

November 13, 2012

REDACTED—FOR PUBLIC INSPECTION

VIA HAND DELIVERY AND EMAIL

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

*Re: Opposition of General Communication, Inc. to Cordova Wireless
Communications, Inc.'s Petition for Waiver of Universal Service Rules, WC
Docket No. 10-90, WT Docket No. 10-208*

Dear Ms. Dortch:

General Communication, Inc. (“GCI”) encloses its comments on the petition filed by Cordova Wireless Communications, Inc. (“Cordova”) for waiver of Section 54.307(e)(3)(iv) of the Commission’s Universal Service Fund (“USF”) Rules.

Respectfully submitted,



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Cc: Kathryn Hinton, Auctions and Spectrum Access Division, Wireless Telecommunications
Bureau

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform—Mobility Fund)	WC Docket No. 10-208
)	
Petition for Waiver of Cordova Wireless Communications, Inc.)	

OPPOSITION OF GENERAL COMMUNICATION, INC.

General Communication, Inc. (“GCI”) hereby opposes as premature Cordova Wireless Communications, Inc.’s (“CWC’s”) Petition for Waiver.¹ CWC requests a waiver of section 54.307 of the Commission’s rules, which phases down universal service support for certain eligible telecommunications carriers (“ETCs”) serving remote areas in Alaska.²

I. INTRODUCTION

In the *USF/ICC Transformation Order*,³ the Commission reformed universal service funding for high-cost, rural areas. As part of this effort, the *Order* established a universal service support mechanism dedicated to mobile services—the Mobility Fund, with two phases, Mobility

¹ See Petition for Waiver of Cordova Wireless Communications, Inc., WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208 (filed Oct. 1 2012) (“*CWC Petition*”).

² 47 C.F.R. § 54.307(e).

³ *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 an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform—Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Red. 17,663 (2011) (“*USF/ICC Transformation Order*”).

Fund Phase 1, which provides one-time support for bringing 3G or better service to unserved areas, and Mobility Fund Phase 2, which will provide \$500 million annually in ongoing support for mobile voice and broadband service in areas with no unsubsidized competitor providing 3G service.⁴ The Mobility Fund Phase 1 auction recently concluded.⁵ When it adopted the *USF/ICC Transformation Order*, the Commission stated that it anticipated beginning disbursements from Mobility Fund Phase 2 in 2014.⁶ The Commission also sought comment on how to structure and distribute Mobility Fund Phase 2 support, proposing to distribute that support by reverse auction.⁷

Accompanying the transition to Mobility Fund Phase 2, the Commission, with respect to nearly all of the country including portions of Alaska, began to phase out over five years the legacy high-cost support being received by mobile CETCs. That phase-out, however, will automatically cease if Mobility Fund Phase 2 and, for Tribal Lands, Tribal Mobility Fund Phase 2 are not implemented by June 30, 2014—holding support at 60% of 2011 levels.⁸ For Remote Alaska, the Commission adopted a special rule “to preserve newly initiated services and facilitate additional investment in still unserved and underserved areas during the national transition to the Mobility Funds.”⁹ Under this rule, the Commission “delay[ed] the beginning of the five-year transition period for a two-year period for remote areas of Alaska,”¹⁰ which also will not commence if the Commission has not implemented Mobility Fund Phase 2, including its Tribal com-

⁴ *Id.* at 17,773, 18,069-70 ¶¶ 299, 1121, 1123.

⁵ Tribal Mobility Fund Phase 1 has not yet been auctioned.

⁶ *Id.* at 17,773, 18,070 ¶¶ 299, 1121.

⁷ *Id.* at 18,070 ¶ 1122.

⁸ 47 C.F.R. § 54.307(e)(5).

⁹ *USF/ICC Transformation Order*, 26 FCC Rcd. at 17,835 ¶ 529.

¹⁰ *Id.*

ponent, by June 30, 2014.¹¹ Remote Alaska includes all parts of Alaska outside of Anchorage, Fairbanks, and Juneau, including CWC’s service area and Yakutat.

