

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Request for Review by	)	CC Docket No. 96-45
General Communication, Inc. of	)	CC Docket No. 97-
21	)	
Decision of Universal Service Administrator	)	

**SUPPLEMENT TO REQUEST FOR REVIEW  
OF ADMINISTRATOR'S DECISION**

GENERAL COMMUNICATION, INC.

Tina M. Pidgeon  
Alisa M. Everts  
DRINKER BIDDLE & REATH LLP  
1500 K Street, N.W.  
Suite 1100  
Washington, D.C. 20005  
(202) 842-8800 (phone)  
(202) 842-8465 (fax)

Its Attorneys

Dated: August 3, 2001

**TABLE OF CONTENTS**

	<u>Page</u>
I. INTRODUCTION .....	1
II. BACKGROUND .....	2
III. IN LIGHT OF THE S&L COMMITTEE’S FAILURE TO PROVIDE ADEQUATE NOTICE TO GCI, THE COMMISSION MUST REMAND THE S&L COMMITTEE’S DECISION WITH THE INSTRUCTION TO APPROVE THE SCHOOLS’ FUNDING REQUESTS FOR INTERNET SERVERS .....	4
A. The Commission and the Courts Have Recognized that an Agency Must Provide a Party with Notice that Meets the Requirements of Due Process .....	4
B. GCI, as a Party Aggrieved by an Action Taken by the S&L Division and the S&L Committee, is Entitled to Seek Review .....	8
C. GCI’s Internet Servers Are Part of the End-To-End Internet Service Provided to the Schools and, Therefore, Are Eligible for Full Universal Service Funding .....	10
IV. CONCLUSION.....	13

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Request for Review by	)	CC Docket No. 96-45
General Communication, Inc. of	)	CC Docket No. 97-21
Decision of Universal Service Administrator	)	

**SUPPLEMENT TO REQUEST FOR REVIEW  
OF ADMINISTRATOR'S DECISION**

General Communication, Inc. (“GCI”) hereby supplements the record in the referenced proceeding. By its Request for Review, GCI requests that the Commission review the decision of the Schools and Libraries Committee (“S&L Committee”) of the Universal Service Administrative Company (“USAC”) denying GCI’s appeal of decisions of the Schools and Libraries Division (“S&L Division”) regarding recurring charges for Internet services provided to multiple schools in Alaska (the “Schools”).<sup>1</sup>

**I. INTRODUCTION**

By this Supplement to its Request for Review, GCI further elaborates upon the lack of adequate notice from the S&L Division and S&L Committee to GCI concerning the Schools’ funding requests and GCI’s appeal thereof and GCI’s status as an aggrieved party in the review process. The S&L Committee initially failed to provide adequate notice to GCI as required by the Due Process Clause concerning the S&L Division’s partial denial of funding for Year One of the Schools and Libraries Program. Upon receiving adequate notice and the basis for

---

<sup>1</sup> General Communication Inc. Request for Review of Administrator’s Decision, CC Docket No. 96-45, CC Docket No. 97-21 (filed Mar. 29, 2001) (“GCI Request for Review”); Requests for Review of the Decision of the Universal Service Administrator by General Communications, Inc., et al.; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Order,

the decisions, GCI, as a “person aggrieved by an action taken by a division of the Administrator,”<sup>2</sup> filed its appeal to the S&L Committee within 30 days of receiving such notice. Once it reached its decision regarding GCI’s appeal, the S&L Committee failed to notify GCI of its decision to deny GCI’s appeal on the grounds that it was untimely filed. Like the S&L Division, the S&L Committee did not afford GCI with adequate notice as guaranteed under the Due Process Clause.

By dismissing GCI’s appeal as untimely filed, the S&L Committed has never examined how the S&L Division erred in denying the full Universal Service funding for the six-month extension period for Program Year One for the GCI Internet servers located at the Schools. As a result, the S&L Committee has overlooked how the Commission has reversed the basis of the S&L Division’s funding decisions concerning GCI’s Internet servers. Accordingly, GCI urges the Commission to remand this matter to the S&L Division with the direction to approve the funding for the Internet servers for the six-month extension period for Program Year One for each of the Funding Request Numbers addressed in GCI’s appeal to the S&L Division.

## **II. BACKGROUND**

GCI’s appeal to the S&L Committee was based upon funding commitment letters issued by the S&L Division to the Schools for services to be provided by GCI. Each letter issued in response to the Schools’ funding requests stated: “Funding Status: COMMITTED – FULL.” Additionally, each letter set forth the specific dollar amount committed, with the phrase “approved as submitted.”

---

CC Docket No. 96-45, CC Docket No. 97-21 (Com. Car. Bur. rel. July 31, 2001) (extending by an additional sixty days the deadline by which the Common Carrier Bureau must act regarding GCI’s Request for Review).

<sup>2</sup> 47 C.F.R. § 54.719(a).

Although the funding commitment letters failed to report in any way that any portion of the Schools' funding requests had been denied, GCI's accounting department subsequently discovered that the amounts set forth in the letters did not cover GCI's monthly recurring costs for the full 18-month period of the initial funding year. Given that the commitment letters failed to provide that the funding for the requested period was not fully granted or why such funding was denied, GCI promptly inquired about the funding discrepancy with the staff of the S&L Division via email on May 20, 1999.

Like GCI, the S&L Division staff could not readily ascertain why the full monthly recurring costs for the funding period were not awarded to the Schools. Indeed, the S&L Division staff initially told GCI on May 20, 1999 that its decision was based upon an FCC decision that provided that the six-month extension of Program Year One did not cover internal connections. Because GCI suspected that the S&L Division's explanation was erroneous based on its own internal investigation and discussion, GCI made additional inquiries. The S&L Division staff subsequently informed GCI via email on June 24, 1999 that, whereas the six-month extension of Program Year One indeed covered internal connections, the extension did not provide for the commitment of additional funding for internal connections beyond January 1, 1999. The staff stated that, while the recurring charges for telecommunications and Internet services did allow the commitment of additional funding, the recurring charges for internal connections were treated differently.<sup>3</sup> In this regard, the S&L Division did not disclose to GCI the basis of the Division's funding decisions until June 24, 1999, so that GCI was unable to address the merits of S&L Division's funding decisions before that time.

---

<sup>3</sup> See GCI Request for Review, Exhibit 1.

Thus armed with the S&L Division's new revelations concerning the basis of its funding decisions, only then did GCI have adequate notice as required by the Due Process Clause. GCI promptly (and within less than 30 days) filed an appeal to the S&L Committee on July 1, 1999.<sup>4</sup> GCI, however, has never received a decision regarding its appeal. Upon inquiry, on March 1, 2001, GCI was informed that its appeal had been treated as "applicant appeals" and denied as untimely. At such time, the S&L Committee acknowledged that it had never served GCI with the decision and, furthermore, that the decision failed to address GCI's arguments concerning whether GCI's appeal had been timely filed in light of the S&L Division's failure to provide adequate notice.<sup>5</sup>

Accordingly, on March 29, 2001, GCI filed its Request for Review for the Commission to examine both the dismissal of its appeal to the S&L Committee as untimely and the underlying decision not to fund all aspects of the Internet service provided by GCI during the six-month extension of Program Year One.

**III. IN LIGHT OF THE S&L COMMITTEE'S FAILURE TO PROVIDE ADEQUATE NOTICE TO GCI, THE COMMISSION MUST REMAND THE S&L COMMITTEE'S DECISION WITH THE INSTRUCTION TO APPROVE THE SCHOOLS' FUNDING REQUESTS FOR INTERNET SERVERS.**

**A. The Commission and the Courts Have Recognized that an Agency Must Provide a Party with Notice that Meets the Requirements of Due Process.**

As established by GCI in its Request for Review, the Due Process Clause requires that an agency provide notice adequate to apprise a party of the basis of a decision that is subject to

---

<sup>4</sup> See *id.* At the request of the S&L Committee staff, GCI also supplied the staff with an additional copy of its initial July 1, 1999 appeal on September 1, 1999, along with a letter addressing the timeliness of its initial appeal. See *id.*, Exhibit 2.

