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Before the
Federal Communications Commission
Washington, DC 20554

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 Schools Upper Marlboro, Maryland	)	File No. SLD-199306
	)	
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

ORDER ON RECONSIDERATION

Adopted: May 10, 2002 **Released: May 13, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division (Division) is a Request for Reconsideration filed by Prince George's County Public Schools (PGCPS), Upper Marlboro, Maryland.[1] PGCPS seeks review of a decision by the Division denying PGCPS's Request for Review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).[2] For the reasons set forth below, we deny the Petition for Reconsideration.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.[3]

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[1] *Petition for Reconsideration by Prince George's County Schools*, CC Docket Nos. 96-45 and 97-21, Petition for Reconsideration, filed March 18, 2002 (Petition for Reconsideration).

[2] *Request for Review by Prince George's County Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-199306, CC Dockets No. 96-45 and 97-21, Order, DA 02-346 (Com. Car. Bur. rel. February 15, 2002) (*Request for Review by Prince George's County Schools*). Parties may seek reconsideration from a final action of the Commission or its designated authority pursuant to 47 C.F.R. § 1.106.

[3] 47 C.F.R. §§ 54.502, 54.503.

The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470, which is posted to the Administrator's website for all potential competing service providers to review.[4] After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.[5] SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. At issue are twelve requests for discounted services in Funding Year 3, denied in full or in part by SLD because they requested discounts for cache servers.[6] In the *Tennessee Order*, the Commission concluded that cache servers were not eligible for discounts.[7] In its Request for Review, PGCPS requested that we reconsider that decision and reverse it outcome.[8] We denied the request on the grounds that the 30 day period of time for seeking reconsideration of the *Tennessee Order* had expired.[9]

4. In its Petition for Reconsideration, PGCPS argues that we erred in treating the Request for Review as a petition seeking reconsideration of the *Tennessee Order*.[10] PGCPS argues that it is not seeking a reversal of the *Tennessee Order* itself but rather a reversal of the policy as applied to PGCPS's application.[11] It argues that it has the right to challenge the validity of a rule established in an order as applied in a subsequent case even when the period for

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[4] Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470); 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

[5] 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

[6] *See Request for Review of Prince George's County Schools*, at para. 4.

[7] *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, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13734, para. 41 (1999) (*Tennessee Order*).

[8] Letter from Orin R. Heend, Funds for Learning, L.L.C., on behalf of Prince George's County Public Schools, to Federal Communications Commission, filed October 2, 2001 (Request for Review).

[9] *See Request for Review by Prince George's County Schools*, at para. 4..

[10] Petition for Reconsideration, at 2-3.

[11] Petition for Reconsideration, at 3.

challenging the original order establishing the rule has passed.[12] It emphasizes that it is only asking "the [Bureau] to reexamine and overrule *in [PGCPS's] case* the precedent that the Commission created" in the *Tennessee Order*.[13] It asserts that, in light of "*today's* networks," caching servers are necessary to transport information over a network.[14]

5. We agree that, even where the period for challenging the order establishing a general rule has passed, parties may still challenge a specific application of the rule on the grounds that the rule is substantively invalid.[15] Further, viewed as a challenge to SLD's application of the *Tennessee Order* in PGCPS's funding request, PGCPS's Request for Review is not untimely, because it was filed within 30 days of the issuance of SLD's decision.[16]

6. Nevertheless, we must still deny the Request for Review. PGCPS argues that the it has demonstrated that the *Tennessee Order* was wrongly decided and asks the Division to reverse the Commission's determination that caching servers are ineligible.[17] However, it is well established that divisions and bureaus of the Commission are bound by a decision of the full Commission.[18] We therefore have no authority to overrule in this case the holding of the Commission in the *Tennessee Order* that cache servers are ineligible for discounts.

7. We note that the Commission recently initiated a rulemaking proceeding to examine its rules governing the schools and libraries universal service support mechanism in order to ensure its continued efficient and effective operation.[19] PGCPS is free to raise this proposal in the context of the rulemaking.

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[12] *Id.*

[13] *Id.*

[14] *Id.* at 4 (emphasis in original).

[15] *See Public Citizen v. Nuclear Regulatory Commission*, 901 F.2d 147, 153 n.3 (D.C. Cir. 1990); *Functional Music, Inc. v. Federal Communications Commission*, 274 F.2d 543, 546 (D.C. Cir. 1958).

[16] 47 C.F.R. § 54.720; *see* Request for Review (filed on October 2, 2001); Letter from Schools and Libraries Division, Universal Service Administrative Company, to John D. Harrington, Funds for Learning, dated September 4, 2001.

[17] Petition for Reconsideration, at 3-4.

[18] *Voice Stream PCS I License*, 16 FCC Rcd 7584, para. 8 (Enf. Bur. 2001); *see also Jelks v. Federal Communications Commission*, 146 F.3d 878, 881 (1998) (a subordinate body such as a Division cannot alter a policy set by the Commission itself).

[19] *See generally Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Further Notice of Proposed Rulemaking, FCC 02-8 (rel. January 25, 2002).

8. ACCORDINGLY, IT IS ORDERED, pursuant to section 1.106(j) of the Commission's rules, 47 C.F.R. § 1.106(j), that the Petition for Reconsideration filed by Prince George's County Public Schools, Upper Marlboro, Maryland, on March 18, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau