

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

In the Matters of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	
Petitions for Waiver of Windy City Cellular, LLC and Adak Eagle Enterprise, LLC)	

ORDER

Adopted: December 20, 2012

Released: December 20, 2012

By the Chief, Wireless Telecommunications Bureau and the Chief, Wireline Competition Bureau:

1. By this Order, the Wireless Telecommunications Bureau (WTB) and the Wireline Competition Bureau (WCB) (collectively Bureaus) approve interim relief from certain Commission rules governing high-cost universal service support to provide Windy City Cellular, LLC (WCC) and Adak Eagle Enterprises, LLC (AEE) with interim support while the Bureaus complete their review of the companies' respective waiver petitions.¹ We provide this limited, interim relief because we find that it is necessary to ensure continued service in the carriers' respective service areas during the pendency of our review. While their petitions have been pending, WCC and AEE have taken steps to reduce their expenses, and our decision to provide interim relief reflects this fact. We also note that this interim relief will provide the companies an additional opportunity to take further steps to reduce expenses and increase revenues. This interim relief will be provided for six months or until the Bureaus resolve the petitions, whichever comes first. The interim relief provided in this Order will be subject to true-up following the Bureaus' final determination on the merits of the Petitions.

2. *Background.* In the *USF/ICC Transformation Order*, the Commission adopted comprehensive reforms to modernize the universal service system, including a five-year period to phase down existing competitive eligible telecommunications carrier (ETC) support and transition to the Connect America Fund (CAF).² The Commission delayed the phase down for competitive ETCs serving remote parts of Alaska by two years, but implemented a cap to restrict growth of the fund during that time

¹ Petition for Waiver of Windy City Cellular, LLC, WC Docket No. 10-90 *et al.* (filed Apr. 3, 2012) (*WCC Petition*); Adak Eagle Enterprises, LLC Petition for Waiver of Section 54.302 of the Commission's Rules, WC Docket No. 10-90 and WT Docket No. 10-208 (filed May 22, 2012) (*AEE Petition*); *see also Connect America Fund*, WC Docket No. 10-90, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, *Petition for Waiver of Windy City Cellular, LLC*, Order, 27 FCC Rcd 6224 (WTB 2012) (*WCC Interim Relief Order*) (providing interim support to WCC).

² *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

(Remote Alaska Cap).³ As part of the Remote Alaska Cap, support to competitive ETCs serving remote parts of Alaska was limited to \$3,000 per line per year (equivalent to \$250 per line per month) beginning January 1, 2012.⁴ In addition, the Commission adopted new section 54.302, establishing a presumptive per line cap of \$250 per month on total high-cost universal service support for all eligible telecommunications carriers, including incumbent LECs.⁵ The Commission concluded that support in excess of that amount should not be provided without further justification.⁶ The Commission provided that the cap in section 54.302 would be phased in over three years. From July 1, 2012 through June 30, 2013, carriers will receive no more than \$250 per line per month plus two-thirds of the difference between their uncapped per-line amount and \$250. From July 1, 2013 through June 30, 2014, carriers will receive no more than \$250 per line per month plus one-third of the difference between their uncapped per-line amount and \$250. Beginning July 1, 2014, carriers will receive no more than \$250 per line per month.

3. The Commission also instituted a waiver process to allow “any carrier negatively affected by the universal service reforms . . . to file a petition for waiver that clearly demonstrates that good cause exists for exempting the carrier from some or all of those reforms, and that waiver is necessary and in the public interest to ensure that consumers in the area continue to receive voice service.”⁷ In the *USF/ICC Transformation Order*, the Commission stated that “[w]e 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.”⁸ This language reflected the Commission’s longstanding historical commitment to ensuring ubiquitous voice availability and a recognition that the supported service today remains voice telephony. In the recent *Fifth Order on Reconsideration*, the Commission clarified that “we envision granting relief to incumbent telephone companies only in those circumstances in which the petitioner can demonstrate that consumers served by such carriers face a significant risk of losing access to a broadband-capable network that provides both voice as well as broadband today, at reasonably comparable rates, in areas where there are no alternative providers of voice or broadband.”⁹ In addition, the Commission stated that although carriers were not necessarily entitled to receive support under the Commission’s previous rules while their waiver petitions were pending, to the extent immediate or interim relief is necessary while a waiver petition is evaluated, such relief can be provided on a case-by-

³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17835-36, para. 529.

