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

In the Matter of	)	
	)	
Adak Eagle Enterprises, LLC and Windy City Cellular, LLC	))	WC Docket No. 10-90
	)	
Petitions for Waiver of Certain High-Cost Universal Service Rules	))	WT Docket No. 10-208

ORDER ON RECONSIDERATION AND MEMORANDUM OPINION AND ORDER

Adopted: April 30, 2015 **Released: May 7, 2015**

By the Commission: Commissioners Clyburn and O'Rielly issuing a joint statement.

I. INTRODUCTION

1. In this order, the Commission denies the Petition for Reconsideration[1] and the Application for Review[2] filed by Adak Eagle Enterprises, LLC (AEE) and Windy City Cellular, LLC (WCC) of the Wireline Competition Bureau's (WCB) and Wireless Telecommunications Bureau's (WTB) (collectively, Bureaus) denial of WCC's and AEE's requests that the Commission waive its caps on universal service funding.[3] The petitioners have provided no basis to grant either their Petition for Reconsideration or their Application for Review. Therefore, the Commission denies the relief requested, as explained below.

II. BACKGROUND

2. In the *USF/ICC Transformation Order*,[4] the Commission comprehensively reformed federal universal service funding for high-cost, rural areas, adopting fiscally responsible, accountable, incentive-based policies to preserve and advance voice and broadband-capable networks while ensuring fairness for consumers and businesses that ultimately pay into the universal service fund (Fund).[5] The reforms include phasing down existing competitive eligible telecommunications carrier (ETC) support

[1] Adak Eagle Enterprises, LLC & Windy City Cellular, LLC, Petition for Reconsideration, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Aug. 14, 2013) (Petition for Reconsideration).

[2] Adak Eagle Enterprises, LLC & Windy City Cellular, LLC, Application for Review, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Aug. 14, 2013) (Application for Review).

[3] *Connect America Fund*; *Universal Service Reform – Mobility Fund; Petitions for Waiver of Windy City Cellular, LLC, and Adak Eagle Enterprise, LLC,* WC Docket No. 10-90, WT Docket No. 10-208, Order, 28 FCC Rcd 10194, 10211-12 (Wireless Tel. Bur./Wireline Comp. Bur. 2012) (*AEE/WCC Denial Order*).

[4] *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 a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*, 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, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

[5] *See id*. at 17670, para. 11.

over a five-year period and transitioning to the Mobility Fund, which will provide ongoing support for mobile voice and broadband-capable networks within the Connect America Fund.[6] The Commission delayed the phase down for competitive ETCs serving remote parts of Alaska by two years, but adopted a new cap of $3,000 per line per year (equivalent to $250 per line per month) for such carriers beginning January 1, 2012 (Remote Alaska Cap) codified in section 54.307(e)(3)(v).[7] 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 ETCs, including incumbent local exchange carriers (LECs), to be phased in over three years.[8] The Commission concluded that support in excess of that amount should not be provided without further justification.[9]

3. The *USF/ICC Transformation Order* also noted that "any carrier negatively affected by the universal service reforms . . . [may] 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."[10] 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."[11] In delegating to the Bureaus the authority to approve or deny requests for waiver,[12] the Commission indicated that it did not anticipate granting waiver requests routinely or for "undefined duration[s]"[13] and provided guidance on the types of information that would be relevant for such requests.[14] In the *Fifth Order on Reconsideration*, the Commission further 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

[6] *See generally USF/ICC Transformation Order.* This phase down of support for competitive ETCs was halted at 60 percent on June 30, 2014 under the terms adopted in the *USF/ICC Transformation Order* because the Mobility Fund Phase II has not been implemented. *See id.* at 17832, para. 519; *see also* 47 U.S.C. §§ 54.307(e)(2)(iii), (e)(5).

[7] *USF/ICC Transformation Order*, 26 FCC Rcd at 17835-36, para. 529 & n. 880; 47 C.F.R. § 54.307(e)(3)(v).

[8] 47 C.F.R. § 54.302.

[9] *USF/ICC Transformation Order*, 26 FCC Rcd at 17765, para. 274.

[10] *Id*. at 17839-40, paras. 539-40. The Commission's intent in discussing waivers relating to reductions in federal universal service fund (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, 27 FCC Rcd 14549, 14556-57, para. 19 (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. *Northeast 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.

[11] *USF/ICC Transformation Order*, 26 FCC Rcd at 17840, para. 540.

[12] *Id.* at 17840, 17842, paras. 540, 544.

[13] *Id*. at 17766, para. 278.

[14] *Id.* at 17840-42, paras. 542, 544.

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."[15]

4. In 2012, AEE[16] and WCC[17] each filed a request for waiver of the applicable $250 per line per month cap. In the *AEE/WCC Denial Order*, the Bureaus denied AEE's petition and WCC's petition because of the companies' excessive expenses and further denied WCC's petition because of the presence of alternative wireless voice service.[18] However, the Bureaus found good cause existed to provide AEE and WCC an additional six months of support at the pre-existing interim support levels in the amounts of $33,276 per month and $40,104 per month, respectively, to ensure that providers on Adak Island would have time to adjust so that their customers were not adversely affected.[19]

5. In August 2013, AEE and WCC filed a Petition for Reconsideration and an Application for Review of the Bureaus' *AEE/WCC Denial Order*.[20] AEE requested support at **[[Begin Confidential]]** [redacted] **[[End Confidential]]** percent of its 2011 funding levels in order to maintain operations.[21] Both the Petition for Reconsideration and Application for Review presented several complex issues requiring in-depth, coordinated review by the two Bureaus. While review was pending, the Bureaus granted two extensions of the interim support that AEE and WCC were receiving subject to the same conditions as in the *AEE/WCC Denial Order*.[22] In this Order, the Commission denies the Petition for Reconsideration and the Application for Review.[23]

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[15] *Fifth Order on Reconsideration*, 27 FCC Rcd at 14557, para. 21.

