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COUNCIL OF CHIEF STATE SCHOOL OFFICERS

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June 16, 2000

JUN 16 2000

97-21

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dear Ms. Salas:

Please accept comments from the Council of Chief State School Officers and the American Library Association in response to the Federal Communication Commission Public Notice that was released on June 2, 2000. Comments relate to the Universal Service Administrative Company's (USAC) petition with reference to CC Docket Number 96-45 and File Number SLD-26231.

Respectfully submitted,

Gordon M. Ambach
Executive Director
Council of Chief State School Officers

Emily Sheketoff
Executive Director, Washington Office
American Library Association

President NANCY KEENAN, Montana Superintendent of Public Instruction • **President Elect** PETER MCWALTERS, Rhode Island Commissioner of Education • **Vice President** ROBERT E. BARTMAN, Missouri Commissioner of Education • **Directors** JUDY CATCHPOLE, Wyoming Superintendent of Public Instruction • DOUGLAS D. CHRISTENSEN, Nebraska Commissioner of Education • MARY L. PETERSON, Nevada Superintendent of Public Instruction • SUELLEN K. REED, Indiana Superintendent of Public Instruction • TED STILWILL, Iowa Director of Education • MICHAEL E. WARD, North Carolina Superintendent of Public Instruction • **Executive Director** GORDON M. AMBACH

JUN 16 2000

Before the
Federal Communications Commission
Washington DC 20554

In the Matter of	)	
	)	
Federal Communications	)	
Commission Request for Comment	)	DA 00-1194
	)	
Copan Public Schools	)	File No. SLD-26231
Copan, Oklahoma		
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service		
	)	
Changes to the Board of Directors of	)	CC Docket No. 97-21
The National Exchange Carrier	)	
Association, Inc.	)	

COMMENT

The Council of Chief State School Officers (CCSSO) and the American Library Association (ALA) applaud the decision by the Federal Communications Commission regarding the appeal by Copan Public Schools in its Order of March 16, 2000 [CC 97-45, 97-21]. By recognizing the merits of the school system' s request, the Commission demonstrated its commitment to maximize competitive options for "E-Rate" program applicants. The modification of categories of permissible changes of service providers complements and reinforces existing state and local procurement rules for contracts for telecommunications and other related services.

Prior to the Order adopted by the Commission on March 14, only in extreme circumstances could a participating school or library appeal to change a service provider. Applicants have had little or no control in choosing preferential service providers after a contract was signed and a funding commitment received. The providers understood full well that an applicant would lose funding if it selected a provider that was not listed on its Form 471 agreement. The Copan decision rightfully places control back in the hands of the school and library customers. An applicant, for the first time, would have the option of seeking out and choosing an alternative vendor if the current provider was not meeting its needs. At the very least, the Commission's March 14th adopted ruling empowers an applicant to hold a

vendor accountable for agreed upon performance requirements and standards established by the respective state or local jurisdiction. Vendors, henceforth, will have to accept an applicant's discretion to select another competitive service provider.

Under the previous program rules, a school or library applicant had few options after accepting an initial contract bid. An applicant has had to attest to the fact that its designated service provider was no longer in business or taken over by another company, or evidence that a confirmed breach of contract had to be presented to the Program Administrator. Many applicants have had a very difficult time proving that changes to their original Service Provider Information Number ["SPIN"] fell into one of the three previously allowable categories. To prove that their request for SPIN changes fit under the Administrator's rules, considerable and unnecessary documentation was required.

Acceptance of the Copan School District appeal should contribute to increased competition and service options for the programs clients. Providing schools and libraries with the flexibility to make SPIN changes based on service demands and system requirements - in addition to the categories currently enumerated in the guidelines from the Universal Service Administrative Company ["USAC"] can be accomplished, we believe, without undue hardship to the Program Administrator of the Schools and Libraries Division ["SLD"] or to the administrative costs for operational systems. Although it may appear on the surface that the number of SPIN change requests could increase, we are confident that any conceivable increased workload demands will be nominal. There is no reason to believe that school and library applicants will switch providers often, needlessly or simply because they have the authority to do so. Subsequent SPIN change requests, i.e., submitted under the new Copan rules, should strengthen the viability of this program. The flexibility will allow changes-for-the-better, and the type of requests will not differ marginally from those that would have been submitted in the first two years had more reasonable and flexible rules been in place.

