

August 29, 2014

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

Re: Notice of 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 August 27, 2014, Larry Mayes, President and Chief Executive Officer, Adak Eagle Enterprises, LLC (AEE) met with Federal Communication Commission (FCC) Chairman, Tom Wheeler and Patrick Halley, FCC Office of Legislative Affairs, to discuss various issues raised in the Petition for Reconsideration and Application for Review filed by Adak Eagle Enterprises, LLC (AEE), and Windy City Cellular, LLC (WCC) (collectively, the Companies).¹ Also in attendance was Christine O'Connor, Executive Director, Alaska Telephone Association. AEE's Chief Operating Officer, Andilea Weaver, participated by phone.

The Companies explained that when the *USF/ICC Transformation Order*² was released at the end of 2011, the Companies were hit with an 85% flash cut in funding overnight, without warning. In April of 2012, WCC applied for a waiver of the \$3000 annual cap on line support, and AEE applied for a waiver of the phase-down in high-cost-loop support in May of 2012.³ The companies submitted all of the information required under the waiver standard the Commission provided in the *USF/ICC Transformation Order*, and since then the Companies have expeditiously provided responses to dozens and dozens of additional questions and categories of information requested by FCC staff,

¹ 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).

² See *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17633 (2011) (*USF/ICC Transformation Order*).

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

at significant cost and effort. The FCC promised a “90-day” review process, and committed to Congress that factors such as challenging conditions, outstanding loans, recent investments, and consumers at risk of losing service would all be important considerations in the waiver process. If the FCC upheld these commitments and applied the waiver factors, the Companies would have received waivers within the 90-day timeframe, which would have been in July 2012 for WCC and August 2012 for AEE.

Two years ago the Wireline Competition Bureau (WCB) and Wireline Telecommunications Bureau (WTB) (collectively, the Bureaus) sent AEE a request for information requiring responses to 39 questions (16 questions plus subparts).⁴ At that time, AEE and WCC expended substantial resources to respond expediently to the Commission’s questions, hiring consultants and pulling all-nighters to rapidly gather comprehensive responses.⁵ The companies received no response, however—not even a single question—from the Bureaus related to the hundreds of pages of information provided.

Instead, one year after the Companies had submitted those comprehensive responses, the Bureaus issued an order denying the waiver requests, incorrectly stating that even if the Companies went out of existence, there would still be wireline communications service on the island.⁶ Mr. Mayes emphasized that there is no other wireline service on the island. All communications on the island, including wireless and broadband, depend on the existence and maintenance of the wireline network built by AEE.

To counter any suggestions that the White Alice site built by WCC is not necessary, Mr. Mayes emphasized the fact that it is the only site providing service to areas beyond downtown Adak. Because of the White Alice site, WCC provides the most comprehensive wireless coverage across the entire island, including into otherwise unserved remote areas of the island and into the sea, where residents, government researchers, public safety personnel, fishermen, and contractors regularly require service. For example, in June an 8.0 magnitude earthquake impacted Adak Island. When the earthquake hit, the 300 adults and children on the island were evacuated to Bering Hill—the island’s highest point. While residents waited to receive the “all-clear” from emergency personnel related to a potential tsunami, the WCC cellular service, which runs on the AEE network, provided the only source of cellular communications for the evacuees.⁷ Last year, the WCC cellular

⁴ See Letter from Julie A. Veach, Chief, Wireline Competition Bureau and Ruth Milkman, Chief, Wireless Telecommunications Bureau, to Larry Mayes, President/CEO, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC (Aug. 21, 2012).

⁵ See responses provided by Adak Eagle Enterprises, LLC and Windy City Cellular, 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 (filed Aug. 20, 2012; Aug., 21, 2012; Aug. 22, 2012; and Aug. 27, 2012).

⁶ *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*) at ¶ 1. 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 Dec. 18, 2013) (outlining other errors in the *Denial Order*, and also provided to Chairman Wheeler during the meeting).

⁷ See *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, 2014).

service was responsible for the rescue of an individual who had become lost in blizzard conditions on Adak Island.⁸ Moreover, the White Alice site was a relatively recent investment made by WCC, taking many months of careful planning before launching the tower in January 2011. The Companies emphasized that if they had known that the FCC would issuing an order just months later imposing a drastic flash cut in funding on WCC, they would not have invested in the site.⁹

There are numerous letters in the record in support of the waiver requests, including three separate letters filed by the entire Alaskan Congressional delegation, all emphasizing the critical need for the services provided by ATU and WCC.¹⁰

The Companies are currently in the process of responding to a new round of more than 40 questions (17 questions plus subparts),¹¹ and are working around the clock to provide comprehensive responses as rapidly as possible. The Companies submitted their first set of responses last week on August 22,¹² and are hopeful that these responses will result in a productive dialogue.

