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Petition for Reconsideration of Universal Service
FCC 97-420
CC Docket No. 96-45

The Federal Communications Commission recently issued its Fourth Reconsideration of the Universal Service regulations originally released May 8, 1997. In the Fourth Reconsideration the Commission made significant changes to the regulations which will impact the way schools and libraries implement technology initiatives at the school, district, and state levels.

Background

The United States Congress enacted and the President of the United States signed into law the Telecommunications Act of 1996, which was the first major legal reform measure for the telecommunications industry since implementation of the Telecommunications Act of 1934. In the Act of 1996, Congress stipulated that Health Care Providers, Educational Providers, and Libraries receive special consideration for the purchase of telecommunications services:

Section 254 (h)(1)(B):

All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties.

The Act provides that the Federal Communications Commission shall establish competitively neutral rules for advanced services for schools, libraries, and health care providers:

Section 254 (h)(2)(A);(B)

...to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries; and (B) to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users.

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The Act also established new definitions for terms used in section 254:

Section 3 (a)(41);(48);(49);(50);(51)

(41) INFORMATION SERVICE- The term 'information service' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(48) TELECOMMUNICATIONS- The term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(49) TELECOMMUNICATIONS CARRIER- The term 'telecommunications carrier' means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

(50) TELECOMMUNICATIONS EQUIPMENT- The term 'telecommunications equipment' means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

(51) TELECOMMUNICATIONS SERVICE- The term 'telecommunications service' means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.'

The Act required the Federal Communications Commission to institute a Federal-State Joint Board to recommend changes to any of its regulations, including definition of services that are supported by federal universal service support mechanisms. The Joint Board was asked to make recommendations to the Federal Communications Commission nine months after the date the Telecommunications Act of 1996 was enacted. On November 7, 1996, the Joint Board adopted and submitted its recommendations to the Federal Communications Commission.

Recommendations of the Joint Board for schools and libraries were summarized in paragraph nine of its executive summary:

The Joint Board recommends that, consistent with section 254(h), all eligible schools and libraries should receive discounts of between 20 and 90 percent on all telecommunications services, Internet access, and internal connections, subject to a \$2.25 billion annual cap. In addition, any funds that are not disbursed in a given year may be carried forward and may be disbursed in subsequent years without regard to the cap. We find that this recommendation provides schools and libraries with the maximum flexibility to purchase the package of services they believe will meet their communications needs most effectively.

With respect to Advanced Telecommunications Services, the Joint Board stated, in paragraph 629, that the above recommendation, using Section 254(h) of the Act, was satisfactory for schools and libraries to "...significantly increase the availability and deployment of telecommunications services for school classrooms and libraries, and we find that additional steps are not needed to meet Congress's goal of enhancing access to advanced telecommunications and information services."

The Federal Communications Commission Report and Order of May 8, 1997, and the subsequent four Reconsideration Orders have interpreted the Joint Board recommendations for schools and libraries to include discounts for "all commercially available telecommunications services" and other special services to include "Internet access and installation and maintenance of internal connections." The Federal Communications Commission ruled that non-telecommunications carriers (other than telecommunications carriers as defined above) are eligible for universal service support under section 54.517 to provide eligible schools, libraries and consortia with internal connections and Internet access only. According to Section 54.518, wide area networks to provide telecommunications services (defined above) built or purchased by schools and libraries shall not be eligible for universal service discounts. The Federal Communications Commission, like the Joint Board, chose not to address a definition of "advanced services" in its regulations.

Under these regulations, schools, libraries, and consortia may purchase any “commercially available telecommunications service” from “telecommunications carriers” to serve their needs and receive discounts according to their affluence and location. Schools and libraries may also receive discounts for Internet access and internal connections provided by either “telecommunications carriers” or non-telecommunications carriers. Discounts for Internet connections provided by non-telecommunications carriers are limited to Internet service only. Additional bandwidth for any other service provided by non-telecommunications carriers would be not eligible for discounts.

Discussion

The current regulations articulated in Part 54 of Title 47 of the Code of Federal Regulations (Universal Service) severely limit the options schools and libraries have in choosing “the package of services they believe will meet their communications needs most effectively” as recommended by the Joint Board. By using a narrow definition of “telecommunications services” and “telecommunications carriers” the Federal Communications Commission has failed to include discount coverage for a wide variety of telecommunications media currently used by schools and libraries to transmit not only Internet information, but distance learning, administrative and student information, assistive technologies, staff development, and other “information services” to schools and libraries.

