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

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In the Matters of	)	
Changes to the Board of Directors Of the National Exchange Carrier Association, Inc.	)	**CC Docket No. 97-21**
Federal-State Joint Board on Universal Service	)	**CC Docket No. 96-45**

COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) hereby provides these comments in response to the Commission's Further Notice of Proposed Rulemaking[1] in the above-captioned proceedings. USTA is the principal trade association of the local exchange carrier (LEC) industry. Its members provide over 95 percent of the exchange carrier provided access lines in the United States. Included in its membership are those providers who have been actively involved in the schools and libraries program.

These comments address issues regarding allocation of funds from the schools and libraries universal service support mechanism in situations where the initial denial by the Administrator of the Schools and Libraries Division (SLD) of the Universal Services Administrative Company (Administrator) of a request for support is reversed by the Administrator or the Commission. Specifically, the issues raised in the FNPRM involve

[1]Fifth Order on Reconsideration in CC Docket No. 97-21 Eleventh Order on Reconsideration in CC Docket No. 96-45 and Further Notice Of Proposed Rulemaking, FCC 99-49, released May 28, 1999 (FNPRM).

the disposition of the funds, the amount of those funds, and the timing to act on appeals. USTA is guided by principles of equity in its response to the comments raised in the FNPRM and believes that applications that are reinstated on appeal of an initial denial should be treated no differently from those applications that were granted in the first instance. Such parity of treatment should be a governing tenet of the Commission in ruling on the issues raised in the FNPRM.

I. Funding levels for appeals that are granted should be the same as were established by the fund Administrator for the original applications.

The Commission initially proposes to fund all priority one service appeals and then allocate the remaining funds to internal connection appeals at descending discount percentages if full funding is not available.[2] The Commission similarly proposes that funds should be allocated on a pro rata basis to priority one services if sufficient funds are not available to fund the entire category. USTA opposes both of these proposals. Alternatively, the Commission seeks comment on "alternative proposals that would enable the Administrator to distribute fairly funds for appeals in the event that sufficient funds are not available to fund all priority one service appeals."[3] USTA proposes that customers who receive funding pursuant to an appeal receive the same level of funding as would have been received had their original application been approved.

Customers should not be disadvantaged by receiving a pro rata amount for priority one services or reduced funds for internal connections.[4] USTA proposes that all appeals should be funded in parity with the levels established for the original applications, *e.g.*, in program Year 1, full funding of all discount levels for

[2] FNPRM at ¶ 9.
[3] *Id.* at ¶ 10.
[4] *Id.* at ¶¶ 9 and 10.

telecommunications service and Internet access, and funding of the 70 percent and above discount levels for internal connections.

II. The Administrator should use all available Year 1 funds before using funds collected in Year 2.

If contingency funds are insufficient to fund all granted appeals, USTA proposes that the Administrator use funds returned from Year 1 followed by funds collected in Year 2.

As the Commission states, it is unlikely that contingency funds will not be sufficient to fully fund all appeals that may be granted.[5] Based on the timing of the appeals process, there should be a point when the Administrator can assess the maximum level of funds required to fund pending appeals. If it is determined that the contingency fund is insufficient, the Administrator should calculate the level of Year 1 funds that have been returned by applicants as unused funds. The Administrator can then make a determination regarding the sufficiency of all Year 1 funds to fund the pending appeals. If these Year 1 funds are insufficient to fund all granted appeals, the Administrator should use funds collected in Year 2. USTA believes that if the Administrator needs to use funds collected in Year 2, the Commission should ensure that this is accomplished without changing the funding cap for Year 2 of the program.

III. Funds should be disbursed pursuant to an appeal at the time the decision is made to fund the services.

The Commission advances the position that the Administrator should wait until final decisions have been issued on all priority one service appeals before it allocates funds on a pro rata basis.[6] USTA opposes this position. Instead, USTA proposes that the

[5] *Id.* at ¶ 9 and n. 16.
[6] *Id.* at ¶10.

Administrator disburse funds for services funded pursuant to an appeal as the funding decision is made by the SLD or the Commission. It is especially important that the Administrator not hold funds associated with funding decisions the SLD makes on appeals pending Commission decisions on other appeals. As stated above, funds should be made available to fund all appeals that are granted at the same levels established for the original applications. There should be no need for the Administrator to wait for subsequent decisions in order to allocate funds on those decisions already made by the Administrator or the Commission. Delayed disbursements of funds are problematic from a customer and service provider perspective. Delays penalize customers who have already paid in full for existing services and cause tension between customers and their service providers who ultimately provide discounts to the customer.

