



**Minority Media &
Telecom Council**

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October 28, 2013

Hon. Mignon Clyburn, Acting Chairwoman
Hon. Ajit Pai, Commissioner
Hon. Jessica Rosenworcel, Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: Reversal of Adak Eagle Enterprises and Windy City Cellular's Denied Petition for Waiver of Certain High-Cost Universal Service Rules, WC Docket No. 10-90; WT Docket No. 10-208

Dear Chairwoman Clyburn and Commissioners:

The Minority Media and Telecommunications Council ("MMTC"), as *amicus curiae*, respectfully submits this letter in support of the Petition for Reconsideration and Application for Review in the aforementioned proceeding.¹ The Commission's grant of the Petition for Reconsideration and Application for Review would result in the ability of Adak Eagle Enterprises ("AEE") and Windy City Cellular ("WCC") – both minority-owned – to continue the provision of essential wireline and wireless services to the rural and geographically isolated Adak Island located in the State of Alaska. MMTC has long championed the importance of women and minority owners of telecommunication services, not only in minority or rural communities, but in the roles they have played for the communications industry as a whole. AEE and WCC have provided years of benefit to the Adak community they serve.

As two of few minority-owned telecommunications businesses in the U.S., AEE and WCC provide services in this remote part of the country. Adak Island, Alaska sits on the Aleutian chain of islands in the Bering Sea. Larry Mayes, the owner of both companies, is one of the few minority owners and operators of a rural communications provider in the nation. On Adak Island, AEE is the only provider of wireline voice service to residents. WCC provides the most comprehensive wireless service on the island, including service for otherwise unserved remote

¹ See Application for Review of AEE and WCC, WC Docket No. 10-90 and WT Docket No. 10. 208 (filed Aug. 14, 2013) ("Application for Review"); Petition for Reconsideration of AEE and WCC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Aug. 14, 2013) ("Petition for Reconsideration").

areas and into the sea, where residents, government researchers, public safety personnel, fishermen, and other workers regularly require service, particularly in times of emergency.²

Over the years, AEE has invested significant time, labor, and financial resources, through \$6 million in taxpayer-supported Rural Utility Services (RUS) loans, to invest in the technical infrastructure for their company and, consequently, became the first private communications service provider on Adak Island when no one else was willing to provide service.³ With minimal consumer complaints and service disruptions, AEE and WCC have both proven themselves to be reliable service providers.

Despite the FCC's repeated assurances to Congress that it would provide a predictable and transparent process with "no flash cuts", the October 27, 2011, USF/ICC Transformation Order⁴ imposed, without any warning, a staggering overnight 84 percent flash cut reduction to WCC's funding and a drastic phase-down of AEE's support, as well as an onerous waiver process.⁵ As a result, funding for both AEE and WCC was cut drastically and both companies are now on the verge of bankruptcy.⁶ Whereas the companies have provided an efficient network for voice and broadband services, the impact of the "flash cut" has both entities desperately struggling to continue the provision of essential services to the Adak community. Absent waivers of the new high cost loop support caps, AEE will be forced to default on its RUS loan, and both companies will be forced to cease operations.⁷ Here is the relevant background:

On April 3, 2012, WCC filed a Petition for Waiver of Section 54.307(e) of the Commission's Rules, which established a \$250 per line monthly cap on high-cost universal service support for competitive eligible telecommunications carriers.⁸ On May 22, 2012, Adak filed a Petition for Waiver of Section 54.302 of the Commission's Rules, which similarly imposed a \$250 per line monthly cap on high-cost universal service support for carriers generally.⁹

On July 15, 2013, the FCC's Wireline Competition Bureau and Wireless Telecommunications Bureau (the "Bureaus") denied the petitions on several grounds, but primarily focused on

² See Notice of Ex Parte: WC Docket Nos. 10-90 and WT Docket No. 10-208, Adak Eagle Enterprises and Windy City Cellular, Oct. 23, 2013, available at: <http://bit.ly/1hcWStf> (last visited: Oct. 25, 2013) ("October 23, 2013 Ex Parte").

³ See Petition for Reconsideration.

⁴ See *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Red 17633, Section VII(G), ¶¶539-544 (2011) ("*USF/ICC Transformation Order*").

⁵ See Petition for Reconsideration.

⁶ See October 23, 2013 Ex Parte.

⁷ See Petition for Reconsideration.

