

September 20, 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 18, 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 Nicholas Degani (Wireline Legal Advisor to Commissioner Pai). 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.¹ The parties also discussed the companies’ response to the “efficiency” arguments raised by General Communication, Inc. (“GCI”).²

During the meeting, AEE and WCC highlighted recent remarks made by Commissioner Pai regarding the need for a stable, predictable, and transparent USF process:

“...[F]uture funds need to be stable and predictable so that companies can make long-term investments. Our rules of the road can’t change every year or two, and Washington’s funding formulas for carriers shouldn’t redistribute money annually in an arbitrary or haphazard manner. We also need a transparent system for

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”).

² See 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”); 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.*, filed September 17, 2012 (“AEE/WCC September 17 Ex Parte”).

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distributing funds, one that companies can understand to plan their investments and that government watchdogs can follow to guard against waste, fraud, and abuse. And simplicity is essential if the system is going to work; we cannot create a regulatory framework so complicated that the only people who understand it work at the FCC.”³

AEE and WCC emphasized that the staggering 84% flash-cut reduction to WCC’s funding, effective immediately and without warning under the *USF/ICC Transformation Order*,⁴ and the onerous and complicated waiver process related to their subsequent Petitions, have been the exact opposite of the “stable” and “predictable” process called for by Commissioner Pai.

The companies reiterated that it had been 168 days since the WCC Petition was filed and 119 days since the AEE Petition was filed.⁵ The Commission stopped the 90-day decision clock on August 21 and, despite the companies’ prompt response to the additional information requested by staff, they have received no indication of when the Commission will move forward with a final decision on either Petition. AEE and WCC summarized the process concerns discussed in their September 17 Ex Parte,⁶ and emphasized that they have consistently offered to provide whatever additional information staff desires in order to expeditiously reach a decision.

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 Bureaus. 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. The companies have been unable to “plan their investments” as called for by Commissioner Pai.

WCC began operating at a loss a few weeks after the *USF/ICC Transformation Order* was issued. AEE began operating at a loss on July 1, and was further compromised by USF funding cuts that were realized 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 that time is critical. Delays in decision-making regarding the requested relief have and will continue to

³ Opening Remarks of Commissioner Ajit Pai at Rural Broadband Roundtable, Oswego, Kansas, September 6, 2012.

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, n.880 (2011) (“*USF/ICC Transformation Order*”).

⁵ Today marks 170 days since the WCC Petition was filed and 121 days since the AEE Petition was filed.

⁶ See AEE/WCC September 17 Ex Parte at 1-3.

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both detrimentally impact operations and cause AEE to be out of compliance with its RUS loan covenants.⁷

AEE and WCC emphasized the reasonableness of providing them with relief similar to the relief afforded to other carriers in Alaska. WCC has 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 has requested funding sufficient to cover operations until Mobility Fund Phase II support is made available to WCC. Without such relief, WCC will be unable to continue providing wireless service on Adak – including portions of the study area not served by GCI – and will also be forced to discontinue providing the only broadband service currently available on Adak. Similarly, in order for AEE to continue providing its exclusive wireline service to Adak Island, and not default on its RUS loans, AEE has 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.

AEE and WCC highlighted the ways in which the Wireline Bureau's decision to grant a three-year waiver of Section 54.302 for Allband Communications Cooperative supports the Bureaus in granting the relief requested by AEE and WCC.⁸

Additionally, AEE stressed its need for 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.

Finally, AEE and WCC highlighted their response to GCI's "efficiency" arguments in their September 17 Ex Parte.⁹ The companies emphasized that, 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,"¹⁰ 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

⁷ 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.

⁸ *See* AEE/WCC September 17 Ex Parte at 4-6; *see also 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).

⁹ *See* AEE/WCC September 17 Ex Parte at 6-12; *see also* 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").

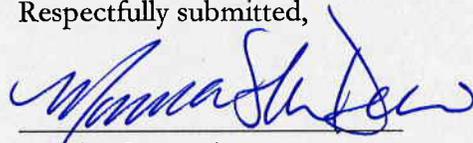
¹⁰ *See* GCI September 11 Ex Parte at 4.

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GCI lines or have signed up for them in exchange for receiving Alaska Airlines miles or some other gift or promotion, the quality of GCI service, including E911, the amount of Universal Service funding GCI has received based on service to Adak, and what investments and operating costs GCI allocates to its service on Adak. 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.

Respectfully submitted,



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