[16] Adak Eagle Enterprises, LLC Petition for Waiver of Section 54.302 of the Commission's Rules, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 22, 2012) (AEE Waiver Petition). AEE initially filed its petition on May 9, 2012, but filed a revised version to modify language explaining how AEE will be affected by the $250 cap, and providing updated exhibits. *See* Letter from Jennifer L. Richter, Counsel to AEE, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 22, 2012).

[17] Windy City Cellular, LLC Petition for Waiver of Section 54.307(e) of the Commission's Rules, WC Docket No. 10-90, WT Docket No. 10-208 (filed Apr. 3, 2012) (WCC Waiver Petition). In a supplemental filing, on May 4, 2012, WCC alternatively requested a full waiver of the $250 cap for two years and, if feasible, application of the waiver retroactively to January 1, 2012, the date that the reduction in funding became effective. *See* Letter from Monica S. Desai, Counsel to WCC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 4, 2012) (WCC May 4, 2012 Ex Parte).

[18] *AEE/WCC Denial Order,* 28 FCC Rcd at 10201, 10208-10, paras. 22, 39-43.

[19] *Id.* at 10211-12, paras. 48-50.

[20] *See* Petition for Reconsideration; Application for Review.

[21] *See* Petition for Reconsideration at 2.

[22] On January 10, 2014 the Bureaus issued a two-month extension of interim support to AEE and WCC. *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, WT Docket No. 10-208, Order, 29 FCC Rcd 244 (Wireless Tel. Bur./Wireline Comp. Bur. 2014) (*AEE/WCC Jan. 2014 Interim Relief Order*). Subsequently, on February 28, 2014, the Bureaus issued a six-month extension of interim support to AEE and WCC. *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, WT Docket No. 10-208, Order, 29 FCC Rcd 2112 (Wireless Tel. Bur./Wireline Comp. Bur. 2014) (*AEE/WCC Feb. 2014 Interim Relief Order*).

[23] To facilitate coordinated resolution of the Petition for Reconsideration and the Application for Review, the Bureaus, as permitted by section 1.104(b) of the Commission's rules, referred consideration of the Petition for Reconsideration to the Commission. *See* 47 C.F.R. § 1.104(b). Consistent with section 1.104(c) of the Commission's rules, the Commission first rules on the Petition for Reconsideration before ruling on the Application for Review. *See* 47 C.F.R. § 1.104(c).

III. PETITION FOR RECONSIDERATION

6. In the *Fifth Order on Reconsideration*, the Commission made clear that, in the waiver context, the analysis should include a focus on the financial picture of a waiver applicant, particularly its "operating expenses."[24] In the *AEE/WCC Denial Order*, the Bureaus concluded that AEE/WCC had certain expenses that, based on the record, appeared excessive and unreasonable.[25] After substantial review and analysis, we find that AEE/WCC continue to have excessive and unreasonable expenses,[26] and we therefore conclude that granting AEE a waiver of section 54.302 and 54.307(e)(3)(v) is inconsistent with the Commission's commitment "to provid[e] support that is sufficient but not excessive."[27] Therefore, we deny AEE/WCC's request to reconsider the Bureaus' decision in the *AEE/WCC Denial Order*.[28]

7. In their Petition for Reconsideration, AEE/WCC claimed that in response to the Bureaus' concerns regarding excessive expenses, they had implemented significant cost-reduction measures and that "[a]s a result of these additional reductions, overall costs have already been reduced for 2013 by approximately **[[Begin Confidential]]** [redacted] [[**End Confidential**]], compared to the pre-*USF/ICC Transformation Order* operating levels, and the companies anticipate that additional savings will be realized once the boat and administrative building are sold."[29] However, rather than reducing expenses in 2013, their expenses actually increased. As of year-end 2011, the year before *USF/ICC Transformation Order* changes took effect, the companies' operating expenses were [[**Begin Confidential]]** [redacted] [[**End Confidential**]];[30] as of year-end 2013 operating expenses *increased* to [[**Begin Confidential]]** [redacted] [[**End Confidential**]][31] and were [[**Begin Confidential]]** [redacted] [[**End Confidential**]] in 2014.[32] Thus, the companies' 2011 baseline for operating expenses was [[**Begin Confidential]]** [redacted] [[**End Confidential**]]; they said they reduced expenses by [[**Begin Confidential]]** [redacted] [[**End Confidential**]] and yet in 2013 their expenses were [[**Begin Confidential]]** [redacted] [[**End Confidential**]] and in 2014 their expenses were [[**Begin Confidential]]** [redacted] [[**End Confidential**]] – in neither case a [[**Begin Confidential]]** [redacted] [[**End Confidential**]] reduction from the pre-*USF/ICC Transformation Order* figure. Likewise,

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[24] *Fifth Order on Reconsideration*, 27 FCC Rcd at 14558, para. 22.

[25] *AEE/WCC Denial Order*, 28 FCC Rcd at 10200-01, para. 21. We note that because a portion of AEE's expenses are attributed to WCC, we discuss them jointly herein.

[26] *Id.* at 10200-08, paras. 21-38. *See also* Letter from Monica S. Desai, Counsel to AEE and WCC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed Apr. 9, 2015) (AEE and WCC Apr. 9, 2015 Ex Parte).

