



DOCKET FILE COPY ORIGINAL

State of North Carolina
Office of Information Technology Services
Telecommunication Services

Michael F. Easley, Governor

Ronald P. Hawley, State Chief Information Officer

May 30, 2001

RECEIVED

MAY 31 2001

FCC MAIL ROOM

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Office of the Secretary
445-12th Street SW
12th Street Lobby Counter TW-A325
Washington, D.C. 20554

RE: Request for Review by the
North Carolina Department of Commerce-SIPS
Wright School, Durham, North Carolina
Of Decision of the Universal Service
Administrator for Program Year 3

FCC Docket Number 96-45
FCC Docket Number 97-21

Dear Ms. Roman Salas:

Enclosed, please find an appeal of the Universal Service Administrator's decision denying E Rate funding for Program Year 3 to the Wright School in Durham, North Carolina.

We are sending this via overnight carrier to the above address.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Atkins".

Dr. Nancy Atkins
School Technology Manager
N.C. Office of Information Technology Services

Steve Stoneman, Acting Director
P.O. Box 17209 • Raleigh, North Carolina 27619-7209
Tel: 919.981.5261 • fax: 919.981.5027 • State Courier 51-01-11
An Equal Opportunity/Affirmative Action Employer

**Before the
Federal Communications Commission
Washington DC 20554**

**RECEIVED
MAY 31 2001
FCC MAIL ROOM**

In the Matter of

Request for Review by the)	
North Carolina Department of Commerce-SIPS)	FCC Docket No. 96-45
Wright School, Durham, North Carolina)	FCC Docket No. 97-21
Of Decision of the Universal Service)	
Administrator for Program Year 3)	

Applicant: North Carolina Department of Commerce -SIPS
Wright School
Billed Entity Number: 162994
Application Number 194401
FRN 416908

Summary

The North Carolina Department of Commerce –SIPS/ Wright School (“the Applicant”) respectfully asks the Federal Communications Commission (“FCC”) to review the decision of the Universal Service Administrator for E Rate program year 3, 2000-2001, which our application for E Rate discounts for long distance voice telephone service. The SLD denied our application because it said we had not provided sufficient documentation to support the funding request.

The Applicant respectfully shows the FCC that there was never any intent to defraud, misrepresent or work in bad faith against any of the Rules of the Program. Failure to get the E Rate discount for Year 3 is a detriment to the Wright School which, like all other State agencies in North Carolina, has had to cut its budget significantly in this budget year.

We respectfully ask that the FCC review the evidence presented in this case, review the SLD's decision in this matter and allow the Wright School to receive its E Rate discount for Funding Year 3 for long distance telecommunications services.

Statement of Interest

The Applicant is a state-operated residential school and mental health treatment program for children with behavioral and emotion problems. Admission to the program is reserved for North Carolina’s most seriously emotionally disturbed six to twelve year olds. The E Rate discount for Wright School is 90%.

For Funding Year 3, July 1, 2000 through June 30, 2001, the Applicant chose the State Master Contract for voice telecommunications service. The billed entity for this service is the North

Carolina Department of Commerce – SIPS. The Applicant's request for E rate funding of long distance voice telephone service provided by the State Master Contract was denied by the SLD.

The State of North Carolina is currently in a budget emergency with a revenue shortfall of approximately \$900 million for the year ending June 30, 2001. Loss of the E Rate discount for the Wright School is serious. The amount of the above-listed FRN for telecommunications service that was denied by the SLD is approximately \$7,020.

