Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of:	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
The Puerto Rico Department of Education and the DRC Corporation	)	SPIN No. 143012559
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

To: The Commission

APPLICATION FOR EXPEDITED REVIEW

Pursuant to Subpart I of Part 54 of the Commission's rules, the Puerto Rico Department of Education ("DOE") and DRC Corporation ("DRC") hereby seek expedited review of the decision[1] of the Schools and Libraries Division of the Universal Service Administrative Company ("SLD"), denying approval for a minor change in a contract between DOE and DRC (the "SLD Decision").

I. Question Presented for Review

This case presents an important issue regarding the ability of the SLD to retroactively apply a new SLD policy to a request for approval of a minor contract change filed almost five months before the new policy was announced. The new policy, called "Post Commitment Change in Products and/or Services ("New Policy"), was posted on the SLD website for the first time on September 1, 2000.[2] The issue presented for review is whether the retroactive application of the

1. Letter from Ellen Wolfhagen to Edwin N. Lavergne and Ramsey L. Woodworth, dated September 11, 2000 attached as Exhibit A.

2. The SLD's New Policy statement is attached as Exhibit B.

New Policy to a contract modification undertaken in good faith in reliance on the Commission's prior minor contract change policy (the "Old Policy") is permissible.[3]

II. Statement of the Facts

The contract between DOE and DRC provides for the acquisition and installation of a wireless Internet access infrastructure and Internet access service for 780 schools for a pre-discount cost of $51,478,221. Except for certain internal connections unrelated to this appeal, virtually all of the contract was approved for funding by the SLD on September 28, 1999, three months after the start of the program year.[4] Due to the three-month delay in receiving funding approval, only about $3,000,000 has been spent in the contract year for recurring expenses, leaving unspent approximately $12,904,200 in approved funding.

The requested contract modification compensates both for this unexpected development, caused by circumstances beyond DOE's and DRC's control, and the need to connect additional classroom computers, explained in Section IV, infra, that developed subsequent to the execution of the contract. The contract change increases the number of classroom wireless access points and computer wireless antenna connections. Significantly, all additional equipment and installation services have already been found to be eligible for funding by the SLD.[5]

DRC and DOE negotiated the contract modification in reliance on the Old Policy. Pursuant to the Old Policy, eligible schools were entitled to make minor modifications to a contract previously

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3. The Old Policy concerning minor contract changes is set forth in *In Re: Federal-State Joint Board on Universal Service*, Fourth Order on Reconsideration, CC Docket No. 96-45, FCC 97-420, ¶224 (1997) (hereinafter "*Fourth Order*"), relevant portions of which are attached as Exhibit C.

4. The SLD approval authorized $31,435,575 for non-recurring internal connections and $15,904,200 for recurring cost items. This represents $11,700,000 for T-1 transport facilities and $4,204,200 for Internet access service.

5. With respect to certain of the antennas (the Lucent Wave LAN/AT 2.4 GHz, ½ size, ISA Antenna), there is a pending eligibility issue with respect to certain functionality of the antenna representing less than 10% of its cost which has arisen subsequent to the filing of the minor change request. This eligibility issue is unrelated to the issues presented in this Application for Expedited Review. The funding of the requested additional antennas will be subject to the ultimate resolution of the pending issue by SLD.

approved for funding, provided: (1) no additional competitive bid process was required; (2) the new equipment or services added by the modification were eligible to receive support; and (3) no additional funding over that already approved was required. *Fourth Order*, ¶225-229. Furthermore, under the Old Policy, what constitutes a minor contract modification is a question for state or local procurement laws in the first instance.[6]

Pursuant to the Old Policy, on April 10, 2000, SLD approval was requested for the minor contract modification negotiated by DRC and the DOE. The request demonstrated that the minor modification was allowable under local Puerto Rico law with no competitive re-bidding required and in the alternative that, even if the local law standard were not applied, it would be considered a minor

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6. In the *Fourth Order*, the Commission held that "eligible schools . . . should look to state or local procurement laws to determine whether a proposed contract modification would be considered minor and therefore exempt from state or local competitive bid processes." ¶225. Where the State and local laws are silent or otherwise inapplicable, the Commission adopted the "cardinal change" doctrine as the standard for determining whether the contract modification requires re-bidding and thus becomes ineligible for funding as to the modified elements. ¶226. As summarized by the FCC, the cardinal change doctrine looks at whether the modified work is essentially the same as that for which the parties contracted. ¶227.

The *Fourth Order* set out the following procedures for consideration of a minor contract modification by the SLD:

> "An eligible school . . . seeking to modify a contract without undertaking a competitive bid process should file FCC Form 471 or 466, 'Services Ordered and Certification' with the School and Libraries Corporation . . . , indicating the value of the proposed contract modification so that the administrative companies can track contract performance. The school. . .also must demonstrate on FCC Form 471 or 466 that the modification is within the original contract's change clause or is otherwise a minor modification that is exempt from the competitive bid process." ¶229.

The Commission's policy did not distinguish between the review of a contract modification for the purpose of determining whether re-bidding the contract was required or for the purpose of funding the contract modification. Indeed, in its *Fourth Order,* the Commission limited the SLD's review of the proposed change to "determine whether the applicant's request is, in fact, a minor contract modification that is exempt from the competitive bid process." ¶229. With respect to funding, the *Fourth Order* only states that the FCC does not guarantee that additional funds will be available to support the modified services.

contract change under the cardinal change doctrine. In addition, guidance was sought as to the exact SLD procedures to be followed in processing the request.

