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April 12, 2013

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VIA HAND DELIVERY

FILED/ACCEPTED

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

APR 12 2013

Federal Communications Commission
Office of the Secretary

Re: 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 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION Adak Eagle Enterprises, LLC and Windy City Cellular, LLC Notice of Ex Parte and Submission of Further Supplemental Information

Dear Ms. Dortch:

On behalf of Adak Eagle Enterprises, LLC (“AEE”) and Windy City Cellular, LLC (“WCC”), pursuant to the procedures outlined in the Third Protective Order adopted in the above referenced proceedings, please find enclosed an original and one copy of AEE and WCC’s Public version of its Notice of Ex Parte filed in the aforementioned dockets. The [] symbols denote Confidential Information. A Confidential version is also being filed separately with the Secretary’s Office. Furthermore, additional copies of the Confidential version are being delivered to the Wireline Competition Bureau.

Should you have any questions concerning the foregoing request, please contact the undersigned.

Sincerely,

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*Counsel for Adak Eagle Enterprises, LLC and
Windy City Cellular, LLC*

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Notice of Ex Parte and Submission of Further Supplemental Information
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 (filed May 22, 2012) and Windy
City Cellular (filed April 3, 2012)**

Dear Ms. Dortch:

This letter memorializes discussions that took place on April 10, 2013, between Larry Mayes, Chief Executive Officer of Adak Eagle Enterprises, LLC (“AEE”) and Windy City Cellular, LLC (“WCC”), Andilea Weaver, the companies’ Chief Operations Officer, Monica Desai, the companies’ counsel, and the following FCC staff: (1) Julie Veach, Rebekah Goodheart, Michael Jacobs, Amy Bender, Gary Seigel, Joseph Sorresso, Chris Cook, and Travis Litman of the Wireline Competition Bureau; Ruth Milkman, Jane Jackson, Margaret Wiener, and Sue McNeil of the Wireless Telecommunications Bureau; and Michael Steffen, Legal Advisor to Chairman Genachowski; (2) Angela Kronenberg and Louis Peraertz, Legal Advisors to Commissioner Clyburn; (3) Priscilla Delgado Argeris, Legal Advisor to Commissioner Rosenworcel; and (4) Nicholas Degani and Courtney Reinhard, Legal Advisors to Commissioner Pai.

The discussions focused on the information contained herein, which AEE and WCC provided to supplement the information submitted with their Notice of *Ex Parte* filed February 28, 2013.¹ The companies emphasized that they have provided overwhelming evidence to support the conclusion that a waiver is necessary to provide quality communications service to Adak Island. AEE and WCC have provided literally thousands of pages of detailed information in support of their waiver requests over the course of over one year. The companies have submitted all of the information required pursuant to Section VII(G) of the *USF/ICC Transformation Order*,² and have rapidly (and without protest) provided responses to dozens of additional questions and categories of information

¹ See Letter from Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of *Ex Parte*, WC Docket No. 10-90, *et al.*, 2, dated Feb. 28, 2013 (“Feb. 28 *Ex Parte*”).

² See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663, Section VII(G), ¶¶ 539-544 (2011) (“*USF/ICC Transformation Order*”).



requested by FCC staff, at significant cost and effort for a tiny company.³ The companies continue to stand ready to provide further explanation of the information they have provided if requested by staff.

AEE and WCC have shown that they have taken significant steps to reduce costs to the greatest extent possible while continuing to provide efficient, comprehensive service to their customers on Adak Island in a safe manner. The companies emphasized, however, that even if they were to eliminate every job position, stop maintaining the plant and equipment that they have invested in, and shut down the retail store (which had been planned years before the unexpected flash cut in funding), in addition to the significant cuts already made, AEE and WCC still would not be able to come close to operating at the \$250 per line per month cap. The companies also emphasized that if another company asserts the ability to provide service at that level, the Commission must critically question such assertions and not take them at face value.

The companies reminded FCC staff that the Commission committed to Congress and to rural America that factors such as challenging conditions, outstanding loans, recent investments, and consumers at risk of losing service would all be important considerations in the “90-day” waiver process, and repeatedly assured that there would not be any “flash cuts” in funding. AEE and WCC are genuinely perplexed that despite meeting the factors that the Commission stated would be persuasive in a waiver evaluation, and despite WCC being hit with a staggering 84% overnight flash cut in funding (with no warning from anyone in the Commission), they remain in limbo one year after filing for waivers, with their plant deteriorating and the companies completely destabilized. Adak Island is inherently a high-cost area with extremely challenging conditions.⁴ AEE took [REDACTED] in RUS loans which they used to invest in plant, build the network from scratch, and become the first private communications service provider on Adak Island when no one else was willing to provide service. The companies have struggled to maintain quality service, including maintaining the only wireline service on Adak Island, the only 911 service on the island, the most comprehensive service on the island, and the only technicians on the island. If the companies’ waiver requests are not granted, the Commission will force AEE and WCC into bankruptcy, and consumers on Adak Island will lose the essential services they provide to the Adak community.

³ See, e.g., Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, *Ex Parte* Notice and Submission of Supplemental Information, WC Docket No. 10-90, *et al.*, dated Aug. 20, 2012; Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Second Submission of Supplemental Information, WC Docket No. 10-90, *et al.*, dated Aug. 21, 2012; Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Third Submission of Supplemental Information, WC Docket No. 10-90, *et al.*, dated Aug. 22, 2012; Letter from Jennifer Richter, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Fourth Submission of Supplemental Information, WC Docket No. 10-90, *et al.*, dated Aug. 27, 2012. The companies have literally submitted thousands of pages of information to the Commission, including the extensive information and materials required by Section VII(G) of the *USF/ICC Transformation Order*, detailed responses to 17 categories of information connected to the “stop the clock” order issued by the Bureaus on August 21, 2012, additional staff requests for supplemental information, and responses to the various filings submitted by GCI.

