

Commission's rules. Specifically, we amend § 43.61 to remove the reference to former § 64.1002. We amend § 63.24 to remove the reference to paragraph (c) because there is no paragraph (c) in § 63.24. We revise the heading for § 63.52. Finally, we remove § 1.813. The requirements referenced in § 1.813 are no longer necessary.

**List of Subjects**

47 CFR Parts 1 and 43

Reporting and recordkeeping requirements.

47 CFR Part 63

Communications common carriers.

Federal Communications Commission.

Andrew S. Fishel,  
Managing Director.

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 43, and 63 as follows:

**PART 1—PRACTICE AND PROCEDURE**

1. The authority citation for part 1 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

**§ 1.813 [Removed]**

2. Remove § 1.813.

**PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES**

3. The authority citation for part 43 continues to read as follows:

**Authority:** 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104-104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

4. Section 43.61 is amended by revising paragraph (a)(1) to read as follows:

**§ 43.61 Reports of international telecommunications traffic.**

(a) \* \* \*

(1) The information contained in the reports shall include actual traffic and revenue data for each and every service provided by a common carrier, divided among service billed in the United States, service billed outside the United States, and service transiting the United States.

\* \* \* \* \*

**PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS**

5. The authority citation for part 63 continues to read as follows:

**Authority:** Sections 1, 4(i), 4(j), 10, 11, 201-205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, and 571, unless otherwise noted.

6. Section 63.24 is amended by revising paragraph (b) to read as follows:

**§ 63.24 Pro forma assignments and transfers of control.**

\* \* \* \* \*

(b) A *pro forma* assignment or transfer of control of an authorization to provide international telecommunications service is not subject to the requirements of § 63.18. A *pro forma* assignee or a carrier that is the subject of a *pro forma* transfer of control is not required to seek prior Commission approval for the transaction. A *pro forma* assignee must notify the Commission no later than 30 days after the assignment is consummated. The notification may be in the form of a letter (in duplicate to the Secretary), and it must contain a certification that the assignment was *pro forma* as defined in paragraph (a) of this section and, together with all previous *pro forma* transactions, does not result in a change of the carrier's ultimate control. A single letter may be filed for an assignment of more than one authorization if each authorization is identified by the file number under which it was granted.

7. Section 63.52 is amended by revising the section heading to read as follows:

**§ 63.52 Copies required; fees; and filing periods for domestic authorizations.**

\* \* \* \* \*

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BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 54**

[CC Docket No. 96-45; FCC 01-350]

**Federal-State Joint Board on Universal Service; 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**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; waiver request granted.

**SUMMARY:** In this document, the Commission grants the State of Alaska (Alaska) a limited waiver, which requires applicants to certify that the services requested will be used solely for educational purposes, subject to the conditions discussed below. The Commission finds that good cause exists to allow members of rural remote communities in Alaska, where there is no local or toll-free dial-up Internet access, to use excess service obtained through the universal service mechanism for schools and libraries when not in use by the schools and libraries for educational purposes.

**DATES:** Effective January 28, 2002.

**FOR FURTHER INFORMATION CONTACT:** Katherine Tofigh, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418-1553.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order in CC Docket No. 96-45 adopted on November 29, 2001 and released on December 3, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC, 20554.

**I. Introduction**

1. In this Order, the Commission grants the State of Alaska (Alaska) a limited waiver of § 54.504(b)(2)(ii) of the Commission's rules, which requires applicants to certify that the services requested will be used solely for educational purposes, subject to the conditions discussed below. The Commission finds that good cause exists to allow members of rural remote communities in Alaska, where there is no local or toll-free dial-up Internet access, to use excess service obtained through the universal service mechanism for schools and libraries when not in use by the schools and libraries for educational purposes.

## II. Discussion

2. The Commission grants Alaska a limited waiver of § 54.504(b)(2)(ii), to permit members of rural remote communities in Alaska, where there is no local or toll-free dial-up Internet access, to use excess service obtained through the universal service mechanism for schools and libraries when the services are not in use by the schools and libraries for educational purposes. The Commission grants this waiver subject to the following conditions: (1) There is no local or toll-free Internet access available in the community; (2) the school or library has not requested more services than are necessary for educational purposes; (3) no additional costs will be incurred, i.e., services subject to a waiver must be purchased on a non-usage sensitive basis; (4) any use for noneducational purposes will be limited to hours in which the school or library is not open; (5) and the excess services are made available to all capable service providers in a neutral manner that does not require or take into account any commitments or promises from the service providers.