In response to the denial order issued by the Bureaus last year, the Companies have undertaken drastic cost cutting measures, such as reducing the number of employees, reducing salaries, shortening the work week, forcing staff to multi-task, and eliminating travel and training.

During the meeting, Mr. Mayes provided Chairman Wheeler with a copy of the story of how he built Adak Telephone Utility from scratch after no other communications provider would serve Adak Island.¹³ Adak Island (located in the Aleutian chain in the Bering Sea) is undoubtedly one of

⁸ See 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 Feb. 28, 2013).

⁹ Indeed, the Commission stated repeatedly prior to the issuance of the *USF/ICC Transformation Order* that there would be “no flash cuts” in funding and that special consideration would be given to Alaska in particular.

¹⁰ See Letters from Sen. Lisa Murkowski, Sen. Mark Begich, and Congressman Don Young, to Chairman Thomas Wheeler, and Commissioners Mignon Clyburn, Jessica Rosenworcel, Ajit Pai, and Michael O’Rielly, Federal Communications Commission (dated Aug. 1, 2014; Oct. 17, 2013; and Apr. 20, 2012). Additional letters of support have also been filed by the City of Adak; 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, Fish and Wildlife Service; Icicle Seafoods, Inc.; Eastern Aleutian Tribes; National Telecommunications Cooperative Association; U.S. Geological Survey; Southwest Alaska Municipal Conference; the Adak Police Department; the Alaska Rural Coalition; Minority Media Telecom Counsel; and others.

¹¹ See Letter from Carol E. Matthey, Acting Chief, Wireline Competition Bureau, to Larry Mayes, President/CEO, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, WC Docket No. 10-90 and WT Docket No. 10-208 (Aug. 12, 2014).

¹² See Adak Eagle Enterprises, LLC and Windy City Cellular, *Notice of Ex Parte and Submission of Supplemental Information*, 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 (filed Aug. 22, 2014).

¹³ See Attachment, Adak Telephone Utility Story.

the most remote, isolated, and climactically inhospitable communities in the United States. Adak has a volatile maritime climate with severe storms and cyclonic (60-100 mph) winds during much of the year, extensive fog storms in the summer, and an average accumulated snowfall of 100 inches. The island is infested with large Norwegian rats that chew through cable (requiring the company to use expensive armored cable) and is littered with active bombs dating as far back as WWII (requiring careful trenching and permitting through the Navy). In addition, the island is in the vicinity of an active volcano, is subject to tsunamis, and is accessible only by air or by large oceangoing vessels. In the very best of circumstances, commercial air service consists of twice-weekly flights, and barges arrive only sporadically.

After no other company would serve the island, AEE invested in a digital fiber-optic network and related plant and equipment through RUS loans. AEE maintains the only wireline service on Adak Island, and the only technicians on the Island. The wireline network supports all communications on the island. The communications services provided by the Companies are vital to the Adak community and essential for public safety on the island. The Companies also reiterated during the meeting that Adak Island is inherently a high-cost area with extremely challenging conditions. Thus, even if the Companies were to eliminate every job position, and stop maintaining the plant and equipment that they have invested in, AEE and WCC would not be able to operate at the \$250 per line monthly cap given all of their recent investments in infrastructure (investments made after the evaluation of RUS and with the permission of RUS). Moreover, even if the Companies were to cut all operating expenses, AEE still would have an outstanding \$6 million RUS loan, which it used to invest in the plant and to build the network from scratch.

The Companies remain hopeful, however, that FCC staff will grant the waivers so desperately needed to maintain service, especially given that the Companies have met all of the factors outlined by the FCC for obtaining a waiver. In the meantime, the Companies remain committed to providing whatever information Commission staff needs for its evaluation. Mr. Mayes ended the discussion by respectfully requesting that the Commission staff grant the relief sought.

Respectfully submitted,



Monica S. Desai
Squire 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

Amy Bender
Nicholas Degani
Rebekah Goodheart
Priscilla Argeris
Carol Matthey
Michael Janson
Roger Sherman
Suzanne Yelen
Patrick Halley



ADAK TELEPHONE UTILITY
ADAK CABLEVISION
WINDY CITY BROADBAND
WINDY CITY CELLULAR

ADAK TELEPHONE UTILITY STORY

The following is the story of how Adak Telephone Utility was formed, as told by Larry Mayes, the Founder, President, and CEO. Mr. Mayes is a retired US Army Veteran, and the only known African American who owns a Telephone, Cellular, Broadband and Cable TV company in North America.

