

September 17, 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 - 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. Petitions for Waiver – Adak Eagle Enterprises and Windy City Cellular**

Dear Ms. Dortch:

On September 13, 2012, Larry Mayes, President and CEO of Adak Eagle Enterprises, LLC (“AEE”) and Windy City Cellular, LLC (“WCC”), Andilea Weaver, the companies’ Chief Operations Officer, and their counsel, Monica Desai, met with Priscilla Argeris (Legal Advisor to Commissioner Rosenworcel). In the meeting, AEE and WCC focused on process concerns related to the Petitions for Waiver filed by each company and the continued urgent need for relief. The parties also discussed the companies’ response to the “efficiency” arguments raised by General Communication, Inc. (“GCI”).¹ In addition to describing the September 13 meeting, this ex parte notice responds to the most recent ex parte filed by GCI on September 11, 2012.² With mounting financial losses and a reduced staff, this is the last response AEE and WCC will make to questions raised by GCI.

Process Concerns.

In the September 13 meeting, WCC and AEE emphasized that it has been 163 days since the WCC Petition was filed and 114 days since the AEE Petition was filed. The companies have

¹ See Petition for Waiver of Adak Eagle Enterprises, LLC, WC Docket No. 10-90, *et al.*, filed May 22, 2012 (“AEE Petition”); Petition for Waiver of Windy City Cellular, LLC, WC Docket No. 10-90, *et al.*, filed April 3, 2012 (“WCC Petition”); *see also* Letter from Monica Desai and Jennifer Richter, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, filed September 4, 2012 (“AEE/WCC September 4 Ex Parte”).

² See Letter from John T. Nakahata, Counsel, General Communication, Inc., to Marlene H. Dortch, Notice of Ex Parte, WC Docket 10-90, *et al.*, filed September 11, 2012 (“GCI September 11 Ex Parte”).

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received no indication of when the Commission will move forward with a final decision on either Petition.³ The companies have promptly responded to all requests for information, and have consistently offered to provide whatever additional information staff desires in order to expeditiously reach a decision.

The companies were alarmed when for the first time, only eleven (11) days before the August 30 decision deadline on AEE's Petition, staff requested a voluminous set of new information during a conference call on Friday afternoon, August 17.⁴ On Tuesday, August 21, the same day AEE and WCC provided their second submission of supplemental information in response to the August 17 conference call, and only nine (9) days before a decision on AEE's Petition was anticipated, staff memorialized their questions in a letter to AEE and WCC and informed the companies that they had stopped the clock on the Commission's August 30 deadline for rendering a decision.⁵ The Bureaus stated that they will restart the clock "once the new evidence has been provided to us in a format and with sufficient explanation and back-up information to enable us, and third parties entitled to have access to the information, to adequately evaluate it."⁶

WCC and AEE expended significant time, effort and resources to rapidly provide detailed information responding to the new questions through a series of additional filings on Monday, August 20, Tuesday, August 21, Wednesday, August 22, and Monday, August 27.⁷

Since August 27, AEE and WCC have repeatedly asked whether the information the companies provided is in an acceptable format for staff review and contains sufficient detail to restart the clock. Although the companies responded to the new questions posed by Bureau staff

³ Today marks 167 days since the filing of the WCC Petition, and 118 days since the filing of the AEE Petition.

⁴ 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, ¶ 544 (2011) ("*USF/ICC Transformation Order*").

⁵ See Letter from Julie A. Veach, Chief, Wireline Communications Bureau ("WCB"), and Ruth Milkman, Chief, Wireless Telecommunications Bureau ("WTB"), Federal Communications Commission, to Larry Mayes, WC Docket No. 10-90, *et al.*, dated August 21, 2012 ("WCB/WTB Letter").

⁶ *Id.* at 6.

⁷ See Letter from Monica Desai, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Ex Parte Notice and Submission of Supplemental Information, WC Docket No. 10-90, *et al.*, dated August 20, 2012 ("AEE August 20 Ex Parte"); Letter from Monica Desai, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Second Submission of Supplemental Information, WC Docket No. 10-90, *et al.*, dated August 21, 2012; Letter from Monica Desai, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Third Submission of Supplemental Information, WC Docket No. 10-90, *et al.*, dated August 22, 2012; Letter from Jennifer Richter, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Fourth Submission of Supplemental Information, WC Docket No. 10-90, *et al.*, dated August 27, 2012.

immediately, twenty-one (21) days after the last submission, the companies have only been told by the Bureaus that the information remains under review.

Delay and Uncertainty Have Cost Jobs and Put AEE and WCC in Financial Peril.

The waiver process has been extremely expensive, onerous and frustrating for a small carrier that is now operating at a loss for both its wireless and wirelines services while continuing to provide these services to remote Adak Island. WCC and AEE, in good faith, expended tremendous time, labor, and financial resources to submit the Petitions and included in their initial Petitions hundreds of pages of detailed information as required by the *USF/ICC Transformation Order*.⁸ WCC and AEE also submitted volumes of information through a subsequent series of supplemental filings.⁹ The costs to AEE and WCC to engage in this process have already been documented in prior filings, but the fees and costs continue to rise.

Since even before their Petitions were filed in April and May, WCC and AEE discussed the precarious position that the Commission's new USF rules put them in, and the urgent need for quick action in order to avoid layoffs, resume services that had been cut, and avoid lost opportunities due to the short construction season on Adak Island. WCC's and AEE's prior filings document the employees they have laid off, the contracts for needed infrastructure they have terminated, and the new opportunities to provide service that they have lost as a result of the financial impact of the *USF/ICC Transformation Order*.

