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May 30, 2001

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Ms. Magalie Roman Salas
Secretary
Office of the Secretary
Federal Communications Commission
445 -12th Street, S.W., Rm TW-204B
Washington, D.C. 20554

Re: **Reply Comments** - CC Docket No. 96 - 45, Further Notice of Proposed Rule Making and Order

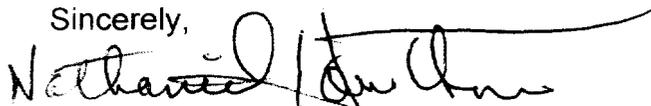
These **Reply Comments** are filed by the Cleveland Municipal School District in response to the request for Comments in the above referenced matter.

Enclosed is the original and four copies of the **Reply Comments**. An extra copy is also enclosed. Please time stamp the extra copy and return it to me in the enclosed self addressed-stamped envelope.

Three copies have been sent to Ms. Sheryl Todd along with a diskette.

A diskette was sent to International Transcription Service, Inc. 1231 20th Street, N.W. Washington, D.C. 20037

Sincerely,



Nathaniel Hawthorne

Cc: Barbara Byrd-Bennet, CEO, Cleveland Municipal School District
Mark Hogan, Director, MIS, Cleveland Municipal School District
Sheryl Todd, Accounting Policy Division, Common Carrier Bureau,
International Transcription Service, Inc.

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

In the Matter of)
)
Federal-State Joint Board on) CC Docket No. 96 - 45
Universal Service)
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REPLY COMMENTS
by
The Cleveland Municipal School District
On the Further Notice of Proposed Rule Making and Order

The Cleveland Municipal School District (CMSD) filed Comments On the Further Notice of Proposed Rule Making and Order, CC Docket 96-45 (FNPRM) on May 23, 2001. CMSD now files its Reply Comments in support of several of Comments that were filed in this proceeding.

The Joint Explanatory Statement of the Committee of Conference states:

The ability of K-12 classrooms...libraries... to obtain access to advanced telecommunications services is critical to ensuring that these services are available on a universal bases...This universal access will assure that no one is barred from benefiting from the power of the Information Age.
[Emphases added.]

Conference Report, Report 104-230, p.132

CMSD observes that this principle should guide the Federal Communications Commission (FCC or Commission) in its FNPRM consideration. Thus, the issue is whether or not the letter and intent of universal service funding (USF), as set forth in the Telecommunications Act of 1996, 47 U.S.C. Sections, 151 *et seq.* (Telecom Act), is being met.

Furthermore, the Joint Explanatory Statement of the Committee of Conference states that, "the conferees expect the Commission...to take into account the particular needs of...K-12 schools and libraries." If the proposed rule

is adopted, 90% districts will not receive funding in Year 4 since they received funding in Year 3, even if funding is *de minimus*. Such a result would not be consistent with the Telecom Act.

Clearly, the thrust of universal service specifically as it relates to schools is “to increase...the spending cap for universal service, [and] not a reduction in services for those eligible.” Comments of the Council of the Great City Schools, p.1. As the Council further stated, “30% of the nation’s Hispanic students, 35% of the nation’s African American students, and 25% of the nation’s children ...[are]...living in poverty.” *Id.*, p 2. In other words, what is the purpose of universal services if it is not to provide funds for the schools that these children attend so that they too can have access to technology as it is incorporated into a district’s curriculum? Therefore, CMSD strongly believes that:

- (1) If the current proposal is promulgated, 90% school districts like CMSD will be most harmed.
- (2) If the universal service cap is not increased, children in 90% school districts like CMSD will be harmed.

Section 254 (c) (1) (A)-(D) mandates that the FCC “consider the extent to which...‘telecommunications services’ included in the definition of universal service:

- (1) are essential to education...
- (4) are consistent with the public interest, convenience and necessity.”

In the Matter of Federal State Joint Board on Universal Service, Report and Order, Rel., May 8, 1997.

If the proposed rule is adopted, or if the cap is not increased, the level of funding is not specific, predictable, and sufficient. Granted, this language addresses universal service in its broader context, but federal law and Congressional policy, as stated in legislative history, require that universal service funding or “e-rate” must still be evaluated in the context of whether or not e-rate funds are specific, predictable, and sufficient.

At the least, as stated by the St. Louis City School District, “rules should not be changed during the funding year.” Comments on the Notice of propose Rule Change for Funding for Internal Connections, filed by St. Louis City School District. p.2. (St. Louis); also, see, *e.g.*, Comments of the New York City Board of Education (New York), and May 10, 2001, letter from R. Gomez, Gallup-McKinley County Schools, to Chairman Michael K. Powell, stating that “Changes to E-rate to address limited funding are ill-advised for year four because so much planning and effort has already been expended.”

St. Louis correctly states that “[schools] should be able to assume that major features of the program [universal service funding] will not be changed within the funding year.” St. Louis, p. 2. Implicit in St. Louis’ comments is that the demand for the schools and libraries universal service support mechanism at the current level and higher was completely foreseeable. As CMSD pointed out in its filed Comments, many major studies on this issue, available to the Commission, clearly indicated that the funding need was significantly higher than the \$2.25 billion annual cap. One study, “Connecting K-12 Schools to the Information Superhighway,” by McKinsey and Company, found that the funding need for the accomplishment of this critical goal was somewhere between \$2 billion (5-year initial outlay) and \$4.7 billion (10-year initial outlay) annually, with an additional annual amount between \$4 billion and \$14 billion necessary for maintenance.¹ McKinsey & Company, Inc. <http://www.uark.edu/mckinsey>.

A theme that permeates many comments (both *pro* and *con*) has a focus on *pro rata* distribution. The Commission expresses concern that the receipt of a *pro rata* portion of the universal service funds requested might not allow sufficient funding for requesting schools to complete “a useful system of internal connections”. However, this same argument can be applied to the Commission’s proposed change in the funding rules. The only difference, however, is that the proposed rule change would not only prevent many schools from completing such “useful system[s] of internal connections”, but would actually result in the disruption of work already performed to create those systems. (This is the concept that the investment of schools, paid for by universal service funds, would be stranded). By eliminating all opportunity for maintenance funding for those schools and libraries receiving such funding in the current program year, the Commission effectively dismantles the success stories of the initial years of universal service funding.

Conclusion

The Commission expresses concern that some applicants eligible for 90% discounts might receive funding in consecutive years while other applicants who, by the Commission’s own admission are less disadvantaged, might receive none. In a time of funding shortfall, however, this is exactly how the system should work. The concept of universal service funding, from both a regulatory and congressional policy objective, dictates that students with the highest level of need would be given the greatest level of assistance. When the need is greater than the Commission’s ability to assist, those schools and libraries that are more able to provide for themselves should be the first to be removed from the list of considered funding applicants.

¹ This information can be found in the section titled “Infrastructure Options and Costs”, under the heading “Models of infrastructure deployment (23)”.

School districts like CMSD, faced with the greatest of economic and social challenges, are those in greatest need of universal service fund assistance.

Respectfully submitted,
The Cleveland Municipal School District

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