<sup>5</sup> See *id.*, Exhibit 3. The facts set forth herein, where not demonstrated by the Exhibits 1-3 to GCI Request for Review, are supported by the affidavit of Martin Cary, GCI's Vice President of Broadband Services, which is attached to the GCI Request for Review as Exhibit 4. See *id.*, Exhibit 4.

appeal.<sup>6</sup> Consistent with this requirement, the Commission has recently criticized the S&L Division for failing to provide an applicant school with notice and opportunity to supply additional information in support of its application during the Universal Service funding request and review process.<sup>7</sup> Specifically, the Commission found that where the S&L Division failed to provide an applicant school with notice and opportunity to support a statement on its Form 471, the S&L Division committed an error warranting the Commission’s grant of the applicant’s request for review, as well as remand to the S&L Division for further consideration.<sup>8</sup>

Moreover, it is well established that an agency must “articulate a satisfactory explanation for its action.”<sup>9</sup> In fact, the Common Carrier Bureau has remanded applications for Universal Service funding eligibility back to the S&L Division for further consideration when the Division has neglected to provide a reasoned basis for its decision.<sup>10</sup> For example, the Commission recently remanded an application to the S&L Division for further review because

---

<sup>6</sup> See GCI Request for Review at 6.

<sup>7</sup> See Request for Review of the Decision of the Universal Service Administrator by Wetzel County School District New Martinsville, West Virginia; Federal-State Joint Board on Universal Service: Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Order, File No. SLD-161553, CC Docket No. 96-45, CC Docket No. 97-21, DA 01-1121 (Com. Car. Bur. rel. May 2, 2001).

<sup>8</sup> Id. at 2001 FCC Lexis 2460 \*\*5-6.

<sup>9</sup> Motor Vehicle Mfrs. Assn. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (D.C. Cir. 1983) (citations omitted) (holding that an agency must “cogently explain why it has exercised its discretion in a given manner” and remanding case for further consideration based on agency’s failure to supply the “requisite ‘reasoned analysis’”); see also Adams Telcom, Inc. v. FCC, 38 F.3d 576, 582 (D.C. Cir. 1994) (citations omitted) (finding that an “agency must ‘articulate a satisfactory explanation for its action.’”); Flagstaff Broadcasting Foundation v. FCC, 979 F.2d 1566, 1569 (D.C. Cir. 1992) (remanding case in light of FCC’s failure to provide even a single reason for its continued adherence to its integration policy and refusal to entertain appellant’s challenges).

<sup>10</sup> See, e.g., Request for Review of the Decision of the Universal Service Administrator by Springfield Public Schools Springfield, Massachusetts; Federal-State Joint Board on Universal Service: Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Order, 16 FCC Rcd 5281, 5284 ¶ 6 (Com. Car. Bur. 2001) (citations omitted) (noting that Common Carrier Bureau has remanded applications for further consideration in instances where the S&L Division has failed to provide an explanation of its determination of ineligibility); Request for Review of the Decision of the Universal Service Administrator by Terral School District 3 Terral, Oklahoma; Federal-State Joint Board on Universal Service: Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Order, 15 FCC Rcd 17969, 17970 ¶ 3 (Com. Car. Bur. 2000)

neither the funding commitment decision letter nor the Administrator’s decision on appeal indicated the basis for the S&L Division’s determination that certain equipment was ineligible for Universal Service funding.<sup>11</sup>