WCC and AEE expended significant additional resources for Mr. Mayes and Ms. Weaver to travel to Washington, D.C. from Alaska twice to meet with Commission staff for the purpose of providing information, answering questions, and explaining the information submitted in support of their Petitions.¹⁰ Since filing their Petitions, AEE and WCC have regularly contacted Commission staff to check to see if any more additional information might be needed from either company and to volunteer their assistance in answering any questions the staff might have.

⁸ See *USF/ICC Transformation Order*, Section G, ¶¶ 539-544.

⁹ See, e.g., AEE and WCC ex parte filings dated April 6, 2012; April 9, 2012; April 12, 2012; May 4, 2012; May 17, 2012; May 21, 2012; May 24, 2012; June 11, 2012; and July 13, 2012.

¹⁰ See Letter from Monica Desai, Counsel, Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, dated April 6, 2012 (memorializing April 4, 2012 meetings with Commission staff); Letter from Monica Desai, Counsel, Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, dated April 9, 2012 (memorializing April 5, 2012 meetings with Commission staff); Letter from Jennifer L. Richter, Counsel, Windy City Cellular, LLC and Adak Eagle Enterprises, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, dated May 17, 2012 (memorializing May 15, 2012 meetings with Commission staff); Letter from Monica Desai, Counsel, Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, dated May 21, 2012 ("WCC May 21 Ex Parte") (memorializing May 17, 2012 meetings with Commission staff).

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As the Bureaus are aware, WCC is already operating at a loss. AEE began operating at a loss on July 1, and was further compromised by USF funding cuts that were implemented on August 31, when the NECA settlement for July was received. The August 31 settlement was the first NECA settlement to reflect the initial phase of funding cuts under Section 54.302 of the Commission's rules. WCC and AEE have repeatedly emphasized, and wish to reemphasize, that time is critical. Delays in decision-making regarding the requested relief have and will continue to both detrimentally impact operations and cause AEE to be out of compliance with its RUS loan covenants.¹¹

Relief Requested.

In order for WCC to continue providing wireless service to residents of Adak that only WCC can provide in certain areas, WCC requested a two-year delay and a five-year phased-in implementation of Section 54.307 of the Commission's rules, retroactive to January 1, and consistent with other Universal Service reforms for Alaska. Alternatively, at a minimum, WCC requested funding sufficient to cover operations until Mobility Fund Phase II support is made available to WCC. Similarly, in order for AEE to continue providing its exclusive wireline service to Adak Island, and not default on its RUS loans, AEE requested at least a two-year delay in the implementation of the \$250 per line, per month cap under Section 54.302 of the Commission's rules. As noted in its Petition, AEE will be unable to sustain service to the Adak area – now and in the future – without USF support roughly equal to the level received prior to the cuts implemented on July 1.¹²

The Bureau's decision to grant a three-year waiver of Section 54.302 for Allband Communications Cooperative ("Allband") supports the Bureaus in granting the relief requested by AEE and WCC.¹³ Justifications offered by the Bureau in support of the Allband decision are equally applicable to AEE and WCC.

Allband explained that absent relief, it would be unable to: "1) provide voice service to any of its customers; 2) pay the principal and interest on its Rural Utilities Service loan; and 3) continue operations as a telecommunications carrier."¹⁴ In granting Allband's waiver, the Bureau emphasized:

¹¹ AEE is out of compliance with the covenants of its RUS loan agreement, which require AEE to maintain a certain financial tier level. See Section 5.12 of AEE's RUS Loan Agreement, dated January 11, 2006.

¹² See AEE Petition at 39-40. AEE understands that if the requested relief is granted, the company will be required to periodically validate its need for support above the \$250 per line, per month cap. See *USF/ICC Transformation Order*, ¶ 278.

¹³ See *In the Matter of Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules*, Order, DA 12-1194, WC Docket No. 10-90 (rel. July 25, 2012) ("Allband Order").

¹⁴ Allband Order, ¶ 5.

- “Unlike many other incumbent telephone companies, Allband is a relatively new company, and therefore has significant start-up costs and undepreciated plant.”¹⁵ AEE and WCC are also relatively new companies that had significant start-up costs and have undepreciated plant. AEE received a Temporary Operating Certificate in 2004 and first began service in 2005, only seven years ago. WCC initiated service in 2009, only three years ago.
- “Allband serves a remote, heavily forested and unserved area in the lower peninsula of Michigan, including portions of four counties that previously had no service.”¹⁶ Similarly, AEE and WCC serve one of the most remote areas of the country with extreme weather, including cyclonic winds, heavy rain, unpredictable snow, earthquakes, tsunamis, and extreme terrain.¹⁷ Like Allband, AEE and WCC also were the first carriers to provide comprehensive service to a previously unserved area.¹⁸
- “Allband’s service territory is difficult to serve and has very few customers.”¹⁹ AEE and WCC have clearly explained the difficult challenges of serving a remote and sparsely populated Alaskan Island with severe weather conditions and extreme terrain.²⁰
- Allband was formed after “no other service provider was willing to provide service to the area.”²¹ AEE similarly undertook the substantial challenge to become the first private communications service provider on Adak after three larger, established carriers were approached and no other service provider was willing to provide service to the area.²²
- “In reviewing Allband’s financial statements, it appears that the management of Allband is mindful of its expenses and limited financial resources given the size of its business.”²³ AEE and WCC have submitted numerous financial statements and accounting records

¹⁵ *Id.*, ¶ 11.