⁴ As detailed in the AEE Petition, Adak Island one of the most remote areas in the entire United States. It is located in the vicinity of an active volcano and is in both an earthquake and tsunami zone. It has frequent cyclonic storms with winter squalls producing wind gusts in excess of 100 knots, extensive fog storms in the summer, and an average accumulated snowfall of 100 inches. The island is infested with large Norwegian rats that regularly chew through communications infrastructure (requiring AEE to use armored cable). The island is littered with active bombs that make trenching and digging extremely complicated, and active bombs regularly wash ashore. See AEE Petition at 2.



The companies pointed out that the staggering 84% flash-cut reduction to WCC’s funding, effective immediately and without warning – and the onerous and complicated waiver process that has now been ongoing for over a year – have been the exact opposite of the Commissioners’ repeated promises of a predictable, timely, and transparent process with no flash cuts. Indeed, just this week, Commissioner Clyburn again reiterated the promise of no flash cuts and a streamlined waiver process:

As some of you may know, it was very important to me that any proposed or realized high-cost reforms involve transition time, a glide path, meaning no flash cuts, and an opportunity for reconsideration for individual carriers where they could demonstrate impact on service capabilities and harm to consumers through a robust and engaged waiver process. ... I have encouraged staff to collaborate with carriers, to streamline the filing and review process, and to resolve issues as quickly as possible.⁵

This statement by Commissioner Clyburn is consistent with testimony, commitments, and statements made before and after the *USF/ICC Transformation Order* was issued:

- “[The proposed USF reform] also calls for a sensible but certain transition – one that gives participating companies sufficient runway to adapt, with no overnight flash cuts, but with clear milestones and a firm path forward.” – Chairman Genachowski, Feb. 8, 2011⁶
- “It also shouldn’t surprise anyone that it was similarly important to me, that we give service providers and their investors time to adjust to our proposed reforms, because from day one, I made a firm commitment to no flash cuts. A reasonable transition period will help ensure that providers can navigate these reforms successfully.” – Commissioner Clyburn, Oct. 27, 2011⁷
- “We have been careful to ensure that affected companies have predictable and measured transition paths so they can keep investing in their networks to better serve consumers and support our economy.” – Chairman Genachowski, Oct. 27, 2011⁸

⁵ Prepared Remarks of Commissioner Mignon Clyburn, 2013 WTA Spring Meeting, San Antonio, Texas (April 9, 2013) (emphasis added).

⁶ *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Statement of Chairman Julius Genachowski (rel. Feb. 8, 2011) (emphasis added).

⁷ *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Statement of Commissioner Mignon L. Clyburn (rel. Oct. 27, 2011) (emphasis added).

⁸ *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Statement of Chairman Julius Genachowski (rel. Oct. 27, 2011) (emphasis added).



- “I want to assure, one of the things that we put in place that I was not going to be supportive of, I was not going to be supportive of a flash cut. So we have a glide path, a number of years to calibrate and to engage.” – Commissioner Clyburn, June 7, 2012⁹
- “One of the things that we are most proud of, as I put forth in my testimony, is the engagement. We have had ongoing engagement with companies throughout this process, even before the order was submitted, so that there were some issues but very few surprises in this process. So therein, we started on a path that we think would lay down the groundwork for predictability. – Commissioner Clyburn, July 7, 2012¹⁰
- “Importantly, our reform carefully balances the need for certainty and predictability for carriers by avoiding flash cuts and providing transitions so they can adjust to the changes.” – Commissioner Clyburn, July 10, 2012¹¹

Commissioner Pai understood the need for predictable USF support to allow companies to adequately plan their long-term investments:

Unlike the urban environment, rural carriers must carefully plan their infrastructure over a five-, ten-, or twenty-year time scale if they are to recover their costs ... [W]e need to think long and hard about the statutory command that universal service be “predictable.”¹²

Similarly, Commissioner Rosenworcel expressed her concerns that overly complex USF process denies companies the certainty they need to plan investments:

... I do worry that our reforms to the high-cost universal service system are extremely complex. I fear that this complexity can deny carriers dependent on it the certainty they need to confidently invest in network infrastructure. So when opportunities arise to simplify our rules in a manner that is fiscally sound, good for rural consumers, and bound to inspire investment – we should seize them. Our policies must strive to provide carriers with confidence to invest in broadband and wireless infrastructure ...¹³

⁹ “Universal Service Fund Reform: Ensuring a Sustainable and Connected Future for Native Communities,” Hearing Before the Committee on Indian Affairs, United States Senate, S. Hrg. 112-655, 28 (June 7, 2012) (emphasis added).

¹⁰ “Universal Service Fund Reform: Ensuring a Sustainable and Connected Future for Native Communities,” Hearing Before the Committee on Indian Affairs, United States Senate, S. Hrg. 112-655, 24 (June 7, 2012) (emphasis added).

¹¹ Statement of Commissioner Mignon Clyburn, FCC, before the House Subcommittee on Communications and Technology Committee on Energy and Commerce, dated July 10, 2012 (emphasis added).

¹² Statement of Commissioner Ajit Pai, FCC, before the U.S. Senate Committee on Commerce, Science, and Transportation, dated March 12, 2013.

¹³ Statement of Commissioner Jessica Rosenworcel, FCC, before the U.S. Senate Committee on Commerce, Science, and Transportation, dated March 12, 2013.



Rather than provide the predictability and financial certainty called for by the Commissioners, however, the staggering 84% flash cut that hit with no warning after AEE and WCC had spent years planning and implementing major investments, and the subsequent complex and lengthy waiver process, have had the opposite effect for AEE and WCC. The companies have been at an operational standstill, unable to plan critical investments as they await a decision from the Bureaus.