On October 1, 2012, CWC filed a petition for waiver of section 54.307(e)’s phase-down requirements. CWC warns that reducing high-cost support below ****BEGIN CONFIDENTIAL**** of its baseline level will force it to terminate all wireless operations. CWC asserts that, absent a waiver, it will be unable to continue to serve individuals that live and work in a large portion of isolated Alaskan territory. Because CWC is the only carrier that serves these territories, CWC argues, denying its petition will leave those individuals without service. Further, CWC argues that denying its requested waiver will leave it unable to complete additional network expansion into rural Alaska.¹²

II. DISCUSSION

A. CWC’S REQUEST FOR A WAIVER IS PREMATURE

CWC’s request for a waiver is premature. To qualify for a waiver, CWC must demonstrate “that good cause exists for exempting the carrier from [section 54.307], and that waiver is necessary and in the public interest to ensure that consumers in the area continue to receive voice service.”¹³ At present, CWC’s requested waiver is both unnecessary and against the public interest. The reduction in funding that CWC fears—a reduction to a level below ****BEGIN CONFIDENTIAL**** of its baseline support—will not occur until July 2015 at the earliest. Moreover, CWC will face that phase-down only if it is not awarded

¹¹ 47 C.F.R. § 54.307(e)(5).

¹² *CWC Petition* at 2, 3.

¹³ *USF/ICC Transformation Order*, 26 FCC Rcd. at 17,839 ¶ 539.

Mobility Fund Phase 2 or Tribal Mobility Fund Phase 2 support for its areas. CWC claims potential harms that remain, at this point, largely hypothetical.

CWC offers no reason why a waiver must be granted *now*. It is possible that the 2015 reduction in funding will interrupt service in CWC’s service area, but CWC fails to show that this threat is imminent or that CWC will be the only provider of mobile service at that time—particularly if the reason CWC faces the phase-down is because another mobile provider has been awarded Mobility Fund Phase 2 or Tribal Mobility Fund Phase 2 support for the same areas. Instead of speculating about Remote Alaska’s future, the better approach is to let the effects of the *USF/ICC Transformation Order* unfold while developing a comprehensive plan for all of Remote Alaska.

From the vantage point of 2012, it is impossible to tell whether CWC will qualify for a waiver in 2015—or 2013, for that matter. There is good reason to believe that it will not. As CWC is aware, GCI has filed an Antenna Structure Registration with the FCC and plans to begin serving Yakutat in 2013 as part of fulfilling the requirements of its ETC designation for the ACS Northland – Sitka study area.¹⁴ Once GCI launches service, CWC will not be the sole wireless provider in Yakutat.

Attempting to demonstrate an emergency, CWC claims that if the Commission denies its petition for a waiver it “will be forced to [1] immediately terminate service to Yakutat and [2] will be unable to continue to provide service to any point on its network past July 1, 2016, at

¹⁴ *Order Designating Eligible Telecommunications Carrier for the Provision of Wireless Service, Subject to Conditions; and Closing Docket*, Order, Docket No. U-10-83 (Reg. Comm’n of Alaska Apr. 11, 2011) (designating GCI an ETC for the Sitka study area, which includes Yakutat); 47 C.F.R. § 54.201(d) (requiring a common carrier designated as an ETC to offer services “throughout the service area for which the designation is received”).

which point it will have to terminate all wireless operations.”¹⁵ Thus, CWC concludes, denying the waiver would force it to leave without voice service those living and working in the remote Alaska areas that it serves.

Despite CWC’s assertions, closer inspection reveals little cause for alarm. With respect to the non-Yakutat portion of CWC’s wireless network, the specter of CWC terminating wireless operations in 2016 is too remote and speculative to justify granting an immediate waiver for the reasons explained above. With respect to “immediately terminat[ing]” service to Yakutat, CWC fails to explain why a potential reduction in high-cost support in July 2015 would compel it to terminate service in November 2012. Instead, CWC argues only that denying the waiver would delay the buildout of its Yakutat network by making uncertain the availability of federal high-cost support.¹⁶ But hampering CWC’s ability to “make prudent investment decisions”¹⁷ is quite different from “forc[ing] [CWC] to immediately terminate service to Yakutat.”¹⁸ Further, CWC spares itself the pains of describing the improvements or expansions that uncertainty about future funding will delay. The lack of detail on this point is telling, and, in any event, GCI’s upcoming entry into the Yakutat service area limits any harm that could result if CWC makes good on its threat to delay its buildout.