¹⁶ *Id.*

¹⁷ *See* AEE Petition at 6-7; WCC Petition at 3-4.

¹⁸ *See* AEE Petition at 6; WCC Petition at 5.

¹⁹ Allband Order, ¶ 11.

²⁰ *See* AEE Petition at 6-7, Attachment B (ATU Story).

²¹ Allband Order, ¶ 11.

²² *See* AEE Petition at 6; WCC Petition at 5.

²³ Allband Order, ¶ 12.

demonstrating the companies' success in offering reliable, comprehensive service in an extremely high-cost area while operating within limited financial resources.²⁴ Even with the limited resources it had, garnering less USF support than GCI, WCI invested more in building out infrastructure to serve Adak Island than did GCI. AEE and WCC also have repeatedly shown that their employee salaries are in line with wage schedules provided by NTCA and the Alaska Department of Labor.²⁵

- “Allband is not in a position to immediately reduce its expenses in these areas. Similarly, given the low population density in Allband’s service territory, Allband also will not be in a position to increase its revenues from consumers in the short term.”²⁶ These statements are equally applicable to AEE and WCC as a result of the low population density in Adak.

The specific justifications discussed above that were given by the Bureau in support of the Allband waiver equally support grant of the waivers requested by AEE and WCC. Moreover, the Bureau’s decision to grant Allband a 3-year waiver was more generous than the relief sought by AEE and WCC.²⁷

AEE Now Requires Interim Relief.

Since the Commission has stopped the 90-day decision clock, AEE now requires interim relief in order to try to come back into compliance with the covenants of its RUS loan agreement. Without interim relief, and faced with the uncertainty of when a decision will be made regarding long-term relief – and not even knowing whether the staff needs more or differently formatted information from WCC and AEE – the companies are at an operational standstill and are suffering under the increasing financial strain of reduced funding and increased costs to pursue this relief from the Bureau. Their facilities are deteriorating, they are being forced to terminate employees, and they have lost opportunities for additional needed build-out as the annual construction window closes due to the weather conditions on Adak Island.

Response to GCI Ex Parte of September 11.

In its most recent filing, GCI asserts that AEE and WCC have not addressed the “reasonableness” of applying GCI’s “proposed framework” for how the Commission should

²⁴ See, e.g., AEE August 20 Ex Parte at Attachment 1; AEE/WCC August 27 Ex Parte at Attachment 5.

²⁵ See Letter from Monica Desai, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, Schedule 2, filed June 11, 2012.

²⁶ Allband Order, ¶ 12.

²⁷ *Id.*, ¶ 16.

evaluate waiver requests.²⁸ AEE and WCC are not responding to GCI's "proposed framework" because the proposal is both irrelevant and untimely. Any such proposals should have been subject to notice and comment during the USF rulemaking proceeding. GCI's biased and self-serving framework proposal does not warrant a response from AEE and WCC – and the Bureau cannot legitimately consider GCI's proposed framework because it was not adopted pursuant to notice and comment rulemaking, and it is not applicable here.

The specific framework that the Bureaus must use in evaluating the Petitions is set forth in Section G of the *USF/ICC Transformation Order*.²⁹ A carrier seeking a waiver "must demonstrate that it needs additional support in order for its customers to continue receiving voice service in areas where there is no terrestrial alternative."³⁰ As demonstrated in their Petitions and numerous subsequent filings, AEE and WCC meet this requirement. GCI is not currently equipped to provide service where AEE and WCC provide service today, and GCI's speculative promises for the future cannot be considered. The Bureaus also can consider whether the USF reforms at issue "would cause a provider to default on existing loans and/or become insolvent."³¹ AEE unfortunately meets this requirement, and is already out of compliance with its RUS loan covenants.

Absent a further request from the Commission, the following will be the companies' final response to GCI's claims. GCI's September 11 *ex parte* contains at least nine (9) material mischaracterizations which Bureau staff undoubtedly noted, but AEE and WCC will take this one last opportunity to set the record straight:

GCI Mischaracterization 1: AEE and WCC are attempting to use the waiver process to extract a competitive advantage.³²

- This is false. AEE and WCC are merely trying to preserve the needed service they provide to Adak Island and survive in the face of the USF reforms. For years, GCI has done well in competing for business in Adak even as AEE and WCC received the prior levels of USF support. This is reflected in the line counts GCI claims for Adak, which in every quarter are higher than the line counts reported by WCC.³³ It is GCI that has a

²⁸ GCI September 11 Ex Parte at 3.

²⁹ See *USF/ICC Transformation Order*, Section G, ¶¶ 539-544.

³⁰ *Id.*, ¶ 540.

³¹ *Id.*

³² See GCI September 11 Ex Parte at 1.

³³ See AEE/WCC September 4 Ex Parte at 2, n.5; see also, e.g., <http://www.usac.org/about/tools/fcc/filings/2011/Q1/HC18%20-%20CETC%20Reported%20Lines%20by%20Incumbent%20Study%20Area%20-%20High%20Cost%20Loop%20Support%20-%201Q2011.xls> (displaying 224 lines reported by GCI versus 105 lines reported by WCC in the first quarter of 2011).

competitive advantage through its apparent ability to leverage its Alaska Airlines partnership to entice customers to sign up for multiple lines, whether or not those customers actually use the GCI service. Grant of the AEE and WCC waiver requests, which will afford the companies less USF funding than received previously – and only half the amount of support in the case of WCC – will not improve AEE’s and WCC’s competitive advantage relative to GCI.