This standstill continues to have a detrimental impact on the community and on the companies' operations. As a recent example, demand for WCC's broadband services has grown as a result of the increased number of contractors working on Adak Island during the spring and summer months to clean up explosives and munitions left over from the military base previously located on the island. As a result of the funding cuts and waiver uncertainty, however, WCC has been unable to fully meet this need because it cannot invest in increased bandwidth for its broadband services. With sufficient funding, the companies ordinarily would have been able to afford to buy an additional satellite link to increase their bandwidth. Currently, they are unable to do so. As long as AEE and WCC face the uncertainty of the ongoing waiver process and insufficient funding, their facilities will continue to deteriorate, and they will be unable to make the critical investments necessary to continue providing quality service on Adak Island.

In this most recent meeting with staff, the companies responded to specific questions raised by staff concerning the following: (1) why WCC chose to invest in a retail store on Adak Island; (2) how the AEE/WCC executive salaries compare with the salaries of other executives of rural telecommunications companies and additional information regarding reductions in salary expenses; (3) an explanation for the need and function of each of the various remaining employees at the companies; (4) a cost analysis of the lease of AEE's administrative building and whether the companies may save money by moving to another building or operating with less space; (5) an analysis of operating cost reductions from 2010-2012; (6) 5-year financial forecast scenarios showing the impact that various levels of relief would have on AEE and WCC; and (7) an explanation of why the FCC should grant waivers to the companies, given that General Communication, Inc. ("GCI") has asserted it could serve Adak Island at the \$250 per line per month cap on high-cost support.

1) WCC Retail Store

The retail store on Adak Island has only been open since January 1, 2012, but its construction was the product of several years of planning and investment. Construction of the store cost approximately [REDACTED]. The only significant ongoing costs of operating the store are [REDACTED] monthly rent and the salary of the retail store clerk, which currently is [REDACTED] at part-time status. If returned to full-time status, her annual salary would be approximately [REDACTED].

WCC invested in the retail store in order to provide its customers on Adak Island with service that is comparable to the service available to consumers in other areas of the country, and in accordance with the objectives of universal service. Given that consumers in other parts of the U.S. are able to visit a store to view and try out different phones before making a purchase, WCC believed it was important for the company to provide the same opportunity for its customers on Adak Island. The store also is the only location where residents on the island can use free Internet service. Additionally, the retail store space is used by WCC to store routers, chargers, cases and other related



items for customers. WCC made that investment with the expectation that it would be used to serve the community for many years to come.

Had WCC known at the time it was planning the retail store that the FCC would slash its funding overnight by 84%, it would not have invested [REDACTED] in the retail store. Given that significant planning and investment was made in order to open the store, and given that continued operational costs are low, WCC believes it makes sense to continue store operations. If the Commission disagrees, then WCC can close the store. Although the sunk investment of [REDACTED] will be wasted, the annual operating cost of approximately [REDACTED] will be saved.

2) Comparison of Executive Salaries and Additional Information Regarding Reductions in Salary Expenses.

The analysis in Attachment 1 provides additional information regarding the salary cuts implemented by AEE and WCC. From 2011 to 2012, salary expenses decreased by approximately [REDACTED]. From 2012 to current projected salaries for 2013, salaries have been reduced by approximately [REDACTED] as a result of the cost-cutting measures discussed in the February 28 *ex parte*, including the permanent elimination of five positions and the voluntary [REDACTED] reduction in the salaries of the companies' CEO and COO. In addition, the CEO and COO have volunteered to freeze their salaries for three years.

Attachment 2 provides a chart comparing the CEO's and COO's 2012 and 2013 salaries to the salary range data provided by NTCA and the Alaska Department of Labor. The actual executive salary figures in the comparison chart are lower than the salary figures contained in Attachment 1 hereto because the figures in Attachment 1 include vacation payouts (on average, approximately [REDACTED] hours per year because only [REDACTED] may be carried over), as well as additional salary that is allocated to non-regulated entities. The NTCA and Alaska Department of Labor salary figures reflect only base pay. When the vacation payouts and additional salary amounts allocated to non-regulated entities are not included in the AEE/WCC executive salary figures listed in the comparison chart, the CEO's 2013 base salary is reduced to [REDACTED], and the COO's 2013 salary is reduced to [REDACTED].

Significantly, the salaries listed for AEE and WCC executives do not reflect their entire salary history during which the CEO and COO did not take any salary for the first two years of operations. Moreover, unlike approximately [REDACTED] of other presidents/general managers and [REDACTED] of other managers/supervisors at companies surveyed by NTCA, AEE and WCC executives do not receive any cash bonuses. Additionally, it is important to note that the salary ranges provided by the Alaska Department of Labor are not specific to the telecommunications industry and reflect salary data from non-specialized industries, as well. Taking all these factors into account, the chart demonstrates that AEE and WCC executive salaries are reasonable and in line with salaries for comparable positions.



3) Additional Information Regarding Remaining Employees.

Through the elimination of employee positions and the reallocation of duties, AEE and WCC have reduced their overall staff from 17 full-time employees (excluding the CEO and COO) down to 11 full-time positions and two part-time positions:

- 2 Technician Positions – Plant Manager (full-time) and Combination Technician (will be full-time once position is filled):

AEE and WCC have been operating with only one technician on Adak Island as a result of the USF funding cuts. AEE’s technician currently is the only technician employed by any company on Adak Island able to perform the necessary maintenance to support telecommunications operations. In addition to their responsibilities to AEE and WCC, AEE’s technicians also have typically received requests from other companies – including GCI – needing maintenance or repair work on the island several times each winter.

