

July 25, 2014

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

Re: **Corrected Version - Notice of Ex Parte – WC Docket No. 10-90 and WT Docket No. 10-208 Adak Eagle Enterprises and Windy City Cellular**

Dear Ms. Dortch:

Monica Desai of Squire Patton Boggs (US) LLP, counsel to Adak Eagle Enterprises, LLC (AEE) and Windy City Cellular, LLC (WCC) (collectively, the Companies), as well as Larry Mayes, President and Chief Executive Officer, Adak Telephone Utility, and Andilea Weaver, Chief Operating Officer, Adak Eagle Enterprises, met with a number of FCC staff to emphasize that the interim funding granted to the companies in February runs out in one week – on July 31, 2014 – and to discuss the status of the companies' Application for Review and Petition for Reconsideration related to their petitions for waiver of the per line monthly caps on high-cost universal service support.¹ On July 23, 2014, the Companies met with Amy Bender (Legal Advisor, Office of Commissioner O'Rielly) and Nicholas Degani (Legal Advisor, Office of Commissioner Pai). On July 24, 2014, the companies held meetings with Priscilla Argeris (Legal Advisor, Office of Commissioner Rosenworcel), and Rebekah Goodheart (Legal Advisor, Office of Commissioner Clyburn). The companies also held a separate meeting on July 24, 2014 with Philip Verveer (Senior Counselor, Office of the Chairman), Daniel Alvarez (Legal Advisor, Office of the Chairman), Carol Matthey (Acting Chief, Wireline Competition Bureau), Michael Janson (Front Office Legal Advisor, Wireless Telecommunications Bureau), and Suzanne Yelen (Assistant Chief, Industry Analysis and Technology Division, Wireline Competition Bureau), which was also attended by Larry Harris of Squire Patton Boggs (US) LLP.

¹ See 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").

During the meetings, the Companies reiterated the need for a permanent solution and impressed upon the Commission that neither WCC nor Adak Telephone Utility can survive absent a waiver from the Commission. The Companies reminded FCC staff that only last month, an 8.0 magnitude earthquake hit Adak Island, and WCC was the sole cellular service available on Bering Hill, where all of the approximately 300 people on the Island remained for hours while in danger of a tsunami, and while awaiting clearance from public safety personnel to return to lower ground.²

The Companies expressed their belief that they have demonstrated beyond doubt that the Commission should grant their pending petitions. The companies have continually reinvested in quality service for the residents of Adak Island. They have met every single requirement of the Commission's 2011 USF Transformation Order waiver standards.³ The companies have diligently and comprehensively answered every single question asked by staff, and have addressed the concerns expressed by the Bureaus in their denial order.⁴ The companies have demonstrated that WCC has taken *less* in overall Universal Service support funding than GCI for Adak Island, while at the same time has served a broader geographic area, and more customers.

AEE and WCC are tiny companies that worked tirelessly against the odds to provide quality, reliable service to remote Adak Island when no one else would.⁵ The companies have embodied the very purpose of universal service by reinvesting USF support to maintain essential services – including the only broadband service, the only wireline service, and the most comprehensive wireless service – for residents, government agencies, business, and workers on Adak Island – one of the most remote areas of the United States. With interim relief set to expire in soon, the companies will be forced to begin the process of shutting down in January unless the Commission quickly corrects course. Without action, the FCC will have eliminated critical communications to this remote island.

² Adak Eagle Enterprises, LLC, and Windy City Cellular, LLC, *Notice of Ex Parte*, WC Docket No. 10-90 and WT Docket No. 10-208 (filed June 24, 2013).

³ See *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Inter-carrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011).

⁴ 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). See also Adak Eagle Enterprises, LLC and Windy City Cellular, LLC Application for Review, *Petitions for Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Aug. 14, 2013); Adak Eagle Enterprises, LLC and Windy City Cellular, LLC Petition for Reconsideration, *Petitions for Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Aug. 14, 2013); Adak Eagle Enterprises, LLC and Windy City Cellular, LLC Reply to Opposition to Petition for Reconsideration, *Petitions for Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Sept. 9, 2013); Adak Eagle Enterprises, LLC and Windy City Cellular, LLC Reply to Opposition to Application for Review, *Petitions for Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Sept. 9, 2013).

⁵ See Attachment 1, Story of Adak Telephone Utility.