GCI Mischaracterization 2: WCC seems to acknowledge that waiver support for an upgrade to 3G would preempt the Mobility Fund/Tribal Mobility Fund processes.³⁴

- WCC did not acknowledge and did not even address this assertion made by GCI. WCC noted that GCI conveniently ignored the many impacts that the cut in funding has had on WCC.³⁵ At this point, WCC is focused on survival and nothing else.

GCI Mischaracterization 3: WCC appears to recognize that its waiver request should stand on its own, rather than being bootstrapped to AEE’s.³⁶

- AEE and WCC did not “recognize” that the companies’ waiver requests should not be considered together. AEE and WCC merely stated that the Commission has decided to consider the two Petitions together.³⁷ The Commission did not seek the input of AEE or WCC on this matter, and GCI did not file a petition for reconsideration of the Commission’s June 12 Interim Order in which the Commission stated its decision to review the AEE and WCC Petitions together.³⁸ This matter is closed and does not warrant further comment.

GCI Mischaracterization 4: GCI’s investments in Adak are just as substantial as WCC’s.³⁹

- GCI’s investments on Adak are visibly insubstantial. AEE and WCC previously submitted photographs showing the state of GCI’s infrastructure on Adak compared to the infrastructure deployed by WCC.⁴⁰ The photographs speak for themselves. If there is any question as to WCC’s and AEE’s independent investments to serve the Adak community, please see the attached lists of investments for each company at Attachment

³⁴ See *id.*

³⁵ See AEE/WCC September 4 Ex Parte at 5.

³⁶ See GCI September 11 Ex Parte at 1.

³⁷ See AEE/WCC September 4 Ex Parte at 7.

³⁸ See *In the Matter of Connect America Fund, et al.*, WC Docket 10-90, *et al.*, Order, ¶ 10 (rel. June 12, 2012) (“As discussed below, we will provide limited, interim support . . . pending further review of the WCC Petition, supplemental filings, and the AEE Petition.”).

³⁹ See GCI September 11 Ex Parte at 3.

⁴⁰ See AEE/WCC September 4 Ex Parte at Attachments 1 and 2.

1. Despite GCI's suggestion that the White Alice site should not be considered when evaluating the relative investments in Adak by GCI and WCC, WCC has, in fact, built two substantial cell sites which are required to serve the entire Adak Study Area.

GCI Mischaracterization 5: WCC's claim that AEE provides "necessary satellite equipment" for GCI wireless service is simply wrong.⁴¹

- WCC made no such claim. In its September 4 Ex Parte, AEE and WCC pointed out that GCI performs only the most basic maintenance and relies on the investments on Adak Island made by AEE in order to provide its service. In contrast, AEE and WCC explained that they "have reinvested the majority of their universal service funding for infrastructure and equipment including but not limited to" a list of multiple items, one of which was "necessary satellite equipment" to support their own reliable services – not GCI's.⁴²

GCI Mischaracterization 6: WCC's argument that it would violate competitive neutrality to provide greater absolute support (but the same support per subscriber) to a carrier that serves more customers, runs contrary to the operation of unsubsidized competitive markets, where participants earn greater revenue by serving more customers and decreasing costs.⁴³

- WCC made no such argument. In its September 4 Ex Parte, WCC pointed out that the only conclusion that can be drawn from GCI's arguments is that GCI wants to be the only carrier in the downtown Adak area, freezing out competition from WCC, which is not competitively neutral.⁴⁴ Also, the Commission has the responsibility to ascertain whether GCI actually "serves more customers." The declaration submitted by Adak's City Manager with AEE's and WCC's September 4 Ex Parte suggests that "line count" may not equal "customer count" in the case of GCI.

GCI Mischaracterization 7: WCC questions whether GCI would let Adak "go dark" based on statements made by GCI's CEO regarding reduced deployment plans in rural Alaska after the *USF/ICC Transformation Order*.⁴⁵

⁴¹ See GCI September 11 Ex Parte at 4.

⁴² See AEE/WCC September 4 Ex Parte at 2 ("WCC and AEE, in contrast, have reinvested the majority of their universal service funding for infrastructure and equipment including, but not limited to: (1) constructing two essential cell sites; (2) laying fiber; (3) repairing roads after construction; (4) providing necessary satellite equipment; (5) employing technicians and a mechanic; and (6) purchasing equipment – including trenching equipment, switches, a pipe locator, four-wheel drive vehicles, a power meter, fiber blowers, transformers and generators – necessary to provide reliable service to every resident and business on Adak – service that GCI relies upon.").

⁴³ See GCI September 11 Ex Parte at 4.

⁴⁴ See AEE/WCC September 4 Ex Parte at 5.

⁴⁵ See GCI September 11 Ex Parte at 4.

- As the prior filing made clear, WCC and AEE question GCI's intentions for Adak Island based not only on statements by GCI's CEO, but also on GCI's historical behavior. GCI conveniently does not address the fact that it could have rebuilt the telecommunications network in Adak when that work was needed in 2003 but chose not to do so.⁴⁶ The Bureau cannot take GCI's assertions about Adak at face value in view of its past behavior and its publicly-communicated future strategic plans.

