

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

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Brooklyn Public Library)	File No. SLD-149423
Brooklyn, New York)	
)	
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

Adopted: September 25, 2000

Released: September 26, 2000

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a statement.

1. This Order denies in part, grants in part, and remands the Letter of Appeal of Brooklyn Public Library, Brooklyn, New York (Brooklyn), that was received by the Commission on May 18, 2000.¹ Brooklyn's Letter of Appeal seeks review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator), dated April 18, 2000.² Brooklyn seeks review of SLD's denial of its request for funding of telecommunications services, for the Year 2 funding year of the schools and libraries support mechanism. To the extent that Brooklyn seeks recovery of the entire \$12.6 million amount in one funding year, we deny the appeal. In this Order, however, we clarify our policy regarding the use of universal service funds for a service provider's capital investment associated with the delivery of eligible services to schools and libraries under a multi-year contract. We therefore remand Brooklyn's appeal to SLD and direct SLD to process Brooklyn's appeal under the guidelines set forth in this Order, so that Brooklyn may receive any Year 2 universal service funding which it is eligible to receive under the principles outlined below.

¹ Letter of Appeal of Martin Gomez, Brooklyn Public Library, to Federal Communications Commission, filed May 18, 2000 (Letter of Appeal).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

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 on eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, schools must file certain information with SLD. Specifically, the Commission's rules require that an applicant submit to SLD a completed FCC Form 470, in which the applicant sets forth the school's technological needs and the services for which it seeks discounts.⁴ Once the school has entered into an agreement for eligible services, it must file an FCC Form 471 application to notify SLD of the services that have been ordered, the carrier with whom the school has signed a contract, and an estimate of the funds needed to cover the discounted portion of the price of the eligible services.⁵

3. Administration of the schools and libraries support mechanism is the responsibility of the Schools and Libraries Division (SLD) of USAC, under the oversight of the Schools and Libraries Committee of USAC.⁶ Under the Commission's rules, the Schools and Libraries Committee's functions include "development of applications and associated instructions," "review of bills for services that are submitted by schools and libraries," and "administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations."⁷ Under these rules, it is the responsibility of SLD, subject to the oversight of the Schools and Libraries Committee, to process and review each FCC Form 470 and FCC Form 471 filed with SLD to ensure that the funding applicant is in compliance with applicable rules and regulations of the Commission.⁸

4. The Commission has recognized in its *Tennessee Order* that, in the ordinary course of business, companies may recover some portion of their infrastructure costs by building such costs into the recurring charges for the telecommunications service provided over that

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3). In submitting its FCC Form 470, an applicant is required to provide only general information about the services for which it seeks discounts, *e.g.*, number of phones that require service, number of dial-up connections necessary, as well as an assessment of the applicant's existing technology that may be necessary for the effective use of eligible services.

⁵ 47 C.F.R. § 54.504(c).

⁶ See 47 C.F.R. § 54.705(a)(1) (setting forth the functions of the Schools and Libraries Committee) and 47 C.F.R. § 54.701(g)(i) (directing the Administrator to establish the Schools and Libraries Division, and setting forth its functions).

⁷ 47 C.F.R. § 54.705(a)(1). See also *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal State Joint Board on Universal Service*, Third Report and Order and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058, 25075-76, paras. 30-31 and 34 (1998) (*Eighth Reconsideration Order*) (describing the functions of the Schools and Libraries Committee).

⁸ 47 C.F.R. § 54.705(a)(1).

infrastructure.⁹ The Commission noted in the *Tennessee Order*, with respect to Internet access services, that “all service providers include within their prices to customers some amount of the cost of building facilities to provide the service . . . we have allowed common carriers to include within their rates to customers, some amount of the cost of the facilities used to provide such services to customers.”¹⁰

5. In the *Tennessee Order*, the Commission found that, under the facts of that case, hub sites and caching servers used by the service provider were part of the underlying facilities used to provide Internet access service, and thus the cost of such facilities may be properly included as part of the cost of providing the Internet access service.¹¹ The Commission stated, however, that it was troubled by the impact of this decision, because when it started the universal service program for eligible schools and libraries, it did not envision providing support to significantly fund the backbone of a provider’s network.¹² The Commission stated, “[w]e believe that we need to consider in the very near future a way to reach a balance between ensuring that schools receive supported services and significantly funding a new company’s network.”¹³

