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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEB 1 8 1998

In the Matter of	)	
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Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge	)	CC Docket Nos. 96-262, 94-1, 91-213, 95-72

PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, the Southern Educational Communications Association ("SECA"), by its attorneys, hereby seeks reconsideration of Paragraph 193 of the Fourth Order on Reconsideration in Docket No. 96-45 and Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213 and 95-72, FCC 97-420, released December 30, 1997 in the above-captioned proceeding (hereafter "December 30 Order"). That paragraph essentially states that the cost to schools and libraries of purchasing wide area networks ("WANs") is not eligible for universal service discounts. This conclusion runs counter to the FCC's policy of ensuring that schools and libraries are able to purchase the most advanced telecommunications services or facilities available on a cost-effective and efficient basis. Accordingly, SECA asks that the FCC issue a further reconsideration order that either allows service on all WANs to be eligible for the universal service discounts, or carves out an exemption that would permit ITFS systems to obtain these discounts.

I. Introduction

On its own motion, the FCC has concluded the following: "to the extent that states, schools or libraries build and purchase wide area networks to provide telecommunications, the cost of purchasing such networks will not be eligible for universal service discounts." December 30 Order at par. 193. The only costs eligible for discounts, according to the FCC, are those associated with the provision of one of the following: (1) a telecommunications service; (2) internal connections; or (3) Internet access. This ruling does not apply to WANs that are run over leased telephone lines, presumably because those networks are operated by telecommunications carriers. Id. at n.585.

While the FCC provides no basis for this disparate treatment, it apparently believes that providing Internet access via a WAN operated by an entity other than a telecommunications carrier cannot be eligible for discounts because it does not fit squarely within any of three authorized categories. By taking this position, the FCC is potentially excluding from discount eligibility a range of network providers such as SECA, as well as other Instructional Television Fixed Station ("ITFS") licensees and licensee consortia.

II. Interest of SECA

SECA is a consortium whose members include four local districts in southwestern Missouri. These school districts are Lamar R-1 School District, Carl Junction R-1 School District, Carthage R-9 School District and Monett R-1 School District. Each of the school districts holds an authorization to construct a four-channel ITFS station. The school districts formed SECA in order to combine their ITFS stations so that they have the requisite capacity to provide two channels of two-way interactive communications, as well as to provide Internet access and telecommunications services to schools in their districts as well as to other schools in the area.

ITFS is a service authorized under Part 74 of the Commission's Rules. ITFS stations are operated by educational organizations and are "intended primarily to provide a formal educational and cultural development in aural and visual form, to students enrolled for credit in accredited secondary schools, colleges and universities." 47 C.F.R. § 74.931(a)(1). Both local and national entities are eligible to hold ITFS licenses. Licensees include K-12 school districts, colleges and universities, national non-profit educational organizations and public broadcasters.

An ITFS station operates by using transmitters that send signals to receive sites that are typically located at educational institutions, libraries and other sites where distance learning services are needed, such as business and industry locations. ITFS stations generally cover a 35 mile radius. There are twenty individual ITFS channels licensed to each market. Each licensee may be licensed to hold up to 4 ITFS channels per market.

Historically, ITFS stations have been used to provide primarily video programming. However, because of recent technological advancements in digital transmission, ITFS stations can also transmit high speed data and have the capacity to provide two-way service, including Internet access. Recognizing these advancements, in 1996 the FCC authorized ITFS stations to use digital technology, with the understanding that high-speed data services would be offered. See Request for Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations, Declaratory Ruling and Order, 11 FCC Rcd 18839 (1996)(petitions for clarification and partial reconsideration pending). Last year, the FCC launched a rulemaking to adopt rules that would facilitate the provision of two-way services by ITFS licensees. See Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, MM Docket No.

97-217, Notice of Proposed Rulemaking, FCC 97-360, released October 10, 1997.

SECA intends to take advantage of these developments by constructing an ITFS system that will provide both video and high speed Internet access. SECA believes that the configuration of ITFS systems is ideally suited to the provision of cost-effective data delivery. ITFS frequencies can provide "downstream" data rates of 27 mbs from the transmitter to receive sites (upstream data traffic may be handled by conventional telephone lines, because upstream data packets are smaller in size).[1] These downstream speeds are superior to those provided over T-1 lines.

