

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

In the Matter of)
)
Protecting and Promoting the Open Internet) GN Docket No. 14-28
)
_____)

COMMENTS OF THE ALASKA RURAL COALITION

Shannon M. Heim
Erik Levy
Dykema Gossett, PLLC
4000 Wells Fargo Center
90 South 7th Street
Minneapolis, MN 55402
(612) 486-1586

Counsel for Alaska Rural Coalition

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I. Introduction.

The Alaska Rural Coalition¹ (“ARC”) files its Comments in this proceeding pursuant to the Notice of Proposed Rulemaking issued by the Federal Communications Commission (“Commission”) on May 15, 2014 seeking comment on legal and regulatory implications of protecting and promoting an open Internet.² Alaska’s network architecture developed differently than in the Lower 48 which changes the context of the questions posed by the Commission.³ Broadband providers in Alaska struggle with a lack of adequate middle mile facilities, or a lack of access due to the high pricing of monopoly interexchange carrier (“IXC”) middle mile transport networks that receive little or no regulatory oversight. Middle mile access and price remain the biggest impediments to robust broadband and an open Internet in Alaska.

The ARC membership consists of most of the rate of return incumbent rural local exchange carriers (“RLECs”) in Alaska, many of whom provide some type of last mile Internet access to consumers. The ARC believes that its members meet the definition of “Edge Provider” as articulated by the Commission’s proposed rules and certainly share a common need to access

¹ The ARC is composed of Arctic Slope Telephone Association Cooperative, Inc., Bettles Telephone, Inc., Bristol Bay Telephone Cooperative, Inc., Bush-Tell, Inc., Circle Telephone & Electric, LLC, Cordova Telephone Cooperative, Inc., Copper Valley Telephone Cooperative, Inc., City of Ketchikan, Ketchikan Public Utilities, Matanuska Telephone Association, Inc., OTZ Telephone Cooperative, Inc., Interior Telephone Company, Mukluk Telephone Company, Inc., Alaska Telephone Company, North Country Telephone Inc., Nushagak Electric and Telephone Company, Inc., and The Summit Telephone and Telegraph Company, Inc.

² *In re Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Notice of Proposed Rulemaking, FCC 14-61 (May 15, 2014) (“NPRM”).

³ Reply Comments of the Regulatory Commission of Alaska, in the matter of *Connect America Fund, et al.*, WC Docket No. 10-90, Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, before the FCC (Feb. 17, 2012) (“RCA Reply Comments”) at 7 (“Extremely limited fiber facilities and lack of access to the Internet are unique to Alaska and require unique solutions.”).

the Internet.⁴ Rural incumbent local exchange carriers (“ILECs”) rely on a middle mile provider (either terrestrial or satellite) to enable Internet service to customers. The Commission’s proposed rules raise important issues for ARC members and their customers. The ARC urges the Commission to address demonstrable problems facing providers but also cautions the Commission from implementing solutions not intended to address real problems without an understanding of the long-term impacts of those regulatory actions.

II. Open Internet Developed Differently in Alaska.

Internet development in Alaska progressed in Alaska very differently than the rest of the nation.⁵ In the contiguous Lower 48 United States, telecommunications deployment was primarily carried out by Regional Bell Operating Companies (“RBOCs”). In the Lower 48, AT&T was the sole telecommunications provider controlling nearly all aspects of the telephone business until the 1980s. AT&T’s regional subsidiaries built a regulated monopoly system of local and long distance networks and held exclusive rights in their service areas. In the 1970s, independent telephone companies emerged and asserted that they could compete with AT&T if granted interconnection access to AT&T’s monopoly network.⁶ In 1982, the Department of Justice famously broke up AT&T’s monopoly and divided the Lower 48 into seven multistate areas served by designated RBOCs to provide local exchange service.⁷

⁴ NPRM at Appendix A: Proposed Rule 8.11(c). Defining an Edge Provider as “[a]ny individual or entity that provides any content, application, or service over the Internet...” *Id.*

⁵ See Walter B. Parker, Telecommunications and Information System History of Alaska, Institute of the North (Feb. 13, 2008), available via the University of Alaska Broadband Taskforce at <http://www.alaska.edu/files/oit/bbtaskforce/2013-08-AK-Broadband-Task-Force-Report%7CA-Blueprint-for-Alaska%27s-Broadband-Future.pdf>.