6. The appeal before us involves a contract between eligible schools and libraries and a service provider for multiple years of telecommunications service. In the *Universal Service Order*, the Commission recognized that eligible schools and libraries should have the flexibility to enter into multi-year contracts. The Commission, however, in discussing multi-year contracts, clearly expressed strong disfavor towards providing universal service funds for the direct payment of large up-front portions of multi-year contracts in advance. The Commission concluded that, while eligible schools and libraries should be able to enter into prepaid or multi-year contracts for supported services, SLD will only commit funds to cover the portion of a long-term contract that is scheduled to be delivered and installed during the funding year.¹⁴ In

⁹*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, Order, Application No. 18132, CC Docket Nos. 96-45, 97-21, FCC 99-216, 14 FCC Rcd 13734, 13749, para. 29 (Tennessee Order), citing 47 C.F.R. Parts 32, 36, 65, 69; also citing Charles F. Phillips Jr., The Regulation of Public Utilities.*

¹⁰ *Tennessee Order*, 14 FCC Rcd. at 13748-49, para. 28.

¹¹ *Tennessee Order*, 14 FCC Rcd at 13755, para. 42.

¹² *Tennessee Order*, 14 FCC Rcd at 13755, para. 42.

¹³ *Tennessee Order*, 14 FCC Rcd at 13755, para. 42.

¹⁴ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9062, para. 544 (1997) (*Universal Service Order*) (subsequent history omitted). The Commission also stated:

Eligible schools and libraries may structure their contracts so that payment is required on at least a yearly basis, or they may enter into contracts requiring advance payment for multiple years of service. If they choose the advance payment method, eligible schools and libraries may use their own funds to pay full price for the portion of the contract exceeding one year (pro rata), and may request that the service provider seek universal service support for the pro rata annual share of the pre-payment. The eligible school or library may also request that the service provider rebate the payments from the support mechanisms that it

reaching this conclusion, the Commission stated its concern that “funds would be wasted if a prepaid service provider’s business failed before it had provided all of the prepaid services.”¹⁵

Brooklyn’s Application

7. On April 6, 1999, Brooklyn filed with SLD an application for universal service support, requesting funding of various telecommunications and advanced services for Year 2 of the schools and libraries support mechanism.¹⁶ Included within Brooklyn’s application was an initial funding request for \$15 million, which represented a one-time charge associated with equipment necessary to provide telecommunications services pursuant to a 5-year contract with Bell Atlantic.¹⁷ In its application, Brooklyn identified this funding request as being for “ATM Data Network Services.”¹⁸ This initial \$15 million non-recurring charge was subsequently reduced to \$12.6 million.¹⁹

8. In connection with its review of Brooklyn’s application, SLD staff met with and corresponded with representatives of Bell Atlantic and Brooklyn in order to determine the nature of the \$12.6 million up-front payment included in its funding request. Brooklyn sought universal service support for a project known as “networking.NYC,” which, according to Brooklyn, would provide “Internet-ready and Asynchronous Transfer Mode (ATM) advanced telecommunications services capable of transporting voice, video, and data to 113 linked schools and libraries located in low-income communities dispersed throughout the four densely populated boroughs of New York City.” Brooklyn states that Bell Atlantic determined that, given the scope of the package of services that Brooklyn desired, and the extensive capital investment associated with the networking.NYC project, Bell Atlantic would offer those services only if associated capital investment costs were included in an initial one-time charge.²⁰ Bell Atlantic and Brooklyn subsequently entered into a Limited Service Offering (LSO) agreement whereby Brooklyn committed to an initial \$12.6 million one-time charge for “provision of service to Customer sites,” and monthly recurring charges of approximately \$16,000 for five years. Concurrent with, and independent of the Bell Atlantic-Brooklyn LSO agreement, in January 1999 Brooklyn received an award from the New York State Advanced Telecommunications Project to provide

receives in subsequent years to the school or library, to the extent that the school or library secures approval of discounts in subsequent years from the Administrator.

¹⁵ *Universal Service Order*, 12 FCC Rcd at 9062, para. 544.

¹⁶ FCC Form 471 Application of Brooklyn Public Library, Application no. 149423, filed April 6, 1999 (Brooklyn Form 471).

¹⁷ Bell Atlantic subsequently changed its name to Verizon, following its merger with GTE.

¹⁸ See Brooklyn Form 471, Attachment, Schedules 15 and 16 Summary.

¹⁹ Letter of Kevin Allard-Mendelson, Brooklyn Public Library, to Matt McGourty, National Exchange Carrier Association, dated December 14, 1999.

²⁰ Letter of Appeal at 5. We note that the record is contradictory and unclear as to whether Brooklyn or Bell Atlantic insisted upon this pricing arrangement. We do not believe, however, that whether the school or the service provider requested the pricing arrangement at issue here is relevant to our decision.

approximately \$4,000 for customer premises equipment at each project site (“Diffusion Grant”).²¹ Under the terms of the Diffusion Grant, Brooklyn must expend the Diffusion Grant funds prior to October of 2000.²²

9. In a Funding Commitment Letter dated April 18, 2000, SLD denied Brooklyn’s entire funding request (FRN) for the \$12.6 million non-recurring charge, stating that “30% or more of the FRN is for service to be delivered outside of the funding year.”²³ In an Explanatory Letter sent under separate cover, SLD provided its rationale for denying this FRN, framing the issue as “whether it is appropriate for Universal Service Fund support to be provided in a single year for costs for service-provider owned equipment that will be used to provide service over the course of more than one year.”²⁴ While recognizing that the Commission has found that facilities’ costs may be passed along to the customer as a component of service charges, and as such, may be costs eligible for recovery under the universal service mechanisms, SLD pointed out that Brooklyn “seeks to pay these [facility] costs entirely in the first year of the contract – costs that would normally be spread over the term of the contract.”²⁵ SLD acknowledged that the Commission has recognized in the *Tennessee Order* that some infrastructure costs may be passed on as a component of service charges. SLD determined, however, that this request for up-front reimbursement of facility costs does not comport with the Commission’s decisions in the *Universal Service Order*, whereby the Commission “made it clear that it would be inappropriate to provide funding in advance for multiple years of service.”²⁶ SLD therefore denied the entire

²¹ Letter of Appeal at 6. We note that while Brooklyn states in its Letter of Appeal that the Diffusion Grant funds are to be used for customer premises equipment, Brooklyn also states, “[I]f this appeal is successful, the Library will receive an E-Rate discount of 84% on the initial one-time telecommunications services charge, and a grant awarded by the Diffusion Fund will be used for the remaining amount.” Letter of Appeal at 6.

²² Letter of Appeal at 6.

²³ Letter of Universal Service Administrative Company to Kevin Allard-Mendelson, Brooklyn Public Library, dated April 18, 2000, FRN # 0000250887 (Funding Commitment Letter). The “30-percent policy” is not a Commission rule, but rather is an internal SLD benchmark utilized during its application review process, to enable SLD to approve funding requests for eligible services without having to spend an excessive amount of time working with an applicant that for the most part is requesting funding of ineligible services. If 30 percent or less of the request is for funding of ineligible services, SLD normally will approve the portion that is for eligible services. If more than 30 percent of the request is for funding of ineligible services, SLD will deny the application in its entirety. The benchmark percentage, originally 50 percent, was adjusted to 30 percent by SLD as the program matured. *See, e.g., Request for Review of the Decision of the Universal Service Administrator by New Kensington-Arnold School District New Kensington, Pennsylvania, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, File No. SLD-28754, CC Dockets No. 96-45, 97-21, 1999 WL 1216147 (F.C.C., Dec 21, 1999); *Request for Review of the Decision of the Universal Service Administrator by Western Heights Public School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, File No. SLD-54054, CC Dockets No. 96-45, 97-21, 15 FCC Rcd 8502 (Com. Car. Bur. 1999).

²⁴ Letter of Kate L. Moore, SLD, to Siobhan Reardon, Brooklyn Public Library, dated April 19, 2000, at 2 (Explanatory Letter).

²⁵ Explanatory Letter at 2, *citing Tennessee Order*, 14 FCC Rcd. at 13749, para. 29.

²⁶ Explanatory Letter at 3.

\$12.6 million funding request because it included services not eligible for discounts, specifically the equipment-related costs of service to be provided outside the funding year in an amount that exceeds 30 percent of the total funding request.²⁷

Brooklyn's Appeal

10. On May 18, 2000, Brooklyn filed its Letter of Appeal with the Commission, arguing that its funding request was denied on “a single, arcane, and mistaken ground – the up-front one-time payment of the Bell Atlantic \$12.6 million charge for the project, which Bell Atlantic required be paid in the first year of its five-year contract with the Library.”²⁸ In summary, Brooklyn contends that SLD wrongly determined that the initial one-time payment required by Bell Atlantic was an “advance payment” on a multi-year contract.²⁹ Brooklyn argues that this initial one-time charge is a charge for “qualifying telecommunications services” and not an advance payment, and that all services represented by this one-time charge, namely capital investment and installation charges, will be “delivered and installed in the funding year.”³⁰ Brooklyn argues that disallowing the payment at issue in this appeal would “discourage telecommunications carriers from making meaningful capital investments . . . in communities where the carrier’s business plan does not already include such investments.”³¹ Brooklyn also argues that its appeal is different from the *Tennessee Order* because Brooklyn seeks not to purchase or install facilities *per se*, but rather seeks fund payments for “carefully selected advanced telecommunications services.”³² Finally, from a policy standpoint, Brooklyn argues that the Commission should consider that the networking.NYC project is the very type of project linking inner-city schools and libraries that Congress sought to encourage and foster through its establishment of Section 254.³³

II. DISCUSSION

11. We uphold SLD’s denial of Brooklyn’s request for funding of the entire \$12.6 million one-time charge for service provider equipment costs associated with the provision of telecommunications services pursuant to a multi-year contract. We agree with SLD that up-front funding of the entire \$12.6 million amount would constitute impermissible funding of an “advance” payment for equipment and infrastructure that will be used to provide service over a number of years. We find, however, that Brooklyn may properly seek funding on an annual basis for a reasonable *pro rata* portion of its multi-year contract. We remand Brooklyn’s appeal

²⁷ Explanatory Letter at 3.

²⁸ Letter of Appeal at 2.

²⁹ Letter of Appeal at 3, 9-11.

³⁰ Letter of Appeal at 17.

³¹ Letter of Appeal at 17.

³² Letter of Appeal at 18.

³³ *See* Letter of Appeal at 6-8.

to SLD, and direct SLD to reconsider Brooklyn's Year 2 application for support in accordance with the guidelines set forth in this Order.

12. More specifically, as an initial matter, we reaffirm the principle set forth in the *Tennessee Order* that universal service funds may be used to fund equipment and infrastructure build-out associated with the provision of eligible services to eligible schools and libraries. We conclude, therefore, that our rules and Commission precedent do not bar eligible schools and libraries from seeking universal service funding for costs for infrastructure investment associated with the provision of telecommunications services, provided that: (1) the specific services and uses of those services are eligible for universal service funding; and (2) the costs for service to be provided over shared-use infrastructure are properly allocated so that the fund only pays for the costs associated with providing services to the eligible schools or libraries.³⁴ This conclusion, however, does not resolve the issue of how or in which manner the fund may pay for such infrastructure investment, given the facts before us.

13. Thus we are faced with resolving the issue of how the fund will provide support in this case for non-recurring charges for infrastructure used to provide an eligible service. This issue implicates the following important policies: (1) ensuring that applicants receive funding for eligible services, when there are significant non-recurring charges for equipment necessary to provide such services, and (2) disfavoring the prepayment of services. Balancing these policies, we conclude that the best course in this case is to require Brooklyn to prorate these nonrecurring charges over a period of not less than three years.

14. There is no dispute that Brooklyn does not seek to purchase infrastructure or facilities itself, but rather seeks only to purchase telecommunications services, pursuant to a multi-year contract for telecommunications services with Bell Atlantic.³⁵ In order to be able to deliver the package of services that Brooklyn desires over the course of this contract, Bell Atlantic must invest capital to construct new facilities and must allocate capacity in some of its existing facilities. The record reflects that Bell Atlantic and Brooklyn intentionally structured the LSO pricing arrangement in such a manner as to reduce the monthly recurring charge for telecommunications service, and thus facilitate Brooklyn's ability to pay for the non-discount portion of the service throughout the life of the contract.³⁶

³⁴ See *Tennessee Order*, 14 FCC Rcd. at 13748-49, paras 28-29. We note that, because SLD denied Brooklyn's funding request based on the presence of an impermissible advance payment, on remand SLD may appropriately find, in their detailed review, that certain ineligible components must be backed out of the funding request. For purposes of the present appeal, however, we will assume that the entire amount of the funding request is for eligible services.

³⁵ We note that, had Brooklyn sought universal service funding to purchase dedicated facilities for its exclusive use, it is likely that its funding request would have been denied, on the basis that Brooklyn sought funding to construct an ineligible wide area network (WAN). See 47 C.F.R. § 54.518. In this case, however, Brooklyn seeks neither to purchase network facilities, nor will it have exclusive use of the Bell Atlantic facilities through which the telecommunications services will be delivered.

³⁶ Bell Atlantic stated that "[t]his pricing arrangement was provided at the request of the customer so that external funds from both the FCC's 'Universal Service Fund' and the 'Bell Atlantic/Public Service Commission's Diffusion Fund' could be applied, thus minimizing any residual monthly rates for this service." Bell Atlantic Letter at 2.

15. Brooklyn argues that it is entitled to up-front universal service funding for the entire \$12.6 million capital investment charge because the charge represents a “payment for telecommunications services scheduled to be delivered and installed during the funding year.”³⁷ We disagree with this analysis, and conclude that this \$12.6 million charge, if paid up-front, would constitute an “advance payment” or “prepayment” for telecommunications services charges that would very likely have been recovered through recurring charges, absent the LSO. Bell Atlantic essentially seeks to recover its entire infrastructure investment in the first year of the project, notwithstanding that this infrastructure will be used to deliver services to Brooklyn and other users for the length of a multi-year contract. Brooklyn and Bell Atlantic, therefore, are indeed seeking an “advance payment” of non-recurring charges that include equipment and facilities that will be used to deliver services beyond the Year 2 funding year.

16. We disagree with Brooklyn that all of the non-recurring charges associated with a multi-year contract to build the entire ATM network are recoverable from the fund in the first year, simply because the hardware necessary to provide the telecommunications services would be “delivered and installed” in that funding year.³⁸ While the infrastructure may be “installed” in the funding year, this does not mean Brooklyn may receive up-front funding for all non-recurring charges associated with that infrastructure. Rather, in light of our past order disfavoring “advance” payments for services from the universal service fund for multi-year contracts, we conclude that the universal service fund should provide support in this situation only when the eligible school or library applies for funding of the *pro rata* portion of those non-recurring charges spread out over a multi-year period.³⁹

17. We are also concerned that wastage of the fund would occur if a large number of schools and libraries included in the original networking.NYC project were forced to drop off the network in subsequent years because Brooklyn was no longer able to cover the non-discount portion of the services. The fund would already have covered a large portion of the non-recurring charges, but the intended beneficiaries would no longer be receiving service. As the Commission made clear in the *Universal Service Order*, it is the schools and libraries and the service providers, and not the universal service fund, that must bear the burden in a multi-year contract for services to be provided outside of the individual funding year for which an application is filed.⁴⁰

18. In response to concerns regarding potential wastage of the fund if a service provider failed to deliver services for which up-front payments were received, Brooklyn proposes that the Commission consider enacting several safeguards.⁴¹ For instance, Brooklyn suggests that (1) up-

³⁷ See Letter of Appeal at 17.

³⁸ Letter of Appeal at 17.

³⁹ *Universal Service Order*, 12 FCC Rcd at 9062, para. 544.

⁴⁰ *Universal Service Order*, 12 FCC Rcd at 9062, para. 544.

⁴¹ Letter of William J. Cunningham III, on behalf of Brooklyn Public Library, to Kathryn C. Brown, FCC, dated July 28, 2000, at 2-3 (*Brooklyn Ex Parte*).

front payments be made available only to entities that “already manage substantial telecommunications operations”; (2) universal service funding be conditioned upon the service provider’s commitment to provide service to “substitute” schools or libraries; and (3) service providers be required to rebate funds to SLD if the agreed-upon services are not delivered.⁴² While Brooklyn’s proposed safeguards may, to some degree, help to minimize the potentially wasteful impacts of large up-front payments, we still cannot endorse payments for services beyond the funding year for which funds are applied, because such funding requests could quickly exhaust available universal service funds. Even if service providers were required to rebate funds, eligible schools and libraries that might otherwise have received money in the funding year for internal connections would not have received funding, because the funds would have already been committed to up-front payments. We also believe that it would be administratively difficult for SLD to track whether entities that benefit from advance payments continue to deliver service in accordance with the terms under which the advance payment was authorized.

