

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45

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JOINT COMMENTS OF UNION CITY BOARD OF EDUCATION,
HUDSON COUNTY SCHOOLS OF TECHNOLOGY,
JERSEY CITY PUBLIC SCHOOLS, TOWN OF KEARNY BOARD OF EDUCATION,
MONROE TOWNSHIP SCHOOLS (MONROE, NJ), SOMERSET
COUNTY VOCATIONAL AND TECHNICAL SCHOOLS, THE RIDGEWOOD
COMMUNITY SCHOOL (RIDGEWOOD, NJ), AND THE KINNELON PUBLIC
SCHOOLS (KINNELON, NJ) IN RESPONSE TO PUBLIC NOTICE REQUESTING
FURTHER COMMENT ON SPECIFIC QUESTIONS.

The above-named joint commenters hereby submit the following comments in response to the FCC Common Carrier Bureau's Public Notice seeking further comment on specific questions in the above-captioned proceeding.

No. of Copies rec'd 0 + 4
List A B C D E

Summary of Comments

Question 7. Does Section 254(h) contemplate that inside wiring or other internal connections to classrooms may be eligible for universal service support of telecommunications services provided to schools and libraries? If so, what is the estimated cost of the inside wiring and other internal connections?

Summary Response: Universal service may include a broad range of services, and not just "telecommunications services" as they are defined in Section 3(a)(2) of the 1996 Act. The 1996 Act should be interpreted as providing the Commission with the discretion to determine that services such as inside wiring or other internal connections are within the scope of special services eligible for universal service support provided to schools and libraries. Section 254 specifically states that the Commission's universal service policies shall be based on the principle that not just schools but *classrooms* should have access to advanced telecommunications services, and therefore inside wiring and internal networks should be considered as eligible for universal service support, because they are necessary if advanced services are to be accessible to individual school classrooms.

Question 8: To what extent should the provisions of Sections 706 and 708 be considered by the Joint Board and be relied upon to provide advanced services to schools, libraries and health care providers?

Summary Response: Should the Joint Board or Commission determine that Section 254 does not authorize the use of universal service support mechanisms for inside wiring and internal connections, they should use the broad authority granted them by Section 706 to expand universal service support to include these items. This interpretation of Section 706 is supported by the legislative history of the 1996 Act. By describing a wide range of regulatory measures that should be used to provide the proper incentives, and by including equipment costs, in addition to available services, among those things that the Commission must consider in determining whether advanced telecommunications capability is being timely and reasonably deployed to the nation's classrooms, the Conference Committee Report's explanation of Section 706 demonstrates that the Commission has discretion to go well beyond any specific limits on its authority that may be found in Section 254.

Question 12: Should discounts be directed to the states in the form of block grants?

Summary Response: A block grant or fixed fund approach would not be consistent with the legislative intent of Section 254(h) because it would require the establishment of qualifications and criteria that would be used to determine which school and library applicants merit universal service support and which do not. The Telecommunications Act of 1996 does not provide the Commission with authority to establish application requirements that would limit the eligibility of any school or library to receive discounted rates.

Nor would a voucher or credit system be consistent with the purpose of Section 254(h) because telecommunications carriers would have the ability to inflate rates to such levels that use of the voucher or credit would have the effect of merely reducing the rates provided to schools and libraries to the same levels that might have existed prior to the implementation of the universal service support mechanism.

Furthermore, providing discounts in the form of block grants to the states would leave to them the task of developing an allocation formula that would determine which communities would be the winners and losers in the contest to obtain universal service support, thereby creating a significant risk that state politics will become an integral part of the process and universal service support will not go to all of the communities that need it the most.

The issuance of vouchers in lieu of mandating discounted rates could create an atmosphere in which school districts are under public or political pressure to cash in their vouchers as soon as possible, based on the concern that by taking the time to address other issues, such as other infrastructure deficiencies or staff training needs, they could impair their ability to receive their fair share of universal service support.

Question 14: If the discounts are disbursed as block grants to states or as direct billing credits for schools, libraries, and health care providers, what, if any, measures should be implemented to assure that the funds allocated for discounts are used for their intended purposes?

Summary Response: The joint commenters agree with the response to this question submitted by the American Library Association, which correctly points out that the need for measures to assure proper use of block grant funds or direct billing credits is a good example of why block grants and other top-down distribution systems should be opposed. In contrast, a discount program would not require the same level of centralized oversight.