⁶ See U.S. Department of State, “Deregulating Telecommunications,” available at <http://economics.about.com/od/governmenttheeconomy/a/telecom.htm> (last visited June 23, 2014).

⁷ See *U.S. v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982).

During the 1990s, RBOCs continued to dominate the telecommunications market in the Lower 48. The Telecommunications Act of 1996 (“Telecommunications Act”) introduced competitive mandates forcing ILECs to offer competitors access to their last mile telephone network infrastructure at wholesale prices, on an unbundled basis.⁸ The unbundling requirements were primarily directed to the RBOCs, who, despite regulatory and legislative pressure, still maintained a near monopoly of the local telecommunications market. These RBOCs largely evolved into what we know as “price cap” carriers in the Lower 48 today.

A. Internet Development in Alaska Is Dependent on Access to Middle Mile.

The Commission discusses the regulatory history of Open Internet, including former Chairman Powell’s 2004 guiding principles for preserving Internet freedom.⁹ It is critical to note that in 2004 there was little robust Internet to preserve in Alaska. Local competition and interconnection was just beginning, and Internet services beyond the major communities of Anchorage, Fairbanks and Juneau was almost nonexistent.¹⁰ The Regulatory Commission of Alaska (“RCA”) previously noted in comments to the Commission that satellite technology, despite its well-known drawbacks, was the sole manner of providing broadband capacity to many areas in Alaska.¹¹ It took years longer for local competition and terrestrial middle mile to start

⁸ Pub. L. No. 104-104, 110 Stat. 56 (codified in various Section of 47 U.S.C.); *see* 47 U.S.C. § 251 (2000) (requiring incumbents to offer network elements to competitors on an unbundled basis); *see also* THE COMMUNICATIONS ACT: A LEGISLATIVE HISTORY OF THE MAJOR AMENDMENTS, 1934-1996 31 (Max D. Paglin et al. eds., Pike and Fischer, Inc., 1999).

⁹ NPRM at para. 12.

¹⁰ *See, e.g., MTA Suspension & Modification – Telecom Act 1996*, Docket No. U-05-046 before the Regulatory Commission of Alaska (May 27, 2005).

¹¹ *See Comments of the Regulatory Commission of Alaska*, Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rate for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up,

developing in Alaska. As the ARC has pointed out many times, a significant number of communities in Alaska are off the road system and are only accessible by plane or boat. This has made deployment of middle mile infrastructure difficult and major construction of facilities have only occurred in recent years due to significant grant funding that paid for a majority of the investment.¹²

Alaska never had an RBOC in place to build infrastructure with federal funding and does not have the same RBOC history of a monopoly carrier status in its service area from the AT&T breakup. Independent RLECs grew out of Alaska communities to provide local service to customers who did not have service and likely would not have service today without community initiative and investment. RLECs are dependent on statewide IXC networks to connect the LEC customers to the world. Alaska lacks the middle mile fiber facilities that are abundant in the Lower 48.¹³ General Communication, Inc. (“GCI”) is the dominant terrestrial middle mile carrier in the remote locations of Alaska via its TERRA networks as well as its control over significant fiber, microwave, and satellite capacity across the state.

WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51 (April 18, 2011) (“*RCA Comments*”) at 22 (“Alaska providers have commented that satellite transmission has problems with latency, data transmission continuity, and disruptions from weather conditions... Nevertheless, for many areas of Alaska, satellite links may be the only viable option to deploy broadband, provided sufficient capacity is available.”).

¹² See *Comments of the Alaska Rural Coalition Concerning the Remote Areas Fund*, WC Docket No. 10-90, before the FCC (Feb. 19, 2013) (“*ARC RAF Comments*”) at 8 (“Lack of access to affordable middle mile facilities also represents a significant barrier facing ARC members, making it more difficult or in many cases impossible to provide broadband services throughout our service areas even where middle mile has been constructed, the high cost involved with accessing the infrastructure puts it out of reach of most carriers serving Remote Alaska.”).

