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September 5, 2001

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: File No. SLD – 160143/ CC Docket No. 96 - 45
Fort Wayne School District's Petition for Reconsideration

This is a Petition for Reconsideration from a decision by the Common Carrier Bureau, Accounting Policy Division

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

Sincerely,

Nathaniel Hawthorne

Nathaniel Hawthorne

Cc: Fort Wayne School District

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

In the Matter of	)	File No. SLD - 160143
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
	)	
Fort Wayne Community School	)	
District	)	
Fort Wayne Indiana	)	
	)	CC Docket No. 96 - 45
Federal-State Joint Board on	)	
Universal Service	)	
	)	
	)	
	)	CC Docket No. 97 - 21
	)	
Changes to the Board of Directors	)	
Of the National Exchange Carrier	)	
Association, Inc.	)	

Fort Wayne Community School District's
Petition for Reconsideration
and
Request for an Expedited Ruling

Introduction

On August 9, 2001, the Accounting Policy Division, Common Carrier Bureau released an Order denying Fort Wayne Community School District's Request for Review. Fort Wayne hereby files its Petition for Reconsideration with the Federal Communications Commission.

As background, Fort Wayne timely filed its FCC Form 471 Application for universal service funding. The relevant data is:

Form 471 Application Number:	160143
Funding Year:	07/01/2000-06/30/2001
Billed Entity Number:	130451
Date of Funding Denial Notice:	June 23, 2000
Funding Request Number Appealed:	372186

The SLD denied funding to Fort Wayne because:

"Category of service was changed from Telecom Services to Internal Connections. The funding cap will not provide 81% discount to be funded."

The bases of Fort Wayne's Request for Review:

> The thrust of Fort Wayne's review is that the funding requested is not for internal connections.

Common Carrier Bureau Decision

The Common Carrier Bureau (Bureau) denied Fort Wayne's Appeal for the following reason:

> "7. ...the Commission affirmed SLD's reclassification of a funding request because the service provider's proposed one time fee for connectivity through leased lines helped cover the costs of items that constituted internal connections such as switches and other hardware."

Bases of Fort Wayne's Petition for Reconsideration

The Bureau's Order is unreasonable in the following respects:

The Applicant provided the vendor's proposal to the SLD. That Proposal clearly states that the vendor "will be delivering ...service over the MAN." See Attachment B to Applicant's Appeal The vendor's proposal describes the service that will be delivered to 60 school buildings, and the fiber over which the service will be delivered. *Id.* So that the Applicant understands precisely how the service

will be delivered, all components of the vendor's network are identified. This identification does not "magically" make the components internal connections, nor does the way the phone company structure its rates convert a common carrier service from telecommunications to internal connections.

All hardware (and fiber) will be owned by the vendor. There is no evidence in the record to the contrary.

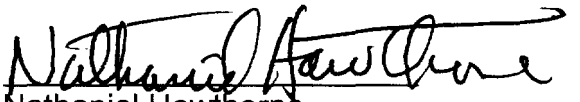
All hardware (and fiber) will be used in "providing connections" between instructional buildings, and not used to provide "connections within instructional buildings." *Fourth Order on Reconsideration*, CC Docket 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Released: December 30, 1997, Paras. 209, 210. Consistent with the SLD's rules, the vendor's MAN is characterized by "connections using fiber high-speed optic cable..." SLD's Eligible Services List, Pg. 38.

Historically, internal connections consist of hardware and wiring on the applicant's side of the demarcation point. This view is consistent with the FCC/SLD's publicly stated position; that is, "Connections between multiple separate schools are not internal connections and instead are part of a wide area network." (Attachment A). And, a wide area network leased from a telecommunications carrier may be eligible for discounts as part of telecommunications service. *Id.* (For e-rate purposes, a WAN and a MAN are the same.) Fort Wayne's position is consistent with the SLD rules for funding FRN 372186.

Relief Requested

Fort Wayne request that the FCC grant its Petition for Reconsideration and Order that the SLD set aside funds to cover Fort Wayne's Application.