Statement of Relevant, Material Facts

- For Funding Year 3, the Applicant appropriately filed a Form 470 for telecommunications service. In that Form 470, the Applicant checked Item 7(d) on Block 2 which indicated that it was seeking telecommunications services pursuant to a multi-year contract signed on or before July 10, 1997 but for which no Form 470 had been filed in a previous program year.
- For Funding Year 3, the Applicant chose to get telephone service from the State Master Contract. It filed a Form 471 indicating that choice and included an FRN for long distance service.
- In its Funding Commitment Decision Letter, the SLD indicated that funding was denied because "the type of service requested on Form 471 was not posted to the web site because only Item 7D was checked on the Form 470, thereby not meeting the 28 day competitive bidding requirement."
- The Applicant appealed the decision of the SLD to the Universal Service Administrator. The result of that appeal was denial of the requested amount. In denying the request, the Administrator stated, "You have not provided sufficient documentation to support this funding request."
- 47 CFR 54.511 (c) (i) provides "A contract signed on or before July 10, 1997 is exempt from the competitive bid requirements for the life of the contract; . . ." That section of the FCC regulations further provides at (d) (1) , "the exemption from the competitive bid requirements set forth in paragraph (c) of this section shall not apply to voluntary extensions or renewals of existing contracts..."
- Attached is the contract (Attachment 1) under which Wright school gets long distance telephone service. It was signed by the State on June 27, 1997. The service term provides that the contract continues from month to month until terminated by either party on thirty days notice. Neither party has terminated this contract and by its own terms, it continues in effect.
- While the contract in question has not been terminated, the State of North Carolina is in the end stages if a competitive bidding process for voice telephone service for schools and libraries. This competitive bidding process has been properly posted to the SLD web site when the State filed a Form 470 for this procurement.

Question Presented for Review

The Applicant believes that the contract in question provides sufficient documentation to support its funding request.

Statement of Relief Sought

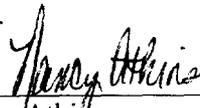
The Applicant respectfully asks that the FCC permit it to receive the E Rate discount for voice telecommunications service for Program Year 3.

Please do not hesitate to call us if there are any questions surrounding this Appeal.

Contact person:

Ms. Kathryn Wilson
N.C. Office of Information Technology Services
Post Office Box 17209
Raleigh, North Carolina 27619-7209
(919) 981-5229
Kathryn.R.Wilson@ncmail.net

Respectfully submitted this 30th day of May 2001.



Dr. Nancy Atkins
School Technology Manager
Office of Information Technology Services
On behalf of the
Wright School, Durham, North Carolina

Appeal of Wright School to the FCC
Funding Year 3
FCC Docket Nos. 96-45, 97-21

ATTACHMENT 1

STATE MASTER CONTRACT WITH MCI TELECOMMUNICATIONS



**MCI SPECIAL CUSTOMER ARRANGEMENT
GOVERNMENT PRICING PLAN (GPP)**

This MCI Special Customer Arrangement ("Agreement") is made and entered into as of the signature dates set forth below by and between MCI Telecommunications Corporation ("MCI") and the State of North Carolina ("Customer").

WITNESSETH:

WHEREAS, Customer is desirous of receiving telecommunications services from MCI and MCI is desirous of providing said services to Customer, pursuant to the terms and conditions more particularly described herein;

WHEREAS, Customer has five (5) T-1's used for MCI's Terrestrial Data Services ("TDS" 1.5) service as of the effective date of this Agreement under a contract with MCI has been continuing month to month; and

WHEREAS, the parties desire to supersede the prior agreement for TDS 1.5 service with the following terms and conditions.

NOW, THEREFORE, for and in consideration of the premises, the terms and conditions herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, MCI and Customer hereby agree as follows:

- 1. Definitions Contained in MCI Tariff FCC No. 1.** All capitalized terms used herein and expressly defined herein shall have the respective meanings given to such terms in the MCI Tariff FCC No. 1 ("Tariff") on file with the Federal Communications Commission ("FCC").

- 2. Description of Service.** MCI Telecommunications Corporation ("MCI") will provide to Customer, and Customer will receive from MCI, telecommunications service(s) as described in Exhibit A which is attached hereto and incorporated herein by reference provided pursuant to MCI Tariffs FCC No. 1 and 8, WUI Tariff FCC No. 27, and any other applicable interstate and international tariff of MCI and its affiliates, each as supplemented by this Agreement, and intrastate telecommunications services provided pursuant to MCI's state tariffs governing such services (collectively the "Tariff"). This Agreement incorporates by reference the terms of each such tariff. MCI and its affiliates may modify the Tariff from time to time in accordance with the law and thereby affect the service(s) furnished Customer.



3. Rates and Charges for MCI Service(s). The rates and charges for MCI services are set forth in Exhibit A herein. Such rates and charges are exclusive of all taxes and tax-related surcharges which the Customer shall pay as stated on MCI's invoice, or if such charges do not apply to Customer, Customer shall provide to MCI appropriate tax exemption certificate(s) or other evidence of tax exempt status. Customer shall pay MCI upon receipt of MCI's invoice.