¹³ *ARC RAF Comments* at 6 (“...much of Alaska lacks access to middle mile facilities necessary to deliver the broadband service required to link last-mile Remote Alaska with the rest of the digital world.”).

B. Public Policy Requires An Open Internet.

The Commission poses a fundamental question: “What is the right public policy to ensure that the Internet remains open?”¹⁴ The ARC’s response to this inquiry focuses on the bottlenecks inherent in the Alaska network. While competitive options exist for fiber transport along the major road systems in the state as well as to the Lower 48, many areas in remote Alaska currently lack access to a high-speed terrestrial broadband network either due to a lack of available infrastructure or due to lack of access to affordable middle mile.¹⁵ Many areas of Alaska have last mile infrastructure in place, but there is still a large need for middle mile infrastructure in areas off the road system.¹⁶ In Remote Alaska, many communities and villages are located off the road system and middle mile transport is limited to satellite. Where there is terrestrial middle mile, a carrier is able to price access at a rate that may not reflect actual costs. Where there is only one provider of terrestrial middle mile the market cannot be considered

¹⁴ NPRM at para. 2.

¹⁵ *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Eighth Broadband Progress Report, GN Docket No. 11-121, FCC 12-90, P. 1 (rel. Aug. 21, 2012) (“*Eighth Broadband Progress Report*”), Appendix C; *see also Comments of Alaska Communications Systems Group, Inc., Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, before the FCC, GN Docket No. 12-288 (Sep. 20, 2012) (“*ACS GN Comments*”) at 4 (“Among the 51 percent of rural Alaskans who are believed to have some form of broadband access, many are underserved, with access to a form of broadband deemed a bare minimum under the Commission’s standards—nothing close to the 4 Mbps the Commission wants incumbent local exchange carriers (“ILECs”) to deploy in exchange for CAF support, not to mention the 10 Mbps to 100 Mbps that is available to most urban Americans.”).

¹⁶ *Comments of the Alaska Rural Coalition*, WC Docket No. 10-90, before the FCC (July 17, 2013) (“In areas where there is adequate connection for broadband-ready last mile networks, the need for high-cost support for standalone broadband service is critical.”)

competitive and regulatory oversight is necessary.¹⁷ The Commission should allow market forces to protect consumers and edge providers where the markets can be shown to be competitive, but in areas lacking effective competition, some form of regulatory oversight is needed to protect the public interest. Without continued oversight, there is nothing to prevent monopoly holders from manipulating the market and pricing out edge providers.¹⁸

As the Commission considers how to regulate the Open Internet, it should keep the regulation of middle mile facilities in mind and realize that reasonably priced, competitive middle mile transport is very lacking in Alaska.

III. An Open Internet Requires Network Transparency.

Open Internet means something a little different in Alaska than it might in Washington, D.C., but the ARC urges the Commission not to lose sight of providing the benefits on a nationwide scale. Failure to consider the ramifications for Alaska threatens to leave many Alaskans behind and perpetuate a digital divide that will become increasingly impossible to overcome.¹⁹ ARC members work hard to bring the benefits of robust broadband to their customers, but the lack of adequate middle mile and access to existing middle mile continues to stymie the effort.

¹⁷ See *Comments of the Alaska Rural Coalition*, WC Docket No. 13-184, before the FCC (Sep. 16, 2013) (“ARC E-Rate Comments”) at 10-11.

¹⁸ Although the ARC refers to monopoly facilities, that reference should be understood to refer to broad control of infrastructure held and used by IXC’s rather than discrete pieces of fiber within an RLEC network.

¹⁹ See Sarah Butrymowicz, *Bridging the digital divide in America’s rural schools*, The Hechinger Report, June 20, 2012, available at http://hechingerreport.org/content/bridging-the-digital-divide-in-americas-rural-schools_8826/ (“Rural America lags behind the rest of the country in Internet usage, making rural schools an important center of connectivity in the communities. In 2010, for instance, 57 percent of rural households had broadband Internet access, compared to 72 percent in urban areas, according to a November 2011 report by the U.S. Department of Commerce.”).