⁴ *Id.*; see also *id.* at 17836, para. 529. n.880, 47 C.F.R. § 54.307(e)(v).

⁵ 47 C.F.R. § 54.302.

⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17765, para. 274.

⁷ *Id.* at 17839-40, paras. 539, 540. The Commission’s intent in discussing waivers relating to reductions in USF support was not to replace the ordinary standard for granting waivers under section 1.3 of the Commission’s rules, but rather to provide guidance in advance to potential applicants of the circumstances that would be persuasive and compelling grounds for grant of a waiver under that waiver standard to assist potential applicants in effectively formulating their waiver petitions. See *Connect America Fund et al.*, WC Docket No 10-90 et al., Fifth Order on Reconsideration, FCC 12-137, at para. 19 (rel Nov. 16, 2012) (*Fifth Order on Reconsideration*). Generally, the Commission’s rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission’s rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17840, para. 540.

⁹ *Fifth Order on Reconsideration* at para. 21.

case basis.¹⁰ The Commission provided guidance on the types of information that would be relevant for waiver requests and delegated authority to WCB and WTB to rule on all such requests.¹¹

4. On April 3, 2012, WCC filed a petition for waiver of section 54.307(e) of the Commission's rules, seeking support at the rate of \$880.09 per line per month.¹² WTB placed the WCC Petition on public notice for comment on April 12, 2012.¹³ In a supplemental filing, on May 4, 2012, WCC alternatively requested a full waiver of the \$3,000 per line per year cap for two years, to be applied, if feasible, from January 1, 2012, the date that the reduction in funding became effective.¹⁴ Over the next six months, WTB requested additional information from WCC and its parent company, AEE, to further evaluate the WCC Petition and AEE Petition.¹⁵ WTB is in the process of reviewing the information provided by both carriers.

5. On May 22, 2012, AEE filed a petition for waiver of section 54.302 of the Commission's rules, the provision limiting high-cost support for incumbent LECs to no more than \$250 per line per month.¹⁶ AEE claims that prior to the issuance of the *USF/ICC Transformation Order*, it received total support of approximately \$1,394 per line per month.¹⁷ AEE asserts it began operating at a loss September 1,¹⁸ and that while it received a large NECA settlement payment during September, it will return to operating at a loss by December as a consequence of the phase-in of the \$250 cap.¹⁹ WCB is currently in the process of reviewing information provided by AEE.

6. On June 12, 2012, WTB granted WCC interim relief from section 54.307(e), authorizing additional support in a fixed amount of \$40,104 per month, for a period of at least three months and up to six months or until WTB resolved the WCC Petition, whichever came first.²⁰ The last of the interim

¹⁰ *Id.* at para. 23.

¹¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17840-42, paras. 542, 544.

¹² For further, more detailed information on the WCC Petition and the filings related to it, see *WCC Interim Relief Order*, 27 FCC Rcd at 6226, paras. 5-8.

¹³ *Wireless Telecommunications Bureau Seeks Comment on Windy City Cellular, LLC Petition for Waiver of Universal Service Rules*, WC Docket No. 10-90, WT Docket No. 10-208, Public Notice, 27 FCC Rcd 3976 (WTB 2012).

¹⁴ See Notice of *Ex Parte* and Supplement, Windy City Cellular, LLC, WC Docket No. 10-90 et al. (filed May 4, 2012).

¹⁵ See, e.g., Letter to Larry Mayes, President/CEO, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, from Julie A. Veach, Chief, Wireline Competition Bureau, and Ruth Milkman, Chief, Wireless Telecommunications Bureau, 27 FCC Rcd 10132 (WCB/WTB 2012).

¹⁶ AEE initially filed its petition on May 9, 2012, but filed a revised version to modify language explaining how AEE will be impacted by the \$250 cap and providing updated exhibits. See Letter from Jennifer L. Richter, Counsel, AEE, to Marlene H. Dortch, Secretary, Federal Communications Commission, Petition for Waiver, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 22, 2012).

¹⁷ *AEE Petition* at 4.

¹⁸ See Letter from Monica S. Desai, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte and Submission of Supplemental Information, WC Docket No. 10-90 et al. (filed Nov. 20, 2012) at 3.

¹⁹ See Letter from Monica S. Desai, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte and Submission of Supplemental Information, WC Docket No. 10-90 et al. (filed Nov. 15, 2012) at 2.