GCI, as an aggrieved party, is entitled to seek review of the subject funding decisions pursuant to Section 54.719 of the Commission’s Rules. Twice, however, the relevant USAC entity neglected to provide GCI (or the Schools) with notice sufficient to apprise GCI of the funding decisions and the reasons therefor. First, the initial notice provided by the S&L Division in its funding commitment letters regarding the Schools’ requested Universal Funding was deficient. The S&L Division failed to inform GCI and the Schools that any portion of the requested Universal Service funding had been denied. Instead, the information set forth in the funding commitment letters issued by the S&L Division, on its face, proclaimed “Funding Status: COMMITTED — FULL.” Moreover, the letters designated that the amount awarded was “approved as submitted,” raising no question that any part of the request had been denied. Not until GCI’s accounting department identified that the dollar amounts in the letters — considered individually and collectively — did not represent a full grant did GCI become aware that the Schools’ requests might not have been granted in full. Indeed, even at this point, the reported dollar amounts reasonably could have been nothing more than an error, based on the reported “Funding Status: COMMITTED — FULL” and that the request was “approved as submitted.”

Further confusing the matter, the S&L Division also failed to set forth any reason for the partial funding denial — despite the administrative law axiom that an agency is required to

---

(remanding matter to S&L Division in light of the absence of an explanation for the basis of its decision and the apparent inconsistencies concerning the S&L Division’s equipment eligibility findings).

provide an explanation for its decisions.<sup>12</sup> Even upon inquiry, the S&L Division's staff was unable to ascertain readily the reasons for its own funding decisions. Only when the partial denial was confirmed and a reason was provided therefor on June 24, 1999 did GCI have adequate notice to appeal the decision. Thus, GCI submitted a timely appeal to the S&L Committee seven days later on July 1, 1999.

Second, the S&L Committee failed to serve upon GCI the decision concerning GCI's July 1, 1999 appeal of the S&L Division funding decisions, as S&L Committee staff admitted. GCI only learned about the purported denial in the course of a routine status inquiry. GCI subsequently filed the Request for Review, even though this informal information regarding denial itself does not rise to the level of adequate notice that satisfies Due Process requirements. Given that GCI has yet to receive written notice of the S&L Committee decision, including the basis therefor, its March 29, 2001 Request for Review is timely.

The right to seek review of the decisions of the S&L Division and S&L Committee pursuant to Section 54.719 of the Commission's rules is rendered meaningless, absent sufficient notice of USAC decisions and the basis for such decisions. Indeed, until such time that GCI had notice that sufficiently stated the denial of funding and explained the basis of the S&L Division's decisions, GCI was unable to appeal that decision. Subsequently, GCI has yet to receive notice of the reported denial by the S&L Committee of GCI's subsequent appeal. Accordingly, in light of the failure of the S&L Division and the S&L Committee to provide

---

<sup>11</sup> Request for Review of the Decision of the Universal Service Administrator by Springfield Public Schools, 16 FCC Rcd at 5284 ¶ 6.

<sup>12</sup> Clearly, the requirement that an agency state the basis for its decisions applies equally to entities that act upon authority delegated by an agency. This principle is demonstrated by the Common Carrier Bureau's remand of decisions issued by the S&L Division when the Division has failed to state the basis for its decisions. See, e.g., Request for Review of the Decision of the Universal Service Administrator by Springfield Public Schools, 16 FCC Rcd at 5284 ¶ 6; Request for Review of the Decision of the Universal Service Administrator by Terral School District 3, 15 FCC Rcd at 17970 ¶ 3.

adequate notice to GCI as contemplated under the Due Process Clause, GCI's appeal of the S&L Division's funding decisions and the S&L Committee's decision are timely filed.

**B. GCI, as a Party Aggrieved by an Action Taken by the S&L Division and the S&L Committee, is Entitled to Seek Review.**

Pursuant to the Commission's Rules, the right to seek review of S&L Division and Committee decisions is not limited to schools and libraries. While the schools and libraries that request universal service support for eligible services may typically be the parties seeking review of such decisions, the Commission's rules extend the right to appeal to service providers such as GCI requesting review of such decisions. Section 54.719(a) of the Commission's Rules provides, *inter alia*, that any person aggrieved by an action taken by a division of USAC can seek review from the appropriate Committee of the Board.<sup>13</sup> In addition, under Section 54.719(c), a person aggrieved by an action taken by a division of USAC may seek review from the Commission.<sup>14</sup> Thus, the plain language of the rule does not limit appeals to applicants, but extends to aggrieved parties, which encompass both the applicant and the service provider that has entered into an agreement with the applicant to provide the services for which funds are requested in the application.