A. Open Internet Brings Tremendous Benefits to Alaskans.

The Commission seeks comment on the current role of the Internet’s openness in “facilitating innovation, economic growth, free expression, civic engagement, competition and broadband investment and deployment.”²⁰ The ARC believes there is value in refreshing the record in light of the rapid advancement that robust broadband and Internet access brings to communities nationwide.²¹ Alaska’s rugged geography, harsh climate, lack of roads, and sparse population underscore the need of Alaskans to have reliable access to the benefits of broadband.²²

The ARC’s advocacy consistently urges the Commission to consider the unique needs of Alaskans to access advanced telecommunications.²³ Broadband and other telecommunications

²⁰ NPRM at para. 34.

²¹ See *ARC RAF Comments* at 7-13 (“Assigning a portion of the Remote Areas Fund to address the lack of middle mile in Alaska would bring real and sustainable change to the broadband map by completing the already in place, cost-effective last mile infrastructure that is already capable of delivering broadband services.”); *Comments of General Communication, Inc. On Design of the Remote Areas Fund*, WC Docket No. 10-90, before the FCC (Feb. 19, 2013) at 4 (“In Alaska, the key to maximizing broadband-deployment benefits is directly or indirectly (through supporting ETC capacity purchases) supporting the continued development and deployment of middle-mile facilities capable of sustaining both mass-market and community anchor tenant broadband services.”).

²² See, e.g., Kim Severson, *Digital Age is Slow To Arrive in Rural America*, N.Y. Times, February 17, 2011, available at <http://www.nytimes.com/2011/02/18/us/18broadband.html?r=1&pagewanted=all>.

²³ See, e.g., *Reply Comments of the Alaska Rural Coalition*, WC Docket No. 10-90, WC Docket No. 05-337, before the FCC (July 23, 2012) (“*ARC Cost Model Comments*”) at 2-3 (“The ARC urges the Commission to specifically account for the limitations of Alaska’s current broadband infrastructure, in particular the absence of widespread, affordable, and robust middle mile networks, when determining high-cost support for carriers serving Alaska”); *Comments of the Alaska Rural Coalition*, WC Docket No. 10-90, before the FCC (Sep. 28, 2012) (“*ARC CAF Comments*”) at 9 (“Without the high-cost support necessary to build out middle mile in rural Alaska, or Commission action addressing the extremely high cost of existing middle mile, meeting even the Commission’s lowest broadband benchmark will continue to be difficult for ARC members.”); *Comments of Alaska Rural Coalition*, WC Docket No. 10-90, Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-

services are especially critical for customers in Remote Alaska, where the benefits of broadband access have the potential to strengthen village economies and overall quality of everyday life.²⁴

Alaska residents have an acute need for advanced telecommunications, especially services like emergency response, telemedicine and distance learning.²⁵

B. Some Broadband Providers Limit Internet Openness.

The Commission seeks to update the record regarding the conclusion that providers have “incentives and the economic ability to limit Internet openness in ways that threaten to weaken or break the virtuous circle.”²⁶ A virtuous circle is a situation where one good thing leads to another.²⁷ The Telecommunications Act determined competition is a key element to a virtuous

45, WC Docket No. 03-109, before the FCC (Jan. 18, 2012) (“*ARC USF I Comments*”) at 4-5 (“Access to Affordable Middle Mile is Critical to Extend Broadband into Remote Areas of Alaska.”)

²⁴ See Alaska Rural Telehealth Network, <http://www.nrtrc.org/about/network-profiles/artn/> (last visited Sept. 13, 2012) “In Alaska, the healthcare workers practicing in hospitals, clinics, and community health centers are essential to the delivery of acute and primary care services to small, rural, and remote communities. Although the majority of Alaska’s population is located outside the greater Anchorage area, the majority of healthcare providers in Alaska (e.g., physicians, PAs, RNs, physical therapists) are located in its three largest cities. As a result, rural clinicians practice in a generalist’s environment, but where they often need to have specialty knowledge and expertise. This dichotomy is further complicated when you consider the limited opportunities for continuing education and access to specialty consultations available because of travel costs, geographical and weather restrictions, and a general lack of or inability to arrange for clinical coverage during absences.” *Id.*

²⁵ Comments of the Regulatory Commission of Alaska, in the matter of Connect America Fund, et. al., WC Docket No. 10-90, Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05- 337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, before the FCC (Jan. 18, 2012) (“*RCA Comments*”) at 5 (“Yet there is no place in America that can benefit more from the promise of advanced telecommunications. the remote parts of Alaska beyond what it can anywhere else in the country. Broadband is the modern thoroughfare of Alaska’s future. It will allow a medical doctor to traverse the wilderness between Anchorage and Kotzebue in moments. It will allow an Alaska Native to work for a California high technology firm without ever leaving his subsistence lifestyle behind. It will allow economic development to flow freely between the world outside and our rural communities.”).