²⁰ *WCC Interim Relief Order*, 27 FCC Rcd at 6227-28, paras. 13-15 (providing details on how the Bureau determined the amount of support), 6228, para. 16 (explaining the term of the interim support).

payments was made in November 2012. Prior to the disbursement of the last interim payment, WTB and WCB staff requested additional data and information from AEE. In response, AEE filed data with the Bureaus on November 15, 2012 and November 20, 2012.²¹ The Bureaus are currently in the process of reviewing this information and, with respect to both the WCC and AEE Petitions, the Bureaus are also determining whether additional information is necessary to compile the full record needed to evaluate those Petitions.

7. *Discussion.* We conclude it is appropriate to provide WCC and AEE additional support, on an interim basis as described herein. Given the complexity raised by the interrelationships between WCC and AEE, the Bureaus require additional time to complete evaluation of the WCC and AEE Petitions, including information just filed by the companies in support of their waiver requests.²² The Bureaus note that WCC and AEE have taken steps to reduce their expenses and our decision to provide interim relief is reflective of this fact. Moreover, we note that this interim relief will provide the companies a further opportunity to identify additional possible expense reductions as well as ways to increase revenues.

8. WTB extends the term of the interim support pending further review of the WCC Petition, the AEE Petition, and all the supplemental filings for both, including any additional information requested, subject to the conditions explained in the *WCC Interim Relief Order*. Specifically, we will continue to provide a fixed amount of \$40,104 per month, for an additional six months or until WTB resolves the WCC Petition, whichever comes first. This amount is in addition to the current support WCC receives based on the number of lines reported each quarter. This interim support will not reduce the amount of support available to remote areas in Alaska under the Remote Alaska Cap. WTB finds that extending the provision of interim support is necessary pending further review of the record, including recently filed data. This interim support is necessary to ensure that WCC can maintain its wireless operations while WTB continues to evaluate the WCC Petition.²³

9. Additionally, WCB finds that a fixed amount of interim support for AEE is necessary pending further review of the record, including any additional information requested. Specifically, WCB will provide a fixed amount of \$33,276 per month, for up to six months or until WCB resolves AEE's Petition, whichever comes first. This amount shall be provided in addition to the amount of support AEE is otherwise eligible to receive pursuant to the Commission's rules. This interim support is intended to maintain the status quo for wireline service in AEE's service area until WCB has had a full opportunity to evaluate AEE's Petition. WCB therefore provides only the amount of limited relief necessary for these purposes. The interim relief provided to AEE is based on the difference between the amounts AEE claims it would have received under the Commission's rules prior to the *USF/ICC Transformation Order*

²¹ See Letter from Monica S. Desai, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte and Submission of Supplemental Information, WC Docket No. 10-90 et al. (filed Nov. 20, 2012); and Letter from Monica S. Desai, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte and Submission of Supplemental Information, WC Docket No. 10-90 et al. (filed Nov. 15, 2012).

²² See Letter from Monica S. Desai, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte and Submission of Supplemental Information, WC Docket No. 10-90, et al. (filed Nov. 20, 2012); Letter from Monica S. Desai, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte and Submission of Supplemental Information, WC Docket No. 10-90, et al. (filed Nov. 15, 2012).

²³ *WCC Interim Relief Order*, 27 FCC Rcd at 6227, para. 11.

and the amount AEE forecasts it will receive under the current rules.²⁴ This projected shortfall then was reduced by the amount of expense reductions AEE can achieve, as calculated based on its 2011 ending balances, from its permanent reduction of labor and benefits expenses for the following accounts:

[REDACTED].²⁵ We note that AEE claims that it provides essential facilities for all communications carriers in Adak, without which voice services, wireless, wireline, and broadband services will be lost.²⁶

10. The Bureaus require additional time to review the entirety of the AEE and WCC Petitions, including the companies' recent filings, assess the reasonableness of their projected shortfall of the subscriber-based universal service support, and evaluate whether either or both companies have a path forward to operate in the future within the \$250 cap.²⁷ In addition, we note that, based on our review of the record to date, the Bureaus have not been able to definitively determine whether or not AEE's and WCC's expenses are reasonable, but the Bureaus are continuing to evaluate the record, and any interim support provided here is subject to true-up upon final resolution of the AEE and WCC Petitions, as described below.