19. The same policy reasons that led the Commission to limit universal service funding to that portion of a long-term contract scheduled to be delivered and installed during the funding year militate against sanctioning direct, up-front payment of the \$12.6 million one-time charge for capital investment agreed upon by Bell Atlantic and Brooklyn. Specifically, we are concerned that, by authorizing unrestricted up-front payments for multiple years of telecommunications service when there is significant infrastructure build-out, we could create a critical drain upon the universal service fund, and reach the annual spending caps relatively quickly. In this respect, therefore, large up-front payments could result in fewer overall schools receiving universal service funding, which we believe is contrary to the goals of section 254. While we recognize that up-front payments may allow schools and libraries to obtain services at a lower overall price, we believe that any benefit to allowing the universal service fund to cover up-front payments is outweighed by the potential harm that could be caused by committing large amounts of money annually to fewer schools and libraries. Indeed, one of the very reasons that the Commission refused to approve “advance payments” in the *Universal Service Order* was its concern that providing advance funding could “enable a wealthy school to guarantee that its full needs over a multi-year period were met, even if other schools and libraries that could not afford to prepay multi-year contracts were faced with reduced percentage discounts”⁴³

20. Based on the overall balance of considerations discussed above, we direct SLD to reconsider Brooklyn’s Year 2 funding request and determine what portion of the \$12.6 million one-time charge Brooklyn is legitimately entitled to recover for the Year 2 funding year. In reconsidering, SLD shall be guided by the following. Ordinary recurring charges for the delivery of telecommunications services can be funded in the year in which such charges are incurred. In this case, where the non-recurring charge for capital investment vastly exceeds the monthly recurring charge, Brooklyn may receive funding for the non-recurring charges associated with capital investment in an amount equal to the investment prorated equally over a term of at least

⁴² *Brooklyn Ex Parte* at 3.

⁴³ *Universal Service Order*, 12 FCC Rcd at 9062, para. 544.

three years in duration.⁴⁴ Thus, Brooklyn may in no case seek to recover more than one-third of the total non-recurring charges in one funding year. We believe that a contract that involves significant capital investment and is less than three years' duration essentially "front-loads" the capital investment in an unreasonably accelerated manner. Even a one or two-year contract with significant non-recurring charges will place the same pressures on the fund as "up-front" payments. We conclude, therefore, that, in this case, requiring funding to be spread over a minimum of three years for a project involving significant capital investment strikes a fair and reasonable balance between our desire not to unnecessarily drain available universal service funds by committing large amounts annually to a limited number of applicants, and our desire to ensure that eligible schools and libraries receive supported services.

21. While we cannot be certain of the impact of this decision on the fund at this time, we do not expect this decision to place significant pressure on the fund due to the requirement that schools and libraries provide a portion of the cost of supported services. This requirement creates a natural constraint on funding requests of a significant magnitude because few schools or libraries are likely to have the resources to cover the annual non-discount portion of funding requests that would be large enough to affect the fund dramatically. Moreover, the "necessary resources" test in our rules tends to discourage funding requests of this magnitude, because in addition to paying for the non-discount services, the school or library must, at its own expense, install the necessary end user equipment, and have technology plans and training programs to make use of the services.

22. We stress that our decision in this Order by no means should be viewed as expressing disfavor of any particular pricing arrangement entered into between service providers and eligible schools and libraries, including Limited Service Offering (LSO) packages.⁴⁵ We merely seek to clarify the circumstances in which SLD may properly commit funding to applicants. Parties remain free to structure their contractual arrangements consistent with their own business practices. We do not intend, furthermore, to disfavor or discourage multi-year or pre-paid contract agreements between service providers and eligible schools and libraries, when the appropriate circumstances are present for such contracts.