That the Commission has entertained numerous requests of service providers seeking review of decisions issued by the S&L Division pursuant to Section 54.719(c) demonstrates

---

<sup>13</sup> 47 C.F.R. § 54.719(a). Section 54.719(a) states that “[a]ny person aggrieved by an action taken by a division of the Administrator, as defined in § 54.701(g), may seek review from the appropriate Committee of the Board, as defined in § 54.705.”

<sup>14</sup> 47 C.F.R. § 54.719(c).

that service providers are “aggrieved parties.”<sup>15</sup> For example, the Commission recently considered an appeal filed by a service provider, MetroCon, that sought appeal of the S&L Division’s refusal to consider its initial Letter of Appeal regarding funding amounts on the grounds that the Letter of Appeal was untimely filed.<sup>16</sup> MetroCon, like GCI, was an injured party because it was unable to collect the discounted portion of the services that it provided to the schools. However, the decision involving MetroCon can be distinguished from GCI’s situation because the funding decision letter explicitly stated that the funding award for MetroCon’s services had been “modified by the SLC.”<sup>17</sup> The Commission has also treated service providers as aggrieved parties for purposes of appeal in the context of reviewing a funding denial due to equipment ineligibility<sup>18</sup> and a funding denial as a result of service provider ineligibility.<sup>19</sup> Likewise, upon the S&L Division’s notification to GCI of its denial of partial funding for Year One of the Schools and Libraries Program for several schools in Alaska and again upon the S&L Committee’s denial of GCI’s appeal, GCI, as the Internet service provider selected by such schools, became an aggrieved party and was entitled to seek

---

<sup>15</sup> See, e.g., Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc.; Federal-State Joint Board on Universal Service, Order, 16 FCC Rcd 4028 (2001) (addressing Request for Review of service provider regarding alleged violation of Commission’s competitive bidding requirements which denied the service provider of Universal Service funding); Request for Review of the Decision of the Universal Service Administrator by Objective Communications, Inc.; Williams Communications Solutions; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Order, 15 FCC Rcd 8395 (Com. Car. Bur. 1999) (addressing Letters of Appeal of service providers regarding competitive bidding procedures).

<sup>16</sup> Request for Review of Decisions of the Universal Service Administrator by MetroCon Communications New York, New York; Federal-State Joint Board on Universal Service; Change to the Board of Directors of the National Exchange Carrier Association, Inc., Order, 16 FCC Rcd 3878 (Com. Car. Bur. 2001).

<sup>17</sup> See Letter from Al Garcia, MetroCon Communications Inc., to FCC, filed June 22, 2000, Attachment (SLD Funding Notification Synopsis for SPIN: 143004632).

<sup>18</sup> Request for Review of the Decision of the Universal Service Administrator by Ozarks Unlimited Resources Cooperative Harrison, Arkansas; On Behalf of the Greenbrier School District; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Order, 15 FCC Rcd 175 (Com. Car. Bur. 2000).

<sup>19</sup> Request for Review of the Decision of the Universal Service Administrator by Bresnan Communications Company White Plain, New York; Federal-State Joint Board on Universal Service; Changes to

review of the decision of the S&L Committee pursuant to Section 54.719 of the Commission's Rules. Not only is a service provider that is aggrieved by an action taken by a USAC division permitted to seek review of such action, the service provider may be the party in the best position to address an action involving issues of a technical nature. This can be plainly demonstrated by the facts in the instant case, where the single substantive issue in dispute concerns the classification of GCI's own equipment as being either Internet service or internal connections — an issue that GCI is most capable and qualified to resolve.

