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Public Service Commission

April 23, 2002

VIA ELECTRONIC FILING

Honorable William F. Caton, Acting Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 02-6, Schools and Libraries Universal Service Support Mechanism

Dear Mr Caton:

Forwarded herewith are Reply Comments of the Florida Public Service Commission in the above dockets with regard to the Review of Rules Governing the Schools and Libraries Universal Service Support Mechanism.

Should you have additional questions, you may contact Greg Fogleman, the primary staff person in this docket, at (850) 413-6574.

Sincerely,

/ s /

Cynthia B. Miller, Esquire
Office of Federal and Legislative Liaison

CBM:tf

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

In the Matter of	)	
	)	
Schools and Libraries	)	CC Docket No. 02-6
Universal Service Support Mechanism	)	

REPLY COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION REGARDING THE REVIEW OF RULES GOVERNING THE SCHOOLS AND LIBRARIES UNIVERSAL SERVICE SUPPORT MECHANISM

The Florida Public Service Commission (FPSC) submits these reply comments in response to the Notice of Proposed Rulemaking (FCC 02-8) released on January 25, 2002. In this Notice, the Federal Communications Commission (FCC) seeks to review certain rules governing the schools and libraries universal service support mechanism. It initiated this review to ensure the continued efficient and effective implementation of Congress' goals as established in the Telecommunications Act of 1996, and to explore a number of suggestions for improvement in the program. The FPSC filed its initial comments with the FCC on April 5, 2002. The FPSC is pleased to file these reply comments to address the issues relating to the eligibility of Wide Area Networks (WANs), consortia participation, equipment transferability, and to further expand the FPSC's proposal to establish a state cap.

Wide Area Networks (WANs)

The FCC requested comments on the effectiveness and fairness of its WAN policy, and on whether other policies could result in a more equitable distribution of discounts in the program. The FCC previously concluded that the building and purchasing of WANs themself do not constitute telecommunications services or internal connections. The FCC further found that WANs built and purchased by schools and libraries do not appear to fall within the narrow provision that allows support for access to the Internet because WANs provide broad-based telecommunications service. The FCC noted, however, that schools and libraries might be able to receive universal service discounts on WANs provided over leased telephone lines, because such an arrangement constitutes a telecommunications service. The FCC correctly noted in its NPRM that the costs associated with leasing WANs decreases funds available for other priority one services.

The FCC subsequently determined 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 (*Tennessee* Order).[1] The FCC next determined that recipients may receive discounts on the non-recurring charges associated with capital investment in an amount equal to the investment prorated equally over a term of at least three years (*Brooklyn* Order).[2] The FCC did express concern that this decision could create a critical drain upon the universal service fund.

The FPSC questions the conclusion of the Fourth Order on Reconsideration as it relates to qualifying WANs for support as telecommunications services. The FPSC believes that the reasons identified in this Order are also applicable to WAN services leased from telecommunications providers. The FPSC believes that the goal of the Telecommunications Act was to provide Internet access to schools and libraries, not to interconnect them into a wide area network.

The FPSC concedes that Section 254(c)(3) does provide the FCC with greater latitude in identifying eligible services. To the extent that the FCC wishes to continue to support WANs, we agree with the Florida Department of Education that applicants should not be limited to leasing wide

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[1] Docket No. 96-45, FCC 99-216, Released: 8/11/99.

[2] Docket No. 96-45, FCC 00-354, Released: 9/26/00.

area services and products. There may be instances where the least cost and most efficient method of providing WAN service is though the purchasing of equipment (i.e., in rural, high-cost areas). We envision this type of support being eligible for priority two support as an internal connection in these instances.

In addition, the FPSC believes that the current funding structure would also need to be addressed. Currently, WAN services that are purchased from telecommunications carriers are eligible for priority one funding as "telecommunications" services. In order to ensure that schools and libraries make the most efficient decisions (i.e., not based on concerns of available federal funding), the FCC should recategorize support for leased WAN services to priority two supported service.

Consortia Participation

The FCC requested comment on whether changes to its rules regarding consortia members would improve program operation. The FCC also invited comment on whether changes to other consortia rules might achieve greater consistency or fairness in its approach to the participation of consortia in the program.

At present, the FCC's rules provide that eligible schools and libraries participating in consortia with ineligible private sector members are not eligible for discounts for interstate services.[3] The rule identifies several categories of public sector (governmental) entities with whom schools, libraries, and health care providers can form consortia. These include state colleges and state universities, state educational broadcasters, counties, and municipalities. The rule states that this

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[3] A consortium may include ineligible private sector entities if the pre-discount price of any services that such consortium receives from ILECs are generally tariffed rates. 47 CFR 54.501(d)

list includes but is not limited to these categories. The FPSC believes that the list should also expressly include not-for-profit entities and private colleges. The FPSC believes that treating these entities as ineligible private sector entities would unreasonably limit participation.

The FPSC is sensitive to the conflicting goals the FCC faces in attempting to balance the desire for large consortia with promoting competition. Specifically, unlimited participation in a consortium would increase the buying power of the consortium members and have the benefit of pushing prices down. At the same time, competition could be adversely affected after a large consortium entered into an agreement if the number of customers remaining outside the consortium is insufficient to attract and retain competition in that market. The FPSC believes expanding the list of public sector (governmental) entities, as we recommend, would be consistent with the FCC's original intent and would not adversely affect competition.

Development of Rules to Limit Equipment Transferability

The FCC notes in the NPRM that it has received reports that some parties are taking unfair advantage of the current rules as they relate to transferring equipment. The FPSC would note that its recommendation calling for the development of rules to limit equipment transferability has been echoed by many of the parties filing comments. Conditioning receipt of universal service discounts on ensuring that discounted internal connections are used at the requested location and for the use specified in the application for a certain period of time would be appropriate.

The FPSC agrees with the comments of BellSouth, SBC, Sprint, and Verizon that the FCC should work to curtail abuses by limiting transfer of equipment for three years after installation, or ten years in the case of cabling. We believe such a rule should allow for some flexibility, and that it would be appropriate that requests for waivers from such rules be evaluated on a case-by-case basis.

The alternative proposal suggested by the FCC would deny internal connection discounts for a specified period of years after a school or library receives support. Like Verizon, the FPSC has concerns that this proposal would place unnecessary barriers within the program because this would not take into consideration applicants' legitimate needs for additional funding. Verizon correctly notes that such considerations would include applicants that had previously only asked for funding of partial upgrades, or those that are undertaking an expansion that warrants additional investments.

State Funding Cap

As the FPSC stated in our initial comments, we believe that augmenting the FCC's current rules for support distribution can achieve a more equitable distribution of funds to each state, if an initial state cap was established based on poverty. We believe this modification would be effective, because entities attempting to take advantage of the program would adversely affect the available funds of similarly situated schools and libraries within their own state. Thus, participants would be more likely to develop self-policing strategies that are not found in the current environment.

To elaborate further on its proposal, a cap could be established based on a ratio of a state's population in poverty relative to the national population in poverty as estimated by the United States Census Bureau. This ratio would establish a cap for a state by multiplying it times the overall funding cap of $2.25 billion. The ratio could be updated each year to capture changes in economically disadvantaged areas. The present USAC administration would continue to administer the funds and approve applicants with an understanding that each state would have a funding cap that could not be exceeded. Funds would be awarded through all priority-one services and then priority-two services, as long as funds were available under the capped amount for that state. The FPSC has attached an estimate of how various states would be affected based on current data available from the Census Bureau.

Conclusion

The FPSC believes that the reasons the FCC concluded that purchasing equipment to provide WAN service was not eligible for funding would also make leasing the service from a telecommunications provider also ineligible. To the extent that the FCC wishes to continue to support WANs, we believe that certain modifications to its existing rules are warranted. Specifically, applicants should not be limited to leasing wide area services and products. There may be instances where the least cost and most efficient method of provisioning WAN service is through purchasing equipment. The FPSC believes that the current funding structure would also need to be addressed and that all support for WAN services and facilities should be funded as a priority two category. In addition, the FCC should reconsider its current rules resulting from both the *Tennessee* and *Brooklyn* orders.

The FPSC believes that the consortia rules should be modified to expressly include not-for-profit entities and private colleges as public sector (governmental) entities. The FPSC believes that treating these entities as ineligible private sector entities unreasonably limits participation. We believe that this modification is consistent with the FCC's original intent in its First Report and Order and would not adversely affect competition.

The FPSC agrees with the comments of BellSouth, SBC, Sprint and Verizon that the FCC should work to curtail abuses by limiting the transfer of equipment for three years after installation, or ten years in the case of cabling. Like Verizon, the FPSC has concerns that simply limiting funding for internal connections for a period of years would place unnecessary barriers within the program.

The FPSC elaborates on how a state cap could be structured in a manner that would aid the FCC in minimizing waste, fraud, and abuse. Specifically, a cap could be established based on a ratio of a state's population in poverty relative to the national population in poverty as estimated by the United States Census Bureau. We believe that this proposal would lead to the development of self-policing strategies that are not found under the current environment.

Respectfully submitted,

/ s /

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2540 Shumard Oak Boulevard
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DATED: April 23, 2002

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

In the Matter of	)	
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
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	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing comments will be mailed to the persons on the attached list.

/ s /

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DATED: April 23, 2002

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