On September 11, 2000, just 10 days after the SLD posted the New Policy on its website and over five months after the minor change request was filed, the SLD denied the requested minor contract modification. The SLD Decision found that "the FCC discussion of minor modifications and cardinal changes to contracts address only whether such changes need to be re-bid before entering into an agreement to adopt the modification, not whether the modification constitutes an acceptable *post-commitment change of service.*"[7] While finding that the minor change was "within the (very general) scope of the original request for service. . . .," the SLD ruled that this "is simply one consideration in determining whether a proposed change of service is allowable."[8] Paralleling the New Policy announced just 11 days earlier, the minor contract modification was found to constitute an unacceptable post-commitment change of service, because the SLD "only allow[s] those post-commitment changes to the application that perform the same functionality."[9]

III. The SLD Erred in Applying the New Policy Retroactively to the Requested Minor Modification

Although not specifically stated in the SLD Decision, it is obvious that the SLD Decision was not based on the Old Policy, but on the New Policy which had just been posted on its website page "What's New At SLD" on September 1. The New Policy should not be applied retroactively to applicants who relied on the Old Policy which was in effect at the time of their contract modification.[10]

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7. SLD Decision at 1 (emphasis added).

8. *Id.*

9. SLD Decision at 2.

10. In addition, in view of its limited authority under Section 54.702(c) of the Commission's Rules, substantial questions exist as to the SLD's authority to adopt a minor change policy significantly more restrictive than the policy originally adopted by the Commission. In the interests of expedition, however, the Commission need not reach this issue in resolving this appeal, given the (continued...)

The only justification in the SLD Decision for the denial was that the Old Policy did not apply because the Old Policy dealt only with the question of whether *re-bidding* was required before entering into the change – and not whether SLD funding for the change should be allowable. This is an illusory distinction with no meaning. Under both the Old Policy and SLD application procedures, the approval of a minor contract change and the approval of a change in funding are one in the same process.[11] The approval of a contract modification and the changes in funding necessitated by the change are inherently intertwined and cannot be separated into two policies – one governing allowable minor contract changes and another quite different policy dealing with changes in contract funding.

Federal law is clear on retroactivity:

> "Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result. By the same principle, a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms."[12]

Nowhere in the Communications Act does Congress give the Commission or the Universal Service Administrator authority to create retroactive rules or policies.

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10. (...continued)
SLD's clear error in the retroactive application of the new policy.

11. Approval for both the contract change and funding change is requested through one application, FCC Form 471. For applicants seeking approval of a minor modification, Item 7(c) requests approval for both the contract change and the associated change in funding. The instructions for this item explicitly provide that the decision approving a minor contract modification also approves the associated funding changes – "[i]f the minor modification or supplement to an existing contract would add services, in addition to those requested on the previous Form 471, you must include in the present FCC Form 471 application only the *additional* services for which discounts are requested." FCC Form 471 Instructions at 8 (emphasis in the original).

12. *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988), *citing Greene v. United States*, 376 U.S. 149, 160 (1964) and *Brimstone R. Co. v. United States*, 276 U.S. 104 (1928).

Moreover, where the ground rules have changed, the FCC policy is clear that funding should not be denied based on the application of a new more restrictive standard not known by the applicant at the time the request was made. In *Williamsburg-James City*,[13] the Commission determined that it was error for the SLD to deny a funding request because of the applicant's failure to segregate Priority 1 Telecommunications Services from Priority 2 Internal Connections when, at the time the application was filed, the Commission's rules on priority had not been adopted and released. This case is even more egregious in that the SLD applied the New Policy published five months after the minor contract change request was filed in lieu of the Old Policy in effect at the time the modification was made and the request was filed.

Even if not expressly subject to Administrative Procedure Act ("APA") requirements, certainly SLD procedures governed by FCC rules should be subject to basic APA procedural requirements in the interests of fairness to all parties and sound administrative practices. The New Policy not only sets forth new minimum requirements to make a post-commitment change, but also establishes new application procedures to be used in seeking approval. Accordingly, under the clear standards articulated by the FCC in Williamsburg-James City and similar cases, contract modifications requested prior to the public announcement of the New Policy should be processed and judged pursuant to the Old Policy on which the parties relied in undertaking the modification. As the Court of Appeals has cautioned with respect to another agency's reliance on non-public standards to determine what constitutes an impermissible substance, "a complicated regulatory regime . . . cannot function effectively unless citizens are given fair notice of their obligations." Massachusetts v. Blackstone Valley Electric Co., 67 F.3d 981, 991 (1st Cir. 1995).

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13. *Request for Review of Decision by Williamsburg-James City Public Schools*, 14 FCC Rcd. 20152 (1999) (Williamsburg-James City); and *Request for Review by Bonner Springs Unified School District* #204, DA 00-1044, released May 17, 2000, attached as Exhibits D and E. This principle has been applied in over 14 cases remanded to the SLD due to the retroactive application by SLD of a new policy to applications filed in reliance on the pre-existing standard.

IV. Request for Expedited Relief

The following compelling circumstances require a prompt resolution of this issue. The contract modification has been made in order to expand the capacity of internal connections within classrooms of the 780 schools covered by the contract serving over 300,000 students. The modification is necessary to accommodate a significantly greater number of classroom computers than DOE anticipated it would be able to purchase when the contract was originally made. Puerto Rico currently has a student-to-computer ratio of 17 to 1, which is well behind the national mainland average of 12 to 1. Under DOE's Comprehensive Technology Plan, approximately $500,000,000 is being invested by Puerto Rico in new technology to support a new Internet-based curriculum program requiring a 5 to 1 student-to-computer ratio.

As a result of additional local funding, approximately 20,000 more classroom computers than initially envisioned have been purchased by DOE and are scheduled to be delivered later this month.[14] These additional computers, however, will not be Internet connected unless the contract modification is allowed by the SLD. DOE could include these connections as part of its upcoming program Year 4 (July 1, 2001 - June 30, 2002) application, but this would significantly delay funding, which is unacceptable to DOE. Approximately 20,000 computers, unconnected to the Internet, would sit largely idle in the classroom and 100,000 students (based on the desired 5 to 1 student-to-computer ratio) will lose the benefit of DOE's new Internet-based curriculum until the new funding could be approved and implemented some time in late 2001 at the earliest. Because additional internal connections are fundable, it makes no sense to prohibit immediate funding by means of a contract modification.[15]

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14. In addition, DOE has been able to acquire approximately 40,000 lap-top units used by teachers in implementing DOE's new Internet-based curriculum. The additional internal connections will also be used to support these new lap-top units.