Adak Island is, by its very nature, a “high cost” area, and may well be the highest cost area in the country. Due to the extremely remote location (an island 1,200 miles southwest of Anchorage, making transportation extremely expensive as heavy supplies and equipment must be shipped in by barge), extreme climate (frequent cyclonic storms with wind gusts in excess of 100 knots, extensive fog storms in the summer, average accumulated snowfall of 100 inches – making building and maintenance extremely expensive), extreme conditions (in the vicinity of an active volcano, in an earthquake zone, in a tsunami zone), and other factors (saturated with active bombs dating back to World War II – complicating digging and trenching; infestation by large Norwegian rats that chew through cable – requiring the use of expensive armored cable; high energy costs, with electricity rates increasing by approximately 85% since 2010, and the Island’s only provider of electricity now requesting an additional rate increase of over 60%), building and maintaining a working wireline, wireless, and broadband communications system, including a working public safety system, is no joke, and is not cheap. The Commission itself recognized the cost challenges associated with such an extreme climate and location by setting forth a straightforward waiver procedure.⁶ The Bureaus should be applauding the companies for their ingenuity and persistence in building out a working communications system under these severe and difficult circumstances. Instead, the Bureaus have chosen a path that will destroy these Companies.

Counsel emphasized that AEE and WCC are increasingly confused as to what basis the Bureaus could have to uphold their order denying the Companies’ waiver petitions at this point.⁷ As discussed in previous filings, there was no actual opposition to the Companies’ Petition for Reconsideration, which discussed in detail how AEE and WCC have diligently taken steps to comprehensively address the concerns raised by the Bureaus.⁸ For example, the Companies have slashed corporate salaries (even though they were reasonable relative to NTCA and Alaska Department of Labor salary ranges), placing AEE’s administrative building on the market for sale (even though AEE was paying below market rent for the building), cut staff by more than half, reduced employees’ weekly hours, largely eliminated travel and training expenses, canceled construction of an additional cell site, and operated without expensive backhaul redundancy as a result of their reduced funding.⁹

With respect to the Application for Review, counsel emphasized that the companies are perplexed by the Bureaus’ decision-making from a legal, policy, and fiscal perspective. From a legal

⁶ See *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17633 (2011) (“USF/ICC Transformation Order”).

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, ¶ 1 (2013) (“Denial Order”).

⁸ See 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).

⁹ See Petition for Reconsideration at 5-9; see also *Adak Eagle Enterprises, LLC, and Windy City Cellular, LLC, Notice of Ex Parte*, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Sept. 20, 2013); *Adak Eagle Enterprises, LLC, and Windy City Cellular, LLC, Notice of Ex Parte*, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Oct. 23, 2013).

perspective, AEE and WCC remain dismayed by the Bureaus' denial of their waiver petitions given that they have provided exhaustive amounts of detailed information demonstrating they satisfy the waiver standard set forth in the *USF/ICC Transformation Order*.¹⁰ The denial is particularly inexplicable given that the Bureaus relied on the unenforceable and unsubstantiated "assurances" of GCI to provide hypothetical service at some point in the future as sufficient to qualify as a "terrestrial alternative" that is "available" under the Commission's waiver standard.¹¹ AEE and WCC cannot understand how the Bureaus could rely on this type of unsubstantiated "pinky promise" as a legal basis to deny their petitions under the waiver standard set forth by the Commission.

Additionally, AEE provides the only broadband service for Adak consumers, and its fiber infrastructure is critical for all communications on the island. AEE's fiber also facilitates the delivery of the island's only cable television service, which provides residents with access to the nearest "local" news programming 1,200 miles away from Anchorage.

As a policy matter, it does not make sense that the Bureaus have chosen to entrust service to the Island to GCI, which currently does not serve significant portions of the study area beyond the downtown Adak area, does not even serve the entire downtown area, does not appear to provide a working 911 system, and has never invested in the infrastructure, facilities, or equipment on the island to provide more than very limited wireless service, all while taking more money from the USF.¹² GCI cannot guarantee build-out quickly enough such that no customers would lose service, has made no enforceable promises regarding future service, and has provided no concrete plans or cost studies to back up its "assurances."