Given that much of the work performed by the technicians – such as laying fiber, installing optical network terminal boxes, climbing towers, repositioning the satellite dish, and wiring customers’ homes – would be unsafe or impossible for an individual technician to perform alone, it is necessary to have two technicians on the island. AEE’s CEO has been temporarily forced to perform additional duties on the island normally performed by a second technician while the companies remain under severe funding shortfalls. It is inefficient and unsustainable, however, for the companies’ CEO to perform these types of duties normally performed by a technician, particularly given his numerous other duties. Because it is essential for safety reasons that AEE have more than one technician working on Adak Island, AEE has made other cuts in order to begin the hiring process to fill a second Combination Technician position. The companies, however, will not be able to sustain this critical position if sufficient funding is not restored by the time the 6-month interim relief expires in June.

- 3 Accounting Positions – Accounting Manager (full-time), Accountant (full-time), and Accounting Assistant (full-time):

- Accounting Manager: This position is critical because the employee manages the accounting department and oversees all accounting practices. In particular, the position’s duties include, but are not limited to, developing and maintaining accounting practices and procedures to ensure accurate and timely financial statements, preparing monthly reports, and handling CAM allocations. This person also must meet deadlines for the preparation of the general ledger, financial reporting, and financial audit preparation, and assist with preparation of the companies’ budgets and forecasting activities.
- Accountant / Payroll: This position is essential to support the Accounting Manager and the companies’ accounting operations. Critical responsibilities include, but are not limited to, accurately maintaining AEE’s accounting records and payroll as assigned by the Accounting Manager. This employee also prepares entries to general ledger accounts to include proper documentation of business transactions, codes and enters information into AEE’s



accounting software, maintains vendor folders for all invoices and check copies, and processes quarterly reports.

- Accounting Clerk: This position’s critical responsibilities include accounting data entry and overseeing accounts payable. The Accounting Clerk also assists with accounting record-keeping and supports all aspects of the companies’ accounting operations.

- 1 Mechanic (full-time):

AEE’s mechanic position is essential because this employee is the only mechanic on Adak Island. Responsibilities include, but are not limited to, performing physically demanding labor such as engine and tire repair, operating heavy equipment such as cranes, graders, bulldozers, and backhoes, and performing duties such as removing snow and participating in routine maintenance.

- 1 Mechanic Assistant (full-time):

AEE hired the Mechanic Assistant in light of the upcoming retirement of AEE’s mechanic – the only mechanic on Adak Island. This employee assists the mechanic with physically demanding labor, including engine and tire repair, which are unsafe or impossible for one individual to perform alone. Requiring the mechanic to perform this type of manual work without assistance presents safety risks in the event of an accident or emergency. This risk is heightened further given the severe climate conditions on Adak Island. Furthermore, absent the Mechanic Assistant position, there would be no backup to perform these essential duties if the lone mechanic were to become sick or need to leave Adak Island for any reason.

Additionally, the Mechanic Assistant has taken on the critical duties previously performed by the Facilities Maintenance Technician. As already discussed in the February 28 *ex parte*, the Facilities Maintenance Technician performed critical duties, including maintenance and repair of all facilities including warehouses, offices and the telex. After this position was laid off due to the FCC’s funding cuts, the companies’ CEO and Plant Manager were forced to take on these responsibilities. Because these duties are essential to the companies’ ongoing operations in a severe and unpredictable climate, AEE has reassigned these responsibilities to the Mechanic Assistant rather than rehire a separate Facilities Maintenance Technician.

The Mechanic Assistant also performs duties of an Assistant Combination Technician. Since AEE has been operating with only one technician on Adak Island, the Mechanic Assistant has taken on job duties to support the current technician in performing maintenance and repair work that would be impossible for the technician to complete alone. After the Combination Technician position is filled, the Mechanic Assistant will continue to assist the technicians with these job responsibilities.

Although the Mechanic Assistant position is critical for the companies’ operations, the position have to be eliminated if sufficient funding is not restored by the time the 6-month interim relief expires in June.



- 2 Customer Service Positions – Customer Service Supervisor (full-time); Customer Service Representative (part-time):

- Customer Service Supervisor: This position is essential because the employee manages the day-to-day operations and supervision of all areas of the customer service department. This employee’s responsibilities also include, but are not limited to, intercompany billing, recordkeeping, billing and collections related to customers, accounts receivable, promotions of services, employee evaluations, and maintaining the AEE website.
- Customer Service Assistant: This position is essential to support the companies’ customer service operations, including but not limited to, accurately maintaining all customer accounts for AEE, receiving all customer feedback, and ensuring that all customer needs are met. This employee processes the monthly billing of customer accounts and receives, records, attempts resolution, and dispatches service orders.

- 2 IT Positions – IT Administrator (full-time) and IT Technician (full-time):

- IT Administrator: This position performs critical duties, including but not limited to, managing and overseeing the companies’ IT operations, implementing software installations, maintaining plant records, addressing all employee IT issues, and performing switch maintenance.
- IT Technician: This position is responsible for essential duties, including but not limited to, serving as the primary contact for the Internet IT helpdesk, implementing and maintaining LAN/WAN and related equipment, and providing AEE’s employees with technical and computer support. This position also receives all service order requests for broadband, maintains minutes of use records for billing, and performs computer maintenance.

- 1 Administrative Assistant (full-time):

This person performs critical duties including, but not limited to, maintaining office logs and supplies, filing corporate documents, record-keeping, researching and executing purchase requests for supplies and equipment, and performing bank runs. Because it is vital that the Administrative Assistant position is filled, AEE has transitioned one of its employees from the accounting department to fill this position rather than incur additional expenses to hire another employee. Consequently, the COO has had to take on additional accounting duties previously handled by this employee, including reviewing all reconciliations and purchase orders, and performing accounting record-keeping duties.

- 1 Retail Clerk (part-time):

This person is responsible for operating WCC's retail store. She is the only retail clerk on Adak Island, and responsibilities include the sale of handsets to customers, providing customer support at the retail store, provisioning customers’ cell phones by adding minutes and troubleshooting, and overseeing the free WiFi stations available for public use at the retail store.