GCI Mischaracterization 8: AEE questions whether wireless technologies, including both CMRS and WiFi, could be used to provide voice and Internet access service on Adak.⁴⁷

- AEE did not address CMRS technologies, nor did GCI in prior filings. In its September 4 Ex Parte, WCC responded to GCI's claims that it "could deploy a WiFi-based fixed wireless broadband service, similar to what it has deployed Dutch Harbor" and that 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."⁴⁸ WCC pointed out that the severe weather conditions in Adak, including snow, heavy rains, and cyclonic winds suggest that GCI's claims regarding its proposed WiFi service may not be reliable. As a matter of record, although AEE and WCC did not address the issue, the declaration provided by Adak's City Manager, filed with AEE's and WCC's September 4 Ex Parte, notes that GCI's CMRS service on Adak Island is not reliable either, and that GCI is not responsive to problems with its service even when the City Manager calls.⁴⁹

GCI Mischaracterization 9: WCC made a "false," "desperate" attempt to portray GCI as collecting subsidies for unused handsets.⁵⁰

- AEE and WCC pointed out the practice that was reported to them and leave to the Commission to investigate and evaluate whether GCI has ever reported unused lines for purposes of its universal service line counts.

Perhaps in an attempt to be helpful, GCI asserts that AEE could lower its operations expenses by "consolidating with other ILECs to spread the corporate overhead over a much larger base of operation."⁵¹ This suggestion is interesting, but it is not actionable. No other carrier has

⁴⁶ See AEE/WCC September 4 Ex Parte at 2.

⁴⁷ See GCI September 11 Ex Parte at 6.

⁴⁸ See AEE/WCC September 4 Ex Parte at 9; see also Letter from John T. Nakahata, Counsel for General Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, 4-5, filed August 29, 2012 ("GCI Ex Parte").

⁴⁹ See AEE/WCC September 4 Ex Parte at Attachment 3, Declaration of Layton J. Lockett, ¶ 5.

⁵⁰ See GCI September 11 Ex Parte at 5.

⁵¹ *Id.* at 7.

indicated an interest in combining its operations with the operations on Adak Island. GCI similarly, and unhelpfully, contends that the Commission should not give any consideration for the various projects (such as building a fiber line to a Conoco Phillips logistics support terminal) that are at a standstill while the companies await a Commission decision, either because the projects would use special access circuits or utilize some other funding mechanism.⁵² Regardless of the specific funding mechanism, AEE and WCC must be able to budget and plan for all projects up front and in advance. As a result of the cuts in USF support and uncertainty regarding future funding, all of their potential projects are stuck while the companies await Commission action because the companies cannot forecast how much funding they can devote to any given projects, or whether they will even be able to continue operating. In the meantime, the windows of opportunity have closed on many of these projects.

GCI urges the Commission to force AEE and WCC into bankruptcy so that GCI can acquire their assets for pennies on the dollar and become the sole provider of service on Adak Island.⁵³ Such an outcome would destroy the incentive for any company to take the risk and perform the necessary hard work to build a communications infrastructure providing service to a remote area. Mr. Mayes and Ms. Weaver did not take a salary for the first two years of AEE's operations. Mr. Mayes used his retirement funds, family savings, and small loans from banks – and maxed out his credit cards – in order to start AEE.⁵⁴ Mr. Mayes literally built portions of the infrastructure by hand. He invested his personal funds even before any assurance of RUS or USF funding because he wanted to provide service to Adak Island. It would be bad public policy for the Commission to give GCI, for pennies on the dollar, the assets that AEE and WCC worked so hard to build.

Further Examination of GCI's Efficiency Theory.

The *USF/ICC Transformation Order* does not indicate that claims by a competing service provider about its service and its efficiency should be considered by the Bureau as part of ruling on a waiver request by an unrelated company. But the Commission's various bureaus may want to

⁵² *Id.* at 8.

⁵³ *See, e.g.*, GCI September 11 Ex Parte at 2 (“...a waiver is not justified in any area in which the ETC seeking the waiver is the only ETC providing a certain type of service, if either another ETC would be willing, given the capital network facilities, to provide comparable service within the \$3000 per-line high-cost support cap ...”); *id.* at 3, n.7 (“Any such additional support, however, should be conditioned on an agreement to transfer the facilities [to] another mobile service ETC in the event that the recipient ETC ceased providing service and to provide voice and data roaming on reasonable and nondiscriminatory terms.”); Letter from Megan Delany, General Communication, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, 2, filed July 30, 2012 (“GCI explained rather that it would be able to continue and potentially expand its service to the Adak Island should AEE or Windy City be forced to shut down . . . Specifically, GCI discussed that while 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, meriting additional support, this support would not exceed the FCC's \$3000 per line limit.”).

⁵⁴ *See* ATU Story, attached to WCC May 21 Ex Parte.

evaluate GCI's "efficiency" theory more closely and on a separate track as it continues to move forward with USF reform. The Commission has the responsibility to investigate the details behind GCI's claimed efficiency. This is particularly important given the affidavit provided by the Adak City Manager, under penalty of perjury, regarding his personal knowledge of five (5) GCI lines taken by the City of Adak that are not used, and five (5) lines he himself has signed up for that are not used. AEE and WCC have no knowledge regarding whether GCI obtains USF funding for those ten (10) lines. To the extent GCI does receive USF funding for those or any other lines on Adak that are not actually used by the customer, this casts doubt on GCI's "efficiency" claims if its line counts do not equal its customer counts, and its costs and revenues per customer are higher than understood by the Commission. Ironically, it appears that GCI may have historically been enjoying significantly higher revenue on a per customer basis than WCC and AEE.

