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May 8, 2001

Magalie Salas
Secretary
Federal Communications Commission
445 12th Street SW
Room TW-A325
Washington, DC 20554

RE: In the Matter of Request for Review of the Decision of the Universal Service Administrator FCC Decision Docket DA 00-2700 by Western Heights School District I-41 Under FCC Docket Nos. 96-45 and 97-21

Dear Ms. Salas:

Enclosed, please find the original and four copies of the Request for Review of the Western Heights School District I-41 in the above-referenced matter.

Also attached is a copy of this letter to be stamped with the date received and returned in the self-addressed stamped envelope.

Sincerely,

John D. Harrington

JDH/ajh
enclosures

No. of Copies rec'd 0
List ABCDE

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Before the
Federal Communications Commission
Washington, DC

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In the Matter of:	)	
	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Western Heights School District I-41 Oklahoma City, OK	)	FCC Decision Docket DA 00-2700
	)	
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
Chief, Common Carrier Bureau

REQUEST FOR REVIEW

Pursuant to Subpart I of Part 54 of the Commission's rules, Western Heights School District I-41 ("Western Heights"), by its representative, hereby seeks review of the determination of the Schools and Library Division of the Universal Service Administrative Company ("SLD"), dated April 27, 2001, denying Western Heights' request for funding in Funding Request Number 429028 (Form 471 No. 197613).

I. Issues

A. Whether the SLD's decision not to fund a request for discounts on Redundant Array of Independent Disks (RAID) devices was incorrect in view of Western Heights' assertion that the devices would be used in accordance with the rules governing conditional eligibility set forth in the SLD's Eligible Services List.

B. Alternatively, whether the SLD should have funded the RAID device as a web server or an integral web server component.

1. Whether the test for "internal connections" continues to turn on what the applicant certifies a piece of network hardware *will do,*

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rather than on what the hardware is *capable of doing*, in the applicant's network.

2. **Assuming that the test remains what the applicant certifies the hardware *will do*, whether it matters for E-rate eligibility purposes how many pieces of integrated hardware operating together it takes to perform that function.**

II. Statement of Material Facts

Many are surprised to learn that Western Heights, a small, relatively poor school district on the western edge of Oklahoma City, has one of the most advanced K-12 data/voice/video networks in the country -- and teachers who know how to use it. *See Business @ the Speed of Thought,* Bill Gates, Warner Books, pp 388-391 ("This is not the school district that you might expect to lead the charge into the Information Age. Yet in the last three years the district has overwhelmingly voted three times to spend a total of more than $6.8 million in local funds to create perhaps the leading technology-driven curriculum in the country."). National, cutting edge technology companies routinely use the school district's network as a laboratory to test their latest K-12 networking products.

In the fall of 1999, Western Heights went into the market to procure a web server solution that would be compatible with its sophisticated network and progressive technology plan. Accordingly, and in line with one of the E-rate program's principal objectives, the school district did not specify a particular web server solution, but rather, permitted interested vendors to suggest their own. Ultimately and after careful consideration, Western Heights decided upon a multi-box web server configuration from Dell Computer Corporation that it concluded was best suited to its current and future needs. That solution included a fiber channel RAID (PowerVault 650F).

Thereafter, in Form 471 No. 197613 (Program Year Three Window Period Application), Western Heights applied for E-rate discounts on the Dell multi-box web server, which proved to be far more cost effective than traditional, single-box solutions in Western Heights' unique networking environment. On July 28, 2000, the SLD blocked the district's networking progress and ability to select freely among competing

technologies by issuing a cursory decision letter denying the funding request in its entirety. According to the SLD, the network hardware that Western Heights intended to purchase to serve up web pages failed to qualify for E-rate support as "internal connections."

Western Heights appealed the SLD's initial determination, pointing out among other things that although the network hardware it intended to purchase certainly was not a garden variety, out-of-the-box, web server and tape backup unit, as a practical matter, it was just that. On April 27, 2001, however, the SLD again denied Western Heights' requests for funding. (*See* Attachment). The stated reason was that 30 percent or more of the estimated pre-discount cost was for an "ineligible product." The product that the SLD concluded was ineligible was the Dell PowerVault 650F:

> It should be noted that PowerVault 650F RAID Storage System is a highly scalable fiber channel RAID storage system with dual active redundant controllers. It supports up to 10 fiber channel drives and 11 expansion units. Data storage is not eligible for discount.

3. Discussion

Issue A. Whether the SLD's decision not to fund a request for discounts on a Redundant Array of Independent Disks (RAID) was incorrect in view of Western Heights' assertion that the device would be used in accordance with the rules governing conditional eligibility set forth in the SLD's Eligible Services List.