[27] *Fifth Order on Reconsideration*, 27 FCC Rcd at 14557, para. 22 & n.42 (internal quotation omitted); *see also* 47 U.S.C. § 254(b)(1), (b)(4)-(5), (d), (e); *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620-21 (5th Cir. 2000) (*Alenco*) ("The agency's broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service"); *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005) (*Qwest Communications Int'l*) ("excessive subsidization arguably may affect the affordability of telecommunications services, thus violating the principle in § 254(b)(1)") (citing *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001)); *Rural Cellular Assn. v. FCC*, 588 F.3d 1095, 1102 (D.C. Cir. 2009) (*Rural Cellular*) (explaining that, in assessing whether universal service subsidies are excessive, the Commission "must consider not only the possibility of pricing some customers out of the market altogether, but the need to limit the burden on customers who continue to maintain telephone service").

[28] *See* Petition for Reconsideration at 1-2.

[29] Petition for Reconsideration at 2.

[30] *Id*. *See also* AEE Waiver Petition at Exh. 8.

[31] Letter from Monica S. Desai, Counsel to AEE and WCC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at Exh. 2 (filed Aug. 22, 2014) (AEE and WCC Aug. 22, 2014 Ex Parte).

[32] AEE and WCC Apr. 9, 2015 Ex Parte at Attach. 2.

AEE has failed both to sell its boat and to move from the administrative building in Anchorage that is owned by the companies' Chief Executive Officer (CEO) and Chief Operating Officer (COO).[33]

8. Not only have the companies failed to follow through on their commitment to reduce operating costs, but they have also failed to meet their commitment to implement a "drastic reduction of executive compensation."[34] The companies stated in their Petition for Reconsideration that they would implement "cuts result[ing] in an annual salary of [[**Begin Confidential]]** [redacted] [[**End Confidential**]] for the CEO and [[**Begin Confidential]]** [redacted] [[**End Confidential**]] for the COO.[35] Yet, in a September 2014 filing, the companies forecasted that the salaries for the CEO and COO, excluding vacation time payout, the companies' contributions to 401K retirement plans, health insurance, and health benefits would be, respectively, [[**Begin Confidential]]** [redacted] [[**End Confidential**]] and [[**Begin Confidential]]** [redacted] [[**End Confidential**]].[36] Not only are these salary levels well above those cited in the Petition for Reconsideration, but they are also well above salary levels of similarly-situated companies in Alaska that the companies themselves submitted for comparison.[37]

9. In addition, one of AEE's affiliates is Adak Cablevision, LLC (ADV), a company wholly owned by AEE's CEO.[38] The companies' 2011 audited balance sheet showed that the companies' unregulated affiliate, ADV, owed AEE [[**Begin Confidential]]** [redacted] [[**End Confidential**]] for transactions between ADV and AEE. [[**Begin Confidential]]** [redacted] [[**End Confidential**]][39] Despite this, AEE allowed the amounts ADV owed it to grow year after year until by 2014 the amount ADV owed AEE has grown to [[**Begin Confidential]]** [redacted] [[**End Confidential**]].[40] The fact that AEE allowed the amounts owed to it by ADV to grow so substantially, while the companies' auditors continued to note ADV's inability to reimburse AEE in full, is yet another failure to control costs. Moreover, such unpaid balances are inconsistent with the Commission's affiliate transaction rules. Section 32.27 of the Commission's rules requires that services provided by a carrier to an affiliate be recorded at fair market value or fully distributed cost.[41] The purpose of this rule is to ensure that ratepayers do not bear the cost of nonregulated ventures.[42] Continuing to allow unpaid balances owed by ADV to accumulate over a three-year period, particularly

[33] AEE and WCC Aug. 22, 2014 Ex Parte at 2-5.

[34] Petition for Reconsideration at 3-5.

[35] *Id.* at 3.

[36] Letter from Monica S. Desai, Counsel to AEE and WCC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at Exh. 7 (filed Sept. 9, 2014).

[37] Petition for Reconsideration at 3-5.

[38] Letter from Monica S. Desai, Counsel to AEE and WCC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at Attach. 2 (filed Aug. 21, 2012) (AEE and WCC Aug. 21, 2012 Ex Parte).

[39] AEE Waiver Petition at Exh. 8. We note that the Rural Utilities Service (RUS) [[**Begin Confidential]]** [redacted] [[**End Confidential**]]. *See* AEE and WCC Aug. 21, 2012 Ex Parte at Attach. 3.

[40] AEE and WCC Apr. 9, 2015 Ex Parte at Attach. 2.

[41] 47 C.F.R. § 32.27.

[42] *See, e.g., Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, WC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996). *See also Contel Telephone Operating Companies Apparent Violations of the Commission's Rules and Policies Governing Transactions with Affiliates*, Notice of Apparent Liability for Forfeiture, 6 FCC Rcd 1880 (1991) (proposing enforcement action for practices that imposed costs of nonregulated venture on captive ratepayers).

after the financial auditors issued a going concern notice,[43] effectively means that those services were provided to ADV for free, regardless of how the transactions were shown on the corporate books.

10. We also are troubled that the companies' 2014 financial statements do not support the companies' claims. We note that their 2014 cash flow statement shows that, as of December 31, 2014, the companies had available cash in the amount of [[**Begin Confidential]]** [redacted] [[**End Confidential**]], which is substantially higher than the companies' estimates provided to the Commission in September 2014.[44]

11. Finally, we note that the 2014 financial audit shows that the companies had net additions of regulated property, plant, equipment (PPE) in 2014 of [[**Begin Confidential]]** [redacted] [[**End Confidential**]],[45] despite their representations to the Commission in September 2014 that there would be an estimated total-year net additions of [[**Begin Confidential]]** [redacted] [[**End Confidential**]][46] in regulated investment.[47] The companies also invested a net [[**Begin Confidential]]** [redacted] [[**End Confidential**]] in nonregulated PPE in 2014.[48] Given the companies' claimed dire financial conditions, a reduction in cash flow of [[**Begin Confidential]]** [redacted] [[**End Confidential**]] for a company of that size due to these net additions to PPE is unreasonable, particularly given they had represented to the Commission in September 2014 they would be making much smaller regulated net additions to PPE. Had they not made net additions to PPE of that magnitude, they would have had an even greater amount of cash on hand at the end of the year.

