

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Adak Eagle Enterprises, LLC)	
d/b/a Adak Telephone Utility)	CC Docket No. 96-45
)	
Petition for Waiver of Sections 36.611, 36.612,)	
54.301(b), 54.314(d), 54.903(a)(3), 69.2(hh) and)	
69.3(e)(6) of the Commission's Rules)	

ORDER

Adopted: November 27, 2006

Released: November 27, 2006

By the Chief, Wireline Competition Bureau:

1. In this Order, we extend the timing of the waiver of sections 36.611 and 36.612 of the Commission's rules granted to Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility (Adak Telephone) in the *Adak Order*.¹ The extension of this waiver will permit Adak Telephone, a new local exchange carrier (LEC) in Alaska, to receive high-cost loop support based on projected costs in 2006 and 2007, until its historical costs become available in 2008.² We grant this extension on our own motion to permit Adak Telephone to continue receiving high-cost loop support without interruption, consistent with the Wireline Competition Bureau's (Bureau) intention in originally granting the waiver in the *Adak Order*.³

2. On December 30, 2005, the Bureau released an order granting Adak Telephone waivers of rules 36.611 and 36.612, and related Commission rules, so that Adak Telephone would be eligible to receive immediate high-cost universal service support and participate in the National Exchange Carrier Association (NECA) pools and tariffs.⁴ The Bureau found that special circumstances warranted a deviation from sections 36.611 and 36.612 of the Commission's rules, and that it was in the public interest to grant Adak Telephone's waiver request.⁵ Carriers without historical data, such as newly established carriers like Adak, may wait up to two years before receiving any high-cost loop support

¹ *Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility Petition for Waiver of Sections 36.611, 36.612, 54.301(b), 54.314(d), 54.903(a)(3), 69.2(hh) and 69.3(e)(6) of the Commission's Rules*, CC Docket No. 96-45, Order, 20 FCC Rcd 20543 (Wireline Compet. Bur. 2005) (*Adak Order*). See also Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility, Motion for Clarifying Order, CC Docket No. 96-45 (filed September 18, 2006) (Motion).

² See 47 C.F.R. §§ 36.611-36.612.

³ See *Adak Order*, 20 FCC Rcd 20543.

⁴ See *id.*

⁵ See *id.* at 20546-47, para. 8. Adak Telephone's service area is on Adak Island, Alaska, a remote island that formerly housed a United States Navy (Navy) complex. Adak Telephone explained that it will require substantial construction and installation costs to upgrade the outdated plant installed by the Navy. See *id.* at 20544, para. 2.

payments.⁶ Without immediate access to high-cost loop support, Adak Telephone's customers would continue to have extremely high monthly basic local service rates of \$100 and \$130 for residential and business customers, respectively, and customers would have to wait two years for local service rate relief due to the customary lag in receiving high-cost loop support.⁷ Consistent with the limited instances where requests for waiver of sections 36.611 and 36.612 have been granted, the Bureau also determined that delaying the timing of Adak Telephone's high-cost loop support could have the unintended effect of discouraging new carriers from extending service in unserved remote areas, thereby frustrating the statutory goal of promoting the provision of services at reasonable rates.⁸

3. Adak Telephone requested waiver of sections 36.611 and 36.612, effective January 1, 2005,⁹ and the Bureau granted the waiver "to the extent necessary to permit it to receive high-cost loop support for the period beginning May 25, 2005, the date the Alaska Commission designated it an [eligible telecommunications carrier] ETC."¹⁰ Adak Telephone already had applied for a loan from the Rural Utilities Service (RUS) when it requested the waivers, and planned to begin replacing the existing plant with new facilities in 2005.¹¹ The Bureau assumed that Adak Telephone would receive high-cost loop support based on projected costs in 2005 and 2006, and payments for periods subsequent to December 2006 based on historic data.¹² Adak Telephone's RUS loan was conditioned, however, on evidence that it had received all necessary approvals from the Commission to begin receiving universal service support and participating in the NECA pools and tariffs.¹³ The Bureau's order was not released until December 30, 2005, and Adak Telephone was not able to finalize its RUS loan and begin construction until June 2006.¹⁴

