



Robert M. Halperin  
(202) 624-2543  
rhalperin@crowell.com

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October 9, 2001

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**EX-PARTE LETTER**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street S.W., Room TWB204  
Washington, DC 20024

Re: 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

In the Matter of Federal-State Joint Board on Universal Service,  
CC Docket No. 96-45

Dear Ms. Salas:

This letter is being filed, in duplicate, in accordance with the Commission's Rules, to report that the attached letter was sent today to Ellen Blackler, Mark Seifert and Katherine Shaud Tofigh of the Common Carrier Bureau.

As noted on the attached letter, copies were sent to Chairman Powell, Commissioner Abernathy, Commissioner Copps, and Commissioner Martin.

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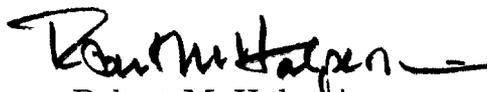
Ms. Magalie Roman Salas

October 9, 2001

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In the event there are any questions concerning this notice, please communicate with the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert M. Halperin", with a horizontal line extending to the right.

Robert M. Halperin

Counsel for the State of Alaska

Attachment

cc: Ellen Blackler  
Mark G. Seifert  
Katherine Shaud Tofigh  
Chairman Powell  
Commissioner Abernathy  
Commissioner Copps  
Commissioner Martin



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Ms. Ellen Blackler  
Mr. Mark Seifert  
Ms. Katherine Tofigh  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: Petition of the State of Alaska for Waiver of E-rate Rule – CC Docket No. 96-45

Dear Mses. Blackler and Tofigh and Mr. Seifert:

We understand that potential concerns have recently been raised concerning the pending “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,” filed on January 29, 2001.

These concerns generally involve the following topics: (1) the nature of the communities that would be eligible to make use of the waiver; (2) the process for selecting the local ISP(s) that would use the E-rate supported interstate telecommunications service (a satellite-based service) to provide Internet access service to members of the local community; and (3) why the waiver would not increase the amount of E-rate support provided to the schools in the communities making use of the waiver authority.

In addressing these potential concerns, the State is guided by the realities of rural Alaska. Attempts to “over-regulate” will only make implementation of the waiver fall of its own weight because (i) school districts will not be able to administer overly regulatory constraints; and (ii) ISP(s), which, to date, have avoided providing service to these remote rural Alaskan communities, will continue to avoid them. Also, in responding to these potential concerns, the State has sought to measure the marginal benefit achieved from additional safeguards against the safeguards the marketplace can be expected to provide.

**1. Nature of Affected Communities**

As set forth in the petition, the communities entitled to participate in the waiver would be those rural Alaska communities that do not have local or toll-free dial-up access to the Internet.

These communities are different from rural communities in the Continental U.S. without local or toll-free dial-up access to the Internet because, among other things, rural Alaska communities are the only ones in the nation that must rely solely on satellites for both intrastate and interstate transport services. Satellite transport services in Alaska are extremely expensive, and it is the high cost of these services, which are used to provide Internet access, that telecommunications firms and others advise us is the primary problem preventing the deployment of Internet access services in rural Alaska.<sup>1</sup> The petition is aimed at addressing this very problem.

The petition (at pages 5-9) also identifies other characteristics that distinguish rural Alaska communities from small and rural communities in the rest of the Nation. The rugged topography, harsh climate, lack of road access connecting these villages to more than a few surrounding communities, and remoteness from the Continental U.S. make other information resources scarce. Professional health care resources do not exist in these communities.

The State estimates that there are approximately 135 communities that currently would be eligible for the waiver (that is, there are about 135 communities in which the schools districts purchase E-rate supported telecommunications services or facilities on a fixed price basis and no local or toll-free dial-up Internet access service is available). As set forth in the petition, most of these communities are very small (with a population under 250), their residents are Alaska Native who subsist on hunting and fishing.

## **2. Process for Selecting Local ISP(s)**

We understand that potential concerns have been raised regarding (a) the manner in which the local ISP(s) would be selected; (b) the process or processes which would apply to the selection process to achieve fairness and competitive neutrality; (c) whether individual schools or school districts would profit from the arrangement with the local ISP(s); and (d) the State's interest in preventing local ISP(s) from overcharging consumers.

2(a). & (b). In Alaska, the school districts are the purchasers of the satellite telecommunications service or facility that is to be made available to allow the provision of Internet access services to the community during non-school hours. Because the school districts are the purchasers of that satellite service or facility, they should be the ones selecting the local ISP(s). The State is not the purchaser of these services and would not be the entity selecting the local ISP(s).