12. Despite the lengthy record developed over the last three years, we still cannot determine that the companies' expenses are justified. In particular, their claims regarding their financial condition are not consistent with the financial information provided to the Commission. Therefore, the companies have failed to persuade us to reverse the Bureaus' decision.

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[43] Letter from Monica S. Desai, Counsel to AEE and WCC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at Attach. 7 (filed Apr. 12, 2013).

[44] AEE and WCC Apr. 9, 2015 Ex Parte at Attach. 2. *Compare* Letter from Monica S. Desai, Counsel to AEE and WCC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at Exh. 1(filed Sept. 12, 2014) (AEE and WCC Sep. 12, 2014 Ex Parte).

[45] AEE and WCC Apr. 9, 2015 Ex Parte at Attach. 2.

[46] AEE and WCC Sep. 12, 2014 Ex Parte at Exh. 1.

[47] In response to Commission inquiries, the companies stated that the AEE expenditures were due to damage to AEE equipment from electrical outages which resulted in approximately [[**Begin Confidential]]** [redacted] [[**End Confidential**]] in new equipment and approximately [[**Begin Confidential]]** [redacted] [[**End Confidential**]] for construction of a warehouse. Letter from Monica S. Desai, Counsel to AEE and WCC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2-4 (filed Apr. 30, 2015) (AEE and WCC Apr. 30, 2015 Ex Parte). However, the companies claim that the warehouse expenditures were known to the companies in June 2014, *id.* at 3-4, so such expenses should have been included in the September 2014 financial representations. Moreover, we note that the companies did not negotiate an early termination of their long-term lease on their current warehouse until after making the expenditures for the new warehouse, which could have left the companies with both the costs of building a new warehouse and an additional ten years of payments on the leased warehouse. Letter from Monica S. Desai, Counsel to AEE and WCC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1-3 (filed Mar. 11, 2015). AEE/WCC also claim that the WCC capital expenditures were to upgrade WCC's 3G capabilities. AEE and WCC Apr. 30, 2015 Ex Parte at 4-5. However, given that the company claimed it was in dire financial straits and that WCC might have to cease operations if a waiver was not granted, such a capital expenditure should have been scaled back or deferred.

[48] AEE and WCC Apr. 9, 2015 Ex Parte at Attach. 2. We cannot determine on the record before us why the companies made net investments in nonregulated plant, property and equipment in 2014, given their financial condition at the time. Such action is perplexing for companies that professed to be engaged in a serious effort to cut costs.

IV. APPLICATION FOR REVIEW

13. In the Application for Review, AEE/WCC claim that the Bureaus failed to observe the proper standard for granting a waiver of the universal service reforms adopted in the *USF/ICC Transformation Order*, and that the Bureaus' denial of WCC's request for waiver of section 54.307(e) of the Commission's rules violated the principle of competitive neutrality and conflicted with the objectives of the universal service program.[49] As described in more detail below, we conclude that the Bureaus applied the proper standard in considering WCC's waiver request, and we affirm that the denial of WCC's original waiver was consistent with the principle of competitive neutrality and the overall objectives of the universal service program. Therefore, we deny AEE/WCC's Application for Review.

A. Waiver Standard Properly Applied

14. In the *USF/ICC Transformation Order*, the Commission explained that waiver relief would only be granted in those circumstances in which the petitioner could 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 to consumers using the same or other technologies that provide the functionalities required for supported voice service."[50] The Commission further anticipated that, for a wireless provider, a waiver would not be warranted unless it could demonstrate that it is the only provider of mobile service in a "significant portion" of the study area.[51]

15. In the *AEE/WCC Denial Order*, the Bureaus noted the presence of an alternative terrestrial provider, General Communication, Inc. ("GCI"), on Adak Island and concluded that consumers there will continue to have access to voice services without the grant of a waiver to WCC.[52] AEE/WCC dispute this conclusion, arguing that consumers on Adak will lose voice services without AEE/WCC continuing to provide service with high-cost support at their pre-*USF/ICC Transformation Order* levels, and thus WCC is entitled to extra support under the waiver standard.

16. The Commission noted in the *USF/ICC Transformation Order* that it would be a petitioner's burden to demonstrate good cause, such as by showing that it is the only provider in a *significant* portion of the study area.[53] AEE/WCC claim good cause exists for grant of a waiver because GCI does not provide the exact same coverage on Adak that WCC provides. However, neither our universal service rules nor the waiver considerations articulated in the *USF/ICC Transformation Order* suggest that the Commission must conclude that the coverage provided by an alternative provider in the study area must be identical to the petitioner's in order to deny a request for waiver.[54] This distinction is

[49] Application for Review at 2-15.

[50] *USF/ICC Transformation Order*, 26 FCC Rcd at 17840, para. 540. In the *Fifth Order on Reconsideration*, the Commission clarified that waiver petitions will be evaluated not just based on the impact of reforms on voice service, "but also on [the] continued operation of a broadband-capable network and the effect on consumer rates." *Fifth Order on Reconsideration*, 27 FCC Rcd at 14557, para. 20.

[51] *USF/ICC Transformation Order*, 26 FCC Rcd at 17841 para. 542. Moreover, the Commission further stated that, for mobile providers, it would consider as a factor specific showings regarding the impact on customers, including roaming customers, if a petitioner is the only provider of CDMA or GSM coverage in the affected area. *Id*. at 17840, para. 540.

[52] *AEE/WCC Denial Order*, 28 FCC Rcd at 10194-95, para. 1.