Fort Wayne Community School District

By: 

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Attachment A

No, a state network is not eligible to receive reimbursements for the provision of telecommunications services to eligible entities, because a state network is not a telecommunications carrier as defined by law, and only telecommunications carriers can receive reimbursements for providing telecommunications services to eligible entities. [Para. 187-188].

Q10. May a state telecommunications network procure telecommunications services for eligible entities and apply for discounts on behalf of eligible entities?

Yes, provided that the state network makes a good faith effort to ensure that each eligible school or library receives a proportionate share of shared services and therefore takes reasonable steps to assure that service providers apply appropriate discount amounts to the portion of the supported telecommunications used by each eligible school or library. [Para. 184]. State networks must also retain records to demonstrate the basis upon which the eligibility determinations were made for schools and libraries to receive the discounts. [Para. 186].

Schools and libraries are encouraged to seek competitive bids for their needed services in order to obtain the best price, recognizing that even after the bidding process is completed, they may choose to obtain telecommunications procured by the state network. [Para. 185].

Internal Connections

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Q11. What distance is permitted between different buildings in order for the internal connections to qualify for discounts?

Connections between or among multiple instructional buildings that comprise a school campus or multiple non-administrative buildings that comprise a library branch are considered internal connections. Connections between instructional buildings located on different campuses do not qualify as eligible internal connections. [Footnote 569]. Connections between multiple separate schools are not internal connections and instead are part of a wide area network. [Footnote 583]. There is a rebuttable presumption that a connection does not constitute an internal connection if it crosses a public right of way. [Para. 193].

Q12. Are internal connections in non-instructional buildings eligible for discounts?

The general rule is no, such connections are not eligible for discounts, unless the connections are necessary to transport services to instructional buildings.

The operative connections that are eligible internal connections are those within instructional buildings or those that are necessary to transport services to instructional buildings. Internal connections between instructional buildings may be eligible for discounts if the buildings are part of a single school campus or multiple non-administrative library buildings comprising a single library branch. [Para. 210].

Wide Area Networks

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Q13. Are wide area networks eligible for discounts?

It depends on whether the network is purchased and constructed by an eligible entity. If so, the costs of the wide area network are not eligible for discounts because they do not meet the definition of services eligible for discount. [Para. 193]. A wide area network leased from a telecommunications carrier, however, may be eligible for discounts as part of telecommunications service. [Footnote 585].

Reflection of State Price Reductions in Calculating the Discounts

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Q14. If a state provides universal service discounts or other subsidies to schools and libraries for eligible services, how will those funds be reflected in the calculation of discounts to be funded from the federal program?

The federal discount will be based on the price of services to regular commercial customers, or if lower than the price of service for regular commercial customers, then the price is computed as though there were no state discount or subsidy. [Para. 196].

Aggregation of Discounts

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Q15. When multiple entities apply for discounts as a consortium, how will the level of support be determined?

Because the overall discount is based on discounts for each entity weighted by the average of the amount for which each individual school or library agrees to be financially liable, the amount of support likewise should be determined, where possible, on the discount rate to which each individual school or library is entitled. Both the discount rate and provision of support should be determined for each individual school or library if it is not unreasonably burdensome to do so.

For services used only by an individual institution, the applicable discount rate for the services is based on the individual institution's discount rate. [Para. 205].

For shared services which cannot, without difficulty, be allocated directly to a particular entity, consortia must certify that each individual institution will receive a proportionate share of the shared services within each year in which the entity is used to calculate the aggregate discount rate. [Para. 206]. This obligation can be met by tracking usage of shared services or other methods to ensure each institution receives a proportionate share of shared services. An applicant comprised of multiple eligible entities must maintain records to show the basis for and actual distribution of funds. [Para. 207].

Existing Contracts

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Q16. Which contracts are exempt from the competitive bid requirement to post a request for services?

The Fourth Order of Reconsideration made a change to the original May 8 Order with respect to this issue. Contracts for eligible services signed on or before July 10, 1997 (changed from Nov. 8, 1996, in the original Order) are exempt from the competitive bid requirement to post a request for services, for the life of the contract. Contracts signed after July 10, 1997 but before the SLC