

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
New Albany-Floyd County)	File No. SLD-27572
Consolidated School Corporation)	
New Albany, Indiana)	
)	
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.)	

ORDER ON RECONSIDERATION

Adopted: January 30, 2001

Released: January 31, 2001

By the Common Carrier Bureau:

1. In this Order, we grant the petition for reconsideration filed by the New Albany-Floyd County Consolidated School Corporation (NAFC) on November 1, 1999¹ regarding our decision to dismiss, as untimely,² the appeal NAFC filed on April 26, 1999.³ Furthermore, after reviewing NAFC's appeal of the March 24, 1999 decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), we conclude that NAFC's application should be remanded to SLD in order for SLD to redetermine whether SLD's decision to reclassify NAFC's facilities as internal connections was appropriate in light of the Commission's *Tennessee Order*.⁴

¹ *Petition for Reconsideration of Request for Review of the Decision of the Universal Service Administrator by New Albany Floyd County Consolidated School Corporation*, SLD-27572, CC Docket No. 96-45, Order, DA 99-2298 (rel. Oct. 25, 1999), filed Nov. 1, 1999.

² *Request for Review of the Decision of the Universal Service Administrator by New Albany Floyd County Consolidated School Corporation*, SLD-27572, CC Docket No. 96-45, Order, DA 99-2298 (rel. Oct. 25, 1999).

³ *Request for Review of the Decision of the Universal Service Administrator by New Albany Floyd County Consolidated School Corporation*, SLD-27572, CC Docket No. 96-45, filed April 26, 1999. (Appeal)

⁴ *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*

I. BACKGROUND

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.⁵ During the first funding year (January 1, 1998 - June 30, 1999) of the support mechanism, SLD granted all approved requests for discounts for telecommunications services and Internet access and granted all approved requests for internal connections for schools eligible for discounts of at least 70 percent.

3. By letter dated February 18, 1999, SLD denied NAFC's application for discount funding, on the grounds that requests for internal connections were not funded for schools and libraries at NAFC's discount level.⁶ NAFC appealed SLD's decision, stating that its application sought discounts for telecommunications services rather than internal connections.⁷ On March 24, 1999, SLD denied NAFC's appeal.⁸ SLD again stated that NAFC's request was for what SLD considered internal connections. SLD reclassified NAFC's entire request as internal connections services so as to avoid the possibility of treating priority two services (internal connections) as priority one services (telecommunications services and Internet access). Further, SLD denied NAFC's funding request for the reclassified internal connections services because it did not qualify for the threshold 70 percent discount.⁹

4. On April 26, 1999, NAFC filed an appeal with the Commission. Because the Administrator's Decision on Appeal had been issued on March 24, 1999, more than 30 days prior to NAFC's filing of its appeal with the Commission, the Common Carrier Bureau dismissed NAFC's appeal as untimely on October 25, 1999. That decision, however, failed to recognize that the Commission was closed on April 23, 1999, the day that would otherwise have been the last day to file an appeal, due to activities associated with the 50th Anniversary NATO Summit. In a Public Notice announcing that it would be closed, the Commission stated that all

Universal Service Administrator, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13734 (1999) (*Tennessee Order*).

⁵ 47 C.F.R. §§ 54.502, 54.503.

⁶ Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Roger Whaley, NAFC School Corp, dated February 18, 1999.

⁷ Letter from Roger Whaley, New Albany-Floyd County Consolidated School Corp., to Schools and Libraries Division, Universal Service Administrative Company, filed March 3, 1999 (March 3, 1999 Letter).

⁸ Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Roger Whaley, NAFC School Corp, dated March 24, 1999 (Administrator's Decision on Appeal).

⁹ In June 1998, the Commission established funding priorities that placed funding requests for telecommunications and Internet access services ahead of those seeking aid for internal connections. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915, 14934-14940, paras. 31-38 (1998) (*Fifth Reconsideration Order*).

filings due on April 23, 1999 would be considered timely if filed on the next official work day, i.e., Monday, April 26, 1999.¹⁰

II. DISCUSSION

A. Timeliness of NAFC's Appeal

5. Under these circumstances, NAFC's appeal, filed on April 26, 1999, was timely and must be considered on its merits. We therefore vacate our Order dismissing that appeal and consider it on the merits here.