4. Effective Date. This Agreement is binding when executed by Customer and subsequently accepted by MCI. Provided the Agreement is accepted by MCI, the rates, charges and discounts provided hereunder shall be effective thirty (30) days from the first day of the next billing cycle following Customer's signature date ("Effective Date").

5. Commencing or Changing MCI Services. MCI Service(s) provided pursuant to this Agreement must begin on the first day of the month. Any Customer requests to commence or change MCI Service(s) must be made in writing and received by MCI at least sixty (60) days prior to the date on which the desired action is to take effect. Notwithstanding the foregoing, any request to commence or change Operator Service is subject to LEC implementation.

6. Cancellation Rights and Liabilities. If Customer cancels this Agreement prior to the end of the Service Term, such cancellation shall constitute a material breach of this Agreement and Customer shall repay to MCI the cost of all equipment, including installation, provided under this Agreement. In addition, Customer shall pay, within thirty (30) days after such cancellation, a charge for each of the months remaining in the Service Term equal to one hundred percent (100%) of the Customer's Minimum Usage Amount defined below. Nothing in this Agreement shall modify or be deemed to modify MCI's right to terminate service(s) as provided for in Section B-11.01 of the Tariff or in any other MCI Tariff.

7. Default. In addition to any other rights of cancellation specified herein, either party may terminate this Agreement upon thirty (30) days prior written notice to the other in the event of the other's failure to pay any amounts due hereunder and not duly contested in good faith within ten (10) days after the receipt of the terminating party's written notice of default concerning the same; or the other's failure to cure a material breach within thirty (30) days after receipt of the terminating party's written notice of default concerning the same.

8. Nondisclosure. Neither party shall disclose the terms and conditions of this Agreement to a third party without the prior written consent of the other party unless otherwise required by applicable law.



9. Applicable Law. Customer understands that MCI, in conducting its business in the manner set forth herein, is subject to the Communications Act of 1934, as amended, and as interpreted and applied by the Federal Communications Commission. This Agreement, including all matters relating to the validity, construction, performance and enforcement thereof, shall be governed by the laws of the State of North Carolina except to the extent the Communications Act of 1934, as amended, FCC rules or regulations, or any other applicable federal law applies. It is agreed between the parties hereto that the place of this Agreement, its situs and forum, shall be Wake County, North Carolina., and in said County and State shall matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of this Agreement, be determined except to the extent the Communications Act of 1934, as amended, FCC rules or regulations, or any other applicable federal law require otherwise. Customer will comply with all applicable state and federal laws.

10. Assignment. Neither party may assign this Agreement or any rights hereunder, without the prior written consent of the other party, which consent shall not be unreasonably withheld, except MCI may assign this Agreement to any parent, subsidiary, affiliate or purchaser of all or substantially all its assets.

11. Entire Service Agreement. This Agreement together with all Exhibits and the applicable tariffs set forth the entire understanding between the parties with regard to the subject matter hereof and supersedes any prior or contemporaneous agreements, discussions, negotiations or representations between the parties whether written or oral with respect thereto. All amendments to this Agreement shall be in writing and signed by the authorized representatives of both parties.

12. Service Term. The service term ("Service Term") shall commence on the Effective Date of this Agreement provided and continue month to month until terminated upon thirty (30) days notice by either party.

13. Billing. MCI shall provide magnetic billing tape to Customer and MCI Perspective for the services hereunder at no additional charge.

14. SCA. This Agreement is a Specialized Customer Arrangement ("SCA") Type 11, State Agency, under Section C-16 of the Tariff and the services hereunder are being provided to Customer pursuant to the provisions of the Tariff.

In the event Tariff revisions that may be required to implement the terms of this Agreement are suspended or rejected, then either party may elect to terminate this Agreement without liability on thirty (30) days written notice given not later than thirty (30) days after the event giving rise to the termination right.

MCI will use its best efforts to maintain its Tariffs in a manner consistent with the terms of this Agreement. In the event that MCI revises any Tariff in a manner inconsistent in any material respect with the provisions of this Agreement and MCI does not effect revisions that remedy such inconsistency within thirty (30) days after receipt of written notice from Customer, then Customer may, as its sole remedy, elect to terminate this



Agreement without liability on thirty (30) days written notice given not later than thirty (30) days after the Customer received actual notice of the event giving rise to the termination right.

