

December 2, 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 and WT Docket No. 10-208
Adak Eagle Enterprises and Windy City Cellular**

Dear Ms. Dortch:

Adak Eagle Enterprises, LLC (“AEE”) and Windy City Cellular, LLC (“WCC”) submit this response to the ex parte filed by General Communication, Inc. (“GCI”) on November 27, 2013.¹ AEE and WCC find the GCI ex parte so incredible that they attach it here for reference.²

GCI states that it can extend service into any areas of Adak Island within the \$3,000 annual per line cap on high cost support.³ Of course it can – it is impervious to the cap. Whereas WCC only collects support for one line per customer, GCI flaunts the fact that it does, with impunity, collect support for an apparently unlimited number of lines per customer. In fact, GCI insists there is nothing “improper” about it collecting support for customers on remote Adak Island with packages of five or more phones that work only in a limited portion of the downtown area.⁴ GCI even warns that the Commission is forbidden from doing anything about this.⁵ Nevertheless, GCI tells the Commission it should be reassured because it can of course trust that, at least “for Adak lines,” GCI is a responsible USF recipient because it has “*voluntarily* taken the step of ensuring that it *only seeks support*” for those lines “*on which there has been usage* within the relevant reporting quarter.”⁶ The companies are flabbergasted that GCI can say this with a straight face. Obviously, this statement raises many questions, including:

- How does GCI define “usage”? Is turning on the phone enough to count as “usage”? Does speaking on the phone for (pick a number) minutes in any given quarter meet the definition?

¹ See Letter from John T. Nakahata, Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, WC Docket No. 10-90, *et al.* (filed Nov. 27, 2013) (“GCI Ex Parte”).

² See Exhibit 1.

³ See GCI Ex Parte at 1.

⁴ GCI Ex Parte at 2.

⁵ See GCI Ex Parte at 2.

⁶ GCI Ex Parte at 2 (emphasis added).

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For example, will GCI collect support for each of a customer's five or more lines if that customer speaks on each of those phones for at least five minutes in any quarter? Is it enough if each customer merely turns on each of his five or more phones just once in a quarter?

- Does GCI have "usage" figures it is willing to share?
- Does GCI's voluntary collect-support-only-for-unspecified-and-undefined-usage policy apply only to Adak lines? How does GCI monitor this voluntary policy?
- What does GCI do in the rest of Alaska? Does GCI collect USF support for multiple lines per customer whether or not there is any "usage" of the line at all?
- How long has GCI been voluntarily collecting only support for unspecified and undefined "usage" for Adak lines? And how long will GCI's voluntary Adak policy last?

GCI clearly is efficient at collecting USF support, but efficiency at collecting USF funds does not make it a more efficient provider of service to remote Adak Island – or a responsible recipient of USF support. From a Fund fiscal responsibility perspective, the Commission must realize that it makes more financial sense to support WCC rather than GCI because WCC serves more customers and a greater coverage area than GCI, all while taking less USF support than GCI.

Additionally, GCI denies that it does not provide 911 service.⁷ GCI may be correct that it provides some type of "911 service," but GCI apparently fails to provide a *working* 911 service. Indeed, the Adak City Manager, who oversees Adak's 911 system, has twice sworn under penalty of perjury that GCI does not provide a reliable service:

In the third quarter of 2010, I had experimented with using the GCI wireless service for the mobile 911 system, however we immediately abandoned using that service less than a week later when their network went down. I had to plea with the senior management in Unalaska for them to reboot the network as they had no on-island presence. Furthermore, I had to explain that our mobile 911 system was on their network and could not answer any emergency calls while their network was down. As a result, I immediately cancelled the experiment as WCC has 24/7 staff on island that can respond immediately.⁸

In his second declaration, the Adak City Manager reemphasized:

The 911 service provided by [GCI] is inadequate and unreliable. ... GCI has a history of being unresponsive when asked by the City of Adak for assistance with its service and has no technicians on the Island to respond to service outages. In contrast, AEE and [WCC] work closely with the City of Adak and its Department of Public Safety to provide prompt, reliable assistance with its 911 service whenever

⁷ See GCI Ex Parte at 2.

⁸ Application for Review, AEE and WCC, WC Docket No. 10-90 and WT Docket No. 10-208, at Exhibit 2 (First Declaration of Layton J. Lockett) (filed Aug. 14, 2013).