Additionally, in light of the elimination of the Facilities Maintenance Technician position, the retail clerk also assists with cleaning the companies' facilities. As a result of the USF funding cuts, WCC's retail clerk was reduced to part-time status, and her health benefits were eliminated.

Additionally, AEE and WCC projected in their February 28 *ex parte* that they would reduce their employee benefits contribution from [REDACTED] companywide beginning in April 2013. In light of significant employee protest regarding this plan, however, the companies have elected not to implement this particular cut to employee benefits. Particularly as current employees have taken on additional duties and responsibilities as a result of the FCC's funding cuts, without any corresponding increase in pay, AEE and WCC believe that implementing such a reduction would significantly impair their ability to recruit and retain the quality staff necessary to support their operations.

Based on their experience operating over the past six years, the companies believe that these employees are essential in maintaining quality operations, providing service to residents and governmental operations on the island, responding to customer provisioning and service issues, preparing and filing 20-30 federal, state and RUS required reports every quarter, handling vendor and customer records, fixing IT issues, keeping proper accounting records and documentation, responding to government requests for information, maintaining the valuable infrastructure on the island, keeping up with changing federal and state regulations, and being prepared to respond in emergency situations, among other duties. The companies have eliminated other positions one by one over the last year, in light of the funding cuts. If the FCC staff believes that, based on its research and experience, particular positions are extraneous, then WCC and AEE would appreciate staff telling them which positions to eliminate so that they can adjust accordingly.

4) Cost Analysis for Lease of AEE's Administrative Building.

AEE has analyzed the cost impact of moving its administrative offices into another leased building in Anchorage instead of leasing its current building from L&A Property, owned by Mr. Mayes and Ms. Weaver. Attachment 3 provides an independent third-party appraisal of market rents for comparable buildings.¹⁴ This analysis reflects that the monthly lease payment of [REDACTED] per rentable square foot, currently paid for AEE's administrative building is well below the fair market monthly rent of [REDACTED] per rentable square foot that could be charged for the building. The analysis also shows that the current rent per square foot paid by AEE is well below the market rents per square foot charged for comparable or inferior buildings in Anchorage.

This building was chosen with the idea that AEE would be growing over time, with the fishery and other private and government operations expanding, and parallel growth in population. As explained in the February 28 *ex parte*, even with the now reduced number of employees resulting from the jarring funding cuts, AEE and WCC still require the space provided in the current administrative building to house not only its staff but also all corporate operations, including the companies' customer service, IT, accounting, storage of all corporate paperwork, files, servers, and computers, and storage of all equipment that is then shipped to Adak for maintenance and repair operations

¹⁴ See Attachment 3, AEE Administrative Building Rent Comparison, at 39-44.



when needed. Because the companies utilize all of the current space (minus three empty cubicles) to support their operations, it would be impractical to sublease space to a third party. Moreover, the design of the building (which was recently remodeled specifically to fit the needs of the companies) would make subleasing space impossible without another major and expensive remodeling.

L&A Property does not make a profit from AEE's monthly lease payment, which is the same amount as L&A Property's monthly mortgage payment for the property. Furthermore, the rent charged to AEE has never been increased since Mr. Mayes and Ms. Weaver purchased the building in 2007. Indeed, from the time L&A Property purchased the building, it has charged rent significantly lower than the rent advertised for the building by its previous owner at the time of purchase. Mr. Mayes and Ms. Weaver used personal funds to purchase the building because, at the time, AEE did not have credit established to rent a corporate office space when the company needed a space to run its operations. Ms. Weaver took money from her 401(k) plan, and Mr. Mayes refinanced his home in order to make it possible for AEE to lease space. RUS has reviewed and approved this lease arrangement.

Additionally, AEE has provided supplemental information in Attachment 4 reflecting that AEE would have to incur moving expenses of over [REDACTED] if the company were to move operations from its current administrative building.

Ms. Weaver explained that in the initial stages, before ATU was fully up and running and could afford its own personnel (and before ATU paid any salary to Ms. Weaver), her company, AAA Accounting, provided accounting services for the company. AAA paid non-regulated rent to AEE for office space. When the company was growing and ran out of space in the building, AAA exited the dedicated space. Although AAA maintains an address, Ms. Weaver does not employ AAA personnel to do work for AAA out of that building. After AAA exited the office space, AEE paid approximately [REDACTED] to remodel the space for use by members of AEE's staff.

The companies believe that this information responds to the questions asked by staff regarding the rent of the building and related questions, but if staff would like additional information, the companies stand ready to provide it.

5) Additional Analysis of Operating Cost Reductions 2010-2012.

The supplemental information in Attachment 5 provides a breakdown of the various expense reductions implemented by AEE and WCC between 2010 and the end of 2012. The analysis shows that, excluding expenses necessarily incurred as a direct result of AEE's waiver request, AEE cut its overall operating expenses in 2012 by approximately [REDACTED] compared to 2011. These cuts included a reduction in AEE's travel and training expenses of approximately [REDACTED]. AEE's overall expenses, however, reflect a significant increase in both legal and consulting fees in 2012 as a direct result of the waiver process.

AEE alone (separate from WCC) incurred approximately [REDACTED] in 2012 for a combination of legal fees, consulting fees, and related travel to Washington, D.C. Legal fees were necessarily incurred to prepare the detailed information required in the FCC's *USF/ICC Transformation Order* for



filing its waiver request,¹⁵ prepare responses to the information requested by staff over the course of the year that the waiver request has been pending (including the 17 categories of information requested in connection with the “stop the clock” order issued by the Bureau in August 2012),¹⁶ prepare responses to the various filings made by GCI, prepare various reports and financial data requested by FCC staff, and meet with Commission staff regarding the waiver requests. Consulting fees were necessarily incurred for the preparation of financial forecasts, submitted in support of the waiver requests, illustrating for staff the impact of the funding cuts on the companies’ operations. Had it not been for the expenses necessarily incurred in connection with the waiver process, overall operating costs would have been significantly lower. AEE anticipates that once this waiver process is complete, legal, consulting and travel expenses will be dramatically reduced going forward.