15. In one recent appeal, for example, the Commission acted to allow another type of post-contract change (the substitution of a new service provider) far more substantial than the minor change at issue here based on "the Commission's express goal of affording schools and libraries maximum flexibility to choose the offering that meets their needs most effectively and efficiently." In the

(continued...)

In addition, $1.2 million in approved local funding for the additional internal connections will be endangered if an expeditious decision is not reached. The Commonwealth's local funding process parallels that of the Universal Service program in that funding not used in the approved funding year is not automatically carried over into the next funding year. Although the DOE can re-apply for these local funds for the next budget year, it has no absolute guarantee that the Commonwealth will reallocate the $1.2 million for DOE purposes. It is always possible that other state agencies and priorities could supercede any DOE's funding request.

For these reasons, the DOE and DRC request the Commission to remand this matter to the SLD with instructions to process the minor contract modification request promptly pursuant to the Old Policy in effect at the time the modification was made and request was filed, providing for adjustments in funding for minor contract modifications allowable under local law or the cardinal change doctrine.

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15. (...continued)
Matter of Request for Review of Decision by Copan Public Schools, Copan, Oklahoma, FCC 00-100, March 16, 2000. This same overriding principle should apply in this appeal.

Respectfully submitted,

DEPARTMENT OF EDUCATION OF THE
COMMONWEALTH OF PUERTO RICO

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October 11, 2000

EXHIBIT A

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SCHOOLS & LIBRARIES DIVISION

Ellen Wolfhagen
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September 11, 2000

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Re: DRC Corporation, SPIN No. 143012559

Dear Messrs. Lavergne and Woodworth:

This is in response to your letter of April 10, 2000, requesting guidance with respect to a proposed minor contract modification, which would affect three Funding Requests (FRNs 296610, 297479 and 297481) in the Puerto Rico Department of Education Year 2 Form 471 application.

After consideration of the very thorough documentation that you supplied with your request, and after consultation with the rest of the SLD management team, I must regretfully inform you that the request you have submitted must be denied. My reasons for this are explained below, and are consistent with the conversations that we have had on this matter.

Minor Modification

I think it is important to note that the FCC discussion of minor modifications and cardinal changes to contracts[1] addresses only whether such changes need to be re-bid before entering into an agreement to adopt the modification, not whether the modification constitutes an acceptable post-commitment change of service. Although you have established that the change requested would be within the (very general) scope of the original request for services, that is simply one consideration in determining whether a proposed change of service is allowable.

[1] In re: Federal-State Joint Board on Universal Service, Fourth Order on Reconsideration, CC Docket No. 96-45, FCC 97-420, ¶223 *et seq.* (1997) (hereinafter "Fourth Order").

Service Reviews

As I have stated in the past, the SLD does a rigorous review of requested services to ensure that only eligible services are being supported with Universal Service Fund discounts. In order to assure the integrity of that process, we allow only those post-commitment changes to the application that perform the same functionality. That means, for example, that we would consider a change to the Internet access FRN to accommodate a faster connection rate at the same cost.

As pointed out in your letter and the supporting documentation, the original service request included both recurring and non-recurring portions. Your request is to reallocate approximately $12.9 million (pre-discount) of the originally approved $15.9 million from recurring services (T-1 lines and Internet access) to non-recurring equipment costs. Clearly, such a change exceeds our current position, as stated above. Due to this change in functionality, your request to change services on Funding Request Numbers 296610m 297479 and 297481 is hereby denied.

You may consider this letter as a formal decision by the SLD. Should you decide to appeal this decision, you may do so by filing an appeal request within 30 days of the date of this letter, citing CC Docket Nos. 96-45 and 97-21, with the Federal Communications Commission, at Office of the Secretary, 445 12th Street, SW; Room TW-A325; Washington, D.C. 20554.

Sincerely,

Ellen Wolfhagen by Tracy Isaac

Ellen Wolfhagen
Schools and Libraries Division
Director, Service Provider Support

EXHIBIT B

What's New at SLD

Helping Schools and Libraries Access a World of Information

Schools and Libraries Division

September 2000

Please click on the topic below to view the most recent announcements:

- **Terms for Six USAC Board of Directors Expire on December 31, 2000** (9/20/2000)
- **Form 471 Filing Window for Year 4** (9/18/2000)
- **US Department of Education Releases Report on E-Rate** (9/12/2000)
- **Certain Year 3 Applicants Permitted to Refile Under Special Waiver** (9/12/2000)
- **Post Commitment Change in Products and/or Services** (9/1/2000)
- **The SLD Guide to Service Provider Participation in the E-Rate** (8/4/2000)
- **Reminder: Select Your Funding Year 3 Invoice Form with Care!** (8/1/2000)
- What's New Archives...

Form 471 Filing Window for Year 4 (9/18/2000) Top of Page

The E-rate application cycle for Funding Year 4 (July 1, 2001 - June 30, 2002) will feature a window opening date in early November 2000 and a window closing date in mid-January 2001. All funding requests received within the window will be considered as having been received simultaneously.

The specific opening and filing dates will be posted here and disseminated when the information becomes available.

As in Year 3, the window opening and closing dates will apply only to the filing of the FCC Form 471; the FCC Form 470 for Year 4 may be filed now. If you are filing Form 470 for Year 4 electronically on this web site, make sure you select the correct Funding Year: 07/01/2001 - 06/30/2002.

US Department of Education Releases Report on E-Rate (9/12/2000) Top of Page

Yesterday, US Department of Education released a report on the E-Rate, entitled "E-Rate and the Digital Divide: A Preliminary Analysis from the Integrated Studies of Educational Technology." This report concludes that the program is achieving its legislative intent, with support going to poorer communities. The full text of the report can be found at http://www.ed.gov/offices/OUS/eval/elem.html#technology

Certain Year 3 Applicants Permitted to Refile Under Special Waiver (9/12/2000) Top of Page

A number of applicants were identified in the FCC Order released on August 11, 2000 (FCC 00-260) which pertained to the Year 3 filing window. These applicants were given a special waiver to refile Forms 470 by September 11, 2000 and properly complete and file Forms 471 by December 11, 2000. The SLD will consider such Forms 471 filed by these applicants as if they were received within the original filing window that closed on January 19, 2000.

The complete list of the applicants given this special waiver can be found under the Service Provider Information section of the Vendor Area of the SLD website. You may also click here to view the list.

Post Commitment Change in Products and/or Services (9/1/2000) Top of Page

Applicants and service providers have approached the Schools and Libraries Division (SLD) to request the ability to change products and/or services indicated on the Item 17 attachment for Funding Years (FY) 1 and 2 or Item 21 for FY 3 (and future FYs) to a Form 471. In certain limited circumstances, the SLD will allow changes in products and/or services after fund commitment.

The SLD will view these limited changes in products and/or services as minor contract modifications. These changes may be required if a service provider is currently unable to provide some of the products and/or services indicated in a Form 471 because the products and/or services are no longer offered. Service providers have also informed the SLD that, in certain circumstances, they are now able to provide better products and/or services for less cost due to technological advances. Allowable changes might be one-time costs such as purchase charges for equipment or monthly costs for services such as Internet access. A change in service might occur when a service provider upgrades the service provided to the school or library, for example, by converting from dial-up access to dedicated connection, such as T1. If the service change meets the criteria below, it would be approved.

Please note that the product/service changes discussed here can not involve a change in the service provider. Procedures for changing service providers can be found at the SLD website <www.sl.universalservice.org>, Reference Area, Spin Changes and Correction Procedures.

Minimum Requirements

In accordance with the definition and the rules for minor contract modifications, the SLD requires that one of the following two parameters be met for service changes:

1. When a product and/or service listed in the original contract is no longer available, a product that performs basically the same function may be substituted; or
2. When an upgraded product and/or service is available, the upgraded product and/or service may be substituted for the original product and/or service if the upgraded product and/or service performs basically the same functions as the original product and/or service. The upgraded product and/or service may perform those functions in an improved fashion, e.g., operate at higher speeds or be easier to use. The upgraded product and/or service must perform basically the same function as the product and/or service submitted in the original Item 17 (FY2) or Item 21 (FY3) attachments.

In all instances, product and/or service substitutions will only be permitted if:

- They will not result in an increase in price for the products and/or services;
- They are consistent with state and local bidding laws and the terms and conditions of the original contract; and
- The substituted product and/or service does not have a higher percentage of costs associated with ineligible functions than the original product and/or service. For example, if the products/services originally requested contained both eligible and ineligible products and/or services, the substituted services/products, if bundled, must contain the same, or smaller, ratio of ineligible products and/or services to total.

In certain limited circumstances, the change or substitution in products and/or services may reduce the cost to the applicant, hence reducing the amount of universal service requested. Although this money is now essentially "freed up," applicants will not be permitted to re-allocate these funds elsewhere, or purchase additional product and/or service, or increase the quantity of these specific products and/or services. Applicants should notify SLD of "freed up" funds by filing a Form 500, upon notification of the approved substitution request.

Process:

1. Service providers must submit to the SLD a list of products and/or services that their eligible customers wish to change or upgrade. This list must indicate the 'from' and 'to' for each product and/or service, by manufacturer, model and cost of each item for which substitution is requested.
2. The SLD will determine the eligibility of the substituted product and/or service.
3. Once the permissibility of the proposed changes has been determined, the Manager - Products & Services will provide a letter outlining the approval or denial of changes to the service provider.
4. When the service provider has received that approval letter, it should provide copies to affected applicants, who then should submit supplemental Forms 471 to the SLD, as described below.
5. SLD will send approval letters to applicants who submit the proper documentation.

Service providers and applicants should work together to provide the proper documentation to the SLD regarding the proposed change in products and/or services. Service providers who have received approval for the change of products and/or services are required to send a copy of the letter to all applicants wishing to make the same substitutions. Any applicant who wishes to make approved substitutions must submit a supplemental Form 471 with Block 2, Item 7 checked, indicating to the SLD that this application updates a previously submitted application with a minor contract modification. The SLD will not require the entire supplemental Form 471 to be filled out. However the applicant is required to complete Blocks 1, 2 and 6, and to include a list of all of the FRNs for that service provider for which substitutions are proposed. In addition, a copy of the approval letter from the Manager - Products & Services to the service provider must be attached to the supplemental Form 471. Substitutions will only be processed for products and/or services identified on the SLD approval letter. Any supplemental Form 471 application for change submitted without the approval letter attached will be denied and returned to the applicant.

Service providers wishing to submit requests for service changes and/or substitutions should contact Louis J. Tiboldo, Manager - Products & Services by telephone at 973-884-8016. Schools, libraries and service providers requesting general information about the process should call 888-203-8100.

The SLD Guide to Service Provider Participation in the E-Rate (8/4/2000) Top of Page

SLD is launching a new manual for service providers: "The SLD Guide to Service Provider Participation in the E-Rate." The first two chapters of this manual are **now available**.

This Guide, with detailed information for service providers on how to participate in the E-rate program, is being released in sections.

Now available: Chapter 8, "**Invoicing USAC and Reimbursement**," and Chapter 9, "**Service Provider Role in BEAR Process**."

Questions about the manual, or other topics of interest to service providers, can be addressed to serviceprovider@universalservice.org

Reminder: Select Your Funding Year 3 Invoice Form with Care! (8/1/2000) Top of Page

As noted with the introduction of the revised Form 486, ***See SLD Releases Revised FCC Form 486 and New FCC Form 500***, invoice payments for Funding Year 3 will be based consistently on the type of invoice form selected for the first invoice. So, if FCC Form 472, Billed Entity Applicant Reimbursement (BEAR) form, is submitted for the first payment, the BEAR form must be used for the entire funding year. Conversely, if FCC Form 474, Service Provider Invoice Form (SPIF), is submitted for the first payment because discounts have been provided by the Service Provider, the SPIF form must be used for the entire funding year.

