

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

COMMENTS OF GENERAL COMMUNICATION, INC.

General Communication, Inc. (“GCI”), is a diversified communications company and Internet Service Provider primarily serving locations throughout Alaska. GCI currently provides Internet service supported by the Schools and Libraries Support Mechanism to 245 different schools, using over 170 connections, in the State of Alaska.¹ Most of these schools are located in the most remote areas of the state, often referred to as the “Bush” or “Bush Alaska”. Internet services—as well as all other forms of communication—to and from these Bush locations are provided over satellite facilities.

The schools in Alaska have a vital interest in this proceeding. The Schools and Libraries Universal Service Support Mechanism has enabled students in Alaska to have access to the Internet for the first time. Given the high cost of satellite-based service, it is vital to these schools that any modifications to the current program not have the effect of pricing such access beyond their means. As the provider of Internet service to many of these schools, GCI has a thorough understanding of both the Support Mechanism and the needs of the schools. GCI offers these comments in regard to the Second Further Notice of Proposed Rulemaking.

¹ GCI also provides Internet service to several school districts located in Arizona, Montana, and New Mexico.

I. The Discount Matrix

The NPRM requests comments on whether the current Discount Matrix should be revised, specifically by lowering the maximum discount rate from 90% to 80%. It has been suggested that reducing the discount rate would make applicants more accountable for funding requests and would dissuade vendors from improperly offering to forgive or refund the 10% contribution required of applicants in the highest discount band.

GCI opposes lowering the maximum discount rate from 90% for Priority One services. Lowering the discount rate would have the greatest adverse effect on the most needy and most rural schools that face the highest cost of obtaining Internet service for students. The problems that lowering the discount rate are intended to address are related not solely to the percentage of the contribution that is required of applicants, but also to the absolute dollar amount of the required contribution. Of the schools served by GCI, there are now 53 that receive the maximum discount of 90%. Even with a 90% discount, the non-discounted amount that such schools must pay is as high as \$166 per student in some schools; the total non-discounted amount exceeds \$5500 per school, on average, and is as high as \$6500 per school. These amounts are quite significant for rural schools with limited budgets and provide sufficient incentive to limit their funding request to services that can be efficiently used. These amounts are also sufficient to dissuade vendors from offering to waive the 10% contribution.²

In the event that the Commission determines that some modification of the discount matrix is necessary, GCI suggests that the discount matrix be modified to provide a limit on the dollar amount of the non-discounted portion required from needy schools. The amount should be stated on a per student basis. For example, if the unadjusted maximum discount rate is set at

² The possibility of forfeiting all amounts received from the Support Mechanism for violating the rule requiring the applicant to pay the non-discounted portion is an even greater incentive and is, in fact, sufficient in and of itself.

80% for Priority One services, GCI suggests that an adjustment should be available such that the discount could increase to the extent necessary to reduce the non-discounted cost to no more than \$100 per student.

II. Competitive Bidding

The Commission seeks comments on various aspects of competitive bidding, including the current Form 470 process, whether the process typically results in competitive bids, and other matters. GCI supports the current process. GCI's experience is that competitive bids are now received for the vast majority of postings for Internet service. Furthermore, the competitive bidding process has led to significant reductions in the cost per unit of bandwidth since the program began. In general, GCI believes that the competitive bidding process has functioned well and will ensure that schools continue to receive the best quality services, at the lowest possible price, and thus requiring the lowest possible support.

The Commission also asks whether a bright line rule should be adopted to limit support in situations in which only one entity responds to a posting. GCI cautions that any such bright line amounts must consider variations in cost in different locations. Any maximum discount amount applicable to such situations would need to be much higher in some situations, such as with services provided over satellite, than in other circumstances. Unless such factors are considered, an applicant could face significantly increased costs simply because, at no fault of the applicant, multiple potential providers failed to respond to a posting.

GCI has no objection to the suggestion that service providers certify that prices in its bids have been independently developed. In GCI's markets, competition among service providers for the services at issue here is significant and bids are, in fact, independently developed. GCI also has no objection to the suggestion that applicants and service providers be required to maintain records related to the competitive bidding process for a period of five years. However, as

discussed further below, GCI is concerned that, if such a requirement were instituted, inadvertent failure to comply with the rule might unduly punish an applicant or service provider. It is well known that schools currently face budget constraints, and it is often difficult for schools to attract and retain well-trained administrators. Turnover is often high. These problems are particularly acute in small, remote locations served by some schools. There is a significant possibility that records will be misplaced when there is a change in personnel. In such cases, required documents may become unavailable, but the absence of the documents does not in any way indicate that competitive bidding rules were not followed, fully and properly, during the competitive bidding process. It would be unduly harsh to require an applicant or vendor to refund all amounts received simply because paperwork might not be found years after the fact. Thus, GCI suggests that any requirement that documents be retained for five years should be accompanied by a rule that would limit the consequences of any failure to comply with that rule.

III. Definition of Rural Area

At this point in time, GCI does not know of any single definition of “rural” that is entirely appropriate for this program. For that reason, GCI believes that it may be necessary for the Commission to adopt a series of rural criteria and to designate an applicant as rural if it meets any of the criteria. In any event, a new rural definition should not be any more restrictive than the current definition, and if any new definition would have the effect of eliminating areas currently defined as rural, those areas should be grandfathered.