Similarly, Attachment 5 provides a breakdown of the various expense reductions implemented by WCC through the end of 2012 in order to cut operating costs. While WCC’s overall operating costs increased from 2011 to 2012, this increase was a result of (1) the legal, consulting, and travel costs of approximately [REDACTED] necessarily incurred as a direct result of the process related to its waiver request as explained above; and (2) incurring the first full year of operating costs for WCC’s White Alice site and retail store, which had both been carefully planned before the FCC imposed the unexpected 84% flash cut in funding to WCC’s operations.

As discussed in previous filings, like AEE, WCC has chosen to reinvest USF funds into providing better quality service to Adak Island. The White Alice site provides the only quality service to an area of Adak Island in which a number of residents reside, many government operations depend, and many contractors work. The coverage provided by the site is critical for public safety and has been instrumental in facilitating emergency rescue operations.¹⁷ As detailed above, WCC also believes the retail store provides an important service to the Adak community consistent with the goals of universal service.

6) Financial Forecast Scenarios.

While the companies have been suffering tremendously as a result of the dramatic cuts in funding and the subsequent onerous waiver process, they also understand and appreciate the Commission’s stated desire to provide a long-term path to more efficient, broadband-oriented service throughout the country. As discussed with staff, Attachment 6 provides five-year financial forecasts reflecting the impact that various levels of relief would have on Adak Telephone Utility (“ATU”) as a standalone entity, WCC as a standalone entity, and AEE on a consolidated basis. These scenarios, summarized below, demonstrate which levels of relief would be unsustainable and which would provide a sufficient level of funding for the companies to continue operations going forward.

¹⁵ See *USF/ICC Transformation Order*, Section VII(G), ¶¶ 539-544.

¹⁶ See Letter from Julie A. Veach, Chief, Wireline Communications Bureau, and Ruth Milkman, Chief, Wireless Telecommunications Bureau, FCC, to Larry Mayes, WC Docket No. 10-90, *et al.*, dated August 21, 2012.

¹⁷ See Feb. 28 *Ex Parte* at 10.

- ATU on Standalone Basis
 - Scenario 1(Unsustainable): Scenario 1 reflects the impact on ATU if no additional relief were granted after the current interim relief expires in June 2013. This scenario is unsustainable. The forecast illustrates that, even after implementing the recent measures to reduce costs to the greatest extent possible, ATU would begin operating at a loss in 2013, and would incur increasingly large losses each year going forward. ATU would be unable to continue operating and would be forced into bankruptcy.
 - Scenario 2 (Unsustainable): Scenario 2 reflects the impact on ATU if relief were granted at only 70% of 2011 support levels. This scenario also is unsustainable. Even after implementing recent cost-cutting measures, ATU would operate at a loss each year going forward, beginning this year. While the losses each year would be smaller than if no relief were granted at all, ATU would be unable to continue operations with this level of support. ATU would be unable to make its RUS loan payments and would not meet its loan tier requirements. It would be forced to lay off additional employees who are essential to the operations of both ATU and WCC. Without these employees, ATU and WCC would be unable to continue offering service on Adak Island in a safe manner and ultimately would be forced to discontinue operations. Moreover, ATU would no longer be able to build out fiber to customers and would be unable to complete postponed projects discussed in the February 28 *ex parte*, which had been planned for the purpose of reducing long-term costs under the expectation that the company would be operating for many years to come.
 - Scenario 3 (Sustainable): Scenario 3 reflects the impact on ATU if relief were continued at the level of current interim relief. This scenario, which would maintain ATU's support at 2011 levels, is sustainable. As a result of the company's significant cost-cutting measures, ATU would be able to continue operating at current levels and would not be forced to lay off additional employees if this level of relief were maintained going forward. The forecast reflects that this level of relief would allow ATU to service its RUS loan, maintain operations, continue with long-planned investments that were calculated to save the company money in the long run, and have enough of a financial cushion each year for the company to be prepared for any unforeseen emergency expenses that can arise while operating under severe and unpredictable weather conditions in one of the country's most remote areas.
- WCC on Standalone Basis
 - Scenario 1 (Unsustainable): Scenario 1 reflects the impact on WCC if no additional relief were granted after the current interim relief expires in June 2013. This scenario is unsustainable. The forecast illustrates that, even after implementing the recent measures to reduce costs to the greatest extent possible, WCC already is operating at a loss, and would incur increasingly large losses over the next five years. WCC would be unable to continue operating and would be forced to shut down unless and until sufficient Mobility Fund support is provided.