Therefore, Applicants and Service Providers should work together, before the first invoice is submitted, to determine which type of form shall be used. Invoice forms received that are not the

same type of invoice form as the first invoice submitted for Funding Year 3 will be rejected.

Invoicing for Funding Year 1 and 2 is unchanged.

PREVIOUS PAGE

What's New Archive

2000: Jan | Feb | Mar | Apr | May | Jun | Jul | Aug

1999: Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec

1998: No data available | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec

Questions about the SLD Program? Call our Client Service Bureau at (888) 203-8100.

Please direct site questions and comments to: comments@universalservice.org

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EXHIBIT C

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
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

FOURTH ORDER ON RECONSIDERATION IN CC DOCKET NO. 96-45, REPORT AND ORDER IN CC DOCKET NOS. 96-45, 96-262, 94-1, 91-213, 95-72

Adopted: December 30, 1997 **Released:** December 30, 1997

By the Commission (Commissioners Ness and Powell issuing separate statements; Commissioner Furchtgott-Roth dissenting and issuing a statement):

TABLE OF CONTENTS

PARAGRAPH

I. INTRODUCTION 1

II. DEFINITION OF UNIVERSAL SERVICE: SERVICES THAT ARE ELIGIBLE FOR SUPPORT 8
- A. Local Calling Provided by Satellite Companies 8
- B. Provision of E911 by MSS Providers 11
- C. Voice Grade Access to the Public Switched Network 15

III. CARRIERS ELIGIBLE FOR UNIVERSAL SERVICE SUPPORT 17
- A. Designation of Eligible Carriers 17
- B. Eligibility Designation Date 21

that the school, library, or health care provider seeks.[679] The Commission required the Administrator to post this information on a website for all potential providers to review.[680]

a. Minor Modifications to Contracts

1. Pleadings

223. USTA argues that there are circumstances in which requiring eligible schools, libraries, and rural health care providers to undertake a full competitive bid process is unduly burdensome.[681] For example, USTA states that "a school may need to add a few additional lines to an already existing contract and it would appear burdensome to require it to adhere to the entire bid process."[682] USTA suggests that the Commission develop a streamlined application process to address such situations.[683] No parties commented on USTA's petition with respect to this issue.

2. Discussion

224. We agree with USTA that requiring a competitive bid for every minor contract modification would place an undue burden upon eligible schools, libraries, and rural health care providers. Such eligible entities should not be required to undergo an additional competitive bid process for minor modifications such as adding a few additional lines to an existing contract. We, therefore, conclude that an eligible school, library, or rural health care provider will be entitled to make minor modifications to a contract that the Schools and Libraries Corporation or the Rural Health Care Corporation previously approved for funding without completing an additional competitive bid process. We note that any service provided pursuant to a minor contract modification also must be an eligible supported service as defined in the *Order* to receive support or discounts.[684]

225. In the *Order*, the Commission explained that the universal service competitive

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[679] *Order*, 12 FCC Rcd at 9029, 9133-9134.

[680] *Order*, 12 FCC Rcd at 9078, 9133-9134.

[681] USTA petition at 22.

[682] USTA petition at 22.

[683] USTA petition at 22.

[684] *Order*, 12 FCC Rcd. at 9005-9023, 9098-9110.

bid process is not intended to be a substitute for state, local, or other procurement processes.[685] Consistent with this observation, we conclude that eligible schools, libraries, and rural health care providers should look to state or local procurement laws to determine whether a proposed contract modification would be considered minor and therefore exempt from state or local competitive bid processes. If a proposed modification would be exempt from state or local competitive bid requirements, the applicant likewise would not be required to undertake an additional competitive bid process in connection with the applicant's request for discounted services under the federal universal service support mechanisms. Similarly, if a proposed modification would have to be rebid under state or local competitive bid requirements, then the applicant also would be required to comply with the Commission's universal service competitive bid requirements before entering into an agreement adopting the modification.

226. Where state and local procurement laws are silent or are otherwise inapplicable with respect to whether a proposed contract modification must be rebid under state or local competitive bid processes, we adopt the "cardinal change" doctrine as the standard for determining whether the contract modification requires rebidding. The cardinal change doctrine has been used by the Comptroller General and the Federal Circuit[686] in construing the Competition in Contracting Act (CICA)[687] as implemented by the Federal Acquisition Regulations.[688] The CICA requires executive agencies procuring property or services to "obtain full and open competition through the use of competitive procedures."[689]

227. Because CICA does not contain a standard for determining whether a modification falls within the scope of the original contract, the Federal Circuit has drawn an analogy to the cardinal change doctrine.[690] The cardinal change doctrine is used in connection with contractors' claims that the Government has breached its contracts by ordering changes

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[685] *Order*, 12 FCC Rcd at 9079, 9134.

[686] 31 U.S.C.A. § 3554(a)(4)(1996) gives the Comptroller General authority to determine whether solicitations of contracts by executive agencies, their proposed awards, or awards comply with statute and regulation. However, this jurisdiction is shared with the district courts of the United States and the Court of Federal Claims. 31 U.S.C.A. § 3556 (1996); 28 U.S.C.A § 1491(b)(1996); *see also* 41 U.S.C.A § 253(1996).

[687] 41 U.S.C. § 253(a)(1)(A) (1994).

[688] The FAR is issued as Chapter 1 of Title 48, CFR.

[689] The CICA is inapplicable here. We reference this statute and the decisions construing the open competition requirement under 41 U.S.C. § 253(a)(1)(A) only to inform our understanding as to when a contract modification may be deemed to fall within the scope of an original competition and when a contract, as modified, materially departs from the scope of the original competition.

[690] *GraphicData, LLC v. United States*, 37 Fed.Cl. 771, 781 (Fed. Cl. 1997) (citation omitted).

that were outside the scope of the changes clause.[691] The cardinal change doctrine looks at whether the modified work is essentially the same as that for which the parties contracted.[692] In determining whether the modified work is essentially the same as that called for under the original contract, factors considered are the extent of any changes in the type of work, performance period, and cost terms as a result of the modification.[693] Ordinarily a modification falls within the scope of the original contract if potential offerors reasonably could have anticipated it under the changes clause of the contract.[694]

228. The cardinal change doctrine recognizes that a modification that exceeds the scope of the original contract harms disappointed bidders because it prevents those bidders from competing for what is essentially a new contract. Because we believe this standard reasonably applies to contracts for supported services arrived at via competitive bidding, we adopt the cardinal change doctrine as the test for determining whether a proposed modification will require rebidding of the contract, absent direction on this question from state or local procurement rules. If a proposed modification is not a cardinal change, there is no requirement to undertake the competitive bid process again.[695]

229. An eligible school, library, or rural health care provider seeking to modify a contract without undertaking a competitive bid process should file FCC Form 471 or 466, "Services Ordered and Certification," with the School and Libraries Corporation or the Rural Health Care Corporation, respectively, indicating the value of the proposed contract modification so that the administrative companies can track contract performance.[696] The school, library, or rural health care provider also must demonstrate on FCC Form 471 or 466 that the modification is within the original contract's change clause or is otherwise a minor modification that is exempt from the competitive bid process.[697] The school, library, or rural

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[691] *See* American Air Filter Co. - DLA Request for Reconsideration, 57 Comp. Gen. 567, 572 (1978), 78-1 CPD para. 443 at 9-10.

[692] *See Graphicdata, LLC supra; AT&T v. WILTEL*, 1 F.3d 1201, 1205 (Fed. Cir. 1993); *Cray Research v. Dept. of Navy*, 556 F. Supp. 201, 203 (D.D.C. 1982); *CAD Language Systems*, 68 Comp. Gen. 376 (1989), 89-1 CPD para. 364.

[693] *Information Ventures, Inc.*, B-240458, Nov. 21, 1990, 90-2 CPD para. 414.

[694] *Master Security, Inc.*, B-274990.2, Jan. 14, 1997, 97-1 CPD para. 21; *Air A-Plane Corporation v. United States*, 408 F.2d 1030 (Ct. Cl. 1968); *Hewlett Packard Co.*, B-245293, Dec. 23, 1991, 91-2 CPD para. 576.

[695] *See, e.g., MCI Telecommunications Corp.*, B-276659.2, Sept. 29, 1997, 1997 WL 602194 (C.G.) at 13;

[696] *See* USTA Oct. 3 *ex parte* at 2.

[697] *Graphicdata, LLC supra, citing AT&T Communications, Inc. v. WilTel*, 1 F.3d 1201, 1205 (Fed.Cir. 1993).

health care provider's justification for exemption from the competitive bid process will be subject to audit and will be used by the Schools and Libraries Corporation and Rural Health Care Corporation to determine whether the applicant's request is, in fact, a minor contract modification that is exempt from the competitive bid process.[698] We emphasize that, even though minor modifications will be exempt from the competitive bidding requirement, parties are not guaranteed support with respect to such modified services. A commitment of funds pursuant to an initial FCC Form 471 or Form 466 does not ensure that additional funds will be available to support the modified services. We conclude that this approach is reasonable and is consistent with our effort to adopt the least burdensome application process possible while maintaining the ability of the administrative companies and the Commission to perform appropriate oversight.

b. Master Contracts

1. Pleadings

230. USTA points out that schools, libraries, and rural health care providers in some states may be able to purchase services from a master contract at rates negotiated by a third party. USTA defines a "master contract" as a contract negotiated with a service provider by a third party, the terms and conditions of which are then made available to other entities that purchase directly from the provider.[699] According to USTA, "the decision to purchase from the master contract may be independent of the competitive bid process, although the rates offered via that contract may in fact be the most competitive, lowest rates available."[700] USTA notes that there is typically no contractual, financial, or management relationship between the third party that negotiates a master contract and the entity that purchases and receives the service under that master contract.[701] USTA asks the Commission to clarify: (1) that eligible entities that choose to obtain supported services by purchasing them from a master contract may do so without going through the competitive bid process; and (2) whether a third party that seeks to negotiate a master contract for services that eligible entities are expected to purchase would be required to adhere to the universal service competitive bid requirements, or in the case of existing contracts, be required to submit those contracts to the

[698] *Graphicdata, LLC v. United States supra, citing Executive Bus. Media, Inc. v. United States, 3 F.3d at 763 n.3* (4th Cir. 1993).

[699] *See* Letter from Hance Haney, USTA, to Chmn. Reed Hundt, FCC, dated October 3, 1997 (USTA Oct. 3 *ex parte*) at 1.

[700] USTA petition at 22-23.

[701] *See* USTA Oct. 3 *ex parte* at 1.

EXHIBIT D

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
Williamsburg-James City County Public Schools, Williamsburg, Virginia	)	File No. SLD-90495
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

ORDER

Adopted: October 14, 1999 **Released: October 15, 1999**

By the Commission:

1. The Commission has under consideration a Letter of Appeal filed on May 26, 1999 by the Williamsburg-James City County Schools (Williamsburg) seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator). Williamsburg seeks review of the SLD's denial of its application for discounts for telecommunications services under the schools and libraries universal service support mechanism.[1] USAC filed comments in response to this appeal on August 17, 1999. For the reasons set forth below, we grant the Letter of Appeal to the extent provided below.[2]

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for

[1] Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

[2] 47 C.F.R. §§ 54.502, 54.503.

discounts for eligible telecommunications services, Internet access, and internal connections. As the Commission has previously explained, the universal service program has been administered to direct support toward the most economically disadvantaged schools and libraries. Under the program's discount matrix, the most economically disadvantaged schools are eligible for the greatest levels of discount. In the *Fifth Order on Reconsideration*, the Commission established new rules to govern how discounts will be allocated when available funding is less than total demand and a filing window is in effect.[3] These rules provide that requests for telecommunications and Internet access services for all discount categories shall receive first priority for available funds (Priority One services), and requests for internal connections shall receive second priority (Priority Two services). Thus, when total demand exceeds the total support available, the SLD is directed to give first priority for available funding to telecommunications services and Internet access. Any funding remaining is allocated to the requests for support for internal connections beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix, which reflects both an applicant's urban or rural status and the percentage of its students eligible for the school lunch program.[4] Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their requests for internal connections. To the extent funds remain, the Administrator would continue to allocate funds for discounts to applicants at each descending single discount percentage, *e.g.*, eighty-nine percent, eighty-eight percent, and so on. As USAC explains in its comments, Year One funds were sufficient to fund internal connections (Priority Two services) with discount percentages of 70 percent and higher.[5]

