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December 3, 2001

Magalie Salas
Secretary
Federal Communications Commission
445 12th Street SW
Room TWB-204
Washington, DC 20554

RE: In the Matter of Request for Review of the Decision of the Universal Service Administrator by Oklahoma City Public Schools Under FCC Docket Nos. 96-45 and 97-21 (FRN No. 663320).

Dear Ms. Salas:

Enclosed, please find the original and four copies of the Supplemental Filing in support of the Request for Review of the Oklahoma City Public Schools 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,

Orin R. Heend

Enclosure

No. of Copies rec'd 0+4
List ABCDE

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of:

Request for Review of the Decision of the Universal Service Administrator by	)	
Oklahoma City Public Schools Oklahoma City, OK	)	
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

SUPPLEMENTAL FILING IN SUPPORT OF REQUEST FOR REVIEW

Oklahoma City Public Schools ("School District"), by its representative, submits this supplemental filing in support of its Request for Review, filed September 5, 2001, of the determination of the Schools and Library Division of the Universal Service Administrative Company ("SLD"), reducing the School District's request for universal service support in Funding Request No. 663320.

I. Basis for Supplemental Filing

In its Request for Review, the School District asked the Commission to direct the SLD to adhere to its Receipt Acknowledgement Letter ("RAL") correction rules—rules that the Commission has reviewed carefully in several cases and approved each time. In support of its appeal, the School District explained to the Commission that it had filed a

timely RAL Correction Request supported fully by documentation contained elsewhere in the Form 471, as SLD rules require, but that the SLD completely ignored the School District's filing.[1]

In its Funding Commitment Decision, the SLD failed even to mention the RAL Correction Request or any of the other attempts the School District made during the data entry and review process to clarify this FRN. Instead, the SLD issued an uncorrected funding commitment without any explanation. Consequently, in its Request for Review, the School District had no choice but to speculate as to the SLD's rationale.[2]

We are submitting this Supplemental Filing to the Commission because the School District has received new information that we believe explains the SLD's decision-making process in this case. Based on a recent telephone conversation with USAC Vice President George McDonald and as explained more fully below, the School District now believes that the SLD's reason for ignoring its RAL Correction Request is tied to the SLD's ability to make accurate projections of funding demand. We still do not know, however, why the SLD opted *never* to explain this to the School District in writing. This due process failure alone should be reason enough for the Commission to reverse the SLD's decision in this particular case. In any event, the SLD's explanation comes as a surprise and, we submit, may not be used as a basis to deny an applicant universal service support in these or any other circumstances.

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[1] As described in detail in the Request for Review, the School District notified the SLD very early in the application process—in fact, before the SLD had even formally data-entered its Form 471 application—that through a clerical error, the monthly, rather than the annual amount, of its telecommunications circuit charges for Internet access was included in a Block 5 funding request. The Description of Services attachment to this funding request made clear, however, what the correct amount should be. (The School District previously has received funding commitments for the annual cost of these services at the corrected level.) The School District made repeated communications with the SLD to try to get this correction made, including submitting a corrected RAL within two weeks of its receipt.

[2] In its Request for Review, the School District stated that it was "impossible to challenge the SLD's rationale [for failing to adjust the School District's funding commitment] because, if one exists, it is not apparent from the record." Letter from Orin Heend, Funds For Learning, LLC, on behalf of the Oklahoma City Public Schools, to Federal Communications Commission, filed September 5, 2001.

Because the School District did not address this issue in its Request for Review, the purpose of this Supplemental Filing is to explain to the Commission why the SLD's rationale is not persuasive, either generally or in this specific case.

II. The SLD's Rationale

On November 28, 2001, George McDonald telephoned Orin Heend, president of Funds For Learning, LLC, the School District's representative. He was calling in response to a letter that Mr. Heend had sent to him earlier in the week. The letter had expressed continuing concern about the irreversible adverse impact that the SLD's decision was having on the School District's funding and the need, therefore, to resolve it as quickly as possible. Mr. McDonald agreed with the sense of urgency expressed in the letter, and advised Mr. Heend that he had communicated this to the Commission. We appreciate Mr. McDonald's timely and considerate reply and the action he took on the School District's behalf.

Mr. McDonald also explained that the School District made the correct decision in filing a Request for Review with the Commission because the SLD would not adjust Block 5 funding request errors upwards *if it did not appear from the face of the form that there was an error*. This, Mr. McDonald explained, was because the SLD needed to protect its ability to produce a "demand projection," an estimated level of demand for E-rate funds represented by the applications submitted by schools and libraries. This position, as expressed by Mr. McDonald, represents a radical departure from the Commission's position on RAL corrections that it has examined repeatedly and has concluded protects both the objectives and administrative integrity of the schools and libraries program.[3]

[3]This position also contradicts the SLD's own guidelines for appeals that it says it is willing to approve: "If the applicant made a mistake in completing the Form 471. . .and had provided information to SLD either with the application or during PIA review. . .and when the appeal points out the mistake. . .and how SLD could have seen the mistake, . . . SLD will grant the appeal." See http://www.sl.universalservice.org/reference/AppealsSLDGuidelines.asp, retrieved December 3, 2001.

The position articulated by Mr. McDonald should not go unchallenged, as it represents, in effect, an impermissible exercise of administrative rule making that assigns more weight to an unrealistic demand for clerical precision than to the program's overall policy objectives.

We understand that the SLD must continually monitor the ever-changing level of demand in order to determine which applications it will be able to fund. And we certainly can appreciate the enormity of the SLD's task, and its need to limit the number of "moving targets" with which it is dealing. We also recognize that the Commission has authorized the SLD "to establish procedures for the administration of the schools and libraries support application process in an efficient and effective manner, including procedures for the review of applications and the implementation of the Commission's rules of priority."[4] Nevertheless, the processes that the SLD apparently followed in this case unquestionably contravene the processes that the Commission has previously authorized for making legitimate corrections.

We believe that in its many decisions reviewing the SLD's RAL Correction Rules, the Commission has already drawn a line that both preserves the SLD's operational efficiencies while permitting certain kinds of narrowly defined corrections. We believe that the number of applications requesting upward adjustments that could actually satisfy these rules are, in fact, extremely small. Furthermore, we believe that the particular circumstances and equities in this case, on balance, far outweigh whatever projection needs the SLD may have had earlier in this particular funding year, and thus, no new rule should be applied.

III. Projecting Demand for Funding is an Imprecise Exercise at Best

When the schools and libraries program was created, the Commission had no basis for predicting what the level of demand for funds would be and how much should

be collected from the carriers to meet that demand. Under the 1997-98 regulations that laid the foundation for the schools and libraries funding mechanism, the fund administrator was directed to provide the Commission with an estimate of the demand represented by the applications that had been submitted during the annual filing window. As a practical matter, in every funding year since Program Year Two, the SLD's initial demand projection has, in fact, exceeded the annual cap of $2.25 billion.

However, the process of making a demand projection is imprecise at best. In Year 4, the funding year at issue here, the SLD first projected, on February 2, 2001, that $5.52 billion had been requested by schools and libraries. On February 28, it revised that number upward to $5.787 billion. Although the SLD said that the number was based on actually "counting the dollars requested" in the applications, it acknowledged that the number was an estimate that was "likely to decline." After reporting its initial demand projection to the Commission, the SLD closely guards the precise level of demand represented by the applications it has processed.

On March 7, 2001, the School District's representative first brought the clerical error to the attention of the SLD staff. The requested correction would have required an upward adjustment of $782,415.78. On April 26, 2001, the School District's representative submitted this same correction, following the prescribed procedure for correcting a Receipt Acknowledgement Letter.

Almost two months after the SLD was first notified of the School District's error—on May 1, 2001—the SLD reported that it had informed the Commission that it had made a $219 million "data-entry" error of its own, further reducing the demand projection. In addition, it said that $374 million worth of applications had also been rejected because of missing or late certifications and/or attachments.

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[4] See, for example, Common Carrier Bureau decision in *Boone County School District*, November 29, 2001.

On August 31, 2001, nearly four months later, the SLD announced that it had determined it would be able to fund all requests for internal connections filed by applicants with discount rates of 90 percent. However, we understand that shortly before that, the SLD had discovered that a certain number of applications were apparently incorrectly processed and rejected for failing to submit their certifications and/or attachments by the filing window deadline. Although the demand projection has not been revised publicly since May, Mr. McDonald reported to the Schools and Libraries Committee of the USAC Board of Directors at its October 22, 2001, quarterly meeting that "$187 million could move inside of the window because of attachment issues."

Additional processing errors on the part of the SLD can, in fact, add to the potential imprecision of its demand numbers. For instance, in Year 1, we know of at least one case in which the SLD failed to data enter a full page of an applicant's Form 471 application – this SLD error involved more than $500,000 in funding. The SLD restored this funding after a successful appeal. During the Year 2 supplemental window application period, the SLD failed to enter another 21 funding requests, totaling more than $900,000, on another Form 471 application. In this case, the SLD failed to respond to a corrected RAL, but agreed, on appeal, that these items should be data-entered. In yet another case, involving a Year 2 application, the SLD data entry staff dropped a "zero" from the funding request, reducing the request by a magnitude similar to the amount in the case under appeal. In this case, the SLD did revise the funding request as a result of a corrected RAL submission.

We cite these examples simply to demonstrate that clerical errors can and do occur, and it is possible for the SLD to correct them (at least when the mistake is the SLD's) without jeopardizing the efficiency of its application review or the positive balance of the schools and libraries fund.

While the demand projection may be a useful tool for helping applicants predict their chances of funding, and to provide the FCC with some guidance on funding and collection issues, the experience of the past year makes clear that the SLD's demand

projection is a target that is constantly moving—both up and down. Although the SLD now has four years of experience to help guide it, for all practical purposes it is impossible for the SLD to know how much funding requests will be reduced or rejected, until it actually gets in and does the application review. Even then, it must still build in a cushion for appeals that may ultimately be successful.

Further, the experience to date has been that schools and libraries actually used much less funding than they had requested, providing an even larger cushion for appeals and late adjustments than the SLD might have needed to provide in the first place. (We understand that the Commission has, in fact, begun permitting the SLD to "commit" more than $2.25 billion, based on mutual acknowledgement that USAC will never be called on to actually disburse that much.)

IV. The FCC-Approved Correction Standard Strikes a Reasonable Balance

We agree with the reasonable position on application corrections that the Commission has taken in its appeals decisions to date and believe that the SLD can continue to apply it in a way that will preserve the SLD's need to predict as accurately as possible the volume of funding requests that have been submitted. In short, the policy the Commission has articulated is this:

- Applicants will be permitted to correct clerical errors in a funding request submission when the correct information is clearly provided elsewhere in the application submission, and the application is otherwise correct.

- Applicants will be permitted to make such a correction if they bring it to the attention of the SLD during the formally established process for making such corrections, namely reviewing the Receipt Acknowledgement Letter and faxing back corrections within two weeks. From the applicant's viewpoint, it is not until it receives the RAL that it knows that the SLD has, in fact, accepted its application and completed the data entry process.

If necessary, the RAL instructions could be modified to state that funding requests would be revised upward only if the applicant can demonstrate that the correct amount was clearly listed elsewhere in its application, in either the actual Block 5 submission or in the Description of Services attachment. From an operational standpoint, *there is no difference* in letting an applicant point out a clerical error by the SLD at the RAL stage and letting the applicant identify its own clerical error at that stage. We believe that the requirement that the correct information be detailed elsewhere in the application is an adequate protection against letting applicants increase their funding requests cavalierly at that point in the process.

We believe that it *is* unreasonable for applicants to expect the SLD to boost their funding request higher than the amount they originally requested after the RAL review stage has been completed, and particularly after a Funding Commitment Decision Letter has been issued. That position has been enunciated in other Commission appeal decisions on this issue.

V. The School District's RAL Correction Satisfied the FCC-Approved Correction Standard and Should be Granted on that Basis and not Subjected to an Entirely New Standard of Review.

In Year 4, the SLD and the Commission have been forced to address a processing error on the part of the SLD's subcontractors that apparently represented a potential increase of $187 million in the amount of legitimately submitted funding requests—an error whose magnitude may not have been fully identified until August. It is in this very realistic context that we request the Commission to consider the very unrealistic correction standard that the SLD has indicated its intent to implement.

The Oklahoma City School District's appeal involves absolutely no violation of program rules. Instead, a school district serving a low-income population wants to continue to use the discounts that have enabled it to provide its schools with high-speed Internet access—precisely what the E-rate program was designed to do. A clerical error

was brought to the attention of the SLD staff as early as it possibly could have been. If the SLD can find a way to adjust its demand projection in August to accommodate its own $187 million error, we believe that the totality of circumstances in this case provide ample justification for it to correct a clerical error of $782,415.78 that was brought to its attention nearly six months before that—and four months before the Commission set the Year 4 funding cap and the SLD started issuing funding commitments.

We believe that under the Commission's current policy on application corrections, the SLD should be instructed to permit applicants to correct a funding request at the RAL review stage if they have documented the correct amount elsewhere in their application. However, if the Commission is unwilling to do that, we believe that in light of the specific circumstances surrounding this case, and the continual readjustment, up and down, of the Year 4 demand figure, it should instruct the SLD to correct the funding request submitted by the Oklahoma City School District.

Respectfully submitted on behalf of

OKLAHOMA CITY PUBLIC SCHOOLS

December 3, 2001

By: _____

Orin R. Heend

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