- Scenario 2 (Unsustainable): Scenario 2 reflects the impact on WCC if relief were continued at the level of current interim relief. This scenario is unsustainable. Unlike the interim relief for ATU, the interim relief for WCC only provided support at approximately 28% of 2011 levels, and were not retroactive to January 2012 when the cut took effect. The forecast reflects that, even after implementing the recent cost-cutting measures, WCC already is operating at a loss and would continue to operate at a loss each year going forward if support were provided only at the level of current interim relief. WCC would be unable to continue operating and would ultimately be forced to shut down unless and until sufficient Mobility Fund support is provided. Indeed, within one year, WCC would be forced to shut down its White Alice site, downtown cell site, and retail store, followed shortly thereafter by WCC going out of business. Moreover, this scenario would result in WCC being unable to pay back its debt to ATU, which in turn would cause ATU to incur additional losses.
- Scenario 3 (Sustainable): Scenario 3 reflects the impact on WCC if relief were granted at only 70% of 2011 levels. This scenario is sustainable until sufficient Mobility Fund support is made available. As a result of the company's significant cost-cutting measures, WCC would be able to maintain the status quo and could provide vital backhaul redundancy that it has been forced to operate without under current interim relief levels. WCC, however, would not be able to pursue any new projects, build-out, or upgrades. The forecast reflects that this level of relief would allow WCC just enough of a financial cushion each year for the company to be prepared for any unforeseen emergency expenses that can arise while operating under severe and unpredictable weather conditions in one of the country's most remote areas.
- Scenario 4 (Sustainable): Scenario 4 reflects the impact on WCC if a full waiver were granted. This scenario also is sustainable until Mobility Fund support is made available. Unlike Scenario 3, however, Scenario 4 would provide sufficient funding for WCC not only to maintain its current operations and restore essential backhaul redundancy, but also to complete additional build-out. The net income projected in Scenario 4 for the next five years does not take into account expenses that would be incurred for additional build-out and, therefore, would be significantly lower depending on the cost of build-out.
- AEE on Consolidated Basis
 - Scenario 1 (Unsustainable): Scenario 1 reflects the consolidated impact on AEE if ATU Scenario 1 and WCC Scenario 1, discussed above, were implemented. This scenario is unsustainable.
 - Scenario 2 (Unsustainable): Scenario 2 reflects the consolidated impact on AEE if ATU Scenario 2 and WCC Scenario 2, discussed above, were implemented. This scenario is unsustainable.



- Scenario 3 (Sustainable): Scenario 3 reflects the consolidated impact on AEE if ATU Scenario 3 and WCC Scenario 3, discussed above, were implemented. This scenario is sustainable if maintained until sufficient Mobility Fund support is provided for WCC.

Attachment 7 provides an independent audit report of AEE's consolidated financial statements for the years 2011 and 2012. AEE emphasized the auditor's statements regarding impairment concerns.

7) The Commission Must Critically Question GCI's Claims That It is Committed to Serving Adak Island at the \$250 Per Line Monthly Cap on High-Cost Support.

Staff requested that the companies defend the proposed waivers in light of GCI's statements that it is "committed" to serving Adak Island at \$250 per line per month. As emphasized by AEE and WCC in prior filings,¹⁸ the Commission must critically investigate such claims by GCI. It is not in the public interest for the Commission to simply take GCI's claims at face value, and the Commission should not rely on such claims without requiring GCI to support such claims with specific evidence, including cost studies, questions regarding how many lines per customer and whether (and how much) those lines are used, whether it intends to support critical services on Adak such as 911, whether its plan includes purchasing AEE's assets in bankruptcy, and information regarding past and current use of USF funds related to service on Adak Island.

The companies repeated that it did not understand why the Commission appeared to be taking GCI's statements regarding its promises of service at the \$250 cap at face value, despite the evidence that the companies have put into the record to refute GCI's claims. As documented by AEE and WCC, GCI did not step forward when the Adak telecommunications plant needed rebuilding and has never invested in robust infrastructure on Adak Island. Moreover, GCI has made only minimal long-term investments in telecommunications infrastructure on the island and maintains no presence there.¹⁹ Also, WCC provides the only comprehensive coverage across the entire island, including into remote areas and into the sea, where government researchers, public safety personnel,

¹⁸ See Letter from Monica S. Desai, Counsel for AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of *Ex Parte*, WC Docket No. 10-90, *et al.*, filed September 4, 2012 ("AEE/WCC Sept. 4 *Ex Parte*"); Letter from Monica S. Desai, Counsel for AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of *Ex Parte*, WC Docket No. 10-90, *et al.*, filed September 17, 2012 ("AEE/WCC Sept. 17 *Ex Parte*").

¹⁹ See Reply Comments of AEE, WC Docket No. 10-90, *et al.*, 2-4, filed July 16, 2012 ("AEE Reply Comments") (explaining GCI's dependence on AEE's infrastructure and technicians). It appears that GCI's minimal investments include a single cell site consisting only of two small antennae mounted on an out-of-service satellite dish, coax cable, switch routing equipment, and an earth station consisting of a small satellite dish to provide long distance service. See Letter from Monica S. Desai, Counsel for AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of *Ex Parte*, WC Docket No. 10-90, *et al.*, Attachment 1, filed September 4, 2012 ("AEE/WCC Sept. 4 *Ex Parte*"), providing photographs of GCI's two antennae mounted on an out-of-service satellite dish, and its earth station. Compare to AEE/WCC Sept. 4 *Ex Parte*, Attachment 2, providing photographs of WCC's downtown and White Alice cell sites, illustrating the stark difference. Based on the fact that GCI has for each quarter reported significantly higher line counts than WCC, we believe it is reasonable to presume that GCI has received greater USF support for Adak than WCC has received, despite its failure to invest in the community or provide a comparable level of service. See Letter from Jennifer L. Richter, Counsel for WCC, to Marlene H. Dortch, Secretary, FCC, Response to Request for Additional Information, WC Docket No. 10-90, *et al.*, filed May 24, 2012 (providing WCC line count information).

fishermen and others regularly require service.²⁰ By stark contrast, GCI covers only a portion of the downtown area – and not even the entire downtown.²¹ GCI has acknowledged that it does not currently possess and has not invested in the required spectrum, facilities and equipment to offer service equivalent to WCC’s.²²

It is not by chance that AEE and WCC are able to provide better quality, more comprehensive service. Unlike GCI, Mr. Mayes and Ms. Weaver have made it a priority to reinvest available funding not only for personnel on Adak Island, but also for infrastructure and equipment, to provide better quality and more comprehensive service to the people living and working on Adak Island, and to foster economic development. These investments include (but are not limited to): (1) constructing two essential cell sites, (2) laying fiber, (3) repairing roads after construction; (4) providing necessary satellite equipment, (5) employing the only technician and mechanic on Adak Island, 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.²³ Additionally, WCC has expended funds to enable cellular voice and data traffic backhaul and open the only retail store on Adak Island.²⁴