3. This waiver is dependent on Alaska's implementation of these conditions. The Commission believes that these conditions are appropriately tailored to narrow the scope of waiver to ensure the integrity of the schools and libraries mechanism, yet broad enough to provide relief to rural remote communities in Alaska that are encountering economic and distance-related challenges to receiving telecommunications and advanced services. Maximizing the use of services obtained from the schools and libraries program by permitting such rural remote communities to use the excess service that is available as a result of the non-usage sensitive basis of the service and the limited hours that the service is used for educational purposes will further the goals of universal service, consistent with the Act. If these conditions are satisfied, then the Commission will find that special circumstances have been met and that a waiver is in the public interest.

4. As an initial matter, the Commission concludes that there are no statutory prohibition against our waiving § 54.504(b)(2)(ii) of the Commission's rules. Section 254(h)(1)(B) provides that eligible schools and libraries shall receive discounts on certain services for educational purposes. Pursuant to the Commission's discretion to implement the statute, the Commission narrowly constructed its rule to require schools

and libraries to certify that they use such discounted services solely for educational purposes. This rule supports the Commission's efforts to guard against fraud, waste, and abuse. Nothing in section 254(h)(1)(B) prohibits the Commission from granting a waiver of § 54.504(b)(2)(ii) of its rules to expand the use of such services, so long as in the first instance they are used for educational purposes.

5. The Commission's rules, however, may only be waived for good cause shown. As noted by the Court of Appeals for the D.C. Circuit, agency rules are presumed valid. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.

6. The Commission finds that Alaska's waiver request satisfies the above-stated conditions. First, Alaska has adequately demonstrated special circumstances. Alaska states that there are approximately 240 communities in the state that lack local or toll-free dial-up access to the Internet. These communities are located in remote areas of the state that are isolated by severe terrain and a harsh climate. Most of these communities are sparsely populated (population under 250), and are reachable only by air or water. As a result, access to information services is minimal and generally cost-prohibitive. In fact, Alaska asserts that start-up costs for an Internet service provider in a village is often more than \$20,000, in addition to the monthly cost for a satellite link. Of the communities without local or toll-free dial-up access to the Internet, 135 have available, non-usage sensitive Internet access at local schools or libraries. Given their extreme isolation and the lack of access to affordable Internet services, the Commission believes it is appropriate to allow rural remote areas in Alaska that lack local or toll-free dial up access to the Internet to utilize excess service obtained through the universal service mechanism under the limited circumstances described above.

7. The Commission also concludes that granting Alaska's waiver will serve the public interest. The Commission believes that it is in the public interest to take steps to utilize the excess

services obtained through the schools and libraries mechanism. Alaska explains that nearly 75 percent of rural Alaskan communities do not have Internet access via a local dial-up or toll-free connection. In many of these communities, however, schools and libraries have access to information services because of assistance from the schools and libraries mechanism. This waiver will serve the public interest by promoting access to available resources and allowing communities to make use of the excess service. The Commission finds that the waiver is also in the public interest because it is consistent with the Commission's efforts to encourage access to advanced telecommunications and information services.

8. In addition, the Commission believes that each of the conditions imposed with this waiver promotes the public interest by reducing the likelihood of waste, fraud, and abuse, and guarding against additional costs from being imposed on the schools and libraries mechanism. These conditions are discussed separately below.

9. The first condition limits application of the waiver to communities in Alaska where there is no local or toll-free dial-up Internet access. As noted above, many of these communities lack affordable access to the Internet due to their remote nature but also have available, non-usage sensitive connections to the Internet in their schools and libraries. The Commission believes that allowing these communities to access services obtained from the schools and libraries universal service mechanism will serve the public interest by reducing waste and making more efficient use of available resources.

10. Under the second condition, eligible schools and libraries in Alaska are not permitted to request more services than are necessary for educational purposes. Alaska will protect against that possibility by instructing schools and libraries to maintain information documenting the necessity for additional services. This will reduce the likelihood of fraud and abuse by enabling the Schools and Libraries Division of the Universal Service Administrative Company to efficiently assess whether additional requests are associated with educational purposes. As noted above, this waiver only allows for the use of excess service that is incidental to services provided for educational purposes. If there are increases in requests not warranted by educational purposes, we believe that it will be appropriate to reassess the propriety of this waiver.

