

February 19, 2014

Monica Desai
Direct Tel: 202-457-7535
Direct Fax: 202-457-6315
mdesai@pattonboggs.comMs. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554Re: **Ex Parte: WC Docket No. 10-90 and WT Docket No. 10-208**
Adak Eagle Enterprises, LLC and Windy City Cellular, LLC

Dear Ms. Dortch:

On January 10, 2014, the Wireless Telecommunications Bureau and Wireline Competition Bureau (the “Bureaus”) released an order extending interim relief for Adak Eagle Enterprises, LLC (“AEE”) and Windy City Cellular, LLC (“WCC”) to “preserve the status quo” while the Bureaus complete their review of the companies’ Application for Review and Petition for Reconsideration.¹ That interim relief, provided for December 2013 and January 2014, expired as of January 31. The companies, however, have not received information from the Bureaus regarding next steps, a further extension of interim relief, or a timeframe for completion of the Bureaus’ review. Unless the Bureaus reach a positive decision quickly regarding the companies’ waiver requests, AEE and WCC will have no choice but to resume moving forward with bankruptcy, threatening the critical communications services (including the only wireline service, the only broadband service, the only working E911 service, and the most reliable wireless service) on which the remote Adak Island community relies.

AEE and WCC remain at an operational standstill, with deteriorating assets and a decimated workforce (yet another employee was recently laid off), nearly two years after WCC first filed its Petition for Waiver.² AEE is currently undergoing a routine annual audit of year-end financials. However, the uncertainty surrounding the waiver review process and the lack of any information regarding next steps make it difficult for AEE to answer even basic audit questions regarding the companies’ future budgets and financial viability. For example, it is impossible to provide a 5-year projection to the auditors without any indication as to when funding will be restored and at what level, or alternatively, whether the companies will be forced to file for bankruptcy. Moreover, the

¹ *Connect America Fund, Universal Service Reform – Mobility Fund, Petitions for Waiver of Windy City Cellular, LLC and Adak Eagle Enterprises, LLC*, WC Docket No. 10-90 and WT Docket No. 10-208, Order, DA 14-33, ¶ 3 (rel. Jan. 10, 2014); see also Application for Review, AEE and WCC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Aug. 14, 2013) (“Application for Review”); see also Petition for Reconsideration, AEE and WCC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Aug. 14, 2013) (“Petition for Reconsideration”).

² See Petition for Waiver of Windy City Cellular, LLC, WC Docket No. 10-90, *et al.* (filed April 3, 2012); see also Petition for Waiver of Adak Eagle Enterprises, LLC, WC Docket No. 10-90, *et al.* (filed May 22, 2012) (“AEE Petition”).

lack of stable funding continues to have an increasingly detrimental impact on the companies' ability to maintain current operations and plan future operations to meet ongoing customer demand.

AEE and WCC also are unable to answer customers' questions regarding whether the essential voice and broadband services provided by the companies will continue to be available. For example, as the Commission will recall, Adak Island is saturated with active bombs dating back to World War II.³ As part of the three-year process to clean up these munitions, the next Explosive Ordnance Disposal Team ("EODT") will arrive on Adak Island in April. The EODT will need the broadband and voice services provided by AEE and WCC to support its bomb search, detonation, and removal work on the island. Without a positive decision from the Bureaus, however, the companies will not be able to continue providing these critical services to support the work of the EODT.

The fish plant on Adak Island also has informed AEE and WCC that it will be increasing the number of seasonal workers on the island as crab season transitions into pollock fishing season. These new employees also will rely on the voice and broadband services provided by AEE and WCC – no other company provides service that reaches into the waters surrounding the island where the fishermen work in dangerous conditions. Without stable and continued funding for AEE and WCC, however, these critical services will no longer be available to those seasonal workers.

The local school and health clinic also depend on the plant in which AEE has invested to support their broadband services. Every person on the island using broadband depends on AEE. All E911 calls on the Island are supported by AEE.⁴ Without a positive decision from the Bureaus, AEE will quickly shut down.

Beyond the need to maintain these vital broadband and voice services for the Adak community, it also is necessary for the companies to have adequate funding to restore critical network redundancy – which is crucial in an environment as severe as Adak Island.

Furthermore, as a result of the unstable funding, the companies are unable to construct the warehouse that is critically needed to house their equipment, vehicles, and maintenance operations in a heated facility protected from the severe weather conditions on the island, and which will save the companies money in the long-term.⁵ As explained in previous filings,⁶ RUS had approved and provided funds for construction of the warehouse. However, due to the Commission's sudden and severe flash cut in funding, and the ensuing uncertainty created by the difficult and unpredictable

³ See AEE Petition at 2.

