

FCC MAIL SECTION

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

JUL 10 11 30 PM '00

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Ubly Community Schools)	File No. SLD-113262
Ubly, Michigan)	
)	
Federal-State Joint Board on)	CC Docket No. <u>96-45</u>
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: July 7, 2000

Released: July 10, 2000

Before the Common Carrier Bureau:

1. The Bureau has under consideration a Letter of Appeal filed by the Ubly Community Schools (Ubly), Ubly, Michigan on February 28, 2000.¹ Ubly seeks review of a funding commitment decision issued by the Schools and Libraries Division (SLD) of the Universal Service Company (Administrator) pursuant to a funding request for internal connection services.² For the reasons set forth below, we deny Ubly's appeal.

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 In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth the

¹ Letter from Evelyn Smaglinski, Ubly Community Schools, to the Federal Communications Commission, filed February 28, 2000 (Letter of Appeal).

² See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Evelyn Smaglinski, Ubly Community Schools, issued July 8, 1999 (Funding Commitment Decision Letter); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Evelyn Smaglinski, Ubly Community Schools, issued January 31, 2000 (Administrator's Decision on Appeal).

³ 47 C.F.R. §§ 54.502, 45.503.

school's technological needs and the services for which it seeks discounts.⁴ Once the school has complied with the Commission's competitive bidding requirements and signed a contract for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the school has signed the contract, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ This information is generally provided in Block 5 of FCC Form 471. Among other information, Block 5 requires the applicant to indicate services requested, the name of the service provider, the type of service or product for which support is sought, and the estimated total annual pre-discount cost. Using information provided by the applicant in its FCC Form 471, the Administrator determines the amount of discounts for which the school is eligible. Approval of the application is contingent upon the filing of FCC Form 471, and funding commitment decisions are based on information provided by the school or library in this form.

3. The instant appeal arises from SLD's denial of Ubly's Year 2 application for discounted internal connections, Funding Request Number (FRN) 167256, on the grounds that a significant portion of Ubly's funding request included products ineligible for discounts.⁶ In its FCC Form 471, filed on March 18, 1999, Ubly sought support in a single funding request for internal connections services or products which it valued at \$36,167.63 and which were to be provided by Hi-Tech System Service, Inc. On March 19, 1999, Ubly filed with SLD a Pre-Discount Cost Calculation Worksheet which indicated that Hi-Tech System Service was providing three different services in the internal connections funding request: 1) computer lab wiring (\$6,452); 2) a Novel network server (\$14,586); and 3) a CD-Net server (\$15,127).⁷ On July 8, 1999, SLD denied funding for the requested internal connections, stating that a significant portion of FRN 167256 included ineligible products, such as the CD-Net server and certain software.⁸

4. Ubly filed an appeal with SLD on July 22, 1999, claiming that it believed that it could include, in a single funding request, multiple services from one vendor, and then depict a breakdown of the services in the Pre-Discount Cost Calculation Worksheet.⁹ Along with its appeal, Ubly filed a new FCC Form 471 which divided into three separate requests the three internal connection services – the computer lab wiring, the Novell network server, and the CD-Net server – that Ubly sought to purchase from Hi-Tech System Service.¹⁰ SLD denied Ubly's appeal on

⁴ 47 C.F.R. § 54.504 (b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ See Funding Commitment Decision Letter at 5.

⁷ Letter and Pre-Discount Cost Calculation Worksheet from Evelyn Smaglinski, Ubly Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed March 19, 1999.

⁸ See Funding Commitment Decision Letter at 5.

⁹ Letter from Evelyn Smaglinski, Ubly Community Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed July 22, 1999 (SLD Letter of Appeal).

