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October 10, 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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 Sam Feder of the Office of Commissioner Martin, with a copy to Dorothy Attwood, Chief of the Common Carrier Bureau.

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

Very truly yours,

Robert M. Halperin
Counsel for the State of Alaska

Attachment

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October 10, 2001

Sam Feder, Esq.
Interim Senior Legal Advisor
Office of Commissioner Martin
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Petition of the State of Alaska for Waiver of E-Rate Rule
CC Docket No. 96-45 (filed January 29, 2001)

Dear Mr. Feder:

Thank you for our meeting on the State's pending petition seeking a waiver of Section 54.504(b)(2)(ii) of the Commission's rules to permit Alaskan schools to make available to a local ISP certain telecommunications services purchased by the schools with E-rate fund support. This letter briefly responds to two questions raised by Commissioner Martin at that time.

ETC-Only Approach

One question raised by the Commissioner was whether an eligible telecommunications carrier ("ETC") in a given Alaska community should be the only firm eligible to use the E-rate supported telecommunications service or facility to provide local or toll-free Internet access service. It is likely that the only ETC in each waiver-eligible community is the incumbent local exchange carrier ("ILEC").

The State does not believe that requiring the ETC to be selected as the local ISP is appropriate. The State has several legal and policy concerns with such an approach.

- The Telecommunications Act of 1996 states a preference for competition in all telecommunications and information services markets. Precluding

competition for selection of the local ISP(s) under the waiver appears inconsistent with this preference.

- Congress required the Commission to establish competitively neutral rules relating to access to advanced telecommunications and information services for schools, libraries and rural health care providers. (47 U.S.C. § 254(h)(2).) The Commission has made “competitive neutrality” a fundamental universal service principle. (*See Federal State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 (1997) at ¶¶ 47-50.) Restricting the selection of the local ISP to a single entity would run counter to these provisions.
- Congress determined that any telecommunications provider (not just an ETC) can provide telecommunications services that will be supported by E-rate funding to qualified schools and libraries. (*See* 47 U.S.C. § 254(h)(1)(B)(ii).) The Commission has recognized this point in adopting its universal service rules. (*Federal State Joint Board on Universal Service*, 12 FCC Rcd 8776 at ¶ 449). In this case, no federal universal support would be flowing to the local ISP. Nonetheless, requiring selection of the ETC as the local ISP would run counter to the spirit of Congress’s determination not to restrict those who can provide E-rate supported services to the school.
- The Commission requires schools to select providers of E-rate supported services or facilities through a competitive process. (47 C.F.R. §§ 54.504(a), 54.511(a).) We have proposed that the ISP be selected through a competitive process as well; this competition would likely result in a more cost-effective solution than no competition.
- Imposition of an “ETC-only” requirement would give the ETC undue leverage in negotiating the terms of service (including the rate to be charged community members for the Internet access service) with the school district.

We understand that the Commissioner was concerned that allowing entities other than the ILEC to be the local ISP could take commercial opportunities away from the ILEC. The State believes this concern applies more to the provision of telecommunications network services themselves than to this situation. It is also important to note that the ILECs will have every opportunity to compete to be the ISP in waiver-eligible communities.

“Open Access” Approach

The second issue raised by the Commissioner was whether the school’s E-rate supported telecommunications service or facility should be made available on a non-discriminatory basis to *all* local ISPs that want to use it. The State addressed this issue on pages 15-16 of the State’s reply comments and explained that it did not think that such a condition was either practical or sound public policy.

As the petition (at page 12) reports, the State has been advised that the up-front costs in establishing a local ISP operation (not including interstate transport costs that would not be incurred under the waiver) are generally in excess of \$20,000. In many (if not most) of these very small and economically disadvantaged communities, demand will not be sufficient to justify the expenditure of these up-front costs by multiple entities. Requiring that the school’s telecommunications service or facility be made available to all interested ISPs could well frustrate the ability of any ISP to obtain the capital necessary to begin operations, and impose additional and unwarranted costs on the school district. As set forth in the reply comments, the State believes that the determination of whether multiple (or all potentially interested) ISPs should be selected is best made by local public officials who have the greatest knowledge of these communities.

We very much appreciated the opportunity to meet with you and the Commissioner on this issue. Please let Marideth Sandler of the Washington, D.C. Office of the Governor of Alaska ((202) 624-5988) or me know if we can provide you any additional information on this matter.

Two copies of this letter are being submitted to the Secretary of the Commission for inclusion in the public files of this docket.

Very truly yours,



Robert M. Halperin
Counsel for The State of Alaska

cc: Dorothy Attwood, Chief, Common Carrier Bureau
Marideth J. Sandler