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requested. Furthermore, AEE and WCC have technicians on Adak Island to support their 911 service and respond to any service outages if necessary.⁹

As reflected in multiple filings, including letters from the Marine Exchange of Alaska and the Chief of the Adak Police Department, the services provided by AEE and WCC are essential for public safety – not only for the government agencies, residents, businesses, and workers on Adak Island but also for the many vessels and their crews that operate in the surrounding Alaskan seas.¹⁰ In particular, WCC's service, including the White Alice site, has repeatedly saved lives.¹¹

Strikingly, more than 16 government agencies, businesses, residents, and other entities – including the U.S. Department of Interior Fish and Wildlife Service, the City of Adak, the Adak Police Department, the U.S. Geological Survey, and the entire Alaskan delegation (twice) – have filed in support of AEE and WCC.¹² It is equally striking that no one has filed in support of GCI.

⁹ See Reply to Opposition to Application for Review, AEE and WCC, WC Docket No. 10-90 and WT Docket No. 10-208, at Exhibit 4 (Second Declaration of Layton J. Lockett) (filed Sept. 9, 2013).

¹⁰ See Letter from Bill Benning, Chief Technology Officer, Marine Exchange of Alaska, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Oct. 28, 2013) (“Marine Exchange Letter”); see also Letter from Monica Desai, Counsel, AEE and WCC, to the Honorable Tom Wheeler, Chairman, FCC, Notice of Ex Parte, WC Docket No. 10-90 and WT Docket No. 10-208, at Attachment 4 (Letter from Chief Darrell E. Tannehill Jr., Adak Police Department) (“Adak Police Dept. Letter”) and Attachment 5 (Declaration of Elaine Smiloff) (filed Nov. 4, 2013).

¹¹ See Marine Exchange Letter and Adak Police Dept. Letter.

¹² See, e.g., Petition for Waiver of Adak Eagle Enterprises, LLC, WC Docket No. 10-90, *et al.*, at Attachment A (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) (Letter of Support filed by Sen. Mark Begich, Sen. Lisa Murkowski, and Congressman Don Young (first of two); the City of Adak; Marine Exchange of Alaska (first of two); 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, 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 the Rep. Don Young, Sen. Lisa Murkowski, and Sen. Mark Begich to Acting Chairwoman Clyburn, FCC (dated Oct. 17, 2013) (second of two); Letter from Bill Benning, Chief Technology Officer, Marine Exchange of Alaska, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Oct. 28, 2013) (second of two); Letter from David Honig, President, Minority Media & Telecom Council, *et al.*, to the Honorable Mignon Clyburn, Acting Chairwoman, FCC, *et al.*, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Oct. 28, 2013) (first of two); Letter from David Honig, President, Minority Media & Telecom Council, *et al.*, to the Honorable Tom Wheeler, Chairman, FCC, *et al.*, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Nov. 27, 2013) (second of two).

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GCI asserts that WCC began operating the White Alice site after the Commission proposed the \$3,000 per line annual cap. In truth, however, the Commission provided clearance for WCC to build the White Alice site in 2009, well before the Commission released its Notice of Proposed Rulemaking in 2011.¹³ Moreover, in its NPRM, the Commission emphasized that it intended to avoid any “flash cuts,”¹⁴ and that special consideration would be given to high-cost rural areas and areas outside the continental United States, such as Adak Island.¹⁵ Accordingly, GCI’s implication that WCC should have somehow predicted an 84% overnight flash cut in funding, applicable to a company with new investments and providing service to a remote part of Alaska, is as unbelievable as GCI’s many other “assurances.”

AEE, through the help of RUS loans, replaced the Adak Island’s old copper lines with a new fiber network that supports ALL communications on the Island, including the Island’s only broadband, only wireline, and most comprehensive wireless service. GCI admits that even its non-working 911 service runs through AEE’s infrastructure, but it assures the Commission that if AEE ceased to operate, it would “find a way to deliver those 911 calls to public safety.”¹⁶ (Never mind that it does not seem to have found a way to deliver such 911 calls now, even while collecting more USF support than WCC.)