²⁶ NPRM at para. 44.

²⁷ Newton’s Telecom Dictionary at 1269 (27th Ed. 2013).

cycle of improving technology and service that benefits consumers where providers have the ability and economic incentive to stifle or foreclose competition.²⁸ The ARC respectfully argues the virtuous cycle is already impermissibly weakened.

The Commission requests particular insight into how the market has changed since 2010.²⁹ The infrastructure situation in Alaska has dramatically evolved. GCI received a substantial federal grant/loan to build the TERRA-SW middle mile project through its subsidiary United Utilities.³⁰ TERRA-SW has been completed and GCI is now working on Phase 3 of TERRA NW. This construction means that parts of Alaska are currently served by unregulated monopoly infrastructure owned and operated primarily by GCI.³¹

Carriers serving areas adjacent to terrestrial middle mile networks must purchase transport to take advantage of bandwidth that carriers in the Lower 48 take for granted.

Unfortunately, the rate available for capacity on terrestrial middle mile exceeds carriers' ability

²⁸ See, generally, 47 U.S.C. § 251.

²⁹ See NPRM at para. 44.

³⁰ See <http://terra.gci.com/project>. GCI's TERRA-SW Project was constructed with \$88 million in BTOP grant and loan fund by United Utilities, Inc. ("UII"), a wholly owned subsidiary of GCI. GCI, *Home: TERRA, available at* <http://terra.gci.com/home> ("TERRA is GCI's vision to build a next-generation communications network for the remote and rural areas of Alaska. The first segment, TERRA Southwest, was built in 2011 by United Utilities Inc., a wholly owned subsidiary of GCI."); see also "GCI to Connect Southwest with Broadband," Alaska Journal of Commerce, Jan. 15, 2012 ("At 10 a.m. Jan. 12, the first video teleconference served as a virtual ribbon cutting between Gov. Sean Parnell and Yukon Kuskokwim Health Corp. President and CEO Gene Peltola utilizing the new interface between the existing DeltaNet in Bethel and Terra-SW.").

³¹ See *ARC E-Rate Comments* at 13-14 ("In Alaska, some carriers receive tens of millions of dollars in E-rate and rural health funding at inflated monopoly prices, and these carriers' profits from E-rate contracts appear to cross-subsidize their entire business. Meanwhile, those carriers are counted as unsubsidized competitors despite their receipt of these funds. Not only does this pattern undermine the Commission's goal of increased efficiency for carriers receiving high-cost support, it also undermines the cost-effectiveness of the E-rate program because there is virtually no competition or E-rate bids due to the inflated cost of middle mile transport.").

to pay.³² ARC members seeking capacity on terrestrial middle mile have found that the rate exceeds the cost of purchasing satellite backhaul.³³

The lack of access to affordable and sufficient backhaul impacts the availability mobile broadband in rural and Remote Alaska. TERRA is the only terrestrial middle mile option in most Remote Alaska locations. Without affordable access to TERRA, carriers have to rely on satellite facilities for middle mile transport.³⁴ Satellite service remains unreliable and inadequate in much of Alaska for many reasons including lack of sufficient capacity, inclement weather and geographic limitations based on latitude and line of sight.³⁵ Consumer satellite likewise fails to provide a meaningful broadband experience.³⁶ Providing the speed, latency, or capacity required by the Commission for satellite service is not yet possible in most areas of Alaska,³⁷ and is both

³² High cost support does not cover this expense. Consumers in the area cannot afford the exponential increase in cost.

³³ Where there is a monopoly terrestrial infrastructure, there is no “market rate.” In Alaska, GCI offers a DSL resale program that allows providers to offer an internet product to customers in TERRA communities, but that product limits the ability of the carrier to provide a diversity of products since it depends entirely on what offering is made available by GCI, and precludes using the capacity for backhaul for mobile broadband.