15. Detariffing. If before the end of the Service Term of this Special Customer Arrangement MCI voluntarily or involuntarily as a result of government or judicial action cancels in whole or in part any Tariff on file with the Federal Communications Commission, where the affected provisions prior to such cancellation applied to any service(s) MCI provides under this Agreement, then effective on such cancellation and for the remainder of the Service Term this Agreement shall consist of the following, in order of precedence from (a) through (c):

(a) MCI Tariff provisions that remain in effect ("Effective Tariffs"), as MCI may amend them from time to time in accordance with law; and

(b) Specific provisions contained in this Agreement that expressly apply in lieu of, or that apply in addition to, provisions contained in Effective Tariffs and/or in MCI's standard Guide to Services and Pricing ("Price Guide"); and

(c) Provisions contained in the Price Guide to the extent that (a) and (b) above are not applicable. MCI may amend the Price Guide from time to time and will maintain the Price Guide open for public inspection at one or more offices during normal business hours. Immediately prior to the cancellation of any Tariff provisions applicable to service(s) provided under this Agreement MCI shall incorporate such provisions into the Price Guide (and if MCI fails to incorporate any such provisions they shall be deemed incorporated into this Agreement as if MCI had so incorporated them in the Price Guide).

In all events, the applicable rates and rate schedules shall continue to be subject to any discounts, waivers, credits, or restrictions on rate changes that may be contained in this Agreement. Where rate adjustments would have been made by referencing any canceled tariff rate or rate schedule, these adjustments shall instead be made by reference to the Price Guide. To the extent that any adjustment to tariffed rates and rate schedules is permitted under this Agreement, such adjustment may be made by MCI to its Price Guide.

16. Notices. All notices, requests, demands or communications shall be deemed effective upon personal delivery or on the calendar day following the date of the telex, telegram, or MCI Mail, or when received if sent by registered, certified or express mail to the parties as follows:



If to MCI: **MCI Telecommunications Corporation**
Three Ravinia Drive
Atlanta, Georgia 30346
Attn: Vice President of Finance

with a copy to: **MCI Telecommunications Corporation**
Three Ravinia Drive
Atlanta, Georgia 30346
Attn: Legal Department
Fax No. (770) 668-6041

If to Customer: **State of North Carolina**

If either party wishes to alter the recipient or address to which communications to it are sent, it may do so by providing the name of the new recipient or a new address, in writing, to the other party.



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the dates set forth below.

State of North Carolina

By: *Dennis W. McCarty*

Name: DENNIS W. McCARTY

Title: DIRECTOR of SIPS

Date: 6/27/97

MCI Telecommunications Corporation

By: *[Signature]*

Name: MIKE HUBINS

Title: DIRECTOR of FINANCE

Date: 7/15/97



**EXHIBIT A
PROGRAM RATES AND CHARGES**

STATE AGENCY – SCA TYPE 11

Except as modified herein, Customer will pay the applicable rates and charges for MCI service(s) as set forth in the Tariff. The rates/discounts provided herein are in lieu of, not in addition to, any discounts or commissions to which Customer is or would otherwise be entitled to receive by application of Tariff discounts during the term of this Agreement, including any renewals thereof. Customer will pay, in addition to any applicable taxes and tax-related surcharges, the following per minute, non-distance sensitive “postalized,” rates:

Qualifying Condition

In order to receive the rates/discounts and credits set forth in this Agreement, during each Annual Period of the Service Term, including any renewals thereof, Customer must meet the following usage requirements:

- i. Customer must qualify under the terms of the GPP Type 11, State Agency, as a state agency for participation under the GPP as defined in the Tariff.
- ii. Customer must be an existing MCI T-1 Customer for the three (3) years prior to the Effective Date of this Agreement.
- iii. All T-1 circuits provided in this Agreement must originate and terminate within North Carolina.

Dedicated Leased Line Service

For Terrestrial Data Services (“TDS 1.5”), Customer will pay standard tariffed rates. No installation charges shall be applicable to Customer’s five (5) existing T-1’s used for this MCI service before the Effective Date of the Agreement. MCI will waive MCI monthly recurring Access Coordination Fees and Central Office Connection charges for the five (5) existing T-1’s. Inter-Office Channel charges of \$7.00 per mile shall apply for the five (5) existing T-1’s. Customer shall pay MCI local access loop charges of \$905.00 per loop for the five (5) existing T-1’s. Customer will pay MCI’s standard Tariffed Rates for all additional T-1’s.