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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	)	
	)	
Joplin R8 School District Joplin, Missouri	)	File No. SLD-82921
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

ORDER

Adopted: December 14, 1999 **Released: December 14, 1999**

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Letter of Appeal filed by Joplin R8 School District (Joplin) on June 16, 1999, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator). Joplin seeks review of SLD's denial of its application for discounts under the schools and libraries universal service support mechanism. For the reasons set forth below, we remand this case to the Administrator for further consideration.

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]

3. By letter dated February 9, 1999, the SLD denied Joplin's funding request for discounts for telecommunications services provided by the Empire District Electric Company (Empire) because SLD apparently had reclassified the category of service requested by Joplin from telecommunications services to internal connections, and because Joplin was not eligible for funding for internal connections at the discount level for which it qualified. By letter dated

[1] 47 U.S.C. 254(h)(1)(B); 47 C.F.R. §§ 54.502, 54.503.

February 26, 1999, Joplin appealed the SLD's decision. On May 26, 1999, SLD affirmed its original decision. In that decision, SLD noted that, notwithstanding the fact that it had inadvertently reclassified Joplin's funding request for leased fiber through Empire District Electric Company as a funding request for internal connections, the request was still denied funding under the telecommunications service category, as originally submitted, because Empire is not a registered telecommunications provider for purposes of the universal service support mechanisms.

4. In its June 14, 1999 Letter of Appeal to the Commission, Joplin contends that Empire is an approved telecommunications provider with a service provider number (143008207) assigned to it by SLD. Joplin further contends that Empire is certified as both an interexchange telecommunications provider and a local exchange telecommunications provider. Joplin has attached to its Letter of Appeal a memorandum from the Missouri Public Service Commission that indicates that Empire was certified to provide interexchange telecommunications services and local exchange telecommunications service (restricted to dedicated, private line services) as of January 26, 1998.[2]

5. The issue raised by Joplin's appeal is whether Empire is a telecommunications carrier. As discussed in the *Universal Service Order*, and affirmed in the *Fourth Reconsideration Order*, the Communications Act permits only "telecommunications carriers" to receive direct reimbursement under the universal service support mechanisms for the provision of discounted telecommunications services, and the term "telecommunications carrier" includes only carriers that offer telecommunications on a common carriage basis.[3] As the Commission stated in the *Universal Service Order*, a carrier may be a common carrier if it holds itself out "to service indifferently all potential users," but a "carrier will not be a common carrier 'where its practice is to make individualized decisions in particular cases whether and on what terms to serve.'"[4]

6. Joplin has made a showing indicating that Empire is a telecommunications carrier. Review of SLD files, however, indicates that Empire filed an FCC Form 498, Service Provider Information Form, dated April 14, 1998, declaring that Empire's principal communications

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[2] *See* Memorandum from Philip M. Garcia to Missouri Public Service Commission Official Case File, dated January 14, 1998.

[3] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 9177-78, 9005-23, 9084-90 (1997) (*Universal Service Order*); *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 Nos. 96-45, 96-262, 94-1, 91-213, 95-72, *Fourth Order on Reconsideration*, 13 FCC Rcd 5318, 5413-14 (1997) (*Fourth Reconsideration Order*).

[4] *Universal Service Order*, 12 FCC Rcd at 9177-78 (*citing National Association of Regulatory Utility Commissioners v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976) (*NARUC II*)).

business is as a private service provider, which is not a common carrier provider and thus not eligible for funding for the provision of telecommunications services under the universal service support mechanisms. Empire subsequently filed a revision to its FCC Form 498, which was received by USAC on March 1, 1999. In its revision, Empire selected non-traditional provider (NTP) to characterize its principal line of business. NTP is a classification used to indicate a provider that does not fall within the descriptions of telecommunications services providers, such as local exchange carriers (LECs), interexchange carriers (IXCs), competitive local exchange carriers (CLECs), etc. NTPs are not eligible to receive direct reimbursement for the provision of telecommunications services under the universal service support mechanism for schools and libraries.

7. The record before us reflects conflicting evidence concerning Empire's status as a common carrier and, thus, as a telecommunications carrier eligible to receive reimbursement under the universal service support mechanism for the provision of telecommunications services to eligible schools and libraries. The memorandum Joplin provides in its appeal to the Commission from the Missouri Public Service Commission indicates that Empire qualifies as a common carrier. Information set forth in the FCC Form 498, however, calls into question Empire's status as a common carrier. Under these circumstances, we remand Joplin's application to SLD for further consideration of the question of whether Empire is a "telecommunications carrier" and whether it qualified as such during the period of time that corresponds to Joplin's instant funding request.

8. To the extent necessary to effectuate the decision above, we 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.

9. 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 Joplin R8 School District on June 16, 1999 IS GRANTED and REMANDED to SLD for further consideration in light of the ruling in this order.

10. IT IS FURTHER ORDERED, pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that section 54.507(b)(2) of the Commission's rules, 47 C.F.R. § 54.507(b)(2) IS WAIVED for a period of up to 180 days following the issuance of any Funding Commitment Letter that the Administrator may issue pursuant to this order.

FEDERAL COMMUNICATIONS COMMISSION

Yog R. Varma
Deputy Chief, Common Carrier Bureau