³⁴ See *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for our Future*, Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161 (rel. Nov. 18, 2011) (“*Transformation Order*”) at para. 1321; see also *Comments of Microcom*, WC Docket No. 10-90 *et al.* (Jan 5, 2011) at 2.

³⁵ *ARC USF I Comments* at 25.

³⁶ The ARC has provided the Commission with a study commissioned by TelAlaska supporting this position. See Martin & Baugh Consulting Group, *Satellite Internet Review* (Jan. 30, 2012), attachment to Shannon M. Heim, *Ex Parte Notice*, before the FCC (June 12, 2012).

³⁷ See *ACS GN Comments* at 10 (“ACS is not aware of any coverage maps demonstrating satellite coverage at the prescribed broadband speeds in any part of Alaska north of Anchorage.”).

extremely impracticable and exponentially more expensive than building middle mile in these areas if new satellites have to be launched.³⁸

The Commission seeks comment on the “state of competition in broadband Internet access service, and its effect on providers’ incentives to limit openness.”³⁹ In Alaska, the record demonstrates that areas served by monopoly middle mile lack market checks on the price of transport.⁴⁰ The E-rate and Rural Healthcare programs rely on healthy competition to generate fair pricing. In many Remote Alaska communities, the monopoly middle mile invites the possibility for price inflation, waste, fraud, and abuse.⁴¹ Carriers, consumers, and broadcasters

³⁸ See Martin & Baugh Consulting Group, *Satellite Internet Review* (Jan. 30, 2012) at 8. (“The three main hub providers also indicated the costs for the service would be extremely expensive. The cost per subscriber would be upward of \$4000 per sub per month—just for the cost of the service. This doesn’t include the costs of overhead support and management, as well as ongoing customer care, billing and Internet access. These additional costs would increase the month rate by at least \$500 per month per subscriber.”).

³⁹ NPRM at para. 47.

⁴⁰ Monopoly transport generates complaints from broadcasters regarding GCI’s leveraging of facilities. See, e.g., Jill Burke, *Alaska TV wars: GCI fires back at KTUU, other competitors*, Alaska Dispatch, March 18, 2013, available at <http://www.alaskadispatch.com/article/20130318/alaska-tv-wars-gci-fires-back-ktuu-other-competitors> (“The sale of television stations to GCI would effectively create a monopolistic choke-hold on the flow of information and competition, and would ultimately be a disservice to viewers statewide, according to the complainants.”); Kirk Johnson, *Alaska Media Battle Pits Old Power vs. Cable Rival*, New York Times, May 4 2013, available at <http://www.nytimes.com/2013/05/05/us/alaskan-media-battle-pits-ktuu-and-cable-rival.html> (“KTUU’s owners, joined by most other Alaska television broadcasters in a united front, said in filings to the F.C.C. that GCI would naturally favor its own content and strangle competitors through overt or subtle means, like channel placement on the cable menu. They also say, based on comments from GCI executives quoted in affidavits, that the company plans to skew its news coverage toward ‘corporate interests.’”)

⁴¹ It is a widely accepted notion that an unchecked monopoly power will distort the marketplace. See, e.g., K. Lloyd Billingsley, *The Corruption Inherent in the System*, Pacific Research Institute (Sep. 25, 2002), available at <http://www.pacificresearch.org/education/education-article-detail/the-corruption-inherent-in-the-system/> (“...the larger problem is the entire government education monopoly itself. That monopoly provides poor products at high prices, resists reform, restricts choice, wastes billions, and invites fraud.”); Bradley R. Schiller, *A Comparative Perspective of Market Power*, The

have alleged difficulty accessing middle mile facilities that lack competitive options.⁴² The ARC believes that there is a correlation between a lack of competition and a provider's incentive to limit openness. The lack of access to terrestrial middle mile infrastructure represents the largest impediment to bringing 4G service to Remote Alaska.⁴³

The Commission recognizes that the “presence or absence of market power—over broadband subscriptions, over end users once they have chosen a broadband provider, and over content providers who wish to reach those end users—may inform an understanding of a broadband provider's behavior in the Internet marketplace and its incentives to engage in practices that limit Internet openness.”⁴⁴ The ARC agrees and research supports the premise that market power informs the behavior of a monopolist.⁴⁵ Regulation serves to balance the inequities between players in the market who have power and those who do not.⁴⁶ The ARC

Economy Today, *available at* <https://www.inkling.com/read/the-economy-today-bradley-schiller-12th/chapter-23/a-comparative-perspective-of> (“Price exceeds marginal costs at all times. There's no squeeze on profits and thus no pressure to reduce costs or improve product quality.”).