⁸ Petition for Waiver of Windy City Cellular, LLC, WC Docket No. 10-90 et al. (filed Apr. 3, 2012) (WCC Petition); see also *Connect America Fund*, WC Docket No. 10-90, Universal Service Reform – Mobility Fund, WT Docket No. 10-208, Petition for Waiver of Windy City Cellular, LLC, Order, 27 FCC Rcd 6224 (WTB 2012) ("WCC Interim Relief Order") (providing interim support to WCC).

⁹ Adak Eagle Enterprises, LLC Petition for Waiver of Section 54.302 of the Commission's Rules, WC Docket No. 10-90 and WT Docket No. 10-208 (filed May 22, 2012) ("AEE Petition").

certain “unreasonable” operating expenses.¹⁰ Despite the responsiveness of AEE and WCC to the Bureaus’ expense and operational concerns, FCC officials concluded that the “plans fail to adequately address key ongoing expenses, including, for example, disproportionate executive compensation relative to the size of the companies.”¹¹

The Bureaus also cited in its decision to deny the waiver the presence of another company that the Bureau regarded as an alternative service provider of mobile wireless voice service on Adak Island. Specifically, the Bureau based its denial, in large part, on General Communication, Inc.’s (“GCI”) *promise* to provide future service on Adak Island in the event AEE and WCC were to shut down.¹² GCI does not currently serve significant portions of the service area beyond only limited portions of the downtown Adak area; lacks the infrastructure, facilities, or equipment on the island to do so; does not provide 911 service; and cannot guarantee buildout quickly enough such that no customers would lose service.¹³

Furthermore, the Bureaus also relied on GCI’s claims of greater “efficiency” without addressing GCI’s documented practice of collecting USF support for multiple lines sold to individual customers on Adak.¹⁴ On this point alone, the Bureaus did not consider that GCI could potentially take even more money from the USF if GCI were to take over as the sole provider of services on Adak Island.

It appears that the Bureaus support GCI providing Adak Island with fewer services to a smaller geographic area, and to fewer customers, at more cost to the USF.¹⁵ At the same time, a small, minority-owned business is providing more and better services, including what appears to be the only 911 service, serving a larger geographic area and more customers, all while historically taking less support. We believe it does not make sense as a policy matter for the FCC to favor GCI over AEE under these circumstances.

The weather and remoteness-related difficulties faced on Adak Island, the ecological and financial challenges associated with building a new network, and the short season in which such

¹⁰ Order in the Matters of Connect America Fund, Universal Service Reform – Mobility Fund, Petitions for Waiver of Windy City Cellular, LLC and Adak Eagle Enterprise, LLC, WC Docket No. 10-90 and WT Docket No. 10-208 (adopted December 20, 2012) (“Order”).

¹¹ *Id.*

¹² See Opposition of General Communication, Inc. to AEE’s and WCC’s Application for Review and Petition for Reconsideration, WC Docket No. 10-90, *et al.*, at n. 8 (filed Aug. 30, 2013) (“... although GCI committed to continuing to provide voice service, it did not commit to providing ‘wireline’ service.”); see also Reply to Opposition to Application for Review, AEE and WCC, WC Docket No. 10-90, *et al.*, at 1 (filed Sept. 9, 2013) (“Reply to Opposition to Application for Review”).

¹³ See October 23, 2013 Ex Parte.

¹⁴ *Id.*

¹⁵ See Opposition of General Communication, Inc. to “AEE’s and WCC’s Application for Review and Petition for Reconsideration, WC Docket No. 10-90, *et al.*, at n. 8 (filed Aug. 30, 2013) (“... although GCI committed to continuing to provide voice service, it did not commit to providing ‘wireline’ service.”); see also Reply to Opposition to Application for Review, AEE and WCC, WC Docket No. 10-90, *et al.*, at 1 (filed Sept. 9, 2013) (“Reply to Opposition to Application for Review”); see also Application for Review at 4-5, 10.

major infrastructure can be planned and implemented also make GCI a riskier contender to provide ubiquitous and reliable voice and broadband services.¹⁶ Moreover, MMTC is not convinced that GCI would be able to assume all of the telecommunications services in the community within a reasonable time frame, dangerously leaving the residents of the communities without basic telephonic communications capabilities, and increasing risk for consumer complaints, as well as potential consumer harms. Given the remoteness of Adak Island, access to both voice and broadband can be a matter of life and death.