Question 15: What is the least administratively burdensome requirement that could be used to ensure that requests for supported telecommunications services are bona fide requests within the intent of section 254(h)?

Summary Response: Certification procedures such as those proposed by USTA, NYNEX, and other commenters, requiring schools and libraries to develop comprehensive plans for funding and implementation that would be compared to a federally-established "national vision," would impose an unnecessary cost burden on already financially overburdened schools and libraries and would, to some degree, negate the benefits of the discount provided.

Furthermore, the NYNEX plan would inappropriately inject the FCC and state public utility commissions into local education policy making. The joint commenters respectfully contend that the setting of educational standards is outside the statutory jurisdiction of a communications regulatory agency such as the FCC.

Question 17: How should discounts be applied, if at all, for schools and libraries and rural health care providers that are currently receiving special rates?

Summary Response: Schools and libraries currently receiving special rates, whether under tariff, contract, or the terms of a cable television franchise agreement or ordinance, should not be penalized for having been able to secure a discounted rate prior to implementation of the 1996 Act. The prices paid by a school or library for telecommunications services should be the lower of the telecommunications carrier's current rate or bid, or the discounted rate that would apply under any universal service support mechanism implemented by the Commission.

Comments

7. Does Section 254(h) contemplate that inside wiring or other internal connections to classrooms may be eligible for universal service support of telecommunications services provided to schools and libraries? If so, what is the estimated cost of the inside wiring and other internal connections?

Response:

Although Section 254(h)(1)(B) does not make explicit reference to inside wiring or other internal connections, it should be noted that this section does require a discount upon a bona fide request for "any of [a carrier's] services that are within the definition of universal service under subsection (c)(3)."¹ In contrast, Section 254(h)(1)(A), in addressing rural health care providers, uses different language and mandates discounts upon a bona fide request for "telecommunications services which are necessary for the provision of health care."² The use of language in paragraph (B) of subsection (h)(1) that is different from the language in paragraph (A) of the same subsection must be accorded some significance. In reference to the discounts to be provided to schools and libraries, the authors of this provision intended that discounts be provided on not just telecommunications services, but on *any* services that are special services included within the definition of universal service.

¹ Emphasis added.

² Emphasis added.

In turn, the 1996 Act grants to the Commission authority to establish what shall be included in "the definition of the *services* that are supported by Federal universal service support mechanisms" 47 U.S.C. § 254(a)(2) (emphasis added). Thus, universal service may include a broad range of services, and not just "telecommunications services" as they are defined in Section 3(a)(2) of the 1996 Act. The 1996 Act also authorizes the Commission to designate "additional services," and not only additional telecommunications services, that are to be special services included in universal service support mechanisms for schools and libraries. See 47 U.S.C. § 254(c)(3). Therefore, the 1996 Act should be interpreted as providing the Commission with the discretion to determine that services such as inside wiring³ or other internal connections are within the scope of special services eligible for universal service support provided to schools and libraries.

Moreover, inside wiring and internal networks should be viewed as being within the scope of special services contemplated by the 1996 Act, because Section 254 specifically states that the Commission's universal service policies shall be based on the principle that not just schools but *classrooms* should have access to advanced telecommunications services. 47 U.S.C. § 254(b)(6). See also 47 U.S.C. § 254(h)(2). Inside wiring and internal connections are necessary if advanced telecommunications services are to be accessible to elementary and secondary school classrooms. Therefore, inside wiring and internal networks should be considered as eligible for universal service support because they are necessary to serve one of the express purposes of Section 254.

³ Inside wiring and other internal connections should be treated as a service and not equipment, because the cost of materials is, in most cases, minimal when compared to the cost of the labor involved or to the total cost of wiring materials and labor combined.

8. To what extent should the provisions of Sections 706 and 708 be considered by the Joint Board and be relied upon to provide advanced services to schools, libraries and health care providers?

Response:

To the extent that the Joint Board or the Commission interpret Section 254(h) as not providing them with authority to include inside wiring or other internal connections as special services eligible for universal service support provided to school and libraries, Section 706 can and should be relied upon to provide such statutory authority. Section 706 provides a very broad grant of authority to the Commission to use its regulatory powers to encourage deployment on a timely basis of advanced telecommunications capability to all Americans, but particularly to elementary and secondary schools and classrooms.

By making reference not just to schools, but also specifically to the classrooms in those schools, Congress evidenced its intent that the Commission use its authority to promote the connection of *all* school rooms to the Internet and not just school computer labs, media centers, and libraries. Connection of America's classrooms can only be accomplished by making extensive use of inside wiring and internal connections. Therefore, should the Joint Board or Commission determine that Section 254 does not authorize the use of universal service support mechanisms for inside wiring and internal connections, they should use the broad authority granted them by Section 706 to expand universal service support to include these items.

This interpretation of Section 706 is supported by the legislative history of the 1996 Act. The Conference Committee Report that accompanied the legislation explained that the

Commission's regular inquiries to determine whether advanced telecommunications capability is being deployed to schools and classrooms in a "reasonable and timely fashion" must include "an assessment by the Commission of the availability, at reasonable cost, *of equipment needed to deliver advanced broadband capability.*"⁴ If the Commission's determination is negative, it is required to take immediate regulatory action under Section 706 to "provide the proper incentives for infrastructure investment."⁵ By describing a wide range of regulatory measures that should be used to provide the proper incentives, and by including equipment costs, in addition to available services, among those things that the Commission must consider in determining whether advanced telecommunications capability is being timely and reasonably deployed to the nation's classrooms, Congress evidenced that its purpose in enacting Section 706 was to authorize the Commission to go well beyond any specific limits on its authority that may be found in Section 254 pertaining to universal service.

12. Should discounts be directed to the states in the form of block grants?

Response:

The joint commenters are opposed to the use of a block grant or voucher program to provide universal service support to schools and libraries. Funding schemes such as those proposed by the United States Telephone Association (USTA) and NYNEX would incorporate a "fixed fund" approach that would limit the size of the universal service fund to the total cost

⁴ H. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 210 (1996) (emphasis added).

⁵ Id.

of implementation of a particular network model, such as the KickStart "Lab" model. Schools would receive funding only after submission of plans that met criteria established by the Commission, and implemented by a state agency. Each state would receive a funding allocation, and once that allocation was expended, no further universal service funding would be available for schools and libraries.

A block grant or fixed fund approach would not comply with the requirements of Section 254(h) of the Communications Act. Section 254(h) establishes an obligation to provide universal service discounts to schools and libraries on a continuing basis, and not on a one-time basis. A fixed fund approach would not allow many schools and libraries sustained access to advanced telecommunications services at affordable rates.

Universal service support should be available to all schools and libraries, and not only to those that are able to submit applications before all of the funds are expended. The language of Section 254(h)(1)(B) requires "all telecommunications carriers" to provide services at discounted rates "upon a bona fide request." The plain meaning of this statutory language is clear. Discounted rates must be provided to *every* elementary and secondary school and library that makes a bona fide request.

The co-sponsors of Section 254(h) have reiterated their intent in a letter to FCC Chairman Hundt. "[E]very school and library submitting a bona fide request deserves a significant, real, and meaningful discount" Letter from Senators Snowe, Rockefeller, Exon and Kerrey to Reed E. Hundt (April 24, 1996). Use of the block grant method of providing discounted services would not be in keeping with the legislative intent of this provision, because it would require the establishment of qualifications and criteria that would be used to determine

which school and library applicants merit universal service support and which do not. The term "bona fide request" should be read to mean "genuine request." By interpreting "bona fide" to mean "qualified," the Commission would be expanding its meaning beyond the drafters' intent. The Telecommunications Act of 1996 does not provide the Commission with authority to establish application requirements that would limit the eligibility of any school or library to receive discounted rates.

Nor does a voucher or credit system, such as the one proposed by NYNEX, meet the statutory requirement of discounts to all schools and libraries. A voucher, like a grant, has the potential to be an ineffective mechanism for ensuring that the rates charged for services remain affordable. Unless there are explicit and direct controls on the rates for telecommunications services provided to schools and libraries, telecommunications carriers will have the ability to inflate rates to a point where use of the voucher or credit still does not result in truly affordable rates. Carriers should not have the ability to raise rates to such levels that use of the voucher or credit has the effect of merely reducing the rates provided to schools and libraries to the same levels that might have existed prior to the implementation of the universal service support mechanism. If carriers retain this ability, then rates for services will not be reduced to the same levels that make the discount significant, real, and meaningful to its recipients.