A competitive sealed proposal process would be used for selecting the local ISP(s). The State has procurement procedures for small purchases of between \$25,000 and \$50,000. This process is set forth in Title 2 of the Alaska Administrative Code at section 12.400(d) and any other regulation cited in that section. This process best accomplishes the twin goals of (i)

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<sup>1</sup> This point was also made in comments filed in response to the State's petition. See Reply Comments of the State of Alaska at 6-9 (filed May 7, 2001).

providing a single, legally enforceable process that can be used in all areas of the State implementing the waiver, and (ii) avoiding unnecessary burdens on school district staff.<sup>2</sup>

The process for selecting the ISP(s) would be competitively neutral. To maximize competition, public, tribal, non-profit and commercial entities would be treated equally in the selection process. In many of the smaller communities, in particular, tribal councils or village governments may be the only entities interested in providing the ISP service. The selection of the ISP would be based on which potential ISP offers the most cost effective solution to the requirement for non-school hours Internet access to the community. This factor is the basis on which school districts select the provider of the telecommunications services supported by E-rate funds. (*Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd. 8776 at ¶ 481 (1997).)

As set forth above, the school district (or local school) would not be allowed to compete to be the ISP. Notwithstanding that general prohibition, however, if no other private or public entity expresses an interest in being the ISP (or submits an acceptable proposal to be the ISP), the school district could reject all proposals and seek new proposals solely from the school district, local school itself, and other public sector entities that are willing to offer the community Internet access service at no charge.

2(c) & (d). We understand and agree with the view that the school district (including the individual school) cannot profit from the arrangement with the local ISP(s), as the Commission's rules require. (*See* 47 C.F.R. § 54.513(a).) The school district would not receive any payment by the local ISP(s) for use of the telecommunications service used by the local ISP(s). It would not receive any other form of consideration from the local ISP(s). The school district also would not profit or participate financially in any manner in the local ISP operation (*e.g.*, no portion of the revenues from the ISP operation will be shared with the school district).<sup>3</sup>

We also share the concern that consumers in the waiver communities not be subject to excessive rates for the ISP service being offered. The State has a strong interest in assuring that

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<sup>2</sup> In applying these regulations to the particular circumstance at hand, certain practical modifications are necessary. For example, the protest process would involve the participation of the Commissioner of Education, not the Commissioner of Administration. The State will provide notice of these modifications to offerors during the selection process.

<sup>3</sup> The school or school district could, in the State's view, be reimbursed for any additional out-of-pocket costs the school or school district may incur in providing access to the school or its property (but not the cost of the telecommunications service being shared). For example, if the school district were to incur additional costs to construct a closet or small room for the ISP to install equipment, the school district would be entitled to be reimbursed for the actual costs so incurred.

such a result does not take place and believes that the marketplace and the competitive proposal process make it unlikely.

The nature of the communities to be served if the waiver is granted very likely precludes the possibility overcharging by the local ISP(s). As set forth in the petition (at page 6), most of the communities eligible for relief under the waiver petition are populated by fewer than 250 people. Given the relatively high birth rates in these communities, the number of households in each of these communities is likely to be fewer than 100. These communities are also extraordinarily economically depressed. When the petition was filed in January of this year, the published state unemployment rate was 5.5%. According to the Alaska Department of Labor-Kotzebue Employment Center, when discouraged workers were factored in, the rate was as high as 67% in the villages. These conditions have not improved and likely have worsened, because of extremely low fish prices. Stated simply, rates sufficient to cover a local ISP(s) costs and provide a high profit margin are likely to be unaffordable in these communities and, therefore, are not likely to be charged by an ISP.

Moreover, the competitive process for selecting the ISP(s) itself would discipline the prices to be charged by the ISP(s). The "cost" to be evaluated in connection with the selection of the local ISP(s) is the price each offeror proposes to charge members of the community who subscribe to its service. A proposal offering a price that is relatively high runs the serious risk of not being selected, or even eligible, for award by the school district.

**3. Why The Waiver Will Not Does Not Impose Additional Costs on The School and Libraries Fund.**

We understand that concerns have also been expressed concerning: (a) the mechanisms preventing schools from requesting more telecommunications capacity than necessary for school-related purposes; (b) the manner in which community usage will be restricted non-school hours; and (c) the steps that can be taken from preventing an increase in the cost to the universal service fund in the future as a result of the waiver.

The State's petition set forth various mechanisms to assure that the waiver, if granted, would not impose additional costs on the schools and libraries fund. For example, the State proposed conditions that would restrict implementation of the waiver to those communities that pay a flat, non-traffic sensitive rate for the relevant satellite service. It also proposed that any additional equipment needed to provide Internet access to the community would not be subject to universal service support. The State believes the petition and reply comments set forth the reasons why grant of the petition would not increase costs to the schools and libraries program.