In its Decision on Appeal, the SLD concluded, and we do not disagree, that the Dell PowerVault 650F ("650F") is a "RAID." For this reason alone, the SLD refused to fund Western Heights' requests for discounts on the 650F. With this determination, of course, we disagree.

The Eligible Services List on the SLD web site dated December 18, 2000 states that a "Hard Disk Array Control" is "the same as RAID, or Redundant Array of Independent Disks, and is eligible if used ***with*** an eligible component." (Emphasis added). The same list states, however, that RAID disk drives are eligible only if used ***in*** an eligible component. (Emphasis added).

The determinative issue, therefore, is whether the SLD meant that the RAID had to be used "with" the eligible component or "in" the eligible component or whether the SLD did not really intend any distinction between the two words at all. This matter, we contend, represents the classic case of a distinction without a difference. Surely the specific hardware's functionality and not its geographical location is the issue upon which E-rate eligibility should turn, especially in a high-tech environment where distance means absolutely nothing.

The single most important fact is that Western Heights made it perfectly clear to the SLD that it intended to use the 650Fs as an integral part of its web server solution. According to the SLD, an eligible web server "stores document files and displays them to users when accessing the server." *See* Eligible Services List. In the Western Heights web server configuration, web server functionality is distributed over three boxes, processing in one, document storage in another, and tape backup in the third. Document files are stored on the 650F and displayed to users when accessed by authorized users. Thus, the 650F, as Western Heights intended to use it, unquestionably satisfied the SLD's tests for an eligible "RAID."

Does the 650F also satisfy what may or may not be a more narrow "used *in* an eligible component" test? We contend that it does. In this instance, the only logical conclusion we can draw is that the issue of "in" versus "with" is insignificantly semantic. Apparently, the SLD itself could not decide or, more likely, did not care about which word to choose. "In" or "with"? Certainly the word "with" makes more sense. Perhaps what the SLD really meant to say was "in conjunction with," as that term certainly would make the most sense in a networking context.

Did Western Heights clearly intend to use the 650Fs "in conjunction with" eligible web server processors? Yes it did, and furthermore, because in this configuration the 650F and the web server processor are so closely integrated that they operate together

as a single, unified web server, we would contend that the 650F will be used "in" an eligible component within the meaning of the SLD's definition.

Accordingly, we urge the Commission to reverse the SLD's decision and to fund fully this FRN. [Alternatively, if the Commission decides to adopt one of the SLD's eligible "RAID" definitions over the other and to construe it very narrowly against the school district, we ask the Commission to suspend the SLD's 30 percent rule and to fund the portion of the FRN that is undisputedly eligible. To hold otherwise would be unfair in these circumstances, as the purpose of the rule, to discourage applicants from filing for ineligible services, would not be furthered.]

Issue B. Alternatively, whether the SLD should have funded the RAID device as a web server or an integral web server component.

The Commission, we believe, never intended the question of "internal connections" eligibility to turn on the number of pieces of hardware that an applicant decides to integrate together to perform an otherwise eligible network function. Therefore, for E-rate eligibility purposes, it makes no difference whatsoever whether an applicant decides to use one, two, or even three boxes worth of hardware to create E-rate eligible web server functionality. Accordingly, for the reasons discussed in more detail below, Western Heights' multi-box web server configuration is eligible for support as an "internal connection," and all of the component hardware should therefore be funded in full.

1. The test for "internal connections" continues to turn on what the applicant certifies a piece of network hardware *will do*, rather than on what the hardware is *capable of doing*, in the applicant's network.

Any given piece of electronic equipment may have numerous capabilities, some of which perform eligible functions and others of which do not. A "computer" is a perfect example. Depending upon how an applicant configures and uses the computer, it could be, for example, an eligible web server, an eligible "PC Attendant Console," or an ineligible workstation. *See* SLD Eligibility List. How the component will be used in the applicant's network, therefore, was, is, and continues to be the key to its eligibility. In

Request for Review by Solomon Schechter Day School Boston, Massachusetts, File No. SLD-132804, CC Docket No. 96-45 and 97-21 (Com.Car. Bureau, rel February 20, 2001), for example, the Commission stated that "under our rules and program precedent, certain components within WAN applications...may be eligible depending on the nature of their use" and remanded the case to the SLD to examine the use of the components at issue.