In Virginia, schools face budgetary constraints implementing school wide and division wide telecommunications infrastructure. Schools have devised innovative solutions using a myriad of technologies and services to meet the telecommunications needs of their systems. A number of systems utilize the services of “telecommunications carriers” as defined in Section 3 and will receive discounts on those services. However, a large percentage of schools have opted for other technologies that they feel better serve their needs and at a lower cost than services provided by “telecommunications carriers”. Under the current rules, many of these systems may find their hard work and innovation ineligible for universal support because they chose a solution that may not fall under the regulations issued by the Federal Communications Commission.

Some examples of alternative technologies may include:

- wide area network (WAN) applications using bandwidth on the local cable system, obtained either by competitive bid or through franchise negotiation;
- wireless WAN's that a number of school systems either have installed or are considering, that provide large bandwidth at low cost, mostly for rural schools where high speed data connections are prohibitively expensive or unavailable;
- or hardwired (or fiber) WAN systems that school systems install themselves to connect schools at significant savings over recurring costs of leased lines.

New breakthroughs in technology are sometimes first deployed in schools by companies wishing to test innovations on a limited basis before offering services to the general public. We see this happening now with cable companies as they experiment with high-bandwidth bi-directional systems operating in schools first with the prospect of migrating to the public sector. Power companies may soon be in a similar position if the technology to transmit data over electrical wires proves viable. According to regulations adopted in the Fourth Reconsideration, these services (beyond internet delivery) would be ineligible for Universal Service discounts until they were offered to the general public.

The Act, in Section 254(b) advises the Joint Board and Federal Communications Commission to base their recommendations and regulations on certain "...policies for the preservation and advancement of universal service..." including 254(b)(6):

ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES- Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).

Subsection (h) includes a category for Advanced Services for schools and Libraries in 254(h)(1)(B)(2):

ADVANCED SERVICES- The Commission shall establish competitively neutral rules--
(A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries...

The Joint Board with its recommendations and the Federal Communications Commission with its regulations chose to rely on definitions of covered services in Section 3 of the Act which clearly encompass a more narrow scope of services than schools and libraries need to efficiently and effectively deliver services to students, even though the Act gives the Federal Communications Commission authority to establish such rules. Both the Joint Board and the Federal Communications Commission chose not to define "advanced services" for schools and libraries. By limiting the scope of covered services for schools and libraries, the Federal Communications Commission has violated the Act's premise of "competitive neutrality" forcing schools to choose between a more cost effective communication medium or a more costly medium, offset by discounts funded by the American people.

In Section 706 of the Act, Congress outlines a program to promote competition in the local telecommunications markets:

SEC. 706. ADVANCED TELECOMMUNICATIONS INCENTIVES.

(a) **IN GENERAL-** The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

(b) **INQUIRY-** The Commission shall, within 30 months after the date of enactment of this Act, and regularly thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

(c) **DEFINITIONS-** For purposes of this subsection:

(1) ADVANCED TELECOMMUNICATIONS CAPABILITY- The term 'advanced telecommunications capability' is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

(2) ELEMENTARY AND SECONDARY SCHOOLS- The term 'elementary and secondary schools' means elementary and secondary schools, as defined in paragraphs (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

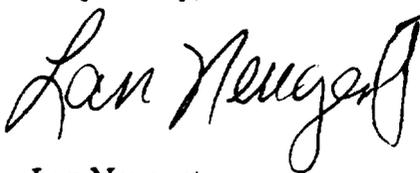
This section clearly illustrates Congress intent that schools and libraries should have access to *all* forms of communication using *any* technology that will enable them to transmit and receive high-quality voice, data and video. Twenty four months have passed since enactment of the Telecommunications Act of 1996. The Federal Communications Commission must initiate an

inquiry concerning the availability of advanced telecommunications within the next six months. By excluding certain providers and technologies from full participation in the universal service discount program for schools and libraries, the current regulations will ensure continued disparity in advanced telecommunications access for the foreseeable future. The current regulations in Part 54, Title 47 of the Code of Federal Regulations fall far short of the intent of the Telecommunications Act of 1996 with respect to discounted services provided to schools and libraries.

Recommendation

We ask that the Federal Communications Commission reconsider its current regulations under Part 54, title 47 to include, as prescribed in 254(h)(1)(B)(2), competitively neutral rules for advanced services, with a broad scope of covered services, equipment and providers so schools may choose the most cost effective telecommunications needs for their students. We also ask that as the Federal Communications Commission considers the definition of "advanced services" it incorporate, to the greatest extent possible, the definition provided in "advanced telecommunications capabilities" from section 706 of the Act articulated above. Finally, we ask that the rules allow that all providers of "advanced telecommunications" to schools and libraries, regardless of the capabilities used, be eligible for discounts.

Respectfully,



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