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

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In the Matter of)	
)	
Request for Review)	
of the Decision of)	
the Universal Service Administrator by)	
)	
West Texas Telecommunications Consortium)	File No. SLD-141204
Abilene, Texas)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45 ✓
)	
Changes to the Board of Directors)	CC Docket No. 97-21
of the National Exchange Carrier)	
Association, Inc.)	

ORDER

Adopted: November 8, 2000

Released: November 9, 2000

By the Common Carrier Bureau:

1. The Bureau has under consideration a Letter of Appeal filed by the West Texas Telecommunications Consortium (West Texas), Abilene, Texas, on May 3, 2000, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ West Texas seeks review of the SLD's denial of its application for discounts under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny the Letter of 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 Eligible schools, libraries, and consortia may receive discounted telecommunications services only from telecommunications carriers, but may receive discounted Internet access and internal