11. The interim relief authorized by the Bureaus in this Order is subject to true-up following the final determination of the Bureaus on the merits of the WCC and AEE Petitions.²⁸ We emphasize that the extension of interim support we approve today does not prejudice the ultimate disposition of the WCC or AEE Petitions. Rather, by this action, we provide additional support until the Bureaus can complete their review of the WCC and AEE petitions, including the documentation recently filed on behalf of WCC and AEE.²⁹ We believe that providing this interim support is necessary, and that it will ensure that WCC can continue to provide wireless service and AEE can continue to provide wireline service during this period. The same conditions described in the *WCC Interim Relief Order* will continue to apply to the support provided to WCC, including the requirement to continue providing wireless service on the same terms and conditions or to coordinate with WTB staff on a transition plan should WCC elect to terminate

²⁴ See Financial and Operating Forecast at Exhibit 8, Adak Eagle Enterprises, LLC Petition for Waiver of Section 54.302 of the Commission's Rules, WC Docket No. 10-90 and WT Docket No. 10-208 (filed May 9, 2012). The May 9, 2012 petition was rescinded and replaced by the one filed on May 22, 2012.

²⁵ Certain information included in the Petition was filed pursuant to the *Protective Order* in this proceeding and has been redacted. See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Protective Order, 27 FCC Rcd 10276 (2012).

²⁶ *AEE Petition* at 2. The broadband service has been in place for three years and the wireless service has been in place for two years. *Id.*

²⁷ See Letter from Monica S. Desai, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte and Submission of Supplemental Information, WC Docket No. 10-90, *et al.* (filed Nov. 20, 2012); and Letter from Monica S. Desai, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte and Submission of Supplemental Information, WC Docket No. 10-90, *et al.* (filed Nov. 15, 2012).

²⁸ The Bureaus grant interim relief to WCC and AEE based on forecasts that WCC and AEE have provided to the Bureaus. This amount is subject to a true-up based on the Bureaus' further review of the record and/or other developments that occur during the period of interim relief.

²⁹ See Letter from Monica S. Desai, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte and Submission of Supplemental Information, WC Docket No. 10-90, *et al.* (filed Nov. 20, 2012); and Letter from Monica S. Desai, Counsel, Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte and Submission of Supplemental Information, WC Docket No. 10-90, *et al.* (filed Nov. 15, 2012).

service.³⁰ In addition, as a condition of interim support, AEE must maintain its existing services. To the extent that AEE must discontinue, reduce or impair service, it must coordinate with WCB staff on a transition plan in order to minimize customer disruption.³¹ The Bureaus also expect AEE and WCC to actively pursue any and all further cost cutting and revenue generating measures they can take in order to reduce their dependency on universal service support to the level of the cap.

12. *Conclusion.* For the reasons discussed above, WTB hereby authorizes Windy City Cellular, LLC interim relief in the amount of \$40,104 per month, for a period of six months or until WTB resolves the WCC Petition, whichever comes first. In addition, WCB hereby authorizes Adak Eagle Enterprises, LLC interim relief in the amount of \$33,276 per month, for a period of six months or until WCB resolves the AEE Petition, whichever comes first.

13. IT IS ORDERED pursuant to authority contained in sections 4(i), 4(j) and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 254, and sections 0.91, 0.131, 0.291, 0.331, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.131, 0.291, 0.331, and 1.3, and paragraph 544 of the *USF/ICC Transformation Order* that Universal Service Administrative Company SHALL MAKE payment to Windy City Cellular, LLC and Adak Eagle Enterprises, LLC in accordance with the amount, terms and conditions described herein.

14. IT IS FURTHER ORDERED that, pursuant to section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Ruth Milkman
Chief, Wireless Telecommunications Bureau

Julie A. Veach
Chief, Wireline Competition Bureau

³⁰ See, e.g., *WCC Interim Relief Order*, 27 FCC Rcd at 6228, para. 17 (WCC must continue service over the same coverage area and consistent with the same performance metrics that WCC offered when the Bureau adopted the *WCC Interim Relief Order* and must coordinate with Bureau staff on a transition plan should it elect to terminate service) and para. 18 (WCC should continue to pursue cost cutting and revenue generating measures).

³¹ The condition on the waiver enabling AEE to obtain interim support is in addition to any otherwise-applicable discontinuance requirements. See, e.g., 47 U.S.C. § 214(a); 47 C.F.R. § 63.71.