GCI does not deny that WCC serves more customers than GCI and takes less USF support than GCI. GCI addresses none of this while continuing to repeat the empty statement that “there is no justification” for granting the waiver request of WCC. Actually, the opposite is true – there is no justification left for NOT granting each company a waiver. The companies have met each element of the Commission’s waiver standard and have provided thorough responses to every follow-up question raised by the Bureaus. Moreover, as outlined in their Petition for Reconsideration and subsequent filings, the companies have diligently taken steps to comprehensively address all of the concerns raised by the Bureaus in the denial order.¹⁷ For example, the companies shut down WCC’s

¹³ See *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011) (“NPRM”).

¹⁴ See, e.g., NPRM, ¶ 12 (“As we proceed with USF and ICC reform, we intend to avoid sudden changes or ‘flash cuts’ in our policies, acknowledging the benefits of measured transitions that enable stakeholders to adapt to changing circumstances and minimize disruption.”); ¶ 17 (“We do not propose any ‘flash cuts,’ but rather suggest transitions and glide paths that we believe will facilitate adaptation to reforms.”).

¹⁵ See NPRM, ¶ 210 (“We recognize that the cost of providing terrestrial phone service in some rural areas is significant, and we reaffirm that universal service must truly be universal.”); ¶ 211 (“Should there be an exception for carriers serving Tribal lands in addition to carriers operating outside of the continental United States?”).

¹⁶ GCI Ex Parte at 2.

¹⁷ See Petition for Reconsideration, AEE and WCC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Aug. 14, 2013); Reply to Opposition to Petition for Reconsideration, AEE and WCC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Sept. 9, 2013); See Petition for Reconsideration at 5-9; see also Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Notice of Ex Parte, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Sept. 20, 2013); Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Notice of Ex Parte, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Oct. 23, 2013); see also Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, Petitions for Waiver of Certain High-Cost Universal Service Rules, WC Docket No. 10-90 and WT Docket No. 10-208, Order, 28 FCC Rcd 10194 (2013).

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retail store (the only source of free Internet on the island), slashed corporate salaries (even though they were reasonable relative to NTCA and Alaska Department of Labor salary ranges), placed AEE's administrative building on the market for sale (even though AEE was paying below market rent for the building), cut their staff by more than half, reduced employees' weekly hours, largely eliminated travel and training expenses, postponed construction of an essential warehouse, canceled construction of an additional cell site, and have been forced to operate without essential backhaul redundancy as a result of their reduced funding.

Furthermore, as emphasized in the companies' Application for Review,¹⁸ the Commission, in its waiver standard, stated:

We envision granting relief only in those circumstances in which the petitioner can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice services, with no **alternative terrestrial providers available** to provide voice telephony service to consumers using the same or other technologies that provide the functionalities required for supported voice service.¹⁹

GCI does not dispute that it does not currently provide service into parts of the island that WCC serves – including many parts of Adak Island where residents and visitors regularly work, hunt, fish, or otherwise travel to or through.²⁰ GCI offers that it is kindly “willing to either assume operation” of WCC's infrastructure (never mind that GCI provides no explanation of how it would be legally possible for it to simply “take over” the infrastructure in which another company has invested), “or extend its own coverage” at some hypothetical, unspecified time in the future (never mind that this “assurance” is neither enforceable nor backed by any concrete plans).²¹ The Commission must make clear that “alternative terrestrial provider” that is “available” means actually available – not hypothetically available based on an unenforceable and unsubstantiated “pinky promise” by a competitor.

With the companies' interim funding expiring at the end of December, the Commission only has a few weeks left to avoid the bankruptcy of AEE and WCC – the companies that responsibly, carefully and diligently planned their recent investments to build a communications infrastructure on one of the most remote places of the United States, and under the most extraordinary of conditions. AEE and WCC provide the Island with its only wireline service, only broadband service, only working 911 service, and its most comprehensive wireless service. The Commission must confirm that it will not risk all of these services based on the unenforceable and unsubstantiated “assurances” of a competitor – particularly under these facts. The promise of universal service cannot be so callously risked. With winter fast approaching and the already harsh weather on Adak Island

¹⁸ Application for Review, AEE and WCC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Aug. 14, 2013).

¹⁹ See *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17633, ¶ 540 (2011).

²⁰ See GCI Ex Parte at 1.

²¹ GCI Ex Parte at 1.