3(a). As set forth in the State's reply comments (at pages 11-12 and note 33), concerns that schools may apply for funding for additional telecommunications services because they are not paying for the entire (or even a majority of the) cost of the service, exist today separate from consideration of the State's waiver proposal. The Commission has previously determined that the co-payment requirement is sufficient to prevent schools in economically disadvantaged

communities from purchasing more telecommunications services than are needed for educational purposes.<sup>4</sup>

Moreover, the school districts would be keenly aware of the scrutiny under which the waiver authority would be implemented, and this point would be emphasized to them by the State when implementation of the waiver authority (if granted) begins. The school districts would know that any increase in the amount of telecommunications services they request is going to be subject to scrutiny from private and public entities, including the State.

As a result, the State believes that widespread requests for support for increased amounts of telecommunications services as a result of grant of the waiver petition are very unlikely. It certainly is possible that some school districts will seek support for additional services as their own needs change over time. It is clear, though, that, a mechanism exists to address such requests. The State would instruct any school or school system requesting universal service funding for more telecommunications services than it has used in the past to develop and maintain information (and be prepared to submit such information to it and the Schools and Libraries Division upon request) demonstrating that the additional requested services are necessary for in-school educational purposes. The SLD would then be in a position to determine whether the additional services for which support is requested are justified on the basis of in-school educational needs. In making that determination, the SLD could consider any relevant information including, for example, the amount of telecommunications services supported by E-rate funding by similar schools in Alaskan and other communities not implementing the waiver authority.

3(b). A fundamental part of the waiver application is that the satellite telecommunications service for facility used by the school to access the Internet would not be available to the local ISP(s) when school is in session. To implement the requirement that community usage be limited to non-school hours, school districts implementing the waiver would: (i) include into the request for proposal ("RFP") and the contract between the school district and the selected ISP(s) an explicit statement that access to the underlying telecommunications facility or service is restricted to non-school hours; (ii) include in the RFP and contract the normal hours when schools are open, and, if available, the anticipated school calendar for the academic year in which the local ISP service would commence; and (iii) include in the RFP and contract a provision requiring each ISP to demonstrate the effectiveness of its solution to that requirement to the school or school district prior to starting service. We believe that a failure to observe the "non-school hours only" limitation would be enforceable by both the

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<sup>4</sup> *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd. 8776 at ¶ 497 (recognizing that even a 10% copayment "might create an impossible hurdle for disadvantaged schools and libraries" and that the E-rate program does not support the costs of other resources, including computers, software, training and maintenance, which constitute more than 80% of the cost of connecting schools to the Internet). That same rationale should apply here.

Commission (through termination for that community of the authority provided by the waiver) and the school district (as a breach of contract).

3(c). Some may be concerned that the increased usage of the satellite resource to be shared in each community (beyond its use just during school hours) would lead the satellite service provider to raise its rates for that satellite resource in the future (*i.e.*, when its contract comes up for renewal).

As a preliminary matter, the State believes that this concern is entirely speculative and appears unlikely in all or most of the affected communities. Given the small population of these communities and their economically distressed nature, the marginal increase in use of the satellite service or facility during non-school hours in the majority of these communities likely will not impose any material additional costs on the satellite service provider. Although the State recognizes the theoretical possibility of the problem, it does not believe that cost (and price) increases are by any means inevitable or even likely.

Nonetheless, should the existing satellite service provider or a competitor seek to increase the rate for the satellite service provided to the school district in a community with ISP service pursuant to the waiver, the school districts (as the contracting party) would undoubtedly be aware of it. They would be instructed to advise the State of this circumstance. Once so informed, the State would be prepared to address that situation in a manner that would not result in additional costs to the E-rate program. As an example, one approach would be to compare the new proposed rate to the rate offered by the same provider at that time for the same service in a similarly situated community that does not have a local ISP pursuant to the waiver authority.<sup>5</sup> Any difference between the rates charged for a given service in a waiver community and a non-waiver community would not be eligible for E-rate support. That difference would have to be paid for from other sources. (Such sources could include the local ISP(s), the school district, the village council or other local government, grants, other public or private support, or a combination of any or all of these sources.)

\* \* \* \* \*

The State hopes that this letter responds these potential concerns. If you have any questions or wish to discuss this matter, please do not hesitate to let us know.

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<sup>5</sup> This approach assumes that the rate integration and geographic rate averaging requirements of Section 254(g) of the Communications Act, as amended, would not apply to these telecommunications services. By identifying this approach, the State is not conceding this point. If those statutory requirements apply to these services, those requirements themselves, along with satellite services competition in some (more urbanized) areas of the State and elsewhere, would solve this potential problem.

Mses. Blackler and Tofigh and Mr. Seifert

October 9, 2001

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Thank you for your attention to this matter of utmost importance to the State of Alaska.

Very truly yours,

  
Robert M. Halperin  
Counsel for the State of Alaska

cc: Chairman Michael K. Powell  
Commissioner Kathleen Q. Abernathy  
Commissioner Michael J. Copps  
Commissioner Kevin J. Martin