The companies are perplexed as to how the Bureaus could conclude that "the residents of and visitors to Adak Island *will continue to have access to both wireline and wireless voice service without the grant of a waiver here.*"¹³ This statement is flatly untrue. GCI specifically stated it does not commit to replicating AEE's wireline service,¹⁴ even though it admits that even its (apparently non-working) 911 service is dependent on the AEE wireline infrastructure. Instead, GCI assures the Commission that it will "find a way to deliver those 911 calls to public safety" (even though it has thus far not

¹⁰ See *USF/ICC Transformation Order*, Section VII(G), ¶¶ 539-544.

¹¹ See Application for Review at 1-2; see also *USF/ICC Transformation Order*, ¶ 540.

¹² See Reply to Opposition to Application for Review at 2, 4; Application for Review at 4-6; Adak Eagle Enterprises, LLC, and Windy City Cellular, LLC, *Notice of Ex Parte*, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Dec. 2, 2013).

¹³ *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, ¶ 1 (2013) (emphasis added) ("*Denial Order*").

¹⁴ 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").

managed to do so).¹⁵ The Companies are hard pressed to believe that the Commission would endorse the idea that imaginary wireline service, no broadband service, and limited, unreliable wireless service are “good enough” for Adak Island. This is not consistent with the goals of USF reform, and not consistent with the Commission’s promises.

Furthermore, the Bureaus did not properly consider the potential for a default on AEE’s RUS loan, ignoring the Commission’s direction to “consider whether the specific reforms would cause a provider to default on existing loans and/or become insolvent.”¹⁶ The Bureaus made only a passing reference to this requirement under the waiver standard in a single footnote, inexplicably concluding that “even in the event that AEE were to default on its RUS loan, this cost would be far more than offset by savings to the [Universal Service Fund].”¹⁷ As the Companies have explained, this conclusion is not only unsupported by any cost analysis, but it also appears to be wrong.¹⁸

The Bureaus inexplicably seem to endorse GCI’s improper and legally unsupportable statement that it can and should somehow simply be able to swoop in and “take over” the investments that AEE and WCC worked so hard and so carefully to plan and build (literally some portions by hand) over many years and at much risk. Under Section VII(G) of the *USF/ICC Transformation Order*, the Commission did not delegate authority to the Bureaus to deny a waiver based on another company’s unenforceable statements that it will (for pennies on the taxpayer-funded dollar) “by hook or by crook” just somehow seize another unrelated company’s assets, or that it will build and offer additional services at some hypothetical point in the future to customers in areas where it has never provided service and has never previously bothered to make the investments necessary to do so.¹⁹ Moreover, simply allowing GCI to “take over” AEE and WCC’s hard-earned investments in this way would be entirely inconsistent with the Commission’s commitment to encouraging investment, particularly in rural areas.

None of this makes any sense from a legal, policy, or fiscal perspective. The lengthy, costly, and overly burdensome waiver process has been a travesty on many levels. The Commission repeatedly promised “no flash cuts,” yet WCC was hit with an immediate 84% flash cut in funding while AEE was hit with a rapid phase-down in funding.²⁰ The Commission promised a “90 day” waiver process that took 468 days to reach a final decision. AEE and WCC dutifully and diligently prepared and filed their waiver petitions, and met every single factor set forth in the Commission’s

¹⁵ See CGI, *Notice of Ex Parte* at 2, WC Docket No. 10-90, *et al.* (filed Nov. 27, 2013) (“GCI Nov. 27 Ex Parte”).

¹⁶ *USF/ICC Transformation Order*, ¶ 540.

¹⁷ *Denial Order* at n.72.

¹⁸ Reply to Opposition to Application for Review at 3.

¹⁹ See Application for Review at 6.

²⁰ See, e.g., Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, at 3-4 (filed May 14, 2013) (for example, Commissioner Clyburn stated: “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.”).

waiver standard. The companies quickly and comprehensively responded to multiple rounds of questions from the Bureaus that went beyond the waiver standard.

AEE and WCC are hopeful that the Bureaus will promptly correct course before their interim relief expires and the companies are forced into bankruptcy. The companies are ready and willing, and in fact eager, to respond to any questions and concerns that staff may have regarding their requests for funding. The promise of universal service requires that the remote Adak community be able to continue relying on the essential wireline, wireless, and broadband services provided by AEE and WCC.

Respectfully submitted,



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