¹⁰ See *id.*

January 31, 2000, explaining that, “[n]o additional funding requests could be created beyond those included on the original 471.”¹¹

5. Ubly filed the instant appeal with the Commission on February 28, 2000.¹² In this appeal, Ubly claims that a SLD representative instructed it to file all three Hi-Tech System Service requests in a single funding request, and break out the services separately in a Pre-Discount Cost Calculation Worksheet.¹³ Ubly also states that it was unaware that the CD-Net server was ineligible for funding, and it had included the request for the server’s funding with the other requests at SLD’s urging.¹⁴ To remedy this predicament, Ubly requests that the Commission allow it to divide FRN 167256 into three separate requests, as described above.¹⁵ Ubly indicates that it expects to receive funding for only the two new funding requests related to computer lab wiring and the Novell server, but not for the CD-Net server.¹⁶

6. We find no basis upon which to grant Ubly’s appeal. In the instant appeal, Ubly requests relief on the grounds that it was not aware that CD-Net servers were ineligible for support and that SLD provided incorrect information on how to structure its application. Ubly, however, should have been aware that it was seeking discounts for ineligible services. The program’s rules state repeatedly that universal service funds support only eligible services.¹⁷ SLD’s web site contains a list of eligible services, including a section on the servers that are eligible for discount, and information tips on how to file an application.¹⁸ Included in such information is a notation that applications containing ineligible services will be denied funding.¹⁹ As to Ubly’s assertion that it received misleading information from SLD, we find that such statements are insufficient to exempt Ubly from having to comply with our policies regarding ineligible services. We note that rules and policies are enforced, even where a party has received erroneous advice from a government employee, and the Commission is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when the relief requested

¹¹ See Administrator’s Decision on Appeal at 1.

¹² See Letter of Appeal.

¹³ See *id.*

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ 47 C.F.R. §54.504 et seq.

¹⁸ See SLD web site, <<http://www.sl.universalservice.org>>; see Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471 Instructions), OMB Approval No. 3060-0806 (December 1998) at pp. 5-6.

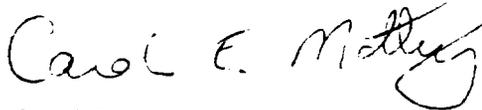
¹⁹ See *id.*

would be contrary to an applicable statute or rule.²⁰ In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures. Ubly's misunderstanding of program rules provides no basis for deviating from the Commission's policy of placing on the applicant the responsibility for understanding program rules and procedures.²¹

7. We also decline to grant Ubly's request that the Commission allow it to correct its FCC Form 471 by dividing a single funding request (FRN 167256) into three separate funding requests.²² With this request, Ubly intends to locate a costly ineligible service (the CD-Net server) in one of the new funding requests and concomitantly reduce the percentage of ineligible services in the two remaining funding requests, thereby rendering them potentially eligible for funding. Ubly's requested relief, however, contravenes SLD's policy that applicants shall not be permitted to amend completed Form 471s to remove ineligible service requests after the closure of the filing window deadline.²³ If applicants were permitted to make such corrections, SLD would face significant additional administrative burdens. Therefore, we cannot permit Ubly to amend its FCC Form 471.

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 February 28, 2000, by Ubly Community Schools, Ubly, Michigan, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief, Common Carrier Bureau

²⁰ *In re Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4707-08, para. 22 (1991) (citing *Office of Personnel Management v. Richmond*, 497 U.S. 1046 (1990)). A person relying on informal advice given by staff does so at his own risk. *Id.*, citing *Texas Media Group, Inc.*, 5 FCC Rcd 2851, 2852, para. 8 (1990); *aff'd sub nom. Malkan FM Associates v. FCC*, No. 90-1281, slip op. at 12 (D.C.Cir. June 14, 1991).

²¹ See e.g. *Request for Review of Decision Universal Service Administrative Company by Arizona Call-A-Teen Center*, CC Docket No. 96-45, Order, DA 00-1058, para. 6 (rel. May 15, 2000).

²² See *id.*

²³ The Commission's rules require that applicants file a completed Form 471 by the filing window deadline to be considered pursuant to the funding priorities for "in-window" applicants. 47 C.F.R. §§ 54.504(c); 54.5079(c).