In its appeal for clarification, dated April 14, 2000, USAC contends that this aspect of the Order will be difficult to administer because of numerous factors that may cause the funding request to be reduced or denied. The additional administrative burden which the Commission's Order may engender must be weighed against the enormous relief the Copan decision offers to the thousands of program applicants. Moreover, an applicant requesting a SPIN change should be allowed to submit its discounted service request with the new competitive service provider at a level that is comparable or less than the amounts requested on the original Form 471, rather than being constrained to the USAC/SLD commitment allowance.

State officials, who are routinely in contact with CCSSO and ALA, suggest the Program Administrator could readily re-evaluate a SPIN change request to ensure that comparable services are being provided and that services offered under a new contractual or tariff agreement will benefit the applicant and the ultimate constituents to be served. Additionally, applicants should be allowed to sign multi-year contracts with new vendors and

simply cite their request for services as specified in the original form 470 competitive postings.

Further, CCSSO and ALA urge the Commission to find that the Copan decision and the rules that have been created by Copan are applicable to program year two (July 1, 1999 - June 30, 2000), as well as year three and beyond of the program. Currently, numerous SPIN change requests are awaiting action by the SLD. To decide that the new rules are only in place beginning with Program Year 3 would shut out many schools and libraries that are awaiting SPIN changes so they can procure service by the end of the Program Year. Recognizing that year one of the program is essentially closed, we accept the Commission's finding that no SPIN changes can take place after a funding year is officially ended.

While the Commission did not specifically request comment on whether a replacement service provider must have participated in the original competitive bidding process, CCSSO and ALA would like to reiterate their support for the Commission's decision to allow applicants to select whichever service provider best meets their needs. This decision is particularly important to the schools and libraries in rural areas of the country that are unlikely to receive more than one response to their 470 posting. To make applicants select providers that originally submitted a bid as a result of the 470 posting could be shutting out thousands of rural applicants from the SPIN change relief that you granted in the Copan decision.

As we are sure the Commission is aware, many schools and libraries have SPIN change requests awaiting SLD action. We believe an equal number of applicants are patiently awaiting FCC final action before they submit their requests. Therefore, CCSSO and ALA strongly encourage the Commission to act expeditiously on this issue. The Program Administrator should be instructed to begin processing SPIN change requests that would enable applicants to make immediate and necessary decisions for securing all eligible services.

Finally, while the Copan decision was silent on SPIN changes for tariff services, we encourage the Commission to clarify its intent to include all eligible services, and not create separate rules based on different types of service agreements or service providers. An applicant may have problems and reasons to change providers of telecommunication services just as they would for providers of other eligible services. For example, some telecommunications carriers choose not to sign contracts for tariff services, while others do offer a contract option. Therefore, if the Commission finds that SPIN changes are not allowed for tariff services, even fewer telecommunications carriers may be willing to enter into contracts with schools and libraries.

In conclusion, CCSSO and ALA recommend that the Copan guidelines are applicable to tariff agreements, as well as to contracts; that the principles set forth in the Copan decision should be effective retroactively; and that a new form 470 need not be posted by the applicant. CCSSO and ALA urge the Commission to recognize the needs of applicants and to provide them with the opportunity to change service providers as state and local

procurement permit and as each applicant deems necessary and favorable, for program year two and subsequent program funding years, and for all services, both tariff and contract services. A broad interpretation of the Order released on March 16, 2000 is in the best interests of states, local school districts, and libraries.

Respectfully Submitted,

Gordon M. Ambach
Executive Director

Emily Sheketoff
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American Library Association