3. As indicated in its FCC Form 471, dated April 10, 1998, Williamsburg requested funding for, among other things, telecommunications services provided by Bell Atlantic. Williamsburg specified (in a block 5, section fifteen attachment, lines one through five) the specific services requested. These services include: 1) basic telephone service; 2) 16 ISDN lines; 3) 16 T-1 lines; 4) dedicated Internet connection, and 5) network management services and router configuration. By letter dated February 9, 1999, the SLD denied funding for these services. The SLD's determination was based on the conclusion that "[t]he category of service changed from Telecommunications Service to Internal Connections," and that the "[f]unding cap will not provide for Internal Connections . . . ."[6]

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[3] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Reconsideration Order, 13 FCC Rcd 14915, 14934 at para. 31 (1998) (*Fifth Reconsideration Order*).

[4] *Fifth Order on Reconsideration*, 13 FCC Rcd at 14938, para. 36.

[5] USAC comments at 3.

[6] Letter from Schools and Libraries Division of USAC to Steven Herborn, Williamsburg-James City Schools, dated February 9, 1999 at 6.

4. By letter dated February 26, 1999, Williamsburg appealed this decision to the SLD Administrator, who on April 29, 1999, issued a Decision on Appeal upholding the original determination made by SLD to deny funding for the telecommunications services requested. As the Decision on Appeal explains:

> Services the applicant listed as telecommunication [sic] included some internal connections services such as Cisco routers and wiring. These funding requests were categorized as internal connections services so as to avoid the possibility of treating priority two services (internal connections) as priority one services (telecommunications, dedicated and Internet access services). Since internal connections are funded only at the 70% level or above, these services could not be supported for this funding period.[7]

5. In its appeal to the Commission, Williamsburg notes that SLD granted funding for the Internet access portion of Williamburg's Bell Atlantic contract, but "denied funding for its basic telephone service and data communications lines."[8] Williamsburg contends that SLD, "contrary to policy, combined individual funding request lines of our Form 471 block 5 into a consolidated Funding Request Number (FRN) in their denial."[9] Further, Williamsburg notes that "[i]n doing this, the SLD included 'Internal Connections' (Network Management/Router Configuration component of our Bell Atlantic contract) with the 'Telecommunications Services' (basic telephone, 16 ISDN lines and 16 T1 lines) portion of the same contract," and "after the SLD combined our funding request lines, they decided to deny all discounts based on the relatively small 'Internal Connections' component."[10]

6. As described above, the SLD, in an effort to ensure that the priority rules were not violated, reclassified Priority One services in circumstances where they were combined in the same FRN with Priority Two services. This reclassification resulted in funding denials for services that, but for the fact that they were commingled with Priority Two services, would have been eligible for universal service discounts. The *Fifth Order on Reconsideration*, which first set forth the Commission's rules of priority, however, was adopted on June 22, 1998. Williamsburg submitted its FCC Form 471 on April 10, 1998. Williamsburg could not have been aware of the rules of priority at the time it filed its

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[7] Administrator's Decision on Appeal, dated April 29, 1999 at 1.

[8] Williamsburg letter of Appeal at 2.

[9] *Id.*

[10] *Id.*

application. Moreover, because the Commission gave no indication prior to adoption of the *Fifth Reconsideration Order* of its intent to distinguish among Priority One and Priority Two services, Williamsburg could not have been aware of the need to carefully segregate its service requests. Under these circumstances, we believe that the Priority One and Priority Two services listed in Williamburg's Form 471 should be considered separately and that Williamsburg is entitled to full funding for all appropriate Priority One services. Therefore, we will remand Williamsburg's application to the SLD for reprocessing of its application and issuance of a new funding commitment decision letter, based on Williamsburg's Form 471 and any further consultations with the applicant that may be necessary.

7. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151-154 and 254, and sections 1.3, 54.505, 54.507(f), 54.511, 54.518, and 54.719, 47 C.F.R. section 1.3, 54.505, 54.507(f), 54.511, 54.518, and 54.719, the request for review filed by the Williamsburg-James City Public Schools IS GRANTED and Williamsburg's application IS REMANDED to the SLD for further consideration in light of this decision.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

EXHIBIT E

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Bonner Springs Unified School District #204 Bonner Springs, Kansas	)	File No. SLD 32985
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

ORDER

Adopted: **May 16, 2000** **Released:** **May 17, 2000**

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Letter of Appeal filed on July 2, 1999, by Bonner Springs Unified School District #204 (Bonner Springs), Bonner Springs, Kansas, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).[1] Bonner Springs seeks review of the SLD's denial of its application for discounts under the schools and libraries universal service support mechanism.[2] For the reasons set forth below, we grant in part and deny in part the Letter of Appeal.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.[3] The universal service program has been administered to direct support toward the most economically disadvantaged schools and libraries. Under the program's discount matrix, the

[1] *See* Letter of Appeal of Ken Clark, Bonner Springs Unified School District #204, to Federal Communications Commission, filed July 2, 1999 (Letter of Appeal).

[2] Section 54.719 (c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719 (c).