⁴ See Letter from Monica Desai, Counsel to AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, WC Docket No. 10-90 and WT Docket No. 10-208, at 3 (filed Dec. 18, 2013).

⁵ See Letter from Monica Desai, Counsel to AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Submission of Further Supplemental Information, WC Docket No. 10-90 and WT Docket No. 10-208, at 11 (filed May 31, 2013) ("AEE/WCC May 31 Ex Parte").

⁶ See, e.g., Letter from Monica Desai, Counsel to AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, WC Docket No. 10-90 and WT Docket No. 10-208, at 3 (filed Sept. 20, 2013).

February 19, 2014

Page 3

waiver review process, AEE was forced to cancel the project. After the Bureaus issued their *Denial Order*,⁷ the funds allocated for the warehouse were immediately repaid to RUS.

Because AEE was unable to construct the badly needed warehouse, the companies' assets continue to deteriorate and ruin in the leaky, rat-infested facility the companies rent for storage. The companies' mechanic also has nowhere else to work except for this facility, where he performs routine tasks such as changing oil and maintaining vehicles. The facility has no restroom, no break room, and gets no warmer than 45 degrees during the winter. Although the companies installed a furnace in an attempt to heat the building, due to the holes in the building, lack of insulation, 40-50 mph winds, and severe winter cold on the island, the facility cannot be heated efficiently. Moreover, utility costs, which are consistently high on the island, are even higher for the rented facility due to the leaks and lack of insulation. AEE currently pays approximately \$3,034 in monthly rent for the facility, between approximately \$755 and \$1,400 a month for the facility's electricity, and between \$1,300 and \$4,000 a month for fuel to heat the facility, depending on the time of year. Construction of the heated warehouse would protect the companies' assets from the severe weather, provide the mechanic with a suitable working environment, and result in long-term financial savings for the companies.⁸

The companies are doing everything they can to maintain current operations as they await a decision from the Bureaus. WCC also is actively applying for funding through Mobility Fund Phase I. In a Public Notice released February 11, the Bureaus identified WCC as qualified to bid in the upcoming Tribal Mobility Fund Phase I auction.⁹ WCC is hopeful that this is an indication that the Commission is planning for the long-term viability of the company, which is obviously necessary for WCC to participate in the upcoming auction. WCC, after all, cannot prepare to bid in the auction without knowing whether its waiver request will be granted.

As emphasized throughout the waiver review process, AEE and WCC would like to be able to move forward, restore critical redundancy to their networks, build a storage facility that will save money in the long-run, and make plans for future operations. For example, the companies recently met with Optic Fibre regarding the possibility of connecting with undersea fiber cables to ensure that Adak residents and others who depend on the companies' services are able to enjoy high-speed broadband service. The companies, however, cannot make plans for the future and instead continue to struggle just to barely maintain current operations in the face of severe conditions on Adak Island as they await a decision from the Bureaus.

⁷ *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) ("*Denial Order*").

⁸ See AEE/WCC May 31 Ex Parte at 11.

⁹ *Tribal Mobility Fund Phase I Auction, 14 Bidders Qualified to Participate in Auction 902*, AU Docket No. 13-53, Public Notice, DA 14-178 (rel. Feb. 11, 2014).

February 19, 2014

Page 4

The companies would appreciate receiving feedback from the Commission regarding next steps and the expected timeline for completing the review of the companies' Application for Review and Petition for Reconsideration. If the Bureaus require additional time, AEE and WCC request that the Bureaus further extend interim relief to achieve the Bureaus' goal of preserving the status quo while they complete their review. Without a positive decision from the Bureaus soon, AEE and WCC will be unable to maintain the critical services they provide, plan for future operations, or ensure the companies' long-term viability. That outcome would be devastating to the residents, workers, businesses, and government entities that depend on the vital communications services provided by the companies on Adak Island.

Respectfully submitted,



Monica S. Desai
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037
(202) 457-7535
*Counsel to Adak Eagle Enterprises, LLC
and Windy City Cellular, LLC*

cc:

Philip Verveer
Daniel Alvarez
Priscilla Delgado Argeris
Amy Bender
Christopher Cook
Nicholas Degani
Rebekah Goodheart
Renee Gregory
Jane Jackson
Michael Jacobs
Scott Mackoul
Carol Matthey
Erin McGrath
Sue McNeil
Ruth Milkman
Louis Peraertz
Kelly Quinn
Kimberly Scardino
Gary Seigel
Roger Sherman
Joseph Sorresso
Jamie Susskind
Julie Veach
Margaret Wiener
Suzanne Yelen
Chin Yoo