In addition to basic services, AEE and WCC provide the only reliable 911 emergency service on Adak.¹⁷ Unlike AEE, GCI does not help emergency responders identify and find 911 callers.¹⁸ Moreover, whereas AEE and WCC work closely with the City of Adak to provide prompt, reliable 911 assistance and have technicians on Adak Island to support its 911 service. It has been reported that GCI has a history of being unresponsive when asked by the City for assistance with its service and has no technicians on the Island to respond to service outages.¹⁹ As the Commission strives to promote voice and broadband services that can adhere to the standards of emergency response systems, the ability of AEE and WCC to be the backbone for this remote community should be favorably viewed by the Commission.

Over the past few months, AEE and WCC's waiver petitions have received overwhelming support from the government agencies and organizations that depend on the companies' critical services – including the City of Adak, the Adak Police Department, the Marine Exchange of Alaska, the Aleut Corporation, the Adak Community Development Corporation, the Alaska Maritime National Wildlife Refuge, the U.S. Department of the Interior's Fish and Wildlife Service, the Eastern Aleutian Tribes, the National Telecommunications Cooperative Association, Southwest Alaska Municipal Conference, and the U.S. Geological Survey. Each of these supporters has expressed its operational dependence on AEE and WCC and the harms that would result if the comprehensive and reliable service provided by the companies were no longer available.²⁰

¹⁶ See October 23, 2013 Ex Parte.

¹⁷ See Petition for Reconsideration.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See, e.g., Petition for Waiver of Adak Eagle Enterprises, LLC, (filed May 22, 2012); 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.*, at Attachment 3 (dated May 31, 2013); 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.*, at Attachment 8 (dated April 12, 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; Southwest Alaska Municipal Conference; and the Adak Police Department); see also 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 Elaine Smiloff (filed Sept. 12, 2013); see also Reply of NTCA The Rural Broadband Association and the Western Telecommunications Alliance to Opposition of General Communication, Inc., WC Docket No. 10-90 and WT Docket No. 10-208 (filed Sept. 9, 2013); see also Letter from Shannon M. Heim,

Based on these facts, MMTC recommends that the Commission grant AEE and WCC's Petition for Reconsideration and Application for Review on three significant grounds:

1. The Commission should consider ways to support – rather than penalize minority or women-owned businesses (“MWBEs”) that enter into a competitive communications ecosystem. AEE and WCC are two of the few minority-owned businesses and companies in general that bring telecommunication services to rural America. As stated, these companies are also recipients of government-backed RUS grants that are designed to help MWBEs and small businesses become more economically viable and sustainable. Given that AEE and WCC do not have a history of consumer complaints/harms or compromised services, the denial of their petitions would send a larger message to other MWBEs that desire to do the same in unserved and under-served communities.
2. The Commission cannot maintain with relative certainty that the residents and businesses on Adak Island will not have a disruption of services if AEE and WCC were to cease operations. There is no alternative provider available for significant portions of Adak Island and no other provider has the infrastructure or facilities to provide service to the residents, businesses, and government agencies operating in these areas. Even if another provider were to take over service to these areas at some point in the future, deploying this service would take time, especially given the challenges of serving Adak Island due to the severe weather, terrain, and remoteness.
3. The Commission should explore the adverse effect that the elimination of AEE and WCC's services will have on local businesses, residents and government entities that rely heavily on their existing telecommunications network. Moreover, the Commission should consider the jobs that will be lost with the closure of both companies and the impact on the already fragile, and seasonal, economy of this remote island.

MMTC presents these grounds as prime reasons for the FCC's review of AEE and WCC's Petition for Reconsideration and Application for Review. MMTC respectfully recommends that the Commission grant a reversal of AEE and WCC's denied waiver requests.

Again, AEE is the only provider of wireline voice service to Adak Island, and WCC provides the most comprehensive wireless service on the island. They built the system from scratch – parts of it by hand themselves.²¹ For these reasons, MMTC supports AEE and WCC's waiver petitions and recognizes that by reversing its denial of the waiver petitions, the Commission will assist in preserving women- and minority-owned rural communications providers, serving community

Counsel, Alaska Rural Coalition, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Sept. 19, 2013); Letter from John Charles Padalino, Administrator, Rural Utilities Service, to Acting Chairwoman Mignon Clyburn, FCC, WT Docket No. 10-208, *et al.*, at 3 (dated Aug. 14, 2013); Letter from Rep. Don Young, Sen. Lisa Murkowski, and Sen. Mark Begich to Acting Chairwoman Clyburn, FCC (dated Oct. 17, 2013).

²¹ See Petition for Reconsideration.

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interests, and reducing destructive and inhibitive regulatory barriers in the communications industry.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Honig". The signature is fluid and cursive, with a large initial "D" and "H".

David Honig

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