

May 14, 2013

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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**  
**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:

On May 14, 2013, Monica Desai, counsel to Adak Eagle Enterprises, LLC (“AEE”) and Windy City Cellular, LLC (“WCC”), met with Commissioner Pai and Nicholas Degani, Legal Advisor to Commissioner Pai, regarding the Petitions for Waiver filed by AEE and WCC.<sup>1</sup> During the discussion, Ms. Desai emphasized the following points.

AEE and WCC have provided overwhelming evidence to support the conclusion that grant of their waiver requests 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*,<sup>2</sup> and have expeditiously (and without protest) provided responses to dozens of additional questions and categories of information requested by FCC staff, at significant cost and effort for such tiny companies.<sup>3</sup> The

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<sup>1</sup> 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”).

<sup>2</sup> 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*”).

<sup>3</sup> 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

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.<sup>4</sup> Adak Island, however, is inherently a high-cost area with extremely challenging conditions.<sup>5</sup> Ms. Desai reiterated that even if the companies were to eliminate every job position, stop maintaining the plant and equipment that they have invested in, and shut down WCC's retail store (which had been planned years before the unexpected flash cut in USF funding), in addition to the significant cuts already made, AEE and WCC would not be able to operate at the \$250 per line monthly cap given all of their recent investments in infrastructure. Moreover, even if the companies were to cut all operating expenses, AEE still would have an outstanding \$6 million RUS loan, which it 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.

Since the dramatic, unexpected 84% flash cut in funding, 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 wireless service on the island, and the only technicians on the island. As reflected in the numerous letters submitted in support of the AEE and WCC waiver requests,<sup>6</sup> the services provided by AEE and WCC are vital to the Adak community and essential for public safety on the island. Indeed, WCC provides the most comprehensive wireless coverage across the entire island, including into otherwise unserved remote areas of the island and into the sea, where residents, government researchers, public safety personnel, fishermen and contractors regularly require service.<sup>7</sup> In particular, the coverage provided by WCC's White Alice site is critical

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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, and responses to additional staff requests for supplemental information.

<sup>4</sup> See Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte and Submission of Further Supplemental Information, WC Docket No. 10-90, *et al.*, dated April 12, 2013 ("AEE/WCC April 12 Ex Parte").

<sup>5</sup> 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.

<sup>6</sup> See AEE Petition at Attachment A and AEE/WCC April 12 Ex Parte at Attachment 8 (Letters of Support filed by Sen. Mark Begich; Sen. Lisa Murkowski; Congressman Don Young; the City of Adak; Marine Exchange of Alaska; Aleut Corporation; Adak Community Development Corporation; Alaska Maritime National Wildlife Refuge, U.S. Department of the Interior, Fish and Wildlife Service; Icicle Seafoods, Inc.; Eastern Aleutian Tribes; National Telecommunications Cooperative Association; U.S. Geological Survey; and the Adak Police Department).

<sup>7</sup> See WCC Petition at 6-7.

for public safety and has been instrumental in facilitating emergency rescue operations.<sup>8</sup> As Commissioner Pai recently observed, “it is imperative that [the Commission] take the necessary action . . . to make sure that every American can reach an emergency operator when she or he dials 911.”<sup>9</sup> Commissioner Rosenworcel also recently acknowledged the importance – and challenges – of providing these crucial services to rural America, including remote areas of Alaska:

Many of you [rural providers] operate on tough terrain. You provide service in difficult weather. You work under real financial constraints. Every day you keep people connected despite these challenges. It’s no easy feat.<sup>10</sup>

Ms. Desai emphasized 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 waiver process. Furthermore, the Commission repeatedly assured that there would not be any “flash cuts” in funding and that the Commission would work with companies on an ongoing basis to ensure a predictable process. In stark contrast, however, 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 Commission’s repeated promises of a predictable, timely, and transparent process with no flash cuts.

Commissioner Clyburn recently reiterated the Commission’s promise of no flash cuts, a streamlined waiver process, and ongoing engagement with companies:

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.<sup>11</sup>

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

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<sup>8</sup> 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.*, 10, dated Feb. 28, 2013.

<sup>9</sup> *Improving 911 Reliability, et al.*, PS Docket No. 13-75, *et al.*, Statement of Commissioner Pai (rel. March 20, 2013).

<sup>10</sup> Remarks of Commissioner Rosenworcel, Rural Telecom Industry Meeting and Expo (Feb. 4, 2013).

<sup>11</sup> Prepared Remarks of Commissioner Mignon Clyburn, 2013 WTA Spring Meeting, San Antonio, Texas (April 9, 2013) (emphasis added).

- “[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, 2011<sup>12</sup>
- “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, 2011<sup>13</sup>
- “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, 2011<sup>14</sup>
- “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, 2012<sup>15</sup>
- “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, 2012<sup>16</sup>
- “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, 2012<sup>17</sup>

Rather than provide the predictable transition and ongoing engagement called for by the Commissioners, 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

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<sup>12</sup> *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Statement of Chairman Julius Genachowski (rel. Feb. 8, 2011) (emphasis added).