¹⁵ *CWC Petition* at 9 (internal citations omitted). *Cf.* Verified Petition of Cordova Wireless Communications, Inc., for Designation as an Eligible Telecommunications Carrier in a Redefined Service Area at Yakutat, Alaska at 6, U-12-135 (filed Oct. 1, 2012) (“Without designation of CWC as an ETC in the Proposed Yakutat Service Area and the waiver of federal funding rules described above, CWC will *eventually* be forced to discontinue the only mobile wireless service available in Yakutat.” (emphasis added)).

¹⁶ *CWC Petition* at 12.

¹⁷ *Id.* at 13 n.18.

¹⁸ *Id.* at 12.

Moreover, the history of CWC's Yakutat service makes its complaint about reduced high-cost support ring hollow. CWC undertook its Yakutat service with full knowledge of the coming regulatory changes. CWC applied to amend its wireless license to add Yakutat in May 2011—a few months before the Commission issued the *USF/ICC Transformation Order*. At the time, CWC and other Alaska carriers were well aware of the potential for coming regulatory changes. But CWC pressed on, filing a construction notice with the FCC on July 26, 2012—eight months after release of the *USF/ICC Transformation Order*. The Yakutat station was operational as of July 23, 2012. CWC made the business decision to serve Yakutat knowing of the regulatory plan for Remote Alaska and the uncertain level of support that any potential successor mechanism would provide; it cannot now uniquely argue that this lack of certainty will force it to shutter its operations.

There is simply no reason for the Commission to grant CWC's requested waiver now. The Commission should instead focus on implementing Mobility Fund Phase 2 and Tribal Mobility Fund Phase 2 and developing a sustainable long-term approach for all of Remote Alaska, not just CWC's service area and Yakutat.

B. GRANTING ONE REMOTE ALASKA CETC'S WAIVER REQUEST TO IMMUNIZE IT FROM REVERSE AUCTIONS IS UNWISE.

At its core, CWC's waiver request seeks to lock in a specific level of high-cost support for itself and itself alone, irrespective of all other changes taking place, including changes affecting its competitors.

GCI believes that the Commission has yet to develop a sustainable system of support for Remote Alaska. That system may develop as the Commission implements Mobility Fund Phase 2 and Tribal Mobility Fund Phase 2, depending on the amount of support delivered to Remote Alaska, or it may require a further modified system. The key will be to have sufficient support

flowing to Alaska, and then to have mechanisms that allow that support to be directed to the areas that most need it.

Reserving a portion of high-cost support exclusively for a single carrier in a select handful of areas without any competitive bidding or other selection mechanism frustrates the ability of the Commission and the State of Alaska to ensure that support is flowing to the areas that most need it. On a statewide basis, CWC's areas and Yakutat may be high priority areas for support—but, then again, they may not. CWC's petition seeks for it and it alone to be permanently enshrined at the head of the line. This cannot be justified at this time.

III. CONCLUSION

The *USF/ICC Transformation Order* transitions from pre-2011 high-cost support mechanisms to a new mechanism that seeks to promote universal service along with fiscal responsibility and accountability. Instead of participating in the competitive bidding process, or whatever other mechanisms may result from the Commission's implementation of Mobility Fund Phase 2 and Tribal Mobility Fund Phase 2, CWC seeks to lock in a guaranteed support level for itself now, irrespective of all other changes in the marketplace. This simply cannot be countenanced. The Commission need not decide now that CWC will never be eligible for relief, but it is also premature at this time to accord CWC its requested relief. Accordingly, we urge the Commission to deny CWC's petition.

Respectfully submitted,



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