11. The third condition limits the waiver to communities where the services used by the school are purchased on a non-usage sensitive basis. By limiting implementation of this waiver to communities that pay a flat, non-traffic sensitive rate for services, it reduces wasted resources and it protects against abuse by ensuring that the schools and libraries program does not incur additional costs based on the increased utilization. In addition, the Commission notes that any additional equipment related to the provision of Internet service to the community will not be eligible for support.

12. The fourth condition limits local community usage to hours in which the school or library is not open. By limiting use for non-educational purposes to non-operating hours for the schools and libraries, the Commission guards against abuse by eliminating the possibility that community usage may interfere with usage of services for educational purposes in schools and libraries. In accord with this condition, Alaska will include terms in agreements with ISPs restricting community usage to non-operating hours. Specifically, agreements will include an explicit statement that service is restricted to non-operating hours of the school or library and will designate normal operating hours, along with the anticipated school year calendar. The local Internet service provider will also be required to demonstrate the effectiveness of how it will restrict service to the designated hours.

13. Pursuant to the fifth condition, excess services must be made available to all capable service providers in a neutral manner that does not require or take into account any commitments or promises from the service providers. This condition is consistent with the Act, which prohibits any discounted services or network capacity from "being sold, resold, or transferred by such user in consideration for money or any other thing of value." We believe that this condition will ensure that excess services are not transferred in exchange for any benefit to the school, library, or surrounding community, whether the benefit is a promise of particular services, prices, or other thing of value. This condition will also protect against fraud, waste, and abuse by providing that all public, tribal, non-profit, and commercial entities will be treated equally. We note that there may be circumstances in which demand for the excess services by service providers is greater than the available excess services. In such instances, the school or

library may determine priority based on a set of neutral criteria that is consistent with this condition, such as random selection, first-come-first-served, or any other methodology that does not prioritize based on expectations of particular benefits to the institution or surrounding community. The Commission also notes that this condition in no way prohibits schools and libraries from establishing minimal technical requirements to protect the integrity of the institution's network, to ensure that selected providers are actually capable of providing service, or to ensure that selected providers are prepared to offer service.

14. Therefore, because the Commission finds that this waiver is in the public interest and that Alaska has demonstrated special circumstances, we find good cause to grant Alaska's waiver request subject to the provided conditions. The Commission is confident that this waiver will ensure that appropriate steps will be made to ensure the integrity of the schools and libraries universal service mechanism.

### III. Ordering Clause

15. Pursuant to sections 1, 4(i), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 254 and 1.3 and 1.925 of the Commission's rules 47 CFR 1.3 and 1.925, the waiver request filed by the State of Alaska on January 29, 2001, is granted, subject to the conditions indicated herein.

Federal Communications Commission.  
**Magalie Roman Salas,**  
*Secretary.*  
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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CC Docket No. 92-105; FCC 00-257]

### Require 711 Dialing for Nationwide Access to Telecommunications Relay Services; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Correction.

**SUMMARY:** The Commission published a document in the **Federal Register** at 66 FR 54165-01 (October 26, 2001) which corrected certain rules of the Federal Communications Commission (Commission) that concern access to telecommunications relay services

(TRS). The document should have amended rule § 64.603 to add a third sentence to the undesignated introductory paragraph that reads: "In addition, each common carrier providing telephone voice transmission services shall provide, not later than October 1, 2001, access via the 711 dialing code to all relay services as a toll free call." This document corrects the sentence to provide the correct date of October 1, 2001.

**DATES:** Effective October 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Susan Magnotti, 202/418-0871, fax 202/418-2345, TTY 202/418-0484, *smagnott@fcc.gov*, Network Services Division, Common Carrier Bureau.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission published a document correcting rule §§ 64.601 and 64.603 in the **Federal Register**. In FR Doc. 01-26942, published October 26, 2001 (66 FR 54165), make the following correction:

### PART 64—[CORRECTED]

1. On page 54165, in the second column, correct the rule amendment in § 64.603 to read as follows:

3. In § 64.603, revise the undesignated introductory text to read as follows:

#### § 64.603 Provision of services.

Each common carrier providing telephone voice transmission services shall provide, not later than July 26, 1993, in compliance with the regulations prescribed herein, throughout the area in which it offers services, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. Speech-to-speech relay service and interstate Spanish language relay service shall be provided by March 1, 2001. In addition, each common carrier providing telephone voice transmission services shall provide, not later than October 1, 2001, access via the 711 dialing code to all relay services as a toll free call. A common carrier shall be considered to be in compliance with these regulations:

\* \* \* \* \*

Federal Communications Commission.  
**Magalie Roman Salas,**  
*Secretary.*  
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