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becoming even more severe, it is crucial that the remote Adak community be able to continue relying on the essential services provided by AEE and WCC.

It has been 608 days since WCC filed its initial waiver petition, 559 days since AEE filed its initial waiver petition, and 110 days since the companies filed their Application for Review and Petition for Reconsideration. It would be tragic for the Commission to force the companies to go into bankruptcy, depriving the Adak community of their critical communications services, including vital public safety services, as a result of inaction. The people living and working on remote Adak Island deserve better from the Commission. Time is fast running out for a decision.

Respectfully submitted,



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Joseph Sorresso
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Exhibit 1



November 27, 2013

Ex Parte

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

Re: *Connect America Fund*, WC Docket 10-90; *Universal Service Reform – Mobility Fund*, WT Docket 10-208; *Adak Eagle Enterprises, LLC and Windy City Cellular, LLC*, *Petition for Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90, WT Docket No. 10-208; *Modernizing the E-rate Program for Schools and Libraries*, WC Docket 13-184

Dear Ms. Dortch:

On November 25, 2013, Chris Nierman and Adam Taylor, both of General Communication Inc. (“GCI”), and Traci Galbreath and I, both of Wiltshire & Grannis LLP on behalf of GCI, met with Daniel Alvarez, Legal Adviser to the Chairman. Messrs. Nierman and Taylor and I also met separately with Nicholas Degani, Legal Adviser to Commissioner Pai.

In the meeting with Mr. Alvarez, GCI discussed the attached presentation regarding universal service issues facing Alaska. As set forth in that presentation, we outlined the significant factors that distinguish the Alaska telecommunications environment from other areas of the United States, particularly those that affect the costs, topology and challenges of mobile and fixed broadband network deployment. We also stressed the critical importance of setting aside at least \$78 million for service to Alaska in the Mobility Funds Phase II.

In both the meeting with Mr. Alvarez and the meeting with Mr. Degani, we also discussed the pending application for review and petition for reconsideration filed by Adak Eagle Enterprise and its affiliate Windy City Cellular from the Wireline Competition Bureau’s decision in DA 13-1578. We stated that with respect to Windy City, there is no justification for grant of the waiver. GCI and Windy City compete directly, and GCI serves substantially all of the inhabited locations that Windy City does – and it does so within the \$3,000 per line per year annual high cost support cap. While Windy City also serves uninhabited areas using its White Alice site (which it began operating after the FCC proposed the \$3,000 per line per year annual cap), given that GCI is willing to either assume operation of that site or extend its own coverage in the event that Windy City ceases operating, and to do so within the \$3,000 cap, that is also not a basis for Windy City’s waiver. In any event, there is no reason why any waiver with respect to the White Alice site should ever exceed the incremental costs of constructing and operating the site – without allocation of overhead or other common costs, as GCI explained in its ex parte letter of September 11, 2012 (at 3). With respect to Adak Eagle, the Commission fundamentally must decide whether providing additional support is a good use of universal service funds,

considering that GCI can provide the supported services within the \$3,000 cap (utilizing different technologies).

We also stated that Windy City/Adak incorrectly assert that support for multiple lines is improper. As the Commission is aware, it never adopted a “primary line” approach to high cost after that was proposed by the Federal-State Universal Service Joint Board, and in fact Congress has routinely include appropriations language forbidding the Commission from doing so. This means that all ETCs, whether ILECs or CETCs receive high cost support for providing multiple lines of service to an individual or household. In addition, GCI has voluntarily taken the step of ensuring that it only seeks support for Adak lines on which there has been usage within the relevant reporting quarter.

We also stated that Windy City/Adak incorrectly claim that GCI does not provide 911 service from its wireless phones. GCI is required to do so, and it does. To reach the public safety authorities on Adak Island, GCI must at present route its 911 calls through the ILEC. However, if Adak Eagle ceased to operate, GCI would find a way to deliver those 911 calls to public safety.

Finally, we note that the Section 214(e) gives both the Regulatory Commission of Alaska and the Commission the means to ensure that Adak Island remains served by GCI, an ETC, in the event that Windy City and Adak Eagle Enterprises ceased operation.

Sincerely,

/s/

John T. Nakahata
Counsel to General Communication, Inc.

cc: Daniel Alvarez
Nicholas Degani