Adak Island is part the Aleutian Chain of island located 1,200 miles southwest of Anchorage Alaska in the Bering Sea. It is the most southern community in Alaska. Adak lies in the subpolar oceanic climate zone, characterized by persistently overcast skies, high winds, and frequent cyclonic storms. Winter squalls produce wind gusts in excess of 100 knots (120 mph; 190 km/h). During the summer, extensive fog forms over the Bering Sea and North Pacific. Average temperatures range from 20 to 60 °F (-7 to 16 °C), but wind chill factors can be severe. Total precipitation is 64 inches (1,600 mm) annually, with an average accumulated snowfall of 100 inches (2,500 mm). With 263 rainy days per year, Adak has the second highest rainy day number of any inhabited locality in the United States after the city of Hilo in Hawaii.

Adak Island was the home of over 6,000 Navy personnel before it was selected for closure in 1996. The Aleut Corporation (TAC), an Alaska Native corporation, traded other land they owned with the government to get Adak Island. The transfer took place March 17, 2004. TAC wanted to rebuild the community that was once a military base into a fishing community. I had just retired from the US Military (Army) in Dec 1996. In Feb 1997 I was contacted by a representative of one of TAC subsidiary companies to work on Adak Island as a Telecommunication Technician. This contract was to maintain the following telecommunication systems - Telephone, Pager, VHF/UHF Radio, Cable TV, and Computer. I worked with six other telecommunications personnel to maintain the telecommunication systems on Adak, but as the land transfer was just about to become a reality, the other personnel started seeking other employment because the Navy support funding of the land transfer was ending. I was the only one left there to take care of the telecommunication system on Adak. The reason I stayed on Adak was because I believed in what TAC wanted to do with the old Navy military base.

Adak Reuse Corporation (ARC) which was one of TAC subsidiary companies that took over the operation of Adak planned to turn the Navy Base into a community once the Navy presence was gone. The potential uses included for the fishing industry, as a refueling location and fish processing plant, and by the airline as an emergency landing location with 7,600 and 7,800 foot runways.

The Telephone system (Central Office and Outside Plant) that the Navy had left in place was antiquated and needed replacement badly. By being the only technician on Adak Island, I often had times when I would fly out of Adak to try to visit my family for two weeks, but then would have to turn around and leave to fly back out on the next flight back to Adak because of problems with the telephone switch and outside plant. I was constantly on the phone with Digital Voice Company to fix problems and get the system back up and running correctly. The digital voice switch was military PBX equivalent without the required features of a civilian switch. A temporary switch was leased from Digital Voice when the older switch could not function. Amazingly, the switch manufacturer was able to supply the replacement switch and we were able to install it within a two month period – which is almost miraculous given the logistics associated with Adak. It was a simple switch that functioned but that did not have all of the features of a modern switch.

The outside plant twisted pair copper wiring was a huge rat's nest, and I had to put my tone on a pair of wires at one demarcation point and go from that point to another one to find a good pair that would go back to the switch that could be used for telephone service. I was only one person to maintain those communications systems while working alone. No matter what the weather was like or what I needed to do to complete an installation or fix a particular situation, I did it as well as I could.

What people find "normal" in the lower 48 to fix a circuit and install new service is not what you will find in a remote rural area like Adak. For example, Adak is infested with rodents (Norwegian rats) and it is not at all unusual to encounter these rats when you need to crawl under customer houses or in a building crawl space to install or fix a cable. The weather is not your friend on Adak. The island has a saying – "if you don't like the weather just wait five minutes and it will change" - so when you have good weather, you have to use it to your advantage. But when the grass is wet and the sun is shining, that creates a lot of small flying bugs that get into your eyes and mouth when you are trying to work, which can also slow down progress even in good weather.

In 2000 ARC hired Kenneth Trout (KET, INC.) to submit an application to Regulatory Commission of Alaska (RCA) for a new certificate of public convenience for the Adak Study area. Since it had been a government base, the Navy didn't have a Certificate from RCA. RCA issued ARC a Temporary Operation Certificate.

In 2003 TAC and ARC approached two or three larger Alaskan telephone providers to take over the telephone system because neither TAC nor ARC was capable of running a telephone company and they wanted to create other businesses on Adak Island besides TAC companies. Two of the companies visited Adak to access the system and I gave them tours of the system and provided them with a map of the entire system. While both companies were significantly experienced in rural operations, both telecommunications companies declined to serve Adak Island as a telephone company.

After TAC or ARC could not get a telephone company that was already in business to serve Adak Island they approached me and asked if I would like to run the telephone system on Adak Island. I agreed to take over the telephone system on Adak Island since I had been working the system for many years alone and I knew the system intimately.