To the extent the Commission is considering GCI's assertions regarding its superior efficiency and its superior service, and its assertions that it "serves more customers,"⁵⁵ then the Commission should ask GCI probing questions to ascertain whether it has actually had a history of efficient and high quality service on Adak Island. Those questions should focus on how many separate customers GCI actually has, how many lines are taken by each of those customers, whether those customers are actually using the GCI lines or have signed up for them in exchange for receiving Alaska Airlines miles or some other gift or promotion, and the quality of GCI service, including E911. The Commission should also focus on how much USF support GCI has received based on lines attributed to Adak, what investments it has allocated to Adak, and what operating costs it has allocated to Adak. The Commission also should specifically ask how many customers GCI has signed up through the Alaska Airlines promotion,⁵⁶ how many lines each of those customers have, the value of that promotion for the customer, and the cost of that promotion to GCI. If GCI is claiming superior efficiency based on its ability to spread costs over statewide operations, the Commission should ask similarly probing questions related to its statewide operations.

If the Commission requires additional information from AEE and WCC that could reflect on the relative "efficiency" of GCI, the companies stand ready to provide whatever the Commission requests. Otherwise, AEE and WCC have neither the time nor the resources to continue engaging in an unnecessary back-and-forth dialogue with GCI.

Additional Supplemental Information.

Finally, AEE and WCC again provide a copy of the Declaration of Layton J. Lockett, including copies of the Alaska Airlines statements referenced therein,⁵⁷ at Attachment 2. As explained in

⁵⁵ See GCI September 11 Ex Parte at 4.

⁵⁶ See AEE/WCC September 4 Ex Parte at 3-4.

⁵⁷ See AEE/WCC September 4 Ex Parte at Attachment 3, ¶ 9, filed September 4, 2012.

the September 4 ex parte filed by AEE and WCC, the first statement shows the number of airline miles deposited into Mr. Lockett's personal airline mileage account after he purchased five (5) lines from GCI – none of which Mr. Lockett used, although he gave one (1) telephone to a family member for use outside of Adak.⁵⁸ The second statement shows the number of miles deposited into the City of Adak's corporate airline mileage account for the five (5) lines to which the City has subscribed, but does not use. Only one (1) line was used for a short period of time before serious problems with the GCI service were discovered and not resolved. Thereafter, the GCI service was not used.⁵⁹

Respectfully submitted,



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cc:

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Patrick Halley
Amy Bender
Katie King
Susan Miller
Soumitra Das

⁵⁸ See *id.*, ¶ 7.

⁵⁹ See *id.*, ¶¶ 4-5.

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Gary Michaels
Mark Rossetti
Carol Matthey
Sue McNeil
Jane Jackson
Margaret Weiner

Attachment 1

AEE and WCC Investment Information

Adak Telephone Utility, LLC
List of Investments as of 12/31/2011

Investment Description

Service Vehicles
(Used for Customer Premise visits, cargo pickup, site surveying, hauling fiber reels, plowing)
Utility Service Vans
(Hold inventory for field repairs or installs, inside wire installs)
ATV's
(Used for Remote access to bunkers, in summer months for fiber inspections)
Case 580 SM Bucket Truck
(Used for moving soil for fiber placement)
26" Alaskan HT Galley Boat
(Holds Fiber reel for installing at boat harbor and fishing pier)
Blizzard Plow Model 810
Cable Analyzer
EXFO Power Meter
Lawn Mower
Pipe Locator
Cable Jet Equipment
Building Unit 177ABCD Sandy Cove
Building Satellite-Radome
Furniture - Adak Bldg Unit 177
Dell desk top Computers with Flat screens
Dell E5310, 2x4 MB 1.6 GH Servers
Dell Lap Top Computers
Dell 1110 laser printer
Tekelec Switch & Equip
Battery Plant & Inverter
Transfer Switch
Rectifier
KW Generator
48 Port Ethernet Switch
16 Port Ethernet Switch
Satellite Antenna & Equipment
Concrete for Satellite Pad
Fiber Mux Equipment

Employees on Adak

Full time Combination technicians on Adak
Full time Mechanic
Retail store Clerk

Adak Telephone Utility, LLC
List of Investments as of 12/31/2011

Investment Description

SDLS Modems
560 Quad T1 cards
Underground Fiber Optic Cable
Road Repair after construction
Hydroseeding fiber route
CSTM Alum Warning Signs

Employees on Adak

Windy City Cellular, LLC
List of Investments

Investment Description

Employees on Adak

Polaris -Snowmachine

Share Adak Employees for cost savings

Trait Toboggan & Hitch

(To carry supplies behind snowmachines)

Cisco 2821 Router with additional memory

Firewall & Router connectivity between Nodes Adak & Telalaska Node2 in Anchorage

Downtown Cell Bldg Shelter

Downtown Radios

Downtown Base Station (Switch)

Downtown Cell Tower

Prepare Satellite Dish for Cellular Traffic

White Alice Shelter

White Alice Base Station (Switch)

White Alice Tower

White Alice Radios

Retail Store

Attachment 2

Declaration of Layton J. Lockett

DECLARATION OF LAYTON J. LOCKETT

I, Layton J. Lockett, declare that the following is true and correct to the best of my knowledge and belief:

