

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

In the Matter of)	
)	
The Commission's Consultative Role)	GN Docket No. 09-40
in the Broadband Provisions)	
of the Recovery Act)	

COMMENTS BY THE KODIAK KENAI CABLE COMPANY, LLC

I. INTRODUCTION

In response to the Commission's March 24, 2009 Public Notice¹ for comments issued in this docket, the Kodiak Kenai Cable Company, LLC ("KKCC") hereby offers comments on the five specific terms and concepts in which the National Telecommunications and Information Administration ("NTIA") must consult with the Commission on as part of the Broadband Technologies Opportunities Program ("BTOP") of the American Recovery and Reinvestment Act ("Recovery Act").

KKCC was formed in 2001 as a limited liability company by Old Harbor Native Corporation and the Ouzinkie Native Corporation for the purpose of designing and constructing the Kodiak Kenai Fiber Link.² The Fiber Link is a 600-mile submarine fiber optic telecommunications system connecting the 60,000 people of Kodiak Island and the Kenai Peninsula with Anchorage. The system was completed on-time and within budget in

¹ DA 09-668.

² Old Harbor Native Corporation and Ouzinkie Native Corporation are Native village corporations established by Congress in 1971 under the terms of the Alaska Native Claims Settlement Act ("ANCSA").

2006, was placed in service in 2007, and has since operated successfully and without any interruption in service.³

KKCC operates as a “carrier’s carrier” by offering the high-speed broadband capacity of the Fiber Link on a non-discriminatory basis to local and long distance exchange carriers, who then provide high-speed Internet, telephone, video and other data services to the rural communities of the Kenai Peninsula and Kodiak Island.⁴ KKCC is a socially and economically disadvantaged small business concern as defined under Section 8(a) of the Small Business Act, 18 U.S.C. § 637.

KKCC intends to replicate the success of the Fiber Link by bringing the same high-speed broadband connectivity to rural communities in southwestern, western and northern Alaska. KKCC has developed a business plan to construct a new submarine fiber optic cable system extending from Kodiak Island to the Aleutian Islands, to communities in the Bristol Bay region, then north to Bethel, Nome, Kotzebue, Barrow and Prudhoe Bay.⁵ Once completed, service providers will be able to utilize the cable with their existing infrastructure and bring reliable, high-speed broadband connectivity to over 150 communities in western Alaska that currently are without such service, thereby for the first time connecting the region’s people, hospitals, medical clinics, schools, remote university campuses, public safety offices, U.S. Coast Guard communications sites, commerce and industry with real-time telecommunications and Internet services.⁶

³ See KKCC’s website at <http://www.KKFL.info>.

⁴ In addition to bringing high-speed connectivity to the residents of these communities, the Fiber Link connects the Alaska Aerospace Development Corporation’s Launch Complex at Narrow Cape, minimizes the exposure of the Turnagain Arm communication corridor to earthquakes, landslides or terrorist acts; and connects the community’s schools, industry, and commerce to the world with real-time broadband Internet.

⁵ See <http://www.northernfiberlink.info/pages/routes.html>.

⁶ See <http://www.northernfiberlink.info/pages/projectscope/projectscope.html>.

Nearly 40 percent of Alaska's land area (equal to approximately 16 percent of the land mass of the 48 contiguous states)⁷ – the entire western half of the state – does not have reliable, high-speed broadband connectivity. If there is any Internet service at all, it is provided by sporadic satellite service which is plagued by limited capacity and frequent disruptions.⁸ Moreover, the western part of the state has some of the most remote and impoverished communities in the United States. Unemployment ranges up to 90 percent and the poverty rate is as high as 50 percent. The economy is primarily dependent on commercial fishing, and federal and state jobs, and many rural residents remain highly dependent on hunting and fishing for their everyday subsistence needs. The communities are isolated by rugged terrain, weather, and the lack of any road or rail system connecting them to any urban area.

Of the approximately 150 communities in western Alaska, many, if not most, are located either along the Yukon River, the Kuskokwim River, Bering Sea, the Chukchi Sea or the Arctic Ocean or obtain essential services from communities along those coasts or rivers. Other than the haul road to Prudhoe Bay, there are no roads to any of these communities. Instead, they are accessible only by boat or plane. Due to extreme weather, access by sea to these coastal communities is impossible most of the year, and aircraft are frequently grounded.

⁷ KKCC's recent comments in Docket 09-29 erroneously reported the land mass of unserved western Alaska was equal to only 10% of that of the 48 contiguous states. See Kodiak-Kenai Cable Company, Comments, *Report on Rural Broadband Strategy*, GN Docket No. 09-29 (March 25, 2009) ("KKCC Rural Broadband Strategy Comments"), at 3.