In particular, once the S&L Division provided GCI with the actual basis for its funding decisions, GCI was able promptly to address the S&L Division's inaccurate characterization of its equipment as "internal connections."<sup>20</sup> It is doubtful that the Schools would have the requisite information regarding GCI's equipment to respond effectively to the S&L Division's mischaracterization of GCI's equipment. Ultimately, it is in the interest of all involved for GCI, as a party that may be best able to address technical issues, to work with the S&L Division, S&L Committee, and the Commission to resolve any technical issues arising from funding decisions. For this to occur, however, all parties — including the service provider — must be afforded adequate notice of the funding decision and, in the case of denial, the basis for that denial.

**C. GCI's Internet Servers Are Part of the End-to-End Internet Service Provided to the Schools and, Therefore, Are Eligible for Full Universal Service Funding.**

Because the S&L Committee unlawfully dismissed GCI's appeal as untimely filed, the S&L Committee has failed to address the merits of GCI's arguments regarding the S&L

---

the Board of Directors of the National Exchange Carrier Association, Inc., Order, 15 FCC Rcd 8492 (Com. Car. Bur. 1999).

Division's denial of full Universal Service funding for the GCI Internet servers for the six-month extension period for Program Year One. As demonstrated in its Request for Review, the GCI-owned facilities that are located at the Schools were part of the end-to-end Internet Service provided by GCI to the Schools. Consistent with the criteria used by the Commission to determine whether facilities are in fact part of the end-to-end Internet service provided by a service provider to a school,<sup>21</sup> the servers at issue in the instant proceeding were part of the end-to-end Internet access service provided by GCI.<sup>22</sup>

Specifically, GCI established that it located its point of presence for Internet services at the Schools because no other Internet point of presence exists in the rural villages where the Schools are located and, furthermore, locating the point of presence for this satellite-delivered service at the Schools results in improved performance. The servers have no function or purpose beyond providing Internet service to the Schools and are not necessary or used to transport information within the Schools. In addition, the Schools' internal networks are separate from, and do not rely in any way upon, the servers. Furthermore, the servers do not provide any internal service to the Schools, such as file or print services. GCI is the sole owner of the servers located on the Schools' campuses and there is no lease-purchase arrangement between GCI and the Schools. In fact, GCI maintains the servers as part of the service it provides to the Schools. The Schools did not contribute towards an upfront capital costs for the

---

<sup>20</sup> See Letter of Appeal, from James R. Jackson, GCI, to Schools and Libraries Committee, filed July 1, 1999.

<sup>21</sup> See Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator; Request for Review by Integrated Systems and Internet Solutions, Inc. of the Decision of the Universal Service Administrator; Request for Review by Education Networks of America of the Decision of the Universal Service Administrator; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Order, 14 FCC Rcd 13734, 13753-55 ¶¶ 36-42 (1999).

<sup>22</sup> See Request for Review at 9-11.

servers at issue. Lastly, GCI charges the Schools for the Internet servers on a monthly recurring basis.

In addition, GCI and the Schools should not be prejudiced because the Schools listed the servers as “internal connections” on their Form 471s based on advice received from the S&L Corporation’s Help Desk. Notwithstanding the erroneous advice from the Help Desk, the Schools submitted the forms prior to Commission promulgation of rules concerning Universal Service funding priority. Hence, the Schools filed their forms before such time as the Schools could have known the significance of accurately classifying services as “communications” or “Internet services” rather than “internal connections.”

In similar circumstances, the Commission has acknowledged that a school should have an opportunity to revise the “internal connection” designation on its Form 471.<sup>23</sup> The Schools served by GCI should be afforded the same opportunity to revise their forms. Accordingly, because the servers were part of the end-to-end Internet access service provided by GCI to the Schools, the S&L Division’s decision denying the recurring charges for Internet service during

---

<sup>23</sup> See Request for Review of the Decision of the Universal Service Administrator by Williamsburg-James City County Public Schools, Williamsburg, Virginia; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Order, 14 FCC Rcd 20152, 20154-55 ¶ 6 (1999); Request for Review of the Decision of the Universal Service Administrator by Sparta Area School District Sparta, Wisconsin; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Order, 15 FCC Rcd 8384, 8385 ¶ 5 (Com. Car. Bur. 1999); Request for Review of the Decision of the Universal Service Administrator by Our Lady of Mercy School Hicksville, New York; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Order, 15 FCC Rcd 1675, 1677 ¶¶ 6-8 (Com. Car. Bur. 1999); Request for Review of the Decision of the Universal Service Administrator by Yelm Community Schools, Yelm, WA; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Order, File No. SLD-109156, DA 99-2538, 1999 FCC Lexis 5842 \*\* 2-3 (Com. Car. Bur. rel. Nov. 16, 1999); Request for Review of the Decision of the Universal Service Administrator by Mifflin County Library Lewistown, Pennsylvania; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Order, 15 FCC Rcd 1673, 1674 ¶ 5 (Com. Car. Bur. 1999).

the six-month extension of Program Year One should be reversed based upon revised Form 471s.

Nonetheless, even if the Schools designated the servers as “internal connections,” the S&L Division should fund the recurring charges for the six-month extension of Program Year One for GCI’s servers. With the Universal Service Tenth Order on Reconsideration and the rules adopted thereunder, the Commission resolved any ambiguity concerning the issue of whether recurring charges for internal connections should be funded at the appropriate monthly level for the six-month extension period.<sup>24</sup> In the instant case, the charges related to the servers were monthly recurring charges. Hence, even if the servers were properly characterized as “internal connections,” the Schools were still eligible to receive the recurring charges for the server during the six-month extension period, through June 30, 1999. Consequently, the S&L Division’s decision denying the recurring charges for Internet service — or even internal connections — during the six-month extension of Program Year One should be reversed.

#### **IV. CONCLUSION**

GCI’s appeal to the S&L Committee and now to the Commission are timely in light of the failure of the S&L Division and S&L Committee to provide GCI with adequate notice of their respective decisions consistent with the Due Process requirements. Moreover, pursuant to the Commission’s Rules and as demonstrated by Commission decisions, GCI, as a service provider, is entitled to seek review of the subject S&L Division and the S&L Committee decisions. Indeed, service providers are often in the best position to address substantive technical issues with the USAC entities that are in dispute in the instant case.

---

<sup>24</sup> See Federal-State Joint Board on Universal Service, Tenth Order on Reconsideration, 14 FCC Rcd 5983 (1999); 47 C.F.R. § 54.507(b).

Accordingly, GCI requests the Commission to remand this matter to the S&L Division with directions to approve funding for the Internet servers for the six-month extension period for Program Year One for all of the appealed Funding Request Numbers. GCI further requests the Commission to effectuate this decision by waiving any rules as necessary to issue funding for Program Year One at this time. The Commission has authority to grant the requested relief pursuant to 47 C.F.R. §§ 0.91, 0.291, and 54.722(a).

Respectfully submitted,

/s/

\_\_\_\_\_  
Tina M. Pidgeon  
Alisa M. Everts  
DRINKER BIDDLE & REATH LLP  
1500 K Street, N.W., Suite 1100  
Washington, D.C. 20005  
(202) 842-8812  
(202) 842-8465 FAX

Attorneys for  
GENERAL COMMUNICATION, INC.

Dated: August 3, 2001

**CERTIFICATE OF SERVICE**

I, Colleen A. Mulholland, hereby certify that a copy of the foregoing Supplement to Request for Review of Administrator's Decision by General Communication, Inc. was delivered by first-class mail to each of the following parties as indicated on August 3, 2001.

Schools and Libraries Committee  
Universal Service Administrative Co.  
2120 L Street NW, Suite 600  
Washington, D.C. 20037

Schools and Libraries Committee  
Box 125, Correspondence Unit  
100 South Jefferson Road  
Whippany, NJ 07981

/s/  
\_\_\_\_\_

Colleen Mulholland