Therefore, as the test for "internal connections" unquestionably turns on what the applicant certifies a piece of network hardware will do, the fact that Western Heights clearly explained to the SLD that it intended to use the 650F to provide web server functionality, which is eligible, rather than data storage, which is ineligible, should have ended the inquiry right there. If due diligence required the SLD to ask for additional certifications to this effect, it certainly could have requested one.

2. For E-rate eligibility purposes, it makes no difference how many pieces of integrated hardware operating together it takes to perform an eligible function.

In establishing the Schools and Libraries Program, the Commission accorded schools broad discretion to "make their own decisions regarding which technologies would best accommodate their needs, [and] how to deploy those technologies..."[1] Therefore, as a "technology neutral" program, the Commission should not adopt policies that encourage one type of eligible solution over another. As technology continues to evolve and as network hardware becomes increasingly specialized, to restrict an applicant to single-box solutions would do exactly that. For example, Western Heights could have opted for a single-box web server solution by including internal RAIDs, but that solution would not have been the most effective from either a cost or technological perspective.

[1] *Report and Order*, CC Docket No. 96-45 12 FCC Rcd. at 9019.

As discussed above, it is well established that E-rate eligibility turns on the functionality of the hardware solution as a whole. Thus, how many individual pieces of hardware it takes to create that eligible functionality is irrelevant. It follows logically, therefore, that two pieces of equipment that an applicant integrates together to perform an eligible function must both be eligible, even if one or even both standing alone would not be.

In the configuration at issue here, the 650F and the web server processing unit will be integrated together to operate as a single, unified web server. As web servers are eligible for E-rate support, the SLD could have funded Western Heights request for this reason as well. We request, therefore, based on the record before it, that the Commission find the 650F to be eligible for support either an eligible web server or as a component thereof.

IV. Relief Sought

Western Heights requests that the funding decision of the SLD in FRN 429028 be reversed, processed, and funded consistent with published SLD eligibility standards under which web servers are clearly eligible for support.

Respectfully submitted on behalf of
WESTERN HEIGHTS PUBLIC SCHOOLS

By: _____

John D. Harrington
Funds For Learning, LLC
229 North Broadway
Edmond, OK 73034
(405) 341-4140

cc: Joe Kitchens
Western Heights School District I41

Administrator's Decision on Appeal - Funding Year 2000-2001

April 27, 2001

John Harrington
RE: Western Heights School District 41
Funds For Learning, LLC
229 North Broadway
Edmond, OK 73034

Re:	Billed Entity Number:	139844
	Application Number:	197613
	Funding Request Number(s):	429028
	FCC Decision Docket:	DA 00-2700
	Your Correspondence Dated:	August 26, 2000

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year Three Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 30-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 429028
Decision on Appeal: **Denied in full**
Explanation:

- Your appeal stated that, Web Servers are eligible for funding under all published SLD eligibility Standards. SLD determination does not consider the use or context of the device. SLD showed bias in denying this brand of web server components. Also SLD may not deny funding based on internal unpublished eligibility standards inconsistent with its published eligibility standards. You concluded by asking SLD to provide funding for alternative web server configuration if PowerVault devices are ineligible.

- It should be noted that PowerVault 650F RAID Storage System is a highly scalable fiber channel RAID storage system with dual active redundant controllers. It

supports up to 10 internal drives and 11 expansion units. Data storage is not eligible for discount. Your request for an alternative web server configuration is denied as amendments to Forms 471 already filed can only be made before the close of the application window.

- Your Form 471 application included costs for the following ineligible products: PowerVault 650F. FCC rules provide that discounts may be approved only for eligible services. *See* 47 C.F.R. §§ 54.502, 54.503. The USAC website contains a list of eligible services. *See* USAC website, http://www.universalservice.org, Eligible Services List. Program procedures provide that if 30% or more of an applicant's funding request includes ineligible services, the funding request must be denied. 74% of your funding requests were for ineligible services. Therefore, your funding requests were denied. You did not demonstrate in your appeal that your requests included less than 30% for ineligible services. Consequently, SLD denies your appeal.

If you feel further examination of your application is in order, you may file an appeal with the Federal Communications Commission, Office of the Secretary, 445 12TH Street, SW, Room TW-A325, Washington, DC 20554. Before preparing and submitting your appeal, please be sure to review the FCC rules concerning the filing of an appeal of an Administrator's Decision, which are posted to the SLD Web Site at <www.sl.universalservice.org >. You must file your appeal with the FCC no later than 30 days from the date of the issuance of this letter, in order for your appeal to be timely filed.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Cc: Joe Kitchens
Western Heights School District 41
8401 SW 44th Street
Oklahoma City, OK 73179