Once I had the telephone system, I set up an office in my home and I had my family to help with invoices and paper work. Before long, I needed someone to help with accounting so I hired Mrs. Andilea Weaver to do the accounting. We both were new to this regulated industry. I informed Mrs. Weaver that we were just starting out and we had a very small customer base. Also I knew there was going to be a lot of work and I told her I would pay her whenever I could. I used my retirement funds, family savings, and small loans from banks, and maxed out my credit cards to get started.

I worked all day and spent many hours at night into the next morning trying to draft the application for the Certificate of Public Convenience and Necessity (CPCN) to Provide Local Exchange Service in Alaska for Adak Eagle Enterprises, LLC (AEE) d/b/a Adak Telephone Utility (ATU). The Regulatory Commission of Alaska (RCA) staff knew me pretty well because I had called and visited their office many times to learn how to fill out the application. Once I thought I had completed the application for CPCN, I turned the application into the RCA for review. After the RCA had reviewed the CPCN application the staff recommended that I hire a consultant to help out with CPCN application.

I revisited the ARC temporary Certification of Operation and looked at who had submitted their application and found that Kenneth Trout (KET Inc.) had prepared and submitted the application. I contacted KET, Inc. and asked him if he would help with the drafting and filing of the CPCN application. Kenneth came in and helped with the application and then he recommended Dean Thomson, a lawyer with the law firm of Kemppe, Huffman & Ellis, P.C. that deals with filing and regulatory issues.

There was much work to be done and there were limited funds to do this, but both firms were able to help us set up a telephone company. While we were going through this procedure they suggested that we apply for a Rural Utility Service (RUS) loan to rebuild the telephone system infrastructure on Adak. RUS was contacted and we were put in touch with Doug Devore, and Mike Riley of Mid-State Consultants who helped to construct the documentation to apply for the RUS loan. Reeve engineering had completed a review of the facilities and had taken photos along with the on-site review, and had determined that the entire plant needed to be replaced.

Jim Rowe and Alaska Telephone Association (ATA) members were great mentors in letting ATU join the association and taking a young, inexperienced company under their wing.

In 2005 while talking with Doug Devore about needing some help on Adak and he stated that he might know of a Technician that would willing to work on Adak. So Doug had Michael Eickoff to call me and we worked out a deal for him to work on Adak with me.

We submitted a loan package to RUS for over Six (6) million dollar to replace the entire Telephone system on Adak. The Rural Utility Service (RUS) based the approval contingent upon the FCC'S granting Adak a waiver into the National Exchange Carrier Association, Inc. (NECA pools) and inclusion in the

Universal Service Administrative Pools (USF). (RUS Letter dated September 27, 2005. p. 2 Item 5) After the FCC granted those items, the processing of the loan continued and RUS approved our loan package request for over 6 million dollars. With these funds AEE was able to rebuild the communication system with modern day technology (Class 5 Switch, FTTH, DSL, and ONT). The first draw was finally available in July 2006. Without RUS approving the AEE loan request the Adak community would not have a functioning communications system, and would still be struggling with the old military switch, and corroded twisted pair outside plant wiring.

RUS, RCA, FCC, consulting firms, lawyers, ATA and their members have been a blessing to a small community like Adak.

Building the system and coordinating logistics were challenged by the need to coordinate materials and equipment arriving from the lower 48 into Alaska and then being barged out on a Navy Barge that assisted in the initial process. There were no direct barges from the lower 48 to Adak. Bad weather occasionally kept the contractors and equipment from arriving on time. Airline scheduling had to be worked out as flights to Adak were infrequent, and great efforts were made to get a reliable schedule in place. Scheduling an airline that would be willing to fly all the way to Adak was a significant task. Currently, we now have a regular schedule of flights on Thursday and Sunday from Anchorage to Adak, thanks to Alaska Airlines.

Construction included such challenging tasks as obtaining sand and gravel for repairs of road crossing and obtaining and using equipment for washing the sand and gravel so that it would perform properly in the concrete. Due to the remoteness of the island, a ready source of these items was not available to truck material to the sites.

Building the fiber optic network included waiting for the manufacturer to build file jumpers, making sure hazmat regulations were followed while shipping batteries and coordinating the arrival of construction crews, along with arranging for the housing needed to accommodate workers.

Ongoing power supply and infrastructure had been a significant issue while the TAC and the Adak city government worked to have reliable power. At one point, the residents were cautioned to leave the island due to the prospects of possible shut downs.

Today, with the USF support provided, and thanks to the fiber optic system we built with that support, the telecommunications on the island provided by AEE/WCC include robust communications facilities that support residents and workers on the island. The system is a critical piece of the island's infrastructure, and is needed for the community to survive.