[53] *USF/ICC Transformation Order*, 26 FCC Rcd at 17840-41, para. 542 (emphasis added).

[54] The Commission's guidance in the *USF/ICC Transformation Order* for seeking a waiver of the capped support contemplates a denial of the waiver when a significant portion of a study area is served by multiple providers of voice services. *See id.* at 17840, para. 542 (requiring petitioner to provide evidence that "it is the only provider of mobile service in a significant portion of any study area for which it seeks a waiver"). The Commission did not intend for waiver petitions to be granted merely because alternate providers do not overlap 100 percent of the

(continued…)

particularly relevant when considering the Commission's goal in the *USF/ICC Transformation Order* of fiscal responsibility. The Commission noted, as the Bureaus did in their decision, that universal service funds are finite, the costs of which are ultimately borne by the consumers and businesses that pay into the universal service fund.[55] In this case, WCC has not demonstrated that it is the only voice provider to a significant portion of the Adak study area. Consistent with the considerations articulated in the *USF/ICC Transformation Order*, we therefore conclude that WCC has not demonstrated good cause for waiving section 54.307(e) of the Commission's rules, and, for the reasons discussed below, we find that the Bureaus did not misapply the waiver standard with regard to WCC.

17. AEE/WCC argue that, in the *AEE/WCC Denial Order*, the Bureaus wrongly based their decision upon a promise of future service by GCI.[56] Specifically, AEE/WCC claim that, if WCC is not granted a waiver of the cap and ceases operations, consumers on Adak Island will be at a risk of losing voice services for a period of time, if not indefinitely, as GCI will be unable to provide the same service that WCC provides.[57]

18. AEE/WCC's arguments are misplaced. First, the Bureaus' decision to deny WCC's waiver request was not based on promises for future deployment. GCI's service on Adak Island is not hypothetical. GCI began providing wireless service to the island in 2008; WCC began operating thereafter in 2009.[58] Both carriers serve the most-populated areas of Adak Island, and both utilize GSM technology on the island.[59] As the Bureaus noted in the *Denial Order*, "the coverage maps submitted by WCC show that nearly all of the populated areas of Adak are covered by GCI's wireless service … [and] drive tests filed in the record show a strong GCI signal in and around the most densely populated areas in Adak, where the vast majority of Adak residents live and work."[60] Thus, we conclude that the Bureaus' decision was based upon the current and actual existence of an alternative voice service provider in a significant portion of the Adak study area. We therefore reject AEE/WCC's argument that the Bureaus' waiver denial was mistakenly based on a commitment by GCI for the future deployment of service.[61]

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service area. When the Commission has sought to address universal service support issues requiring 100 percent overlap, it has done so explicitly. *See id.* at 17766-68, paras. 280-84.

[55] *AEE/WCC Denial Order*, 28 FCC Rcd at 10201 para. 22; 10202 para. 24 (citing the *Fifth Order on Reconsideration*, 27 FCC Rcd at 14557 para. 22 & n.42); 10209-10 para. 43.

[56] Application for Review at 5; *see also id*. at 4 (claiming that consumers on Adak are at risk of losing voice services).

[57] *Id*. at 6.

[58] *See* Regulatory Commission of Alaska, *Order Granting Motion to Accept Late Filing; Acknowledging Withdrawal of Fixed Wireless Service Portion of Petition; Designating GCI as an Eligible Telecommunications Carrier, Subject to Conditions; and Closing Docket*, U-08-64, Order No. 2 (Nov. 28, 2008), http://rca.alaska.gov/RCAWeb/ViewFile.aspx?id=85c37b6f-f0ae-4cfd-aee4-546592029d4e (*GCI ETC Designation Order*) (GCI started providing wireless service on Adak Island in August 2008); WCC Waiver Petition at 6.

[59] *AEE/WCC Denial Order*, 28 FCC Rcd at 10209, para. 40; Comments of General Communication, Inc., WC Docket No. 10-90, WT Docket No. 10-208, at 2 (filed May 14, 2012) (GCI May 14, 2012 Comments) ("GCI, like Windy City, operates a GSM network in Adak.").

[60] *AEE/WCC Denial Order*, 28 FCC Rcd at 10209, para. 40. *See* Opposition of General Communication, Inc. to Adak Eagle Enterprises' and Windy City Cellular's Application for Review and Petition for Reconsideration, filed August 30, 2013, at 1-2 ("GCI provides terrestrial wireless voice service with coverage to all but approximately 10 households on Adak Island."); *see also GCI ETC Designation Order* at 8 n.42.

[61] Application for Review at 1, 5-6, 8, 11-12, 15.

19. Although the Bureaus acknowledged GCI's statements in the record that GCI would be open to expanding its service, including to the areas covered by the White Alice cell site,[62] and noted that GCI was designated as an ETC by the Regulatory Commission of Alaska ("Alaska Commission") and, as such, has certain obligations to provide service throughout the study area upon reasonable request, the Bureaus did not justify denial of the waiver on these bases alone. The Bureaus based their decision primarily on the fact that GCI currently provides existing voice services to a significant portion of the Adak study area.