GCI has attempted to characterize its failure to invest in Adak, and its resulting lack of costs to serve the island, as evidence that it is a more “efficient” carrier than WCC and AEE. Obviously: if a carrier makes insubstantial investments in an area, encourages the government to bankrupt its competitors, and then suggests it should be able to scoop up in bankruptcy the investments that its competitors have worked tirelessly to build – and which taxpayers have helped to fund – it will of course have very few costs to recover. And that would be a neat trick. An even better trick is to take “per line” funding from the government at whatever rate the government suggests, simply multiply the number of lines per user, and claim those lines for reimbursement. Despite submitting

²⁰ See WCC Petition at 6-7.

²¹ See WCC Petition at Exhibit 2 (maps illustrating WCC’s coverage area compared to GCI’s).

²² See Comments of General Communication, Inc., WC Docket No. 10-90 *et al.*, 2-4 (filed July 2, 2012) (“GCI Comments”) (stating that “GCI could construct alternative microwave facilities if necessary;” “GCI believes that it could provide these [E-rate] services to Adak schools as well;” “GCI could provide Adak Island with largely comparable USF-supported services for no more than the total amount of high-cost support;” “GCI’s ConnectMD program, which supplies these telemedicine connections, leases two T-1s from AEE, which GCI could replicate through microwave solutions;” “GCI could deploy a WiFi-based fixed wireless broadband service;” “In the event that it could not acquire the few private line circuits necessary to reach the small number of larger enterprise users on Adak, GCI believes it could provide similar service through microwave facilities to connect those users with GCI’s satellite and switching hub”)(emphasis added); see also GCI Aug. 29 *Ex Parte* at 6 (“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.”).

²³ See Letter from Monica Desai, Counsel for WCC, to Marlene H. Dortch, Secretary, FCC, Notice of *Ex Parte*, WC Docket No. 10-90, *et al.*, 2-3, filed May 21, 2012; AEE Reply Comments 2-4.

²⁴ WCC Petition at 6; see also Letter from Monica Desai, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, FCC, Notice of *Ex Parte*, WC Docket No. 10-90, *et al.*, 4, filed August 21, 2012 (explaining the business rationale for opening the retail store).



evidence into the record that this appears to be what GCI is doing, including an affidavit from the Adak city manager explaining that the city has five GCI lines that it does not use, and that he personally has five GCI lines that he does not use (all 10 of which were taken in exchange for airline miles but cannot be used because of lack of 911 service and otherwise poor quality service), the FCC continues to ask why GCI is not a better option for the public.²⁵ In that scenario, of course GCI can operate much more “cheaply” than any carrier that does take the risk to make long-term investments in anticipation of building and growing a company to provide years of quality service, whose customers only sign up for one line, and whose customers actually use the service because that carrier has invested in the infrastructure necessary to provide quality service.

Attached to this filing is another signed letter from a GCI customer on Adak, Clesson Zaima, explaining that he also has five GCI phone lines, but that he only uses two of them. He took five phones so that he could receive airline miles in exchange, and because he was only being charged \$5/month for each phone. Mr. Zaima explained that he asked to take only two lines for use in downtown Adak, but that GCI would only let him take a package of five phones – he was not allowed to take just two phones. He also has a WCC phone line because that is the one he uses in all of downtown, and in areas outside of downtown.²⁶

This information raises important questions that the Commission must consider if GCI’s assurances remain a persuasive factor in the Commission’s evaluation of the waiver requests:

- What infrastructure is GCI planning to use in order to honor its “commitment” to serve Adak Island at the \$3,000 per line annual cap on high cost support?
- How would it acquire the infrastructure and facilities necessary to provide this service?

AEE and WCC strongly reiterate that it would be directly contrary to the public interest for the Commission to allow its USF reforms to force AEE and WCC into bankruptcy and default so that GCI can buy the companies’ USF and RUS-subsidized assets out of bankruptcy for pennies on the dollar. Such a plan is the opposite of “efficient.” Indeed, as evidenced by the numerous letters in support of the companies’ waiver requests,²⁷ allowing the USF reforms to force AEE and WCC into bankruptcy would create governmental inefficiency that would have a detrimental impact at both the federal and state levels. In particular, RUS would be harmed because AEE would not be able to repay its loan. Other governmental agencies and departments that depend on the critical services provided by AEE and WCC – including the U.S. Department of Interior Fish and Wildlife Service, the City of Adak, and the Adak Police Department – also would be harmed by the unavoidable disruption to essential service on Adak Island.

²⁵ See Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of *Ex Parte*, WC Docket No. 10-90, *et al.*, Declaration of Layton J. Lockett, Attachment 2, dated Sept. 17, 2012.

²⁶ See Letter from Clesson Zaima, dated April 12, 2013, at Attachment 9.

²⁷ See Letters of Support at Attachment 8.



AEE and WCC emphasized that they stand ready – as they have throughout the entire waiver review process – to provide any additional information staff desires and elaborate on any information previously submitted. The companies remain committed to operating as efficiently as possible in order to continue providing essential service to one of the most remote areas in the country. To ensure that these essential services are maintained, AEE and WCC look forward to working with Commission staff to reach a long-term resolution of their waiver requests as quickly as possible.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Monica S. Desai", written over a horizontal line.

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Supplemental Salary Information

Attachment 1

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ENTIRE EXHIBIT REDACTED FOR PUBLIC INSPECTION

Executive Salaries Comparison Chart

Attachment 2

REDACTED - FOR PUBLIC INSPECTION

ENTIRE EXHIBIT REDACTED FOR PUBLIC INSPECTION