Another problem with block grant approaches such as the one suggested by USTA is the need for an allocation formula to determine the amount of universal service funds to be distributed to individual school districts. The joint commenters are concerned that use of an allocation formula would tend to unnecessarily politicize the process of deploying advanced telecommunications capabilities to America's classrooms. This would be particularly true under

the USTA proposal, which would allow states to implement their own review and approval process for determining how much of the state's allocation should be distributed to individual school districts. Development of an allocation formula necessitates the selection of evaluative criteria to be incorporated into the formula. The evaluative criteria used in the funds allocation formula will favor certain school districts over others. Inherent in such a process is that there are both "winners" and "losers." By leaving to the individual states the task of determining which communities would be the winners and losers in the contest to obtain universal service support, the FCC runs the significant risk that state politics will become an integral part of the process and universal service support will not go to all of the communities that need it the most.

Finally, the joint commenters believe that the issuance of vouchers, rather than mandating discounted rates, as a means of distributing universal service support, could create an atmosphere in which school districts are placed under public or political pressure to cash in their vouchers as soon as possible, regardless of whether they are actually ready to take full advantage of advanced telecommunications services. If discounts were to be administered as a grant or voucher program, and particularly if universal service support is provided from a fixed fund, this could create a rush by schools and libraries to spend as much as possible, without giving adequate consideration to whether such expenditures are cost-effective or practical at the given time. School districts facing other issues, such as other infrastructure deficiencies or staff training needs, should be given adequate time to address such issues without being forced to do so at the risk of impairing their ability to receive their fair share of universal service support.

14. If the discounts are disbursed as block grants to states or as direct billing credits for schools, libraries, and health care providers, what, if any, measures should be implemented to assure that the funds allocated for discounts are used for their intended purposes?

Response:

The joint commenters agree with the response to this question submitted by the American Library Association, which correctly points out that the need for measures to assure proper use of block grant funds or direct billing credits is a good example of why block grants and other top-down distribution systems should be opposed. In contrast, a discount program would not require the same level of centralized oversight.

15. What is the least administratively burdensome requirement that could be used to ensure that requests for supported telecommunications services are bona fide requests within the intent of section 254(h)?

Response:

The least administratively burdensome requirement to ensure that requests for supported telecommunications services are bona fide, would be to require that persons making such requests include a written certification that they are authorized under applicable State or local law to order telecommunications services for their school or library.

Proposals such as those made by USTA, NYNEX, and other commenters would establish a certification process that is burdensome, unnecessary and inappropriate. Such proposed

certification procedures would require schools and libraries to develop comprehensive plans for funding and implementation that would be compared to a "national vision" that had been developed by a newly-created federal educational telecommunications board. Such proposals would impose an unnecessary cost burden on already financially overburdened schools and libraries. School administrators, teachers and librarians are already burdened with increasing regulatory reporting requirements that continue to be imposed while their financial and staff resources decrease. By creating another bureaucracy and more administrative processes with which schools and libraries must contend to take advantage of discounts on telecommunications services, the Commission would be negating, to some degree, the benefits of the discount provided.

Furthermore, the NYNEX plan would inappropriately inject the FCC and state public utility commissions into local education policy making. The joint commenters respectfully contend that a strong argument can be made that the setting of educational standards is outside the statutory jurisdiction of a communications regulatory agency such as the FCC.

17. How should discounts be applied, if at all, for schools and libraries and rural health care providers that are currently receiving special rates?

Response:

Schools and libraries currently receiving special rates, whether under tariff, contract, or the terms of a cable television franchise agreement or ordinance, should not be penalized for having been able to secure a discounted rate prior to implementation of the 1996 Act. The

prices paid by a school or library for telecommunications services should be the lower of the telecommunications carrier's current rate or bid, or the discounted rate that would apply under any universal service support mechanism implemented by the Commission.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gary D. Michaels".

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August 2, 1996

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing Joint Comments of Union City Board of Education, Hudson County Schools of Technology, Jersey City Public Schools, Town of Kearny Board of Education, Monroe Township Schools, Somerset County Vocational and Technical Schools, the Ridgewood Community School, and the Kinnelon Public Schools In Response to Public Notice Requesting Further Comments on Specific Questionis was served this 2nd day of August, 1966, by first class mail, postage prepaid, on each of the following persons.



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