.

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