SECA is counting on defraying the costs of constructing its advanced ITFS system by obtaining universal service discounts. SECA's plan is to obtain the discounts for Internet access and other two-way services that it would provide over its system to its member schools as well as to other schools that are not part of the consortium. As a non-profit institution whose members are eligible to obtain universal service discounts, SECA also hopes to obtain direct discounts to help construct its planned system. However, SECA understands that the FCC staff may now be interpreting this paragraph to prohibit schools and libraries that purchase capacity on ITFS systems from obtaining universal service discounts under the debatable theory that an ITFS system is a WAN.

II. Argument

A. There Is No Justifiable Basis For Excluding WANs From Coverage

The following argument assumes that the staff is correct that the FCC is treating ITFS systems as WANs. In Section 254(h)(2)(A) of the Telecommunications Act of 1996, Congress directed the Commission to devise methods to "establish competitively neutral rules . . . to enhance,

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[1] SECA is also considering using a portion of the ITFS channels for wireless "upstream" transmissions.

to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms . . . and libraries" 47 U.S.C. § 254(h)(2)(A)(emphasis added). By this directive, Congress required the Commission to ensure that one technology was not favored over another. Generally, the Commission has followed this directive. For example, it has stated that schools and libraries should be able to take advantage of any feasible technology that best accommodates their needs. See e.g. Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 9019-20 (1997)(hereafter "Order"). It has also allowed parties other than "telecommunications carriers" to bid on services, under the theory that providing universal service support to non-telecommunications carriers "empower[s] schools and libraries to take the fullest advantage of competition to select the most cost-effective provider of Internet access and internal communications, in addition to telecommunications services . . ." Id. at 9086-87; see also December 30 Order at par. 165.

Inexplicably, the FCC has ignored its "competitively neutral" directive in refusing to allow universal service discounts for services provided over WANs that are not built or provided by telecommunications carriers.. There is no justifiable basis for the Commission to allow discounts for WANs run over telephone lines but not to allow discounts for other types of WANs. SECA does not understand why other types of WANs do not meet the statutory definition of telecommunications while carrier-provided WANs apparently do meet the definition. The FCC has been flexible enough to permit non-telecommunications carriers offering services on local area networks to be eligible to obtain discounts. See Order at 9086-90. No compelling reason exists to deny the same right to WANs provided by non-telecommunications carriers.

B. Public Policy Reasons Compel Reconsideration

Even if the FCC cannot find the statutory authority to allow all services provided over non-carrier WANs to be eligible for discounts, it should carve out an exemption that would allow ITFS systems to be covered. This would allow entities such as SECA to obtain the benefit of the discounts. Specifically, it would enable SECA to obtain universal service discounts on the cost of building its system.

There is ample support for such an exemption. The FCC has exempted ITFS licensees that operate as non-telecommunications carriers from contributing to the universal services fund. December 30 Order at par. 284. The Commission reasoned that while the provision of ITFS meets the definition of the provision of "telecommunications" on a non-common carrier basis, and therefore ITFS licensees could be required to contribute to the fund, it would be counter-productive to require ITFS licensees to make such contributions because this would effectively reduce the amount of universal service support they would receive. Id.

Similarly, disallowing discounts on ITFS systems will also reduce the amount of support that each member of SECA will receive. Without access to the discount, SECA will unable to obtain funds to construct the system initially, and would be at a competitive disadvantage even if it could construct its system when it seeks to contract with schools to provide Internet access and other services. This means that SECA members will not be able to cover the cost of constructing the planned network. This will result in SECA members not only being unable to obtain services over their own network, but also being forced to pay telecommunications carriers to obtain service such as Internet access, which could otherwise have been provided over the ITFS channels. (It also may increase the expense for other schools that wish to use the ITFS system.) This is totally contrary to the spirit, as well as the letter, of the universal service statute.

IV. Conclusion

For the foregoing reasons, SECA respectfully requests that the Commission issue a further reconsideration order that allows services offered over ITFS systems to be eligible for universal service discounts, either through inclusion of all WANs, or through an express exemption for ITFS systems.

Respectfully submitted,

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