⁴² *ARC RAF Comments* at 8-9 (“The small, rural carriers, all ARC members, who serve the areas adjacent to the TERRA-SW Project, would like to purchase terrestrial backhaul, but the price provided by UUI/GCI far exceeded the cost of purchasing satellite backhaul and places it beyond the reach of rural carriers absent Commission support.”).

⁴³ *See Connect America Fund*, Comments of the Alaska Rural Coalition, WC Docket No. 10-90 (March 31, 2014) (“*ARC WC Comments*”) at 3-4 (“The full benefits of broadband will not be realized in rural Alaska without funding targeted at building out the terrestrial middle mile facilities necessary to support robust and reliable high-speed connections.”)

⁴⁴ NPRM at para. 49.

⁴⁵ *See, e.g., Robert Kuttner, Everything for Sale: The Virtues and Limits of Markets*, (Knopf 1977) (“[f]irms that enjoy market power...retard competition with coercive or anticompetitive mergers, discriminatory or predatory pricing, cross-subsidies, retail-price maintenance, tying or bundling arrangements...”).

⁴⁶ *See Lloyd Dixon, et al., The Impact of Regulation and Litigation on Small Business and Entrepreneurship: An Overview, Kaufmann-RAND Center for the Study of Small Business and Regulation*, February 2006, *available at* http://www.rand.org/content/dam/rand/pubs/working_papers/2006/RAND_WR317.pdf (“In

urges the Commission to be judicious in its application of regulation to the Internet and address the underlying network challenges that are impeding competition in Alaska and elsewhere.

The Commission seeks comment on whether the unreasonable discrimination rules should apply to peering arrangements.⁴⁷ It is imperative for the continuing deployment of broadband access in Alaska that carriers be able to obtain affordable access to middle mile facilities.⁴⁸ If the owners of existing middle mile and backhaul transport are allowed to discriminate against certain carriers, it will continue to have a chilling effect on the expansion of mobile and fixed broadband services.⁴⁹ There is a particular risk when an owner shares an affiliate relationship with the preferred carrier. A closer regulation of transactions between affiliate and preferred carriers will promote Internet openness. The ARC encourages the Commission to expand the application of the unreasonable discrimination rules to peering relationships, including middle mile and backhaul.

The Commission proposes that “the competitive factors should also examine the extent of an entity’s vertical integration and/or its relationships with affiliated entities.”⁵⁰ As discussed

general, government regulation of private business tends to serve two overriding public objectives: (1) to promote market competition and control the market power of large firms over customers and smaller firms, and (2) to mitigate any adverse effects of business activity on individuals, other organizations, and the environment.”).

⁴⁷ NPRM at para. 59.

⁴⁸ *ARC USF I Comments* at 6 (citing Kim Severson, *Digital Age is Slow to Arrive in Rural America*, N.Y. Times, February 17, 2011, available at http://www.nytimes.com/2011/02/18/us/18broadband.html?pagewanted=all&_r=0).

⁴⁹ See *ARC WC Comments* at 3-4 (“The full benefits of broadband will not be realized in rural Alaska without funding targeted at building out the terrestrial middle mile facilities necessary to support robust and reliable high-speed connections.”); see also *Connect America Fund*, Comments of Alaska Communications Systems, WC Docket No. 10-90, FCC 12-138 (Jan. 28, 2013) (“*ACS WC Comments*”) at 14 (“In some cases, it is a lack of availability of such middle mile capacity, even more than the architecture or capabilities of the local loop plant, that limits ACS’s ability to offer faster broadband more widely.”).