<sup>13</sup> *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Statement of Commissioner Mignon L. Clyburn (rel. Oct. 27, 2011) (emphasis added).

<sup>14</sup> *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Statement of Chairman Julius Genachowski (rel. Oct. 27, 2011) (emphasis added).

<sup>15</sup> “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).

<sup>16</sup> “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).

<sup>17</sup> Statement of Commissioner Mignon Clyburn, FCC, before the House Subcommittee on Communications and Technology Committee on Energy and Commerce (July 10, 2012) (emphasis added).

lengthy waiver process – have had the opposite effect. The companies have been at an operational standstill over the past year, unable to plan critical investments as they await a decision from the Bureaus.

Ms. Desai emphasized that AEE and WCC have provided staff with scenarios for the companies to operate with reduced support.<sup>18</sup> The companies will also submit into the record a long-term plan to transition as close to the \$250 per line monthly cap as possible, based on the depreciation of their recent investments, over the course of the next 25-29 years.<sup>19</sup> As a reminder, both AEE and WCC are relatively new companies, with the wireline service in place only seven (7) years, the broadband service only five (5) years, and the wireless service only four (4) years. A long-term transition timeline is consistent with the Commission’s promise of a measured and predictable transition path and, in particular, Commissioner Pai’s call for predictable USF support that allows companies to adequately plan their long-term investments into the future:

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.”<sup>20</sup>

A 25-29 year transition timeline also is consistent with Commissioner Rosenworcel’s call for USF policies that afford 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 and provide rural consumers with confidence that they will have access to first-rate communications services.<sup>21</sup>

Furthermore, Ms. Desai pointed out the Commission’s acknowledgment in the *USF/ICC Transformation Order* that “[c]arriers serving remote parts of Alaska . . . should have a slower transition path in order to preserve newly initiated services and facilitate additional investment in still unserved and underserved areas during the national transition to the Mobility Funds.”<sup>22</sup> Consistent with this

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<sup>18</sup> See AEE/WCC April 12 Ex Parte at 12-15, Attachment 6.

<sup>19</sup> AEE and WCC will submit this transition plan into the record by May 16, 2013.

<sup>20</sup> Statement of Commissioner Ajit Pai, FCC, before the U.S. Senate Committee on Commerce, Science, and Transportation (March 12, 2013) (emphasis added).

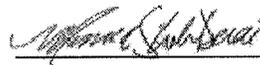
<sup>21</sup> Statement of Commissioner Jessica Rosenworcel, FCC, before the U.S. Senate Committee on Commerce, Science, and Transportation (March 12, 2013).

<sup>22</sup> *USF/ICC Transformation Order*, ¶ 529 (“... [C]arriers serving remote parts of Alaska, including Alaska Native villages, should have a slower transition path in order to preserve newly initiated services and facilitate additional investment in still unserved and underserved areas during the national transition to the Mobility Funds. Over 50 remote communities

acknowledgment, a more gradual transition timeline is appropriate for AEE and WCC, relatively new companies that have made recent investments to provide newly initiated services to otherwise unserved areas of remote Alaska.

Additionally, Ms. Desai strongly reiterated 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 in order to allow another company to buy AEE's and WCC's USF and RUS-subsidized assets out of bankruptcy for pennies on the dollar. Such a plan would be the opposite of "efficient." Indeed, as evidenced by the numerous letters in support of the companies' waiver requests,<sup>23</sup> 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. As a result of AEE's and WCC's investments, the companies are able to provide service beyond the portion of the downtown area served by their competitor. Other governmental agencies and departments depend on the critical services provided by AEE and WCC beyond downtown Adak – including the U.S. Department of Interior Fish and Wildlife Service, the City of Adak, and the Adak Police Department – and would be harmed by the unavoidable disruption to these essential services.

Respectfully submitted,



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in Alaska have no access to mobile voice service today, and many remote Alaskan communities have access to only 2G services. While carriers serving other parts of Alaska will be subject to the national five-year transition period, we are convinced a more gradual approach is warranted for carriers in remote parts of Alaska. Specifically, in lifting the Covered Locations exception, we delay the beginning of the five-year transition period for a two-year period for remote areas of Alaska . . . During this two-year period, we establish an interim cap for remote areas of Alaska for high-cost support for competitive ETCs, which balances the need to control the growth in support to competitive ETCs in uncapped areas and the need to provide a more gradual transition for the very remote and very high-cost areas in Alaska to reflect the special circumstances carriers and consumers face in those communities.”).

<sup>23</sup> See AEE Petition at Attachment A and AEE/WCC April 12 Ex Parte at Attachment 8 (Letters of Support).

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