IV. USTA supports the six-month timeframe to complete the installation of internal connections and asks the Commission to clarify that priority one services will have the same six-month grace period.

The Commission tentatively concludes that "an applicant would be required to complete the installation of internal connections that received support pursuant to an appeal within six months from the date that the final decision on appeal is issued."[7] USTA supports the six-month time period to complete the installation of internal connections that receive support pursuant to an appeal. In addition, USTA believes that the six-month time period should apply to the non-recurring installation of all services that receive support pursuant to an appeal.

If an applicant obtains funding for telecommunications or Internet access services pursuant to an appeal, it should have a full six-month period to install these services. In the Commission's Tenth Reconsideration Order in this proceeding that authorized the

grace period through September 30, 1999 for the installation of Year 1 services, the Commission used the general term "nonrecurring discounted services."[8] The Commission referred to internal connections as an example of nonrecurring discounted services covered by the grace period.[9] USTA asks that the Commission clarify that it intends the grace period for non-recurring charges associated with services that receive support pursuant to an appeal, to include all categories of services: telecommunications, Internet access and internal connections.

V. The FCC should also consider issues associated with discounts on recurring charges reinstated by grant of appeal.

USTA notes that the proposed six-month grace period for use of discounts on non-recurring charges, if adopted for all eligible services, will provide successful appellants with a reasonably fair remedy regarding the installation of new services. However, USTA suggests that the Commission needs to also establish clear guidelines regarding the treatment of discounts on recurring charges (*i.e.*, monthly charges for priority one services) that are granted as a result of the appeals process.

For recurring charges on existing services, where the applicant has paid in full for the eligible services that are the subject of a successful appeal, USTA proposes that the full amount of the discount would be provided to the applicant in the form of a lump sum retroactive reimbursement similar to the program Year 1 Billed Entity Applicant Reimbursement (BEAR) process. In addition, if such an applicant did not apply for program Year 2 funding as a result of its initial denial and subsequent appeal, USTA

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[7] *Id.* at ¶ 11.

[8] *Federal-State Joint Board on Universal Service*, Tenth Order on Reconsideration, CC Docket No. 96-45, FCC 990-46, released April 2, 1999 (Tenth Reconsideration Order) at ¶ 20.

[9] *Id.*

proposes that the filing window be waived and the applicant be allowed to apply after the appeal has been decided.

Other applicants, however, have applied for discounts on new services and delayed installation until receipt of the funding commitment decision. Because their requests were initially denied, the service was not installed and no recurring charges were incurred. Under the Commission's current proposal, if the appeal is fully granted, the applicant would be able to take advantage of discounts on non-recurring charges. However, it appears that they would forego any benefit on the recurring charges that they applied for and would have incurred had their application been granted in the first instance and service installed as intended. In other words, the grant of appeals regarding recurring charges for uninstalled services may be essentially meaningless and without value.

USTA urges the Commission to address the issues associated with funding appeals for uninstalled services. USTA proposes that, at a minimum, if an applicant who has filed an appeal and has already submitted an application for program Year 2 discounts on the same services, that request should receive expeditious treatment. If the applicant did not apply for program Year 2 funding as a result of its initial denial and subsequent appeal, USTA proposes that the filing window be waived and the applicant be allowed to apply after the receipt of the appeal decision.

VI. USTA urges the Commission to adhere to the 90 day time period for taking action on appeals.

Finally, USTA urges the Commission to adhere to the 90 day time period established in its rules for taking action on an appeal.[10] As stated above, delays in

[10] 47 C.F.R. § 54.724(a) and (b).

disbursing funds to applicants are problematic from a customer and service provider perspective. Delays penalize customers and cause additional tensions between customers and their service providers who ultimately provide funds to the customer.

VII. Conclusion

USTA urges the Commission to treat applications reinstated by appeal in the same manner as applications that were originally granted. This includes retaining the same funding levels, the use of unused Year 1 funds and Year 2 funds if contingency and non-disbursed funds are insufficient for full funding, disbursal of funds immediately after an appeal is granted rather than waiting for all appeals to be decided, and clarification that the six-month period for installation applies to non-recurring charges associated with all eligible services. In addition, USTA proposes that the Commission address issues associated with recurring charges and, specifically, that the filing window be waived for applicants whose appeal for recurring charges is granted after the filing date for Year 2. USTA also supports adherence to the Commission's current 90-day rule for taking action on appeals.

Respectfully submitted,

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June 30, 1999

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on June 30,1999, Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

Robyn L.J. Davis