⁵⁰ NPRM at para. 126.

above, the ARC believes that closer oversight of affiliated entities benefits an Open Internet. As the Commission noted, “Comcast-NBCU will have the incentive and ability to discriminate against, thwart the development of, or otherwise take anticompetitive actions against online video distributors.”⁵¹ It is also important that the Commission consider those entities that are heavily advantaged due to their ownership and control of multiple parts of the transport network, which gives those entities the incentive and ability to use anti-competitive pricing practices when engaging with competing carriers. The ARC strongly supports the examination and investigation of vertical integration affiliates where it impacts broadband networks.⁵² The ARC also supports a good faith requirement in negotiating disputes related to affiliate relationships and access to transport facilities necessary to keep the Internet Open and available to all consumers.⁵³

IV. Unambiguous Enforcement Mechanisms Promote An Open Internet.

The Commission proposes the creation of a dispute resolution process to govern the rules proposed in the Open Internet Notice.⁵⁴ Under consideration are the use of informal complaints, flexibility in the process and the use of an ombudsperson to facilitate resolution of disputes.⁵⁵ The ARC believes is vital that the Commission’s dispute resolution mechanism be accessible to

⁵¹ NPRM at fn. 255.

⁵² Although some oversight of affiliate relationships resides at state commissions, companies subject to those requirements can attempt to terminate that oversight. *See e.g.* GCI Petition to Rescind Filing Requirements, Docket No. U-14-086, June 16, 2014.

⁵³ NPRM at para. 133.

⁵⁴ NPRM at para. 162.

⁵⁵ NPRM at para. 162-76.

parties of all sizes.⁵⁶ The financial realities of carriers operating in Remote Alaska make it cost prohibitive to engage in lengthy, expensive dispute resolution.⁵⁷

The Commission proposes to create an ombudsperson “whose duty will be to act as a watchdog to protect and promote the interest of edge providers, especially smaller entities.”⁵⁸ Effective dispute resolution that is both cost effective and timely is vital to ARC members. Treating carriers serving isolated, rural communities the same as carriers serving major urban areas creates a barrier to access. The Commission seeks comment regarding whether an initial pleading or procedural requirement would make access to Commission processes less cumbersome for individuals or small businesses.⁵⁹ Until the nature of the initial pleading is understood, it is difficult to provide meaningful input on whether it would provide a less cumbersome process. The waiver process initially articulated in the *Transformation Order* was intended to create clarity for carriers seeking a waiver of the rules, but the process became very burdensome, time consuming and expensive for carriers.⁶⁰ The ARC would encourage the Commission to avoid imposing onerous obligations to begin a dispute resolution process.

The ARC supports the creation of an ombudsperson whose duties include ensuring that small carriers operating in remote areas have access to cost effective and timely dispute resolution. The ARC believes that disputes between carriers and edge providers can potentially be resolved with the timely intervention of a neutral third party. Small carriers in particular need

⁵⁶ NPRM at para. 170.

⁵⁷ RLECs serving Remote Alaska lack excess resources, both human and financial, to engage in expensive litigation or dispute resolution. In one of the highest cost areas of the nation to serve, all available resources must be directed to serve to customers.

⁵⁸ NPRM at para. 171.

⁵⁹ NPRM at para. 171.

⁶⁰ *Transformation Order* at para. 539.

an efficient process to resolve conflict before it becomes an unavoidable barrier to access to broadband and an effective Open Internet.

V. Conclusion.

The ARC views the Commission's Open Internet reforms to be a promising step in the right direction. The ARC urges the Commission to ensure that it is mindful of the significant additional costs and challenges that are faced by carriers in Remote Alaska. The Commission cannot lump Alaska together with the Lower 48 when designing its Open Internet regulations. The ARC supports the Commission's decision to examine competitive factors in determining compliance with the Open Internet order, and urges the Commission to consider network transport factors in this analysis. Finally, the ARC supports the Commission's desire to create an ombudsperson that will give remote carriers greater access to the dispute resolution mechanism.

Respectfully submitted on this 15th day, July 2014.

DYKEMA GOSSETT, PLLC
Attorneys for the Alaska Rural Coalition

By: /s/ Shannon M. Heim
Shannon M. Heim
Erik Levy
4000 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Telephone: (612) 486-1586
Facsimile: (855) 223-7059
Email: sheim@dykema.com
elevy@dykema.com