23. As indicated above, Brooklyn may appropriately seek funding for a *pro rata* portion of the eligible non-recurring charges resulting from its multi-year contract with Bell Atlantic.⁴⁶ In keeping with our decision in this Order, therefore, Brooklyn shall be allowed to amend its

⁴⁴ Investment in "new infrastructure" includes, but is not limited to, the purchase and procurement of new network facilities, or the allocation of capacity in existing facilities to serve eligible schools and libraries.

⁴⁵ We note that Bell Atlantic, as a customary business practice, makes use of LSO agreements to deliver specialized services to larger customers. *See* Letter of Frank Gumper, Bell Atlantic, to George McDonald, SLD, dated January 7, 2000 (attaching list of sample LSO offerings provided to other entities, all involving significant up-front payments). Bell Atlantic characterizes LSOs as "an alternative to customer purchasing services via existing tariffs and are designed to provide prices to customers reflecting their particular circumstances." *Id.*

⁴⁶ Because of our resolution of the funding question in this matter, we need not consider SLD's application of its 30 percent policy in this instance. We stress that our decision today does not invalidate SLD's 30 percent policy. SLD shall inform future applicants of this policy change through its normal operating practices, such as its Internet page or its application manuals.

Year 2 application and any pending applications before SLD. We further direct SLD to process any subsequent applications for support from Brooklyn in accordance with the terms of this Order.⁴⁷ Brooklyn shall have seven (7) days from the release date of this Order to file any supplemental documentation that it believes will assist SLD in determining the appropriate Year 2 funding amount to which it is entitled. We direct SLD to conclude its reconsideration of Brooklyn's Year 2 application and issue any funding which they find Brooklyn is entitled to no later than thirty (30) days from the release date of this Order. If Brooklyn is not satisfied with the outcome of SLD's reconsideration of its Year 2 application, Brooklyn may appeal that decision to this Commission in accordance with Commission rules.

III. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 54.719 and 54.722 of the Commission's rules, 47 C.F.R. §§ 54.719 and 54.722, that the request for review filed on May 18, 2000 by Brooklyn Public Library, Brooklyn, New York, IS GRANTED IN PART AND DENIED IN PART.

25. IT IS FURTHER ORDERED that the request for review filed on May 18, 2000, by Brooklyn Public Library, Brooklyn, New York, is REMANDED to the Schools and Libraries Division of the Universal Service Administrative Company, and the Schools and Libraries Division is directed to take action to effectuate the steps outlined in this Order, within thirty (30) days of the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

⁴⁷ Brooklyn may apply in each subsequent year of the multi-year contract with Bell Atlantic for funding to cover the *pro rata* portion of the non-recurring charges spread over three years or more, as set forth in this Order. Brooklyn's applications, of course, will be subject to all other Commission rules and SLD policies, such as the filing window timeline requirements and the funding priority rules.

**DISSENTING STATEMENT OF
COMMISSIONER HAROLD FURCHTGOTT-ROTH**

Re: Request for Review of the Decision of the Universal Service Administrator by Brooklyn Public Library, Brooklyn, New York; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Order, File No. SLD – 149423, CC Docket Nos. 96-45 & 97-21.

I dissent from this decision. As an initial matter, I believe it is improper to use universal service funds to subsidize the installation of a service provider's Internet backbone. Moreover, even if there might be some isolated cases in which it could be appropriate to use funds for this purpose, this order does nothing to limit the use of subsidies to situations where service providers would be unlikely, for economic reasons, to use their own money to build an Internet infrastructure. Indeed, for a densely populated metropolitan area such as Brooklyn, I find it hard to believe that service providers would not have business reasons of their own for investing in the equipment necessary to bring advanced telecommunications services to the area. In a related vein, nothing in the order prevents service providers from using networks built with federal subsidies to serve customers other than eligible schools and libraries. Indeed, the networks may end up being used *primarily* to serve other customers.

What the Commission's decision means, in practical terms, is that a few service providers will receive enormous sums to build networks that will serve a small number of eligible schools and libraries, even if service providers might have used their own money to build these networks and even if these networks will be used to serve customers not eligible for schools and libraries support. Many other worthy applicants will be left without *any* funding. I would have preferred a rule that distributed universal funding more equitably among the many schools and libraries that would benefit from the awards, as well as a rule that did more to guard against the needless expenditure of federal money.