

**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)	
)	
Fort Wayne Community School District)	File No. SLD-160143
Fort Wayne, Indiana)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER ON RECONSIDERATION

Adopted: November 19, 2001

Released: November 20, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division (Division) has under consideration a Petition for Reconsideration filed by Fort Wayne Community School District (Fort Wayne), Fort Wayne, Indiana.¹ Fort Wayne seeks reconsideration of our denial of its request for review of the decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).² For the reasons set forth below, the petition is dismissed.

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 The Commission's rules require that the applicant make a bona fide request for services by filing

¹ *Petition for Reconsideration by Fort Wayne Community School District*, CC Docket Nos. 96-45 and 97-21, Petition for Reconsideration, filed September 6, 2001 (Petition for Reconsideration).

² *Request for Review by Fort Wayne Community School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-160143, CC Dockets No. 96-45 and 97-21, Order, DA 01-1877 (Com. Car. Bur. rel. August 9, 2001) (*Request for Review by Fort Wayne*). 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.

with the Administrator an FCC Form 470,⁴ which is posted to the Administrator's website for all potential competing service providers to review.⁵ 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.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.⁷

3. In the *Fifth Reconsideration Order*, the Commission established new rules to govern how discounts will be allocated when available funding is less than total demand and a filing window is in effect.⁸ These rules provide that requests for telecommunications and Internet access services for all discount categories shall receive first priority for available funds (Priority One Services), and requests for internal connections shall receive second priority (Priority Two Services). Thus, when total demand exceeds the total support available, SLD is directed to give first priority for available funding to telecommunications services or Internet access.

4. Any funding remaining after allocation to Priority One services is allocated to the requests for support for internal connections beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.⁹ Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their requests for internal connections. To the extent funds remain, the Administrator would continue to allocate funds for discounts to applicants at each descending single discount percentage, e.g., eighty-nine percent, eighty-eight percent, and so on. During the third funding year (July 1, 2000 – June 30, 2001) of the support

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

⁵ 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).

⁶ 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).

⁷ *Request for Review by Metropolitan School District of Pike Township, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-120821, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 13891, para. 2 (Com. Car. Bur. 2000).

⁸ See *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318 (1997).

⁹ *Id.* at 14938, para. 36. The schools and libraries discount matrix reflects both an applicant's urban or rural status as well as the percentage of its students eligible for national school lunch program. 47 C.F.R. § 54.505.

mechanism, SLD granted all approved requests for discounts for telecommunications services and Internet access and granted all approved requests for internal connections down to the 81 percent discount level.

5. In our prior decision, we concluded that SLD had correctly characterized one of Fort Wayne's funding requests, Funding Request Number (FRN) 372186, as internal connections despite Fort Wayne's characterization of the service as telecommunications service.¹⁰ We noted Fort Wayne's argument that FRN 372186 only sought the lease of equipment from the vendor for the purposes of receiving telecommunications services over a metropolitan area network (MAN), and did not seek to purchase any equipment that could be characterized as internal connections.¹¹ Our review of the record, however, determined that Fort Wayne's contract for telecommunications service included a one-time fee in the amount of \$5,496,290, which we found would cover the costs of items that constituted internal connections such as switches and other hardware.¹² We found that, because FRN 372186 commingled Priority Two internal connections and Priority One telecommunications, SLD correctly characterized the entire request as seeking Priority Two services, to which Fort Wayne was not entitled.¹³

6. In its Petition for Reconsideration, Fort Wayne argues again that the hardware being paid for by FRN 372186 will all be owned by the vendor.¹⁴ Citing to documentation attached to its previous Request for Review, Fort Wayne asserts again that the equipment will be used by the vendor to provide telecommunications service over the vendor's Wide Area Network, not as connections within instructional buildings.¹⁵

7. Section 1.106 of the Commission's rules provides that a petition for reconsideration of an order denying an application for review will be entertained only if: 1) the petition relies on facts which have occurred or circumstances which have changed since the last opportunity to present such matters; or 2) the petition relies on facts unknown to the petitioner until after the last opportunities to present such matters could not, through ordinary diligence, have been learned prior to that opportunity.¹⁶ After reviewing the record, we find that Fort Wayne has not presented any new evidence or facts unknown to Fort Wayne at the time of its previous Request for Review. As a result, Fort Wayne's Petition for Reconsideration is subject to dismissal as repetitious pursuant to Section 1.106(b)(3).¹⁷

¹⁰ *Request for Review by Fort Wayne*, para. 7.

¹¹ *Id.* at para. 6.

¹² *Id.* at para. 7.

¹³ *Id.*

¹⁴ Petition for Reconsideration, at 3.

¹⁵ *Id.*

¹⁶ See 47 C.F.R. § 1.106(b)(2).

¹⁷ See 47 C.F.R. § 1.106(b)(3).

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 Fort Wayne Community School District, Fort Wayne, Indiana, on September 6, 2001 IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
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