20. Second, the Bureaus did not err in their consideration of WCC's argument that its operation of the White Alice cell site demonstrated that it was the only service provider in a significant portion of the Adak study area, and if it ceases to operate consumers on Adak will lose service. As explained above, the *USF/ICC Transformation Order* did not specify that the coverage provided by multiple wireless carriers in a study area had to be exactly the same in order to be considered alternatives.[63] Instead, the Commission noted that a mobile provider seeking a waiver of the capped support should provide evidence "demonstrating that it is the only provider of mobile service in a *significant* portion of any study area for which it seeks a waiver."[64] The Commission also stated that it would consider, as a factor in granting a waiver, if the petitioner was "the only provider of CDMA or GSM coverage in the affected area."[65] GCI and WCC both provide GSM service to the areas of Adak Island where the vast majority of people in the Adak study area live and work.[66] In fact, GCI has been providing service to Adak Island longer than WCC.[67] Additionally, as the Alaska Commission found, GCI "has demonstrated a commitment and capability to provide the supported services throughout the AEE study area."[68] Insofar as there is no question that GCI provides existing wireless service to the area where the vast majority of people live and work on Adak, we agree with the Bureaus' finding that GCI's wireless network is an alternative to WCC for voice services to a significant portion of the Adak study area, and as such, WCC has not demonstrated that a waiver is justified based on the additional service it provides from the White Alice cell site.

21. As we have noted, one of the Commission's primary goals in reforming the universal service program in the *USF/ICC Transformation Order* is to be more fiscally responsible with the allocation of universal service funds because these funds are not unlimited, and these costs are ultimately borne by consumers and businesses that pay into the Fund.[69] Toward that goal, the Commission elected to cap the annual baseline amount of support for all ETCs.[70] Funding given to a wireless carrier above

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[62] *AEE/WCC Denial Order*, 28 FCC Rcd at 10209, para. 42. Even if GCI had not made its statements about potentially increasing its coverage to expand to the White Alice cell site, denial of WCC's waiver request would have been justified because GCI's existing wireless network is an alternative to WCC for voice services, and as such, WCC has not demonstrated that it was the only wireless provider in a significant portion of the Adak study area.

[63] *USF/ICC Transformation Order*, 26 FCC Rcd at 17841, para. 542.

[64] *Id*. (emphasis added).

[65] *Id*. at 17840, para. 540.

[66] *AEE/WCC Denial Order*, 28 FCC Rcd at 10209, para. 40; GCI May 14, 2012 Comments at 2 ("GCI, like Windy City, operates a GSM network in Adak.").

[67] *AEE/WCC Denial Order,* 28 FCC Rcd at 10199, para. 15 (GCI refutes AEE/WCC claim that Adak will "go dark" if AEE and WCC cease operations).

[68] *GCI ETC Designation Order* at 10.

[69] *USF/ICC Transformation Order*, 26 FCC Rcd at 17670, para. 11, 17682-83, para. 57; *see also In re: FCC 11-161*, 753 F.3d at 1055, 1082 (noting that the Commission has the discretion to balance competing universal service principles).

[70] 47 C.F.R. § 54.307(e), but also note the Remote Alaska Cap, 47 C.F.R. § 54.307(e)(3)(v)(A).

that cap to provide service to a study area already served by another carrier within the cap is money that cannot be used to provide voice services to other areas in Alaska or elsewhere in the United States.[71]

22. Moreover, contrary to AEE/WCC's claim that the Bureaus ignored that WCC provides wireless service from its White Alice cell site beyond what GCI currently provides,[72] we conclude that the Bureaus specifically acknowledged WCC's coverage from the White Alice cell site, recognized that the cell site did not even become operational until after the *USF/ICC Transformation Order* was adopted, and noted that the cell site provides coverage largely to areas in the Aleutian wilderness and the sea lanes.[73] The Bureaus, however, decided, and we agree, that coverage to these mostly uninhabited areas cannot justify grant of WCC's waiver request above the established cap.[74] We recognize AEE/WCC's claim that, without receiving high-cost support at a pre-*USF/ICC Transformation Order* level, WCC may choose to discontinue service at the White Alice cell site, and if that occurs, some consumers will lose that additional wireless coverage that WCC provides outside downtown Adak. We note, however, that the universal service program seeks to expand coverage to as many people as possible by using support efficiently. It is not a guarantee of support to all carriers or a guarantee of support for every cell site. As the U.S. Court of Appeals for the Tenth Circuit recently upheld, companies do not have a vested right to continued receipt of support at current levels, and the Commission has the discretion to balance competing universal service principles.[75] With little evidence in the record regarding the level of actual usage at the White Alice site, we agree with the Bureaus' conclusion that the coverage provided from the White Alice site, which is the only notable difference in wireless coverage between GCI and WCC in the Adak study area, does not merit a finding of good cause to waive the support cap established by the Commission in order to balance providing support to as many places as possible with the goal of fiscal responsibility.[76]

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[71] In addition to the mobile voice services available through GCI's wireless network, and consistent with the relief we have provided AEE above, we also anticipate that consumers in a significant portion of the Adak study area, where the majority of people reside and work, will have continued access to voice services through AEE's wireline network. AEE has provided voice services through its wireline network for over ten years, *see* AEE Waiver Petition at 7 (AEE assumed operation of the existing wireline network in 2003), and as described above, we grant AEE a limited waiver to continue to receive additional universal service funding. *See supra* paras. 9-10, 15.

[72] Application for Review at 5-8.

[73] *AEE/WCC Denial Order*, 28 FCC Rcd at 10209, para. 41; Letter from Monica S. Desai, Counsel to AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, WC Docket No. 10-90, WT Docket No. 10-208 at 3 (filed June 10, 2012); WCC Waiver Petition, Exh. 7: Revenue & Expense Data for Each Cell Site for Three Most Recent Fiscal Years ("The White Alice site was under construction during 2011 and was placed in service at the end of January 2012.").

[74] *AEE/WCC Denial Order*, 28 FCC Rcd.at 10209-10, para. 43.

[75] *See In re: FCC 11-161*, 753 F.3d at 1082 (holding that "the FCC reasonably interpreted § 214(e)(2) as not requiring it to offer USF support to all ETCs in a particular area."). *See also id.* at 1070 (upholding the Commission's determination that companies have no "vested right to continued receipt of support at current levels" or "entitlement to ongoing USF support"); *id*. at 1055, 1082 (noting that the Commission has the discretion to balance competing universal service principles).

[76] AEE/WCC claim that a waiver is warranted because WCC's service from its White Alice site provides essential communications for parts of Adak Island that GCI does not serve, such as the top of Bering Hill, where residents were forced to relocate following a recent earthquake near Adak Island. Letter from Monica S. Desai, Counsel to AEE and WCC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208 (filed June 24, 2014). While we recognize that severe conditions are common on Adak Island, providing an extraordinary amount of support above the established cap to subsidize service for a remote and largely uninhabited area that is infrequently used prevents limited funding from being spent on other unserved areas of the United States, including potentially unserved areas of Alaska, which may see more regular use.

23. Finally, we are not persuaded by AEE/WCC's arguments in the record questioning the quality of GCI's service to Adak Island, including GCI's ability to provide 911 services.[77] GCI has been providing wireless service to Adak since 2008[78] and the record does not show that GCI failed to comply with its regulatory obligations regarding the quality of services. The record indicates that GCI's service covers the vast majority of the population and provides 911 services.[79] Accordingly, these arguments do not support a conclusion that WCC has shown good cause for a waiver.[80]

B. Principle of Competitive Neutrality Not Violated with No Preference Given to One Carrier Over Another

24. AEE/WCC argue that the Bureaus violated the Commission's policy of competitive neutrality in "choosing" GCI's service over that of AEE/WCC.[81] Upon review of the *AEE/WCC Denial Order*, we find that the Bureaus did not choose, or even indicate a preference for, one provider over another. The Bureaus' decision specifically followed the guidance set forth in the *USF/ICC Transformation Order*.[82] The Bureaus also weighed the potential that the area currently served only by WCC may lose service against the goal of fiscal responsibility and desire to limit universal service funding in areas served by multiple providers.[83]

25. Nothing in the Bureaus' decision stated or implied that the Bureaus supported or encouraged GCI to "take over" AEE/WCC assets, as AEE/WCC assert.[84] Instead, the Bureaus based their decision to deny WCC's request for additional support on the fact that WCC had not adequately demonstrated that it is the only provider of voice service in a significant portion of the Adak study area,

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[77] Specifically, AEE/WCC claim that GCI's service can be spotty and unreliable, and that GCI has no personnel on Adak Island for network repairs other than AEE/WCC technicians. Reply to Opposition to Application for Review of Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, WC Docket No. 10-90, WT Docket No. 10-208, at Exh. 4 (Second Declaration of Layton J. Lockett, City Manager, City of Adak) (filed Sept 9, 2013). Some have asserted that in the absence of AEE/WCC service, public safety would be harmed. *See*, *e.g.*, Letter from Bill Benning, Chief Technology Officer, Marine Exchange of Alaska, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208 (filed Oct. 28, 2013).

[78] *See GCI ETC Designation Order* at 5.

[79] Letter from John T. Nakahata, Counsel to General Communication, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208, at 2 (filed Nov. 27, 2013) (GCI Nov. 27, 2013 Ex Parte).

[80] AEE/WCC also claim that GCI does not adequately support 911 service on Adak, because it currently routes its 911 calls through the ILEC, which is AEE. *See* Application for Review at 4, 7-8. Our rules require GCI to comply with various obligations as a Commission licensee and designated ETC, and GCI has indicated on the record that it will continue to provide 911 service on Adak without routing 911 calls through AEE if necessary. GCI Nov. 27, 2013 Ex Parte at 2 (acknowledging it must deliver 911 calls to public safety as it is required to do as a Commission licensee); *see also* 47 C.F.R. § 20.18 (911 Service).

[81] Application for Review at 11-12 (arguing that the Bureaus were "choosing a new hypothetical service by GCI over services that are presently offered by AEE and WCC on Adak Island" and "unfairly advantaging GCI over AEE and WCC"). The principle of competitive neutrality states that "[u]niversal service support mechanisms and rules should be competitively neutral," which means that they should not "unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another." *USF/ICC Transformation Order*, 26 FCC Rcd at 17731, para. 176, citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801, para. 47 (*Universal Service First Report and Order*) (subsequent history omitted).

[82] *USF/ICC Transformation Order*, 26 FCC Rcd at 17839-42, paras. 539-42 (guidance for seeking waiver of universal service reforms adopted therein, including, for mobile providers, evidence that petitioner is the only provider of mobile service in a significant portion of the study area).

[83] *AEE/WCC Denial Order*, 28 FCC Rcd at 10209-10, para. 43.

[84] Application for Review at 12.

which was the general premise of its waiver request in this regard.[85] Furthermore, by denying waiver of the universal service rules, the Bureaus are treating WCC in *exactly* the same manner as GCI – that is, applying the same cap established in the *USF/ICC Transformation Order* to both carriers.

26. We are likewise not persuaded by AEE/WCC's claim that the Bureaus, in denying WCC's waiver, were "picking winners and losers" or are somehow "shutting down AEE and WCC."[86] In its reforms of the universal service program, the Commission established a limit on the amount of subsidy to be provided to carriers in order for the program to be more fiscally responsible. Where, as in this case, one carrier is able to provide voice services to a significant portion of the study area at the level of support established by the Commission rules, the subsidy has effectively achieved its goal.[87] The Commission has not chosen one provider over another. Rather, it is the business decisions of the carriers involved that ultimately decide whether they can best serve an area within the reforms established by the Commission.

C. Denial of WCC's Waiver Request is Consistent with Universal Service Objectives

27. AEE/WCC claim that the Bureaus' denial of WCC's request for waiver violates universal service objectives by "failing to ensure that consumers on Adak Island will continue to have access to telecommunications services."[88] As explained fully above, we disagree with the premise that, without granting WCC a waiver of the universal service reforms, consumers on Adak Island will be left without telecommunications services.[89] GCI and AEE currently provide voice services to the areas of Adak Island where the vast majority of people live and work. Moreover, the Bureaus' denial is consistent with the Commission's goal of providing support to only one carrier per geographic area.[90] The Bureaus' denial allows universal service monies to be spent in other unserved areas of the United States, including potentially unserved areas of Alaska, rather than providing excessive funding to a study area served by multiple providers.

28. Moreover, the Bureaus' denial is consistent with the Commission's conclusion that waivers in this context shall not be granted routinely.[91] Specifically, in the *USF/ICC Transformation Order*, the Commission cautioned petitioners that the Commission intends to "subject such requests to a rigorous, thorough and searching review comparable to a total company earnings review."[92] The

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[85] *AEE/WCC Denial Order*, 28 FCC Rcd at 10208-10, paras. 39-43.

[86] Application for Review at 12-13.

[87] *See In re: FCC 11-161*, 753 F.3d at 1070 (upholding the Commission's determination that companies have no "vested right to receipt of support at current levels" or "entitlement to ongoing USF support"); *id*. at 1082 (holding that "the FCC reasonably interpreted § 214(e)(2) as not requiring it to offer USF support to all ETCs in a particular area."). As discussed above, an alternative provider of voice services (GCI) operates at the capped rate of $3,000 per line per year on Adak. *See also* Comments of General Communication, Inc., WC Docket No. 10-90, WT Docket No. 10-208 (filed May 5, 2012). We reject AEE/WCC's speculation about why GCI can operate within the capped subsidy and why GCI's actions might be contrary to universal service policy goals. *See* Application for Review at 9-10. AEE/WCC's allegations do not provide compelling evidence that GCI's actions violate the Communications Act or Commission rules, nor do we find these sorts of undeveloped and unsupported allegations persuasive evidence that good cause exists for a waiver.

[88] Application for Review at 15.

[89] *Id*.

[90] *USF/ICC Transformation Order*, 26 FCC Rcd at 17780, para. 319 ("Based on the experience of a decade…we conclude that this prior policy of supporting multiple networks may not be the most effective way of achieving our universal service goals. In this case, we choose not to subsidize competition through universal service in areas that are challenging for even one provider to serve."). *See also In re: FCC 11-161*, 753 F.3d at 1082 (holding that "the FCC reasonably interpreted § 214(e)(2) as not requiring it to offer USF support to all ETCs in a particular area.").

[91] *USF/ICC Transformation Order*, 26 FCC Rcd at 17840, para. 540.

[92] *Id*.

Commission intended the waiver review process to examine how federal universal service funds are being spent, and whether such expenditures are being made in a fiscally responsible manner. Because WCC has failed to meet its burden to demonstrate good cause for a waiver by virtue of it being the only provider of service for a significant portion of the study area, it is neither necessary nor consistent with universal service objectives to grant WCC a waiver. Instead, we conclude that the Bureaus' denial of WCC's request for waiver is consistent with the Commission's objectives for a fiscally responsible universal service program.

29. Finally, AEE/WCC contend that upholding the denial of waiver may lead to the bankruptcy of WCC.[93] As the Commission has explained in other regulatory contexts where it has been faced with threats of bankruptcy, "a party's assertion that it might seek the protection of a bankruptcy court, with all the consequences that would entail, if the Commission does not otherwise waive the party's obligations is no basis by itself for waiving the Commission's [] rules."[94] In this case, we likewise cannot justify a waiver of the capped support amount based on the threat of filing for bankruptcy. We therefore affirm the Bureaus' conclusion that the universal service objectives are best served by denying WCC's waiver request for additional support.

V. ORDERING CLAUSES

30. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 4(j), 5(c)(5), 254, 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 155, 254, 405, and sections 1.104, 1.106, and 1.115(g) of the Commission's rules, 47 C.F.R. §§ 1.104, 1.106, 1.115(g), the Petition for Reconsideration of Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, and the Application for Review of Adak Eagle Enterprises, LLC and Windy City Cellular, LLC IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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[93] *See, e.g.*, Application for Review at 13 ("How can it be good public policy for the Bureaus to allow the bankruptcy of companies. . . .").

[94] *See Alpine PCS et al.*, Memorandum Opinion and Order, 25 FCC Rcd 469, 497-98, para. 50 (2010).

JOINT STATEMENT OF
COMMISSIONERS MICHAEL O'RIELLY AND MIGNON L. CLYBURN

Re: *Adak Eagle Enterprises, LLC and Windy City Cellular, LLC*, WC Docket No. 10-90, *Petitions for Waiver of Certain High-Cost Universal Service Rules*, WT Docket No. 10-208.

Congress directed the FCC to ensure that consumers throughout the Nation, including Alaska, have access to reasonably comparable services at reasonably comparable rates. But this obligation is not without limits and we need to balance the interests of consumers that benefit from subsidies in high cost areas with the burdens on consumers and businesses that pay into USF to ensure that support is provided and used in a cost-effective manner. This balance is one of the reasons that the FCC adopted a rule that no carrier should receive more than $3,000 per "line" per year in high cost support without further inquiry – support that is in addition to universal service subsidies associated with intercarrier compensation reform.

While we recognize the challenges associated with providing service in the Adak Island area, the Commission made clear that it would engage in a "rigorous, thorough and searching review comparable to a total company earnings review" to determine whether expenses were justified and a waiver of its rules should be granted.

Despite the extensive record developed over the three years that this waiver has been pending, serious questions remain. Without sufficient answers, the Commission is unable to approve a waiver. Rather than prolong this already lengthy inquiry, it is important to provide a response. We are very mindful of the potential impact on residents of Adak, but there is no evidence that they are at risk of losing access to communications services.