1. I am the City Manager for the City of Adak in Alaska.
2. Currently the City of Adak pays for service from General Communications, Inc D/B/A GCI/Alaska Wireless ("GCI") for five cellular telephone lines, and received five free phones from GCI, but the service from GCI is not actually used. The City originally signed a contract for five lines with GCI in 2010 in order to gain the mileage that was being offered by GCI as a promotion. The previous city clerk signed up for the offer which gave the City 250,000 Alaska Airlines miles if the City would sign up for 5 lines of service from GCI (50,000 per line). Given our fiscal position at the time, these air miles allowed staff to travel for business without using the limited cash the City had on hand (the City at that time was near insolvency).
3. Within three months of my employment in 2010 I sought to cancel the contract because the City of Adak did not use the five lines from GCI. Unfortunately, after looking at the costs I decided it made more fiscal sense to just pay the bill for the unused phone lines and let the contract expire. GCI came back to Adak in April of 2012 and at the time the promotion was still active, The promotion however was reduced to offering 25,000 miles per line (125,000) total for a maximum of five lines. Since phones were also given for free, I recalculated the cost of purchasing the miles vs. paying the monthly bill for the unused phone lines, and it was still cheaper to renew the contract with GCI for five cellular lines that we won't use rather than purchase airline mileage.
4. Although we have not actively used the GCI service, we have deployed one of the phones we received from GCI for our mobile 911 service. I installed a Windy City Cellular ("WCC") sim card in the GCI phone and exclusively use the WCC service. One sim chip from GCI is being held for immediate backup for the 911 mobile system as protection should Windy City Cellular's network fail for any prolonged period of time. It is my hope that possessing the GCI sim card will at some point allow us to decipher data from their network to determine which of their phones call 911 since they do not currently transmit usable, tracable data to 911.
5. In the third quarter of 2010, I had experimented with using the GCI wireless service for the mobile 911 system, however we immediately abandoned using that service less than a week later when their network went down. I had to plea with the senior management in Unalaska for them to reboot the network as they had no on-island presence. Furthermore, I had to explain that our mobile 911 system was on their network and could not answer any emergency calls while their network was down. As a result, I immediately cancelled the experiment as WCC has 24/7 staff on island that can respond immediately.
6. I personally have an iPhone and plan with AT&T, the plan and phone number of which I have had since 2002, and I use this phone on the island. It should be noted that I am aware that on Adak I am roaming on the WCC network.

7. After several GCI visits to the island, each time with the airline promotion and phones, I decided to personally sign up for the GCI promotion by purchasing five lines. Paying for GCI service (all five lines) is less expensive than paying for the equivalent mileage and/or flights to/from Adak Island. If I purchased the equivalent of the air miles from Alaska Airlines, I would pay \$3,695 (125*29.56 [includes the 7.5% tax]) versus \$2,276 (94.82*24 months) practically financed at 0% (technically the present value would be even less) so from a finance perspective I signed up. I also received 5 smart phones (several Samsung Galaxy II phones and HTC Acquire phones) valued at over \$200 each that conceivably reduces my net present value cost even further. Four of these phones I have in storage, though I did give one phone to a family member, who does not live on Adak, to use in a few communities where AT&T does not have a roaming agreement. This family member, when they do visit Adak, forwards the GCI phone number to the AT&T phone. On occasion, I will forward one of the phone numbers to my AT&T cell phone to mask my permanent number..
8. When I do use a GCI phone I have reception problems and therefore cannot rely on the coverage for much. In residing in the Kuluk neighborhood the signal strength is significantly less than what I receive through WCC. With the new tower at White Alice that Windy City Cellular installed, the coverage for myself and the city's 911 phone allows us to venture outside the core area while being accessible. As an example, when travelling to the northern areas of the city limits, to monitor our water/refuse infrastructure we regularly are outside GCI service area but not the WCC service area. Furthermore, the building materials the U.S. Navy utilized (consisting of dense metals, concrete, etc) reduce signal strength in areas of town and in most buildings.
9. Attached is my Alaska Airlines statement showing the miles being deposited into my personal airline mileage account after I bought five lines from GCI, that I do not use, notwithstanding the phone mentioned in item 7. Furthermore, attached is the Alaska Airlines statement showing the miles deposited in to the City's corporate airline mileage account for the five lines the City of Adak pays for but does not use.

I declare the foregoing under penalty of perjury. Executed on this 4th day of September 2012.



Layton J. Lockett
City Manager
City of Adak, Alaska
Phone: 907-592-4500 ext. 302

	[REDACTED]			
07/25/2012	[REDACTED]	1333	[REDACTED]	[REDACTED]
07/25/2012	[REDACTED]	1537	[REDACTED]	[REDACTED]
07/24/2012	[REDACTED]	3990	[REDACTED]	[REDACTED]
07/24/2012	[REDACTED]	1593	[REDACTED]	[REDACTED]
07/22/2012	[REDACTED]	138	[REDACTED]	[REDACTED]
07/12/2012	[REDACTED]		[REDACTED]	0
07/08/2012	[REDACTED]	160	[REDACTED]	[REDACTED]
07/07/2012	[REDACTED]		[REDACTED]	0
07/07/2012	[REDACTED]		[REDACTED]	0
07/07/2012	[REDACTED]		[REDACTED]	0
07/05/2012	[REDACTED]		[REDACTED]	0
07/01/2012	SPECIAL SERVICES AIR CARE KIT	161	[REDACTED]	0
06/24/2012	SPECIAL SERVICES AIR CARE KIT	460	[REDACTED]	0
06/23/2012	[REDACTED]		[REDACTED]	0
06/06/2012	[REDACTED]		[REDACTED]	0
06/06/2012	[REDACTED]		[REDACTED]	0
06/04/2012	[REDACTED]		[REDACTED]	0
06/04/2012	[REDACTED]		[REDACTED]	0
06/02/2012	[REDACTED]		[REDACTED]	0
05/29/2012	[REDACTED]		[REDACTED]	0
05/29/2012	ALASKA AIR [REDACTED]		[REDACTED]	0

