

May 31, 2013

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

Re: **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:

Adak Eagle Enterprises, LLC (“AEE”) and Windy City Cellular, LLC (“WCC”) hereby respond to the ex parte filed by General Communication, Inc. (“GCI”) on May 24, 2013.<sup>1</sup> AEE and WCC reiterate that the Commission must critically investigate claims by GCI that it is “committed” to serving Adak Island under the \$3,000 per year cap. 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 its 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 for pennies on the dollar in bankruptcy, and information regarding GCI’s past and current use of USF funds related to provision of service on Adak Island.

In particular, the Commission has a responsibility to critically investigate GCI’s use of promotional incentive programs to sell multiple lines to individual customers, and its statement that even if individual customers take multiple lines, GCI does not include in its high cost line count reports “any lines that have no usage in the reporting quarter.” This apparent GCI practice of only making available to customers packages of multiple phone lines on Adak (even if the customer only wants to purchase one or two lines), and which phone lines only seem to work in limited portions of the Island, and which apparently do not connect with 911 service, is all quite curious. If, for example, a customer purchases five phone lines and uses each of those lines for just fifteen minutes over a three-month period, does GCI claim support for all five of those lines for each of those three months? How many of its customers on Adak take more than one line? Of those customers, how

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<sup>1</sup> See Letter from John T. Nakahata, Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, Ex Parte, WC Docket No. 10-90, *et al.*, dated May 24, 2013 (“GCI May 24 Ex Parte”).

many lines for each has GCI claimed since it began providing service on Adak Island? Based on how many minutes of use for each line? If GCI is claiming the ability to serve Adak Island more “efficiently” based on its statewide network and statewide facilities, then the FCC has the responsibility to ascertain whether this “efficiency” is based even in part on multiple lines per customer throughout the state, with support for phone lines with little to no use.

GCI’s apparent practices raise important questions that the Commission has the duty to investigate if GCI’s “assurances” are a factor in staff’s evaluation of the AEE and WCC waiver petitions:<sup>2</sup>

- With respect to GCI’s claim that it does not include in its high cost line count reports “any lines that have no usage in the reporting quarter,” how does GCI define “usage” over a three-month period? For example, if just one phone call over an entire three-month period is made on each of the five phones belonging to a single customer, does GCI claim support? Or has it claimed support in the past for such a practice?
- GCI apparently concedes that it sells multiple phone lines to individual customers.<sup>3</sup> But why does GCI offer packages of multiple lines to individual customers if the lines are not going to be used? How many lines do each of its individual customers each have on Adak Island? How much support has GCI received for each of those lines?
- How long has GCI engaged in the practice of selling multiple lines to individual customers?
- Does GCI engage in this practice statewide in Alaska or only on Adak Island?
- How many customers has GCI signed up through promotional incentive programs, and how many lines does each of those customers have? How many of those lines do the customers “use”?
- What is the value of such promotions for the customer, and what is the cost of the promotions to GCI?

From a public policy perspective, the FCC must evaluate whether GCI is collecting support for multiple phones that are unused or are used minimally, and if so, whether that is an appropriate and efficient use of funds.

AEE and WCC reiterate that, under Section VII(G) of the *USF/ICC Transformation Order*, a waiver request cannot be denied based on another company’s “commitment” to take over another company’s assets in bankruptcy, or another company’s “promise” to serve a certain area.<sup>4</sup> Rather, a

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<sup>2</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”).

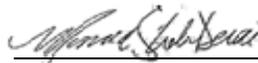
<sup>3</sup> See GCI May 24 Ex Parte at 2, n.5.

<sup>4</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*”).

carrier seeking a waiver “must demonstrate that it needs additional support in order for its customers to continue receiving voice service in areas where this is no terrestrial alternative.”<sup>5</sup> As demonstrated by their petitions and numerous subsequent filings, AEE and WCC meet this standard. Indeed, as a result of AEE’s and WCC’s investments, the companies are able to provide service into portions of the Adak service area beyond the portion of the downtown area served by GCI. Governmental agencies and departments, as well as residents, 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 if AEE’s and WCC’s waiver requests were denied. There is no terrestrial alternative currently available to these customers. GCI’s unsubstantiated “commitment” to provide service at some point in the future is not sufficient.

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,<sup>6</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. RUS would be harmed because AEE would not be able to repay its loan. The numerous other governmental agencies and departments that depend on the critical services provided by AEE and WCC also would be harmed by the unavoidable disruption to essential service on Adak Island.

Respectfully submitted,



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<sup>5</sup> USF/ICC Transformation Order, ¶ 540.

<sup>6</sup> See AEE Petition, Attachment A; 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.*, Attachment 8, dated April 12, 2013 (“AEE/WCC April 12 Ex Parte”); Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Submission of Further Supplemental Information, WC Docket No. 10-90, *et al.*, Attachment 3, dated May 31, 2013 (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; the Adak Police Department; and the Southwest Alaska Municipal Conference).

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