⁸ Recent comments filed with the Commission agree that satellite service to rural Alaska is inadequate. See Regulatory Commission of Alaska, Comments, *Report on Rural Broadband Strategy*, GN Docket No. 09-29 (March 25, 2009), at 5-6; General Communication, Inc., Comments, *Report on Rural Broadband Strategy*, GN Docket No. 09-29 (March 25, 2009), at 3; KKCC Rural Broadband Strategy Comments, at 7-8.

II. COMMENTS

1. KKCC's proposed definition of "broadband."

The Commission should use this opportunity to promote a definition of broadband that is sufficiently robust to accommodate and support the current uses of the Internet and ensure that it remains relevant for foreseeable future applications. The Recovery Act provides an opportunity for agencies coordinating the definition of broadband to consider what applications are driving the burgeoning use of the Internet today and are likely to continue to do so for the foreseeable future.⁹ For this reason, KKCC believes that the Commission should advise the NTIA to adopt a functional definition of broadband, rather than one that is delimited in terms of capacity and data speed, which can become antiquated almost as soon as it is agreed upon.

KKCC proposes that "broadband" be defined as enabling, at a minimum, the delivery of interactive, real-time and full-motion, high definition video content, both in a downstream and upstream mode to and from the end user. A transmission pipe that is incapable of delivering video content fulfilling this range of qualities and characteristics will be unable to provide adequate levels of support for such critical applications in the unserved areas of Alaska that KKCC seeks to support, such as telemedicine programs, distance learning programs, and public safety and government services. The threshold speeds, at a minimum, should support today's commercially available interactive, real-time, full-motion, high definition video applications. To be effective and to meet the statutory concept of technologically neutral, this standard should be applied regardless of the technology used.

⁹ As KKCC previously cited to the Commission in its comments filed in Docket 09-29, it is estimated that by 2012, 90 percent of Internet traffic will be comprised of video content and that the Internet will be 75 times larger than it was in 2002. *See* http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-481374_ns827_Networking_Solutions_White_Paper.html.

A goal of the 1996 Telecommunications Act provided that “consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to...advanced telecommunications and information services...that are reasonably comparable to those services provided in urban areas.”¹⁰ This goal has not been realized in the 13 years since the Act was passed. Many rural communities, like the ones in western Alaska that KKCC seeks to support, simply do not have access to the broadband capacity and speed to allow them to use the Internet to deliver the modern services that their urban counterparts enjoy. The broadband funds appropriated in the Recovery Act, therefore, present a real opportunity to realize the goal of the 1996 Telecommunications Act and close the gap in broadband speed and capacity that currently exists between urban and rural communities. The only way to close that gap in a meaningful way, and for the foreseeable future, is to be sure that any recipient of Recovery Act broadband funds must build a network that, at a minimum, can deliver interactive, real-time and full-motion, high definition video content, both in a downstream and upstream mode to and from the end user.

2. KKCC’s proposed definitions of “unserved area” and “underserved area.”

(a) “Unserved Area”

KKCC believes that the Commission should advise the NTIA to define “unserved” as having no access to broadband service at all, or having access to the Internet only through dial-up or satellite connectivity, as NARUC has proposed in the NTIA/RUS jointly sponsored public meetings on the terms for implementing the Recovery Act’s Broadband Program.¹¹ In Alaska, the inadequacy of satellite delivery as a means of providing access to broadband services is now a matter of public consensus, with the state’s public utility commission, the

¹⁰ See 47 U.S.C. § 254(b)(3).

¹¹ See Betty Ann Kane, NARUC Chairman, Testimony to the NTIA and RUS on the Recovery Act, page 10, available at http://www.ntia.doc.gov/broadbandgrants/090316/NTIA_031609_1000-1130session.pdf.

Regulatory Commission of Alaska, having publicly testified to that effect before the Commission.¹² In addition, General Communication, Inc., the largest integrated provider of telecommunications services in Alaska and itself a purveyor of satellite backbone transmission capacity, concurs in this assessment of the role for satellites for the delivery of current- and next-generation broadband services.¹³

(b) “Underserved” Area

KKCC proposes that the Commission, in determining how to advise the NTIA and RUS should, once again, look to Congress’ policy declarations in the 1996 Telecommunications Act for guidance in helping define “underserved” areas. An “underserved” area should be defined as a rural area which lacks access to broadband facilities and services (however “broadband” is defined), “reasonably comparable” to those that exist in the urban areas of the same state and at “reasonably comparable” rates.¹⁴

3. KKCC’s proposals on the non-discrimination obligations and the network interconnection obligations as contractual conditions of BTOP grants.

