

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

In the Matter of)
Federal-State Joint Board on Universal Service) CC Dockets No. 96-45, 97-21
DA 03-1186

William F. Caton
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: Comments on the Petition by the State of Tennessee to Change Its Service Provider for the Schools and Libraries Universal Support Mechanism, Funding Year 2002

Release Date: April 21, 2002

Funds For Learning is an educational technology consulting firm that has focused its practice on the E-rate program since the program's inception in 1997. We work with schools and libraries and provide independent consulting advice to service providers to help them understand program rules and their own responsibilities.

We believe that the Commission should permit school and library applicants to seek a change of service provider before a funding commitment decision letter is approved, provided that the standards that the Commission enunciated in its *Copan* decision are met.

In that decision, the Commission concluded that it could not anticipate every conceivable situation that might lead an E-rate applicant to need to change a service provider. Consequently, it laid out three broad principles that would have to be met

before the Schools and Libraries Division could approve what has become known as an “Operational SPIN Change.” An applicant must now certify that:

- 1) the change is “allowed under all applicable state and local procurement rules,”
- (2) the change is “allowable under the terms of the contract, if any, between the applicant and its original service provider,” and
- (3) “the applicant has notified its original service provider of its intent to change service providers.”

We believe that there is no good reason why this kind of change could not be initiated before a funding commitment decision letter is approved. In fact, the longer it takes for a funding commitment to be approved, the greater the likelihood that a change may turn out to be necessary. If the Schools and Libraries Division’s Program Integrity Assurance staff were permitted to process such changes as part of their review of other aspects of an application and its underlying contractual arrangements, it would, in fact, streamline the process and remove the need for another level of bureaucratic review after commitments are approved--and speed the disbursement of funds.

If the Commission decides to approve the state’s petition, we recommend that it make clear that applicants should not view a favorable decision in the case as a possible “escape hatch” if the SLD had been investigating possible program violations involving the applicants’ own application or competitive bidding procedures. In cases where an applicant had, for instance, failed to conduct a proper competitive bidding process, the substitution of a new vendor would not necessarily address the underlying problem with its application.

The situation that the state of Tennessee finds itself in *does* highlight another issue that we believe the Commission should direct the Universal Service Administrative Company to address. Because we have reason to believe that USAC’s productivity benchmarks are based on the volume of applications that are processed by a certain date, more challenging applications, such as these, seem to go to the bottom of the pile. We note that for the 2003 funding year, another \$30 million worth of funding requests have been

submitted in Tennessee in the name of ENA. If the SLD directs greater attention to applications like these, earlier in the year, there will be less likelihood that an applicant will still be waiting for a resolution of their request this close to the end of the 2003 funding year.

Submitted by:

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Orin Heend, President

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