

**Before the
Federal Communications Commission
Washington, DC**

In the matter of:

)
Proposed Fourth Quarter 2004)
Universal Service Contribution Factor)
Released: September 16, 2004) DA 04-2976
)
Federal State Joint Board on) CC Docket No. 96-45
Universal Service)
)

Petition for Reconsideration

In accordance with Title 47, Chapter 1, Part 1, Section 1.106, I petition the Federal Communications Commission to reconsider the above captioned order because the Wireline Competition Bureau (Bureau) exceeded its authority in offsetting contributions with Schools and Libraries funds and uncertainties in the funding mechanism exemplified by the moratorium of funding commitments imposed by the Universal Service Administrative Company.

The fourth quarter Universal Service Contribution Factor has been set by the Bureau at 8.9 percent. This contribution factor is set at this percentage rate because of the application of \$150 million in carryover funds from the Schools and Libraries fund. The Bureau cites section 54.709(b) as the authority to apply carryover funds to offset proposed collections.

Section 54.709(b) reads as follows:

(b) If the contributions received by the Administrator in a quarter exceed the amount of universal service support program contributions and administrative costs for that quarter, the excess payments will be carried forward to the following quarter. The contribution factors for the following quarter will take into consideration the projected costs of the support mechanisms for that quarter and the excess contributions carried over from the previous quarter.

Language in the last sentence requires the Bureau to consider the projected costs of support mechanisms for the current quarter and EXCESS CONTRIBUTIONS from THE PREVIOUS QUARTER (emphasis added). The Bureau has incorrectly applied this provision when offsetting the fourth quarter contributions by \$150 million in carryover Schools and Library funds. The Commission specifically limited the offset to excess CONTRIBUTIONS carried over from a single (the previous) quarter, not carryover funds of the Schools and Libraries mechanism from previous years. Because there is no evidence of an excess of contributions in the amount of \$150 million in the third (let alone second) quarter(s), the Bureau has exceeded its authority.

Language in this section clearly speaks of excesses in contributions. For example, if the contribution factor was set at 9 percent and telecommunications revenues for the quarter increased by \$100 million more than the Bureau had anticipated, the Bureau would have \$9 million in “excess contributions” for the quarter. The contribution factor for the following quarter could be offset to reflect the \$9 million surplus from the previous quarter.

Untimely Suspension of Funding Commitments

On August 19, 2004 the Schools and Libraries Division of USAC posted the following announcement on its Web site:

“USAC has been directed by the FCC to move to government accounting standards by October 1, 2004, and this has raised potential budget authority issues that may impact USAC. As a result, SLD has not issued FCDLs for any Funding Year since August 3, 2004, and will be temporarily suspending further issuance of such letters. USAC is working with the FCC to resolve these issues and, once that happens, SLD will resume issuing commitment letters. In the meantime, SLD is continuing to review applications so that, when the matter is resolved, we will be in a position to issue FCDLs. USAC expects the issue to be resolved in the near future.”

With this suspension, funding commitments to schools and libraries have not been made for almost two months. Nationwide, less than half of funding requests for Priority One service – Telecommunications and Internet Access – have been made. Applicants that were counting on funding to pay 70, 80, or 90 percent of their telecommunications or Internet bills are quickly running out of money and may have to curtail vital services because of this impasse.

Because of the uncertainty surrounding the suspension of funding commitments, the Commission cannot reasonably affirm that the \$150 million allocated to reduce fourth quarter contributions is not necessary to address the accounting issue now before it. Therefore, the Commission cannot, with any degree of certainty, rule that the \$150 million is actually due to a lack of “service support” of funds under section 54.709. It is imprudent to allocate \$150 million in hard, available resources while the FCC and Administrator debate accounting nuances. It very well may be that the solution to the ongoing tussle between these two inside-the-beltway bureaucracies is simply \$150 million in cash.

It is a grave disservice to everyone involved in the E-Rate program to prolong the suspension of funding commitments. It is a grave disservice to the Congress of the United States for the program regulator and program administrator to fail to carryout its law.

I ask the Commission to reconsider this Order issued by the Wireline Competition Bureau and restore \$150 million to the Schools and Libraries fund. I also ask the Commission to resolve outstanding accounting issues between it and the Administrator and resume funding commitments as soon as possible.

Respectfully Submitted this 23rd day of September,

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