(a) Non-Discrimination Obligations

Section 6001(j) of the Recovery Act requires that NTIA shall, at a minimum, require grant recipients to adhere to the principles contained in the Commission’s broadband policy statement adopted August 5, 2005.¹⁵ KKCC submits that the Commission should advise the NTIA that the themes of that policy statement – the consumer’s right to access content and applications of his choice on the Internet provided by competitive service providers of his

¹² See Regulatory Commission of Alaska, Comments, *Report on Rural Broadband Strategy*, GN Docket No. 09-29 (March 25, 2009).

¹³ See General Communication, Inc., Ex-Parte Notice, *Broadband Industry Practices*, WC Docket No. 07-52 (Feb. 23, 2008); General Communication, Inc., Comments, *Report on Rural Broadband Strategy*, GN Docket No. 09-29 (March 25, 2009).

¹⁴ See 47 U.S.C. § 254(b)(3).

¹⁵ FCC 05-151, released Sept. 23, 2005.

choosing -- should be applied by NTIA to funded telecoms projects, as well. Specifically, backbone networks provided on a carrier's carrier basis should be favored for the receipt of Recovery Act funding, as such networks make possible the provision of competitive broadband services in the last mile.

(b) Network Interconnection Obligations

It is important that broadband facilities that are deployed with the support of Recovery Act funding have the right to interconnect with other carriers, so that no carrier can become a bottleneck for self-serving, competitive reasons in permitting access by end users to robust, broadband capacity. A model for this requirement is found in Section 251 of the 1996 Telecommunications Act, which establishes basic interconnection requirements to enable competition in the local exchange sector. Subsection (a) of this provision states simply that "[e]ach telecommunications carrier has the duty...to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." For backbone networks developed with the use of Recovery Act funding that provide long haul and middle-mile access to unserved and underserved areas, the inability to interconnect with last-mile carriers would thwart the very purpose which the public funding was intended to accomplish.

KKCC submits, therefore, that backbone, wholesale carriers should have both the right and responsibility to interconnect with any other carrier of their choosing. To this end, the principles of Section 251(a) of the 1996 Telecommunications Act should be made a condition to the operation of systems funded by BTOP grants. It is further noted that the requirements found in Section 251(b) of the Act would have an equally salutary effect when applied to grant recipients. In accordance with that provision, grant recipients should also be required not to install network features, functions or capabilities that will violate the standards found in Section 255 of the Act ensuring access to the network by persons with disabilities, and Section 256 of the Act which seeks to promote "nondiscriminatory

accessibility by the broadest number of users and vendors of communications products and services to public telecommunications networks....”

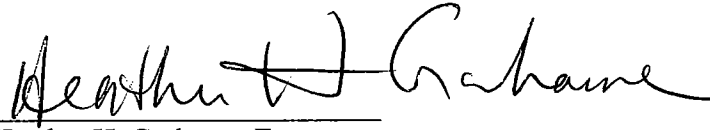
In addition to complying with the requirements of Section 251 of the 1996 Telecommunications Act, grantees that offer backbone transport should do so on a carrier-neutral and nondiscriminatory basis, so that no interconnecting telecommunications provider is either favored or disfavored, and so that retail prices to the end user may be as low as possible.

III. CONCLUSION

KKCC believes that the Commission should, based on its considerable expertise in these matters and in Congress’ goals in the 1996 Telecommunications Act, advise the NTIA that the terms and obligations of the Recovery Act must be defined in a way that ensures that grantees bring a broadband service to rural communities that is comparable in quality and price to services already enjoyed by their urban counterparts, at speeds and capacity that will support the applications that will drive the use of the Internet in the foreseeable future, that will support the consumer’s right to access content and applications of their choice, and that will support and encourage the provision of broadband service by multiple providers in currently unserved and underserved areas. Application of the Recovery Act “non-discrimination” obligation should result in preference for funding of backbone networks delivering broadband on a carrier’s carrier basis. The network interconnection obligation of the Act can be fulfilled by applying the standards of Section 251 of the Telecommunications Act to the networks of BTOP grant recipients.

Dated: April 13, 2009

Dorsey & Whitney LLP

A handwritten signature in black ink, reading "Heather H. Grahame". The signature is written in a cursive style with a horizontal line underneath it.

Heather H. Grahame, Esq.
1031 West 4th Avenue
Suite 600
Anchorage, AK 99501
Telephone: (907) 257-7822
Facsimile: (907) 276-4152

Stefan M. Lopatkiewicz, Esq.
Karly Baraga, Esq.
Washington Square
1050 Connecticut Avenue, NW
Suite 1250
Washington, DC 20036
Telephone: (202) 442-3553
Facsimile: (202) 442-3199