



March 18, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Salas
Secretary
Federal Communications Commission
445 12th Street SW
Room TW-A325
Washington, DC 20554

Re: In the Matter of Petition for Reconsideration of the Request for Review of the Decision of the Universal Service Administrator by Prince George's County Public Schools Under FCC Docket Nos. 97-21 and 96-45 (SLD Form 471 No. 199306)

Dear Ms. Salas:

Enclosed please find the original and four copies of the above referenced Petition for Reconsideration.

Should you have any questions, please feel free to contact me.

Sincerely,

Orin R. Heend
(Arlington Office)

ORH/vss
Enclosures

0+4

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

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In the Matter of:)	
)	
Petition for Reconsideration of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Prince George's County Schools)	File No. SLD-199306
Upper Marlboro, MD)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

To: The Commission
Chief, Common Carrier Bureau

PETITION FOR RECONSIDERATION

Pursuant to Section 1.106 of the Commission's Rules (47 C.F.R. § 1.106), Prince George's County Public Schools ("School District"), by its representative, hereby petitions the Common Carrier Bureau ("CCB") to reconsider its Order in the above-captioned matter denying the School District's Request for Review.

The School District has standing to file this Petition because it is a party to this proceeding. 47 C.F.R. § 1.106 (b) (1). A petition for reconsideration must be based on new facts, changed circumstances, or material errors or omissions in the underlying opinion. 47 C.F.R. § 1.106(c) and (d). The basis for the School District's Petition is a material error in the underlying opinion. The Petition is timely, as it was filed with the Commission within 30 days from the date of public notice. 47 C.F.R. § 1.106 (f). Therefore, the instant Petition is properly before the CCB.

On September 4, 2001, the Schools and Libraries Division of the Universal Service Administrative Company (“SLD”) issued a Decision on Appeal, denying the School District’s request for Universal Service support in connection with the purchase of caching servers from Dell Computer Corporation. The School District filed a Request for Review with the Commission. Thereafter, on February 15, 2002, the CCB issued an Order denying the School District’s Request for Review on procedural grounds, rather than on the merits. Rather than consider the arguments *in the instant case* as to why the CCB should rule caching servers eligible, the CCB instead decided to treat the Request for Review as a petition to reconsider the Commission’s 1999 *Tennessee Order*¹ -- even though the School District had no standing to file such a petition and never intended to do so.

After characterizing the Request for Review in the *instant case* incorrectly as a petition to reconsider the *Tennessee Order*, the CCB went on to find that “the 30 day period of time for seeking reconsideration of that ruling had expired.” Because the School District’s petition was untimely, the CCB concluded, “the SLD correctly denied funding for cache servers requested in the pending application.” *Prince George’s County Schools Order* at para. 4. Mischaracterizing the Request for Review in the instant case as a petition to reconsider a matter in a case in which the School District had no standing, and then dismissing it as a result of that mischaracterization constituted a material error in the underlying proceeding.² Therefore, this Petition for Reconsideration should be granted and all of the information and arguments presented in the underlying proceeding in connection with the caching server eligibility question should be considered.

In *Tennessee*, the Commission decided to support charges for end-to-end Internet access that included, in certain circumstances, the cost of on-premise equipment necessary to provide that service. In the course of a very long and complex discussion,

¹ *Request for Review by the Dept. of Education of the State of Tennessee, et. al.* 14 FCC Rcd 13734

² The School District was not a party to the *Tennessee* proceeding and had not requested E-rate support for caching servers at the time of that decision. Therefore, the School District was neither involved nor adversely effected by the decision, and thus had no standing to file a petition to reconsider it. Because it had no standing to file such a petition in the first place, even if the School District had attempted to file such a petition, the timeliness of it would have been irrelevant.

the Commission considered several subsidiary issues, including whether caching servers should be eligible as internal connections.

Because the School District's entitlement to E-rate support in the underlying proceeding turned entirely on the Commission's caching server-findings in *Tennessee*, it had but one way around this controlling precedent -- ask the CCB to reexamine and overrule *in its case* the precedent that the Commission had created *in that case*. While the School District's Request for Review had asked the CCB to "reconsider" the *Tennessee* caching server determination, the word "reconsider" in that context was not intended and never should have been construed as a formal request to reopen the *Tennessee* matter, especially in the absence of any allegation of standing.

Instead, what should have been and, we submit, was apparent from the School District's filing was that it believed reasonably that the Commission had decided the caching server question in *Tennessee* incorrectly. Consequently, in the underlying proceeding, the School District's objective was to persuade the CCB to question the continuing validity of the rule and, as a result, to change it. See *Functional Music, Inc. v. FCC*, 274 F.2d 543, 546 (D.C. Cir. 1959) (because "administrative rules and regulations are capable of continuing application," limiting review of a rule to the period immediately following rulemaking "would effectively deny many parties ultimately affected by a rule an opportunity to question its validity").

In the underlying proceeding, the SLD reasoned that caching servers are Internet content "storage devices" and thus ineligible under program rules. In *Tennessee*, the Commission found, somewhat tentatively, that the reason caching servers are ineligible is that they "*seem* to provide levels of efficiency in the delivery of information" but are not necessary to transport it. *Tennessee* at para. 41 (emphasis added). As the School District made clear in its Request for Review, neither the Commission's nor the SLD's findings describe accurately the role that caching servers play in today's sophisticated, frequently bandwidth-challenged networked environments. We submit that the *Tennessee* caching server issue was wrongly decided, primarily because the record in that case was incomplete. Furthermore, we submit that the nature of networking and digital media has

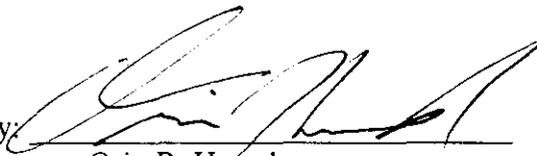
changed radically since the time *Tennessee* was decided, that the “intelligence “ of caching hardware has advanced dramatically along with those changes, and that today caching servers are even more central to enabling access to information than they were then.

Caching servers, as discussed in detail in the Request for Review, play an absolutely mission critical role in transporting media-rich information, such as video, across the local area networks that schools and libraries are building today. Upon closer and more careful examination, the CCB will find that in *today's* networks, caching servers are absolutely necessary to transport all kinds of information, especially high-bandwidth information, to and from the classroom.

REQUESTED RELIEF

For these reasons, the School District requests that the CCB grant the instant Petition for Reconsideration, review on their merits the issues the School District raises in its Request for Review, and grant to the School District the relief requested therein.

Respectfully submitted on behalf of
PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS

By: 
Orin R. Heend

Funds For Learning, LLC
2111 Wilson Blvd. Suite 700
Arlington, VA 22201
703-351-5070

cc: Michael Lieb
E-rate Coordinator
Prince George's County Public Schools
8437 Landover Road
Landover, MD 20785

Certificate of Service

I, Orin Heend, do hereby certify that I have mailed, by first class mail with the United States Postal Service, a true and complete copy of this Petition for Reconsideration to the Schools and Libraries Division, Box 125 – Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981 and Michael Lieb, E-rate Coordinator, Prince George's County Public Schools, 8437 Landover Road, Landover, MD 20785, this 18th day of March, 2002.


Orin R. Heend