4. Adak Telephone expected to begin receiving high-cost loop support in October 2006,¹⁵ and it will be able to receive high-cost loop support in 2006 based on annualized current costs followed by true-ups using actual costs.¹⁶ Under the terms of the Bureau's order, however, Adak would not receive high-cost loop support in 2007, because the Bureau had assumed that such support would be based on 2005 actual costs.¹⁷ Adak argues that limiting the use of true-up annualized current costs to the period

⁶ *See id.* at 20546, para. 7. Carriers generally do not receive high-cost loop support based on historical cost data until the beginning of the second calendar year after the costs are incurred, because the data are not submitted by carriers until seven months after the end of a calendar year (*i.e.*, July 31), and NECA requires time to analyze the data and make the necessary nationwide calculations. *See id.*

⁷ *See id.* at 20546-47, para. 8.

⁸ *See id.* at 20547, para. 9.

⁹ *See* Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility, Petition for Waiver of the Commission's Rules to Obtain Accelerated USF Support and to Participate in NECA Pools and Tariffs, CC Docket No. 96-45 (filed February 9, 2005) (Petition) at 1.

¹⁰ *Adak Order*, 20 FCC Rcd at 29547-48, para.10.

¹¹ *See id.* at 20544, para. 2; Petition at ii, 6.

¹² *See Adak Order*, 20 FCC Rcd at 20547, para. 10. ("Adak Telephone's support initially, for the period May 25, 2005 through December 2006, will be based on annualized current costs followed by true-ups using actual costs.")

¹³ Motion at 3.

¹⁴ *Id.* at 3-4.

¹⁵ *Id.* at 3.

¹⁶ *See Adak Order*, 20 FCC Rcd at 20547, para. 10; Motion at 4.

¹⁷ *See Adak Order*, 20 FCC Rcd at 20547-48, para. 10 ("Payments for periods subsequent to December 2006 will be based on historic data in accordance with the Commission's rules."). Under the normal operation of the Commission's rules, support in 2007 is based on costs incurred in 2005. *See* 47 C.F.R. §§ 36.611, 36.612; *see also* Motion at 4.

ending December 31, 2006, “will create a whipsaw effect on [Adak Telephone] and its ratepayers, with high-cost loop support available in 2006, absent in a large part of 2007, and available again in 2008.”¹⁸ As required by the Regulatory Commission of Alaska (Alaska Commission), Adak Telephone intends to reduce local service rates to reflect additional revenue resulting from the receipt of high-cost support.¹⁹ Absent the extension of its waiver, Adak Telephone claims it would be forced to limit or delay its rate reduction.²⁰

5. For the same reasons we found in the *Adak Order* that special circumstances warrant a waiver of section 36.611 and 36.612 of the Commission’s rules, we find that it is in the public interest to extend the timing of that waiver to permit Adak Telephone to receive high-cost loop support based on projected costs in 2006 and 2007, until its historical costs become available in 2008. We further find that an interruption in Adak Telephone’s high-cost loop support would impair its ability to provide telecommunications services at affordable rates, and that such interruption would not further the goals of section 254 of the Communications Act of 1934, as amended.²¹ We direct Adak Telephone to submit quarterly updates of its actual costs in accordance with the Commission’s rules, so that NECA may determine whether adjustments for the 2006 and 2007 high-cost loop support amounts are necessary.²² Payments for periods subsequent to December 2007 will be based on historic data in accordance with the Commission’s rules.²³

6. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, 202 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that waiver of sections 36.611 and 36.612 of the Commission's rules, 47 C.F.R. §§ 36.611 and 36.612, IS GRANTED, as described herein, to Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility.

7. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, 202 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility is required to submit quarterly updates pursuant to section 36.612 of the Commission’s rules, 47 C.F.R. § 36.612, for 2006 and 2007.

¹⁸ Motion at 4.

¹⁹ See *Adak Order*, 20 FCC Rcd at 20547, para. 8 n.32; Motion at 6. Adak Telephone intends to make a rate reduction filing with the Alaska Commission in November 2006. *Id.*

²⁰ Motion at 6.

²¹ Section 254(b) of the Act provides, among other things, that consumers in rural, insular, and high-cost areas should have access to telecommunications services at rates that are “reasonably comparable to rates charged for similar services in urban areas.” 47 U.S.C. § 254(b)(3).

²² See 47 C.F.R. § 36.612.

²³ See 47 C.F.R. §§ 36.611, 36.612.

8. IT IS FURTHER ORDERED that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau