

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	CC Docket No. 96-45
)	
Federal-State Joint Board on)	
Universal Service)	
)	
Petition of the State of Alaska)	
for Waiver for the Utilization of Schools and)	
Libraries Internet Point-of-Presence in Rural)	
Remote Alaska Villages Where No Local)	
Access Exists and Request for Declaratory)	
Ruling)	

**REPLY COMMENTS OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

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The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits its reply comments in the above-captioned proceeding.¹ ITTA shares the Commission’s desire to promote Internet connectivity in all areas of the nation, including rural areas of Alaska and other states. The comments filed in response to the Petition of the State of Alaska (“Alaska Petition” or “Petition”), however, raise numerous questions about even the most basic details of Alaska’s proposal.

In light of these questions, it is impossible for the Commission or commenters to assess whether the Alaska proposal will further the Commission’s universal service and advanced services deployment goals, or whether it will doom rural Alaskans to a single, subsidized, monopoly provider of Internet access, while degrading crucial Internet access services provided to local schools and libraries. The comments also re-emphasize the need for the Commission to protect against such an anti-competitive outcome, by, at a minimum,

requiring the carrier receiving E-rate funding to allow open, nondiscriminatory access to all subsidized facilities used to provide Internet access to the community.

ITTA's continued concerns stem from the fact that proponents of Alaska's proposal consistently assume details that either are contrary to or have no basis in the Alaska Petition. The comments, taken together, also indicate that more analysis is needed to determine whether the Alaska Petition, if granted, would sufficiently mitigate costs as to significantly increase Internet connectivity in rural communities.

Finally, Alaska has not provided sufficient detail for the Commission to properly consider the Petition at this time. As evidenced by the divergent assumptions made by the commenters, the Petition includes several glaring omissions. As it stands, the Petition would place the Commission in the untenable position of committing federal universal service funds to an incomplete proposal. Therefore, the Commission must not proceed with consideration of the Alaska Petition until Alaska submits a more fully developed proposal.

I. DISCUSSION

A. Alaska Must Provide a More Detailed Description of Its Proposal

Commenters' attempts to supply the missing details of the Alaska Petition accentuate that the Petition is incomplete. Commenters disagree with each other or the Alaska Petition itself on such basic aspects of Alaska's proposal as who will provision the service, how the service will be provisioned, and when the service will be made available.

¹ *Public Notice*, DA 01-584, released March 7, 2001.

For example, it appears that certain proponents of the Alaska Petition believe that the Alaska proposal is appropriate until a “commercial” solution is available.² However, nowhere does the Alaska Petition claim that the provider of E-rate subsidized services to the community will not be commercial. Indeed, the Alaska Petition states that some as-yet-unnamed entity will provide the service on a “flat-rated” basis³ and nowhere asserts that this service will be offered on a “non-commercial,” “not-for-profit,” or other basis that would not qualify as “commercial.” Indeed, by seemingly creating a single, subsidized provider with a legally-granted federally-funded competitive advantage, the Alaska Petition may very well preclude competitors from ever developing additional commercial solutions.

Other commenters dispute Alaska’s stated premise that E-rate service to a school or library involves a dedicated Internet pipe that “lies fallow”⁴ when the school or library is closed.⁵ Although there are situations in which E-rate facilities are provided using dedicated private line circuits, it is not always the case. As explained by ATA, General Communications, Inc. (“GCI”)--a major provider of E-rate services in Alaska and proponent of the Alaska Petition--offers the school or library only “facilities access,” which provides the ability to use some specified amount of satellite bandwidth using facilities shared among all satellite users.⁶ Effectively, GCI does not offer dedicated facilities, but bandwidth on an existing system.

² Comments of Karen R. Crane, State Librarian, at 3; *see* Comments of the University of Alaska Statewide System, at 5 (noting that the Petition will serve as an interim solution until commercial service providers succeed in providing reasonably priced services); *see also*, Comments of ITTA, at 3-4; Comments of Nook Net, at 2.

³ Alaska Petition, at 2 (stating that the waiver would only apply for services provided on a non-usage-sensitive basis).

⁴ *Id.* at 20.

⁵ Comments of the Alaska Telephone Association (“ATA”), at 4-5; *see* Comments of United Utilities Inc. (“UUI”), at 4-5 (raising technical issues related to provision of ISP services to rural Alaska).

Whether during open hours or not, the moment a school or library ceases active use of any portion of its bandwidth, these facilities are immediately shifted to the use of other customers. As a result, under the GCI model, there is no excess capacity wasted while school is not in session or the library is closed. Also, in such circumstances of shared bandwidth, additional use of these facilities must, of necessity, affect service quality by placing additional demands on bandwidth otherwise available to other users.

Moreover, the comments filed raise questions as to when the services will be made available to the community. The Alaska Petition states that “the use by others in those communities is limited to hours in which the school or library . . . is closed.”⁷ The comments reflect clear confusion on what this standard truly requires, assuming, for example, that access will be made available “when the school or libraries are *not using the service*” or any time other than “*regular* school hours.”⁸ Alaska should provide additional rules for service availability in order to ensure consistent implementation of its proposal. Because the Alaska Petition lacks such crucial detail, the Petition serves as an insufficient basis for the Commission to commit federal E-rate funds.

B. Alaska Provides Insufficient Detail to Demonstrate that Grant of its Petition Will Make Internet Services Affordable to Rural Communities

The Alaska Petition presents a detailed analysis of the lack of affordable Internet access and reasons why something must be done to remedy the problem. Indeed, there can be

⁶ *Id.*

⁷ Alaska Petition, at 2.

⁸ Comments of Alyeska Central School, at 1 [emphasis added]; Letter from Darren J. Franz, President, Board of Directors of the Kodiak Chamber of Commerce, at 1 [emphasis added]; *see* Comments of Nook Net, at 2 (raising issue that service to the community will be interruptible if schools need to provide night classes, activities involving Internet usage, or summer school).

little debate as to the gravity of the problem facing rural Alaskan villages in obtaining Internet access. Alaska presents little or no evidence or analysis, however, to demonstrate that its proposed solution will mitigate costs enough to increase access to the Internet in rural communities. Alaska presents no information on: (1) the entity or entities that will provide this service; (2) the relationship of these entities to the school or library's service provider; (3) the rate the customer will be charged under this waiver; and (4) how a purchaser would actually gain access to the Internet via the school's or library's Internet connection (*i.e.*, through a dial-up connection using local exchange facilities? through a separate local area or wide area network within the community? other arrangements?).

Lacking even such basic information, certain commenters dispute where the greatest barriers to provision of service to rural communities lie. GCI, for example, voiced its concern that the Alaska Petition stresses the high cost of satellite communications, while “in GCI's experience, the high cost of local links in a community with a small population is an equally important aspect of the problem.”⁹ Other commenters weighed in with their own thoughts on the most costly aspects of providing Internet service to rural communities.¹⁰

ITTA asserts that the comments submitted in this proceeding, taken together, raise serious questions regarding whether the Alaska Petition, if granted, will actually remedy the problem of connectivity in rural communities. More information and analysis is needed to determine what effect grant of the Alaska Petition will have on costs and whether such grant will actually facilitate Alaska's goal of rural connectivity. The Petition thus presents the Commission

⁹ GCI at note 2.

¹⁰ Comments of UUI, at 6-7; Comments of Nook Net, at 2.

with a vastly insufficient foundation on which to commit federal funds. Until Alaska provides additional analysis and specifics, the Commission must not grant the Petition.

C. Despite Commenters' Assumptions, the Alaska Petition is not Presented as an Interim Solution

The commenters raise additional questions regarding the role that the federal schools and libraries fund will play in the future of the Alaska ISP market. Supporters call the proposal an “interim solution”¹¹ or a “stop-gap” measure,¹² but the Alaska Petition hardly contemplates phasing out use of E-rate funded facilities.¹³ Even with the E-rate subsidies, it is unclear if the Alaska proposal will allow for truly affordable access, let alone ISP service priced comparably to offerings in urban areas. In addition, unless the Commission mandates nondiscriminatory access to all facilities used to provide such access, as ITTA proposed in its comments, it will be impossible for competitors ever to gain a market foothold against the subsidized incumbent.

Further limiting any chance for a transition to competition, the Alaska Petition does not present a process to move toward a non-subsidized solution to the problem of connectivity. As ITTA discussed in its comments, the subsidized provider could always undercut the unsubsidized competition and could, therefore, preclude any chance for a competitor to enter the market.¹⁴ Numerous commenters have demonstrated that providing such

¹¹ Comments of University of Alaska Statewide System, at 1.

¹² Comments of Karen R. Crane, State Librarian, at 3.

¹³ The Alaska Petition offers as an example that “a condition could be attached” for Internet operations to the community from the E-rate funded facilities to be phased out, but only if demand within a village allows the development of a full time ISP that offers prices to the village “reasonably comparable to those available in urban areas in the state.” Alaska Petition at 14 and n.13.

¹⁴ Comments of ITTA, at 6

a competitive advantage violates the Commission’s principle of competitive neutrality.¹⁵ Unless the Commission requires the carrier receiving the E-rate subsidy to allow open, nondiscriminatory access to all facilities, there will be little incentive to competitively price community access to the E-rate funded facilities.

D. Alaska Has Not Adequately Identified What Waivers It is Requesting

The Alaska Petition requests that the Commission find that the Petition “does not violate any provision of the Communications Act of 1934, as amended . . . or any Commission rule or regulation with the possible exception of Section 54.504(b)(2)(ii).” As explained by ATA in its comments, “The Petition, in the guise of a declaratory ruling, seeks a waiver of any contrary provision of the 1996 Act and any potentially conflicting provision of the Commission’s rules and regulations.”¹⁶ In fact, commenters have raised several statutory and regulatory provisions of the Act for which the Alaska proposal may require waiver.¹⁷ Because the Alaska Petition lacks necessary detail regarding implementation, it is impossible to know for certain which statutory and regulatory provisions must be waived. In order to identify the applicable provisions, Alaska must provide complete guidelines of its proposal. Only then can the Commission and commenters address the policy merits of each specific waiver request.

¹⁵ Comments of ITTA, at 6; Comments of United States Telecom Assoc., at 8; Comments of ATA, at 6; Comments of United Utilities, Inc., at 2.

¹⁶ Comments of ATA at 5; Comments of UUI, at 2 (concerned that the Alaska Petition fails to state what “other” provisions of the Act and Commission rules must be waived).

¹⁷ Commenters have raised the following provisions of the Act that the Commission must waive in order to allow implementation of the Alaska Petition: Sections 254(h)(1)(B) (requiring that E-rate funds be used for educational purposes), Sections 254(c)(1) and (2) (requiring Joint Board involvement for expansion of definition of universal service), 254(e) (regarding proper use of E-rate funds), 254(h)(3) (prohibiting transfer of E-rate funded services for consideration); and Section 254(k) (prohibiting cross-subsidization of competitive services).

II. CONCLUSION

For each of the foregoing reasons, the Commission must require that Alaska supplement its Petition to allow for informed consideration of the Petition's merits.

Respectfully submitted,

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