

FCC MAIL SECTION

Federal Communications Commission

DOCKET FILE COPY ORIGINAL

DA 98-1581

AUG 12 8 35 AM '98

Before the

Federal Communications Commission

Washington, D.C. 20554

DISPATCHED BY

In the Matter of)	
)	CC Docket No. 96-45
Federal-State Joint Board on)	
Universal Service)	

ORDER

Adopted: August 7, 1998; Released: August 7, 1998

By the Acting Chief, Common Carrier Bureau:

1. In this Order, we clarify the application of the Commission's "lowest corresponding price" requirement set forth in the *Universal Service Order*.¹ We clarify that this requirement was not intended to preempt state law, and does not obligate carriers to offer rates that would violate state laws.

I. Background

2. In the *Universal Service Order*, the Commission provided that schools and libraries should be eligible to apply for discounted telecommunications services, Internet access, and internal connections, subject to certain limitations and conditions.² The *Universal Service Order* concluded that, to ensure that their lack of experience in dealing with telecommunications providers does not prevent schools and libraries from receiving competitive prices, service providers must offer services to eligible schools and libraries at prices no higher than the lowest price the provider charges to similarly situated non-residential customers for similar services.³ The Commission clarified that, for purposes of determining the lowest corresponding price, similar services would include those provided under contract

¹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776 (1997), as corrected by Federal-State Joint Board on Universal Service, *Errata*, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *appeal pending in Texas Office of Public Utility Counsel v. FCC*, No. 97-60421 (5th Cir. 1997) (*Universal Service Order*).

² See, e.g., *Universal Service Order*, 12 FCC Rcd at 9002; para. 425.

³ *Id.* at 9031-32; para. 484.

as well as those provided under tariff.⁴ The Commission established a rebuttable presumption that rates offered within the previous three years are compensatory.⁵

3. In the *Fourth Reconsideration*, the Commission concluded that earlier versions of tariffs that have been modified should be included in the comparable rates upon which the lowest corresponding rate is determined, "[u]nless a regulatory agency has found that the tariffed rate should be changed, and affirmatively ordered such change, or absent a showing that the rate is not compensatory."⁶ A question has been raised whether the lowest corresponding rate can be based on rates not lawfully offered under state law.

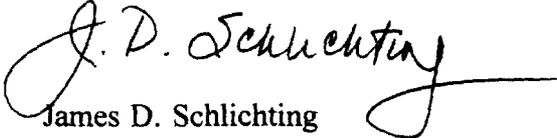
II. Discussion

4. Although the Commission disagreed with the general assertion that the lowest corresponding price should not reflect expired tariffs, the Commission did not expressly preempt state laws governing what rates may lawfully be offered to eligible schools and libraries. In the absence of such an expressly stated intention to preempt, we conclude that the Commission did not intend to require carriers to base the lowest corresponding rate on rates that may not lawfully be offered under state law. Thus, we interpret the *Fourth Reconsideration* as requiring only that rates that may be offered consistent with state law must be made available as the lowest corresponding price.

III. Ordering Clause

5. Accordingly, IT IS ORDERED that, pursuant to section 4(i) and section 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 254, and sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, the lowest corresponding price requirement is clarified as set forth above.

FEDERAL COMMUNICATION COMMISSION


James D. Schlichting
Acting Chief, Common Carrier Bureau

⁴ *Id.* at 9032; para. 485.

⁵ *Id.* at 9034; para. 489. The requirement that providers determine the lowest price that must be offered to an eligible school or library by looking at rates charged to similarly situated customers within the previous three years is commonly referred to as the "look-back" provision.

⁶ *Fourth Reconsideration*, 13 FCC Rcd at 5401; para. 142. On February 12, 1998, the United States Telephone Association (USTA) filed, but subsequently withdrew, a petition for reconsideration or clarification regarding that decision.