05/29/2012	[REDACTED]		0	[REDACTED]
05/29/2012	[REDACTED]		0	[REDACTED]
05/29/2012	[REDACTED]		0	[REDACTED]
05/29/2012	[REDACTED]		0	[REDACTED]
05/24/2012	[REDACTED]		0	[REDACTED]
05/07/2012	[REDACTED]		0	[REDACTED]
05/07/2012	[REDACTED]		0	[REDACTED]
04/16/2012	[REDACTED]		0	[REDACTED]
04/16/2012	[REDACTED]		0	[REDACTED]
04/09/2012	[REDACTED]		0	[REDACTED]
04/09/2012	GCI ALASKA GCI SWEEPSTAKES		125,000	125,000
04/09/2012	[REDACTED]		0	[REDACTED]
04/09/2012	[REDACTED]		0	[REDACTED]
04/09/2012	[REDACTED]		0	[REDACTED]
04/05/2012	[REDACTED]		0	[REDACTED]
04/05/2012	[REDACTED]		0	[REDACTED]
03/29/2012	[REDACTED]		0	[REDACTED]
03/07/2012	[REDACTED]		0	[REDACTED]
03/07/2012	[REDACTED]		0	[REDACTED]
03/06/2012	ALASKA AIRLINES [REDACTED]	731	[REDACTED]	[REDACTED]
03/06/2012	ALASKA AIRLINES [REDACTED]	7	[REDACTED]	[REDACTED]
03/02/2012	[REDACTED]	8	[REDACTED]	[REDACTED]



City of Adak

EasyBiz® Account

EasyBiz Wallet

EasyBiz® Mileage - Activity

Transactions

Expiration Dates

EasyBiz Mileage

EasyBiz Discount Codes

Valid

Used

FormName:

UCMyEasyBizActivity

Member Name: CITY OF ADAK

Mileage Plan Number: [REDACTED]

Available Miles: [REDACTED]

Show By:

All Activity

Activity Date

Past 6 Months

Activity Date	Activity Type	Flight	Miles	Bonus	Total
08/20/2012	ALASKA AIRLINES [REDACTED]		[REDACTED]	0	[REDACTED]
08/20/2012	ALASKA AIRLINES [REDACTED]		[REDACTED]	0	[REDACTED]
08/20/2012	ALASKA AIRLINES [REDACTED]		[REDACTED]	0	[REDACTED]
08/20/2012	ALASKA AIRLINES [REDACTED]		[REDACTED]	0	[REDACTED]
08/16/2012	ALASKA AIRLINES [REDACTED]		[REDACTED]	0	[REDACTED]
08/10/2012	ALASKA AIRLINES [REDACTED]		[REDACTED]	0	[REDACTED]
08/10/2012	ALASKA AIRLINES [REDACTED]		[REDACTED]	0	[REDACTED]
08/10/2012	ALASKA AIRLINES [REDACTED]		[REDACTED]	0	[REDACTED]
08/10/2012	ALASKA AIRLINES [REDACTED]		[REDACTED]	0	[REDACTED]
07/18/2012	EASYBIZ [REDACTED]		[REDACTED]	0	[REDACTED]
07/18/2012	EASYBIZ [REDACTED]		[REDACTED]	0	[REDACTED]

07/18/2012	ALASKA AIRLINES [REDACTED]	[REDACTED]	0	[REDACTED]
07/18/2012	ALASKA AIRLINES [REDACTED]	[REDACTED]	0	[REDACTED]
07/17/2012	ALASKA AIRLINES [REDACTED]	[REDACTED]	0	[REDACTED]
07/17/2012	ALASKA AIRLINES [REDACTED]	[REDACTED]	0	[REDACTED]
07/17/2012	ALASKA AIRLINES [REDACTED]	[REDACTED]	0	[REDACTED]
07/17/2012	ALASKA AIRLINES [REDACTED]	[REDACTED]	0	[REDACTED]
07/17/2012	ALASKA AIRLINES [REDACTED]	[REDACTED]	0	[REDACTED]
07/17/2012	ALASKA AIRLINES [REDACTED]	[REDACTED]	0	[REDACTED]
05/10/2012	ALASKA AIRLINES [REDACTED]	[REDACTED]	0	[REDACTED]
04/25/2012	GCI ALASKA GCI SWEEPSTAKES	125,000	0	125,000
04/24/2012	EASYBIZ [REDACTED]	[REDACTED]	0	[REDACTED]
04/24/2012	ALASKA AIRLINES [REDACTED]	[REDACTED]	0	[REDACTED]

Note: Depending on the partnership, activity will appear on your account 30-60 days after you have earned miles. If you do not see activity after 60 days, contact Mileage Plan.

Attachment 3

Declaration of Andilea Weaver

DECLARATION OF ANDILEA WEAVER
ADAK EAGLE ENTERPRISES, LLC AND WINDY CITY CELLULAR, LLC

I, Andilea Weaver, declare the following is true and correct to the best of my knowledge and belief:

I am the Chief Operations Officer of Adak Eagle Enterprises, LLC and Windy City Cellular, LLC. I have reviewed the attached Ex Parte Notice, including all attachments, and attest, under penalty of perjury, that the facts contained therein are known to me and are accurate.

Executed on this 17th day of September 2012.



Andilea Weaver
Chief Operations Officer
Adak Eagle Enterprises, LLC and
Windy City Cellular, LLC