B. Merits of NAFC's Appeal

6. In its appeal, NAFC argues that SLD incorrectly classified its requests for Ameritech-managed router services and Internet server facilities as internal connections equipment rather than as Internet access or telecommunications services, as NAFC had characterized it.¹¹ NAFC further argues that, even if SLD was correct in reclassifying some of those facilities as internal connections, SLD erroneously denied NAFC support for that portion of its application that clearly was for telecommunications services and Internet access.

7. Subsequent to SLD's March 24, 1999 decision on appeal, the Commission issued its *Tennessee Order*, in which it considered whether certain facilities on school premises could be properly considered Internet access, rather than internal connections.¹² We believe that under the *Tennessee Order*, NAFC's argument concerning the classification of Ameritech's managed router services and data service unit/channel service unit (DSU/CSU) as internal connections may have merit. Therefore, we direct SLD to review NAFC's application again and apply the test described in the *Tennessee Order* to determine whether the services NAFC characterized as telecommunications services or Internet access were properly characterized as such.¹³

8. Furthermore, even if SLD finds that some of the services sought by NAFC are for internal connections and thus not eligible for support, we find that SLD should not penalize NAFC for commingling its requests for discounts for priority one services and priority two

¹⁰ *FCC Closes on Friday, April 23, 1999*, Public Notice, released April 12, 1999.

¹¹ Appeal, at 3. NAFC initially characterized its request as a request for telecommunications services. March 3, 1999 Letter. Later, NAFC characterized the service as "Internet access," because the telecommunications lines were being used to gain access to the Internet. Appeal at 3.

¹² *Tennessee Order*, 14 FCC Rcd at 13746-55, paras. 25-42.

¹³ In the *Tennessee Order*, the Commission concluded that a facility located on an applicant's premises is presumed to be a component of internal connections, but that presumption may be rebutted if the facility at issue functions exclusively as a point of presence for an Internet service provider and there are no other indications that the facility is mischaracterized as a component of an Internet access service. *Tennessee Order*, 14 FCC Rcd at 13753-54, paras. 37-38. Relevant indicia include ownership of the facility used to provide service, any lease-purchase arrangements regarding such facility, exclusivity arrangements regarding such facility, maintenance agreements regarding such facility, and upfront capital costs. *Tennessee Order*, 14 FCC Rcd at 13574-55, paras. 39-40.

services. Although the Commission's *Fifth Reconsideration Order* requires SLD to treat requests for internal connections differently from those for telecommunications services and Internet access,¹⁴ that *Order* was not released until June 22, 1998, while NAFC filed its FCC Form 471 on April 8, 1998.

9. In *Williamsburg-James City*,¹⁵ the Commission held that, in cases where, as here, an FCC Form 471 was submitted before the establishment of the Commission's rules of priority, applicants could not have been aware of the need to segregate carefully their service requests. Consequently, the Commission held that, in appeals addressing such circumstances, applications should be remanded to SLD for reprocessing, with priority one services (telecommunications and Internet access) and priority two services (internal connections) being considered separately on their own merits. We, therefore, remand NAFC's application to SLD, and direct SLD to reconsider NAFC's FCC Form 471 and, if warranted, to issue a new funding commitment decision letter providing discounts for all appropriate priority one services requested by NAFC.¹⁶

10. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Petition for Reconsideration filed by New Albany-Floyd County Consolidated School Corporation on November 1, 1999 to reconsider the dismissal of the Appeal it filed on April 26, 2000 is GRANTED.

11. IT IS FURTHERED ORDERED that the Appeal filed by New Albany-Floyd County Consolidated School Corporation on April 26, 1999, is GRANTED to the extent discussed herein.

12. IT IS FURTHERED ORDERED that the Administrator IS DIRECTED to implement the decision herein.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau

¹⁴ See *Fifth Reconsideration Order*, 13 FCC Rcd at 14934, para. 31.

¹⁵ *Request for Review of the Decision of the Universal Service Administrator by Williamsburg-James City Public Schools*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 20152 (1999) (*Williamsburg-James City*); See also *Request for Review of the Decision of the Universal Service Administrator by Bonner Springs Unified School District #204 Bonner Springs, Kansas, 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, 97-21, File No. SLD 32985, Order, DA 00-1044 (Common Carrier Bur. rel. May 17, 2000).

¹⁶ Whether NAFC will be entitled to funding for its priority one services will depend upon the extent that ineligible products and services were included within its request. See, e.g., *Request for Review of the Decision of the Universal Service Administrator by Redwood City School District*, CC Docket Nos. 96-45 and 97-21, Order, DA 99-2616, at para. 5 (Common Carrier Bur. rel. Nov. 22, 1999).