

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

In the Matter of)	
)	
Preserving the Open Internet)	GN Docket No. 09-191
)	
Broadband Industry Practices)	WC Docket No. 07-52

COMMENTS OF ALASKA COMMUNICATIONS SYSTEMS

Alaska Communications Systems (“ACS”)¹ submits these comments in response to the Notice of Proposed Rulemaking issued by the Federal Communications Commission (“FCC” or “Commission”) in the above referenced proceedings on October 2, 2009.

I. INTRODUCTION AND SUMMARY

ACS concurs with the Commission and the many commenters who have observed that growth in access to, utilization of and the information value of the public Internet has been nothing short of phenomenal. These amazing results have, in no small measure, been the product of individual initiatives and the prudent approach taken by policy makers to limit government intervention as this new economic engine continues to develop a full head of steam. While there may have been some relatively small bumps in the road, the Commission was able to swiftly step in and right the course on a case-specific basis. The

¹ Alaska Communications Systems in this proceeding represents four local exchange carriers, ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc., and ACS of the Northland, Inc., one wireless company, ACS Wireless, Inc., and one Internet service provider, ACS Internet, Inc. Together, these companies provide wireline, wireless, Internet access and other telecommunications and network services to consumer, business and enterprise customers in the State of Alaska and beyond using its statewide and interstate telecommunications network.

Commission did this without new enabling legislation or the need to codify its principles. Unless directed to do otherwise by Congress or the courts, the FCC should continue to allow the public Internet to evolve with an absolute minimum of regulatory imposition.

II. COMMENTS

Upon review of the Commission's Notice, ACS finds that the process going forward does not appear to be substantially different than past practice. The Commission suggests codifying its existing open Internet principles in the broadest possible terms, adding new principles to the list and then creating a body of law via individual adjudications. As noted, that has been the Commission's approach historically and is one that has been effective in addressing specific issues and concerns on a timely basis. Absent some compelling reason to do otherwise, that same practice can continue without the need to adopt new rules which can open the door to unintended consequences.

While ACS does not endorse the need for new rules, it does offer some brief comments in response to the Commission's inquiry.

a. General Comments

- The costs of Internet access facilities investment must be recovered. If the Commission wants to incent network expansion and stimulate investment, a reasonable opportunity to recover capital and earn a fair return is essential.
- Cost causer principles should not be abandoned. If capacity costs cannot be directed to application and content providers, they will be

shifted to end users. The Commission should weigh carefully the consumer impacts of this model.

- The Commission should not assume that unlimited network capacity exists or the ability to expand the network infinitely as it considers its policies. As will be discussed, this is particularly relevant in Alaska.
- Product and service differentiation and Quality of Service arrangements should not be considered discriminatory per se. Different applications demand varying levels of network capacity and impose varying levels of network costs.
- The Commission's definition of "broadband" in this proceeding – to include all Internet access other than dial-up – adds yet another in a long list of definitions that will confuse policy implementation going forward.
- The Commission's suggestion that it may extend its policies to non-access providers raises serious jurisdictional questions.

b. Alaska Specific Issues

- ACS once again points out the unique and distinguishing characteristics of service provisioning in Alaska. In addition to its massive geographic and climatic challenges, Alaska is one of the only markets in the country that relies on satellite backhaul for a substantial number of interconnected networks. These networks facilitate Internet access and must use highly constrained and

costly satellite capacity to connect users with the Internet backbone.

- Satellite backhaul is not only cost prohibitive, it is physically limited at any given time and cannot be readily expanded. As such, Alaska requires special consideration in terms of what constitutes reasonable network management practices in the case of network congestion.
- In light of Alaska-specific conditions, providers should be allowed to “throttle back” entire applications as opposed to individual users when addressing network congestion.
- All of Alaska has been included in the designation of Tribal Lands and Alaska Native Regions. This designation has prompted the Commission to address the specific needs of Alaska separately from its consideration of broad national policies. The same rationale is applicable in the case of open Internet policies, and in particular, what constitutes reasonable network management.
- Given its uniqueness, and the limited and expensive bandwidth available to many locations, the Commission should consider excepting Alaska from the general application of any rules it may adopt in these proceedings.

c. Reasonable Network Management Practices

- The draft rule addressing reasonable network management practices is broadly written and fails to provide clear guidance to

providers. The Commission's intent to set out the "contours" of this rule in subsequent adjudications will cause substantial delay in the ultimate understanding of what behavior will be found acceptable and what behavior is objectionable.

- ACS does not object to a reasonable disclosure guideline for its network management practices as long as it does not compromise network security or result in the dissemination of competitively sensitive information.
- The disclosure of actual transmission rates will be problematic given the number of "choke points" that exist between the user and the desired Internet destination. If actual transmission rate disclosure is necessary, it should be measured only with regard to facilities that the provider owns or controls.
- ACS does not object to the blocking exceptions created for illegal transmissions and illegal content. However, ACS opposes any mandatory requirement that such blocking be offered. Where blocking is offered, ACS believes the provider should be compensated for the service by the user who benefits from the functionality.
- ACS continues to be concerned that imposing special services for law enforcement, public safety and Homeland Security has the potential to impose unfunded mandates on providers. Providers should be eligible for reasonable compensation for such services.

- Managed and specialized services offered by providers should be outside the scope of the Commission's policy making regarding open Internet access. Such services are typically provided on dedicated facilities and are generally offered on a non-common carrier basis. The cost of facilities used to provide these services are recovered directly from the customers who purchase them. These services should not be comingled with the Commission's consideration of shared facilities used to provision access to the public Internet.
- ACS has experience with abusive Internet use that negatively impacts the experience of the majority of users attempting to access the Internet. In ACS' experience, Internet access abuse can come from individual users, be related to specific applications, or be related to specific types of traffic (e.g., the transfer of peer-to-peer files). Any of these events can result in a disproportionately large amount of traffic causing network congestion. The FCC should use information such as this from providers such as ACS to clearly delineate that throttling disproportionate internet users, applications, categories of users are acceptable methods of managing the providers' networks.
- ACS agrees with the Commission that mobile broadband Internet access is still evolving and that rules that are developed in a wireline context may not work as well when applied to wireless

networks. The Commission should take care to create a full record on this issue and may want to consider delaying extending its rules to wireless platforms until it has a better understanding of the implications. In any event, not only is reasonable management of a wireless network likely to differ from reasonable management of a wireline network, but where the wireless network utilizes satellite backhaul stricter network management guidelines will be appropriate.

III. CONCLUSION

ACS appreciates the opportunity to offer these comments. The Commission is urged to carefully consider whether new rules are really needed, especially when it appears that they simply extend application of existing principles and practices. The Commission has already articulated its policies and has begun the process of interpreting those principles in the context of case-specific determinations. That approach has worked well and should be continued. However, if the FCC decides new rules are needed, ACS urges the Commission to create an exception for Alaska.

Respectfully submitted on this 14th day of January, 2010.

/s/ Leonard Steinberg

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