IV. Definition of Internet Access

The Commission seeks comment on whether the definition of Internet access should be modified to conform to the definition recently adopted for the rural health care program. Modifying the definition in that way would somewhat expand the definition beyond “basic conduit” and might allow some “content” with Internet service. GCI supports a modification of

the definition of Internet access. Current restrictions are difficult to administer and preclude support for features that would provide substantial benefits to school children.

For example, a “scheduler” for distance learning is available from GCI. The scheduler allows for interaction with the service to control and coordinate content, but is not content itself. Although it is debatable, that service is not considered eligible for subsidy under current rules, but it could provide significant benefits to students. As such, GCI supports a broader definition to encompass such services.

A broader definition of internet access would also be easier to administer. Under current rules, difficult decisions are presented regarding eligibility, how costs for ineligible services should be allocated, and whether services were “ancillary” to an eligible service. Elimination of these fine distinctions would benefit applicants and program administration.

IV. Recovery of Funds

Under current procedures, funds that have been disbursed to applicants are subject to recovery if it is later determined that the disbursement was in violation of statutory requirements or program rules. In most instances, funds are recovered from the service provider, not from the applicant. However, the Commission has not comprehensively addressed the question of what situations should actually require recovery of erroneously disbursed funds, or from whom recovery should be sought. The Commission requests comments on these matters.

GCI strongly believes that the current procedures should be modified in at least two respects. First, the Commission should reconsider and revise the current policy of seeking recovery from the service provider, rather than the applicant, in almost all instances. In cases where recovery is deemed appropriate, recovery should be sought from the entity (or entities) at fault for the program violation.

There are certainly many instances where recovery from a service provider is appropriate; for example, where a service provider has “rigged” a bid, actively solicited rule violations, and waived payment of non-discounted amounts, recovery from a service provider may be entirely appropriate. However, in other instances a service provider may be entirely without fault. An applicant may not have an approved technology plan. An applicant may refuse to pay the non-discounted amount, notwithstanding the best efforts of the service provider to collect such amounts. An applicant may purchase Priority Two equipment, but fail to properly install and use the equipment, or transfer it to inappropriate locations. In such instances, the service provider may be totally without fault, and even totally unaware that an applicant is not in compliance with program rules. Recovery of funds from the service provider in such an instances is unjust and inappropriate.

Instead, in any situation where recovery of funds is appropriate, USAC should make a determination of which party is responsible for the violation that prompts the need for recovery. If both the applicant and service provider are at fault, recovery should be obtained from both parties. Second, the Commission should limit the circumstances in which recovery of committed funds should be sought. Recovery should be sought only in circumstances that actually represent waste, fraud, and abuse and that threaten the integrity of the program, and the amount of recovery should be proportionate to any violation.

The program is enormously complex, and it is difficult for small schools with limited resources to navigate the complexities. It is very possible for a school official to inadvertently violate some program rule in a way that does not change the underlying fact that appropriate services were obtained and used by students for their intended purpose. In such instances, recovery of funds does little to deter such inadvertent mistakes. Instead, it penalizes the schools, and school children, or service providers that are required, after the fact, to refund monies

already spent. Failure, after the fact, to provide documentation of contracts, asset lists, invoices, copies of competitive bids, or paperwork regarding discount percentages should not prompt recovery if USAC determines, notwithstanding the lack of documentation, that eligible services were obtained and properly used at a reasonable cost.

Furthermore, in most instances to date recovery has been largely an “all or nothing” proposition. If a violation was discovered, then recovery of all related funds has been sought. However, in some cases even a significant violation may not affect use of the vast majority of the funding. In such cases, recovery should be proportionate to the violation. For example, if some funding was used to support ineligible services, but the majority was used for appropriate purposes, recovery should be limited to the amount spent for ineligible services plus a limited additional penalty to deter violations.

Alternatives other than recovery of previously paid amounts should also be considered. Specified penalties for some types of violations might be considered. For significant violations by applicants, limiting their participation in the program for a period of years may be an appropriate penalty.

VI. Cost-Effective Fund Requests

The Commission seeks comment on whether it would be beneficial and administratively feasible to develop a benchmark or formula for determining whether funding requests are “cost-effective”. Such a benchmark might set a specified dollar amount per student, or a ceiling on the total amount of funding an applicant can request. GCI does not believe that any such benchmark or formula is administratively possible or appropriate. The cost of providing services varies significantly across the country. Service provided over satellites to small schools is obviously much more expensive than service provided over terrestrial facilities, on both a per school and per student basis. However, the school and its students in a small, rural village have

the greatest need for and receive the greatest benefit from Internet access, including access to distance learning.³

GCI believes that the rules requiring competitive bidding are the best insurance that services will be provided on a cost effective basis. GCI's experience has been that numerous competitive bids are generally received, and that over time bidding has reduced the price of services. Unreasonably high-cost services will not endure for any extended period in a world of highly competitive telecommunications markets.

GCI urges the Commission to consider the foregoing comments as it considers modification of the rules governing the Schools and Libraries Support Mechanism. GCI looks forward to responding to other comments that may be filed in this proceeding.

Respectfully submitted,

By: /s/_____

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³ Distance learning may be the ONLY way in which small rural schools can meet the demands of "No Child Left Behind."

CERTIFICATE OF SERVICE

I, Colleen A. Mulholland, do hereby certify that a copy of the foregoing Comments of General Communication, Inc. was sent via electronic mail to the addresses indicated below this 11th day of March, 2004, to the following:

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/s/

Colleen Mulholland