[3] 47 C.F.R. §§ 54.502, 54.503.

most economically disadvantaged schools are eligible for the greatest levels of discount.[4] In the *Fifth Reconsideration Order*, the Commission established new rules to govern how discounts will be allocated when available funding is less than total demand and a filing window is in effect.[5] These rules provide that requests for telecommunications and Internet access services for all discount categories shall receive first priority for available funds (Priority One services), and requests for internal connections shall receive second priority (Priority Two services). Thus, when total demand exceeds the total support available, the SLD is directed to give first priority for available funding to telecommunications services and Internet access. Any funding remaining is allocated to the requests for support for internal connections beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.[6] Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their requests for internal connections. To the extent funds remain, the Administrator would continue to allocate funds for discounts to applicants at each descending single discount percentage, *e.g.*, eighty-nine percent, eighty-eight percent, and so on. During the first funding year (January 1, 1998 - June 30, 1999) of the support mechanism, SLD granted all approved requests for discounts for telecommunications services and Internet access and granted all approved requests for internal connections down to the 70 percent discount level.

3. By letter dated February 18, 1999, the SLD denied Bonner Springs' request for discounts, stating that the telecommunications services identified in its application were re-classified as internal connections.[7] The SLD determined that, because Bonner Springs was only eligible for discounts below the 62 percent level, Bonner Springs' request for discounts for internal connections could not be granted as internal connections were only funded at the 70 percent level or above.[8] Bonner Springs requested reconsideration of SLD's decision by letter, filed March 15, 1999.[9] On June 4, 1999, the SLD affirmed its initial funding decision, indicating that services listed by Bonner Springs as telecommunications services included charges for internal connections services, specifically, installation of an integrated data and video system.[10]

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[4] 47 C.F.R. § 54.507(g).

[5] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915, 14934, para. 31 (1998) (*Fifth Reconsideration Order*).

[6] *Id.* at 14938, para. 36. The schools and libraries discount matrix reflects both an applicant's urban or rural status and the percentage of its students eligible for the national school lunch program. 47 C.F.R. § 54.505.

[7] Letter from the Universal Service Administrative Company, to Ken Clark, Bonner Springs Unified School District #204, dated February 18, 1999.

[8] *Id.*

[9] Letter from Ken Clark, Bonner Springs Unified School District #204, to Schools and Libraries Corporation, filed March 15, 1999 (March 15, 1999 Letter).

[10] Letter from Universal Service Administrative Company to Ken Clark, Bonner Springs Unified School District #204, dated June 4, 1999 (Administrator's Decision on Appeal).

It further indicated that where a particular funding request included some internal connections, the entire funding request was recategorized by SLD as internal connection services so as to "avoid the possibility of treating Priority Two services (internal connections) as Priority One services (telecommunications, dedicated and Internet access services)."[11] SLD reiterated that, because Bonner Springs had not shown a discount level of 70 percent or above, internal connection services could not be supported for year one of the program. In response, Bonner Springs filed the instant Letter of Appeal, again requesting reconsideration of SLD's decision to classify the requested services as internal connections rather than telecommunications services. Bonner Springs states that its application requested funding for the provision of telecommunications services for wide area network ("WAN") connectivity through leased lines, and that it did not request funding for equipment that could be construed as internal connections.[12]

4. A review of the record reveals that Bonner Springs' March 15, 1999 letter enclosed an addendum describing the services to be provided in connection with its request. Contrary to Bonner Springs' contentions, the addendum states, *inter alia*, that support and maintenance for internal connections are included in the costs for service listed.[13] The addendum also specifically states that the service provider's proposed one time fees help cover the costs of items such as routers, multiplexers, switches, installation, and servers.[14] These items constitute internal connections. Accordingly, we affirm SLD's determination that Bonner Springs' application included a request for discounts for internal connection services.

5. In finding that SLD was correct in concluding that Bonner Springs' request for discounts covered internal connections, we must also determine whether or not Bonner Springs' application should have been denied in its entirety because requests for discounts for telecommunications services and internal connections were commingled within a single funding request. The SLD denied funding for all of the Priority One services in the disputed request pursuant to the rules of priority set out in the *Fifth Reconsideration Order*.

6. The record reflects, however, that Bonner Springs filed its FCC Form 471 on April 25, 1998. The Commission did not release the *Fifth Reconsideration Order* setting out the applicable schools and libraries rules of priority until June 22, 1998. In *Williamsburg-James City*,[15] the Commission determined that, in cases where, as here, an FCC Form 471 was submitted before the establishment of the Commission's rules of priority, applicants could not have been aware of the need to segregate carefully their service requests. Consequently, the Commission held that, in appeals addressing such circumstances, applications should be remanded to SLD for reprocessing, with Priority One and Priority Two services being considered

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[11] *Id.*

[12] Letter of Appeal at 2.

[13] March 15, 1999 Letter, Addendum at 1.

[14] *Id.*, Addendum at 2.

[15] *Request for Review of the Decision of the Universal Service Administrator by Williamsburg-James City Public Schools*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 20152 (1999) (*Williamsburg-James City*).

1870 separately on their own merits. We, therefore, remand Bonner Springs' application to SLD, and direct SLD to reconsider Bonner Springs' FCC Form 471 and, if warranted, to issue a new funding commitment decision letter providing discounts for all appropriate Priority One services requested by Bonner Springs.[16]

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722 (a), that the Letter of Appeal filed by Bonner Springs Unified School District #204, Bonner Springs, Kansas on July 2, 1999 IS GRANTED to the extent described herein and is otherwise DENIED.

9. IT IS FURTHER ORDERED, that the Administrator IS DIRECTED to implement the decision herein.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey

Carol E. Mattey
Deputy Chief, Common Carrier Bureau

[16] Whether Bonner Springs will be entitled to funding for its priority one services will depend upon the extent that ineligible products and services were included within its request. *See, e.g., Request for Review of the Decision of the Universal Service Administrator by Redwood City School District*, CC Docket Nos. 96-45 and 97-21, Order, DA 99-2616, at para. 5 (Common Carrier Bur. rel. Nov. 22, 1999).

CERTIFICATE OF SERVICE

I, Kerryn Rowe, a secretary at the law firm of Shook, Hardy & Bacon, LLP, do hereby certify that on this 11th day of October, 2000, I have caused to be hand-delivered, copies of the foregoing "**Application For Review**" to the following:

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Kerryn Rowe

*Via U.S. Mail

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