

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

In the Matter of
Request for Review
of the Decision of
the Universal Service Administrator by
Indiana Intelenet Commission
Indianapolis, Indiana
Federal-State Joint Board on Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.
File No. SLD-42537
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: October 6, 1999

Released: October 6, 1999

By the Deputy Chief, Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a "Letter of Appeal" filed by the Indiana Intelenet Commission (Intelenet) on July 8, 1999, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator). Intelenet seeks review of the SLD's denial of its application for discounts under the schools and libraries universal service support mechanism. For the reasons set forth below, we grant Intelenet's "Letter of Appeal" to the extent provided below.

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.

1 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).

2 47 C.F.R. §§ 54.502, 54.503.

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By letter dated February 25, 1999, the SLD denied certain of Intelenet's requests for discounts for the first funding year. Indiana appealed the SLD's decision by letter dated March 11, 1998. On June 8, 1999, the SLD affirmed its initial funding decision.

3. The Administrator's Decision on Appeal indicates that services listed by Intelenet as dedicated access/Internet access included some routers, which were deemed internal connections. As a result "[t]hese funding requests were categorized as internal connections services so as to avoid the possibility of treating priority two services (internal connections) as priority one services (telecommunications, dedicated and Internet access services)." The letter further informs Intelenet that, because internal connections are funded only at the 70 percent level or above, for which Intelenet is not qualified, these services could not be supported for this funding period.<sup>3</sup>

4. In its Letter of Appeal, Intelenet asserts that SLD erred in classifying the routers at issue as internal connections. Among other things, Intelenet contends that: 1) the routers are owned, managed, and maintained by the Internet service provider, not Intelenet or any public school or library;<sup>4</sup> 2) the routers are not part of a school or library's Local Area Network (LAN) and perform no LAN functions, but rather are "analogous to a router in a leased [Wide Area Network] WAN that the FCC has determined to be a telecommunications service, not an Internal Connection;"<sup>5</sup> and 3) the routers serve as a gateway to the Internet without which there would be no Internet access services for the schools and libraries.<sup>6</sup>

5. In an order resolving a request for review of a USAC decision filed by the Tennessee Department of Education, the Commission considered funding requests for, among other things, hubs and routers.<sup>7</sup> In determining whether hubs and routers were internal connections, the Commission first considered the definition of internal connections, under which a service is deemed internal connections if it is necessary "to transport information within one or more instructional buildings of a single school campus."<sup>8</sup> In considering how to discern whether certain services and functionalities should be considered internal connections or whether they should be considered Internet access, the Commission established a rebuttable presumption that

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<sup>3</sup> Administrator's Decision on Appeal at 2; *see also Federal-State Joint Board on Universal Service*, Fifth Reconsideration Order, 13 FCC Rcd 14915, 14938 at para. 36 (1998) (*Fifth Reconsideration Order*).

<sup>4</sup> Letter of Appeal at 3.

<sup>5</sup> *Id.* at ii, 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator*, FCC 99-216, CC Docket Nos. 96-45, 97-21, (rel. August 11, 1999) (*Tennessee Order*).

<sup>8</sup> *Tennessee Order* at para. 37.

"if a service includes facilities that are located on the school premises and are used to transport information" they are internal connections, as opposed to part of an end-to-end Internet access service.<sup>9</sup> Certain indicia, however, could be raised to rebut the presumption. Relevant indicia include ownership of the facility used to provide the service; where the Internet access service begins and/or ends; whether the facilities at issue operate solely for the purpose of providing Internet access service; any lease-purchase arrangements regarding such facility; exclusivity arrangements regarding such facility; maintenance agreements regarding such facility; and upfront capital costs.<sup>10</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at para. 38-39.

6. Applying these indicia, we find that the service provided to Intelenet is Internet access service that does not include costs for internal connections. Intelenet's showing establishes that, first, the routers at issue are owned and maintained by the Internet service provider, not Intelenet or any public school or library. Second, the routers do not provide interconnection between internal LAN segments, departments, or building floors or rooms, nor do they serve as a load-balancing device for an internal network. Third, the routers are part of a "gateway" to the Internet provided by the Internet service provider<sup>11</sup> and they perform no local area network functions. Based on this showing, it does not appear that the routers at issue operate for any purpose other than providing Internet access service. Fourth, neither Intelenet nor the schools or libraries have the option to purchase the routers at the end of the contract. Finally, as further indication that the routers were not to be used as internal connections, there is evidence that the costs associated with the routers are primarily recurring costs from the service provider and not a one-time acquisition cost.<sup>12</sup> Based on this evidence, we conclude that the service provided by the Internet access provider up to and including the router, is end-to-end Internet access service.

7. To effectuate the decision above, we recognize that it may be necessary to waive section 54.507(b)(2) of the Commission's rules. This rule section provides that schools and libraries may receive discounts on nonrecurring services only through September 30, 1999. To the extent necessary, we hereby waive this rule for a period of six months from the date of this order.

8. 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 Letter of Appeal filed by Intelenet IS GRANTED to the extent provided herein and that Intelenet's application IS REMANDED to SLD for further consideration in light of this decision. Furthermore, IT IS ORDERED, pursuant to sections 0.91, 0.291 that section 54.507(b)(2) of the Commission's rules IS WAIVED for a period of six months from the date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Lisa M. Zaina

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<sup>11</sup> Letter of Appeal at 3..

<sup>12</sup> See Declaration of Jerry E. Sullivan, dated July 7, 1999; see also *ex parte* presentation of Indiana Intelenet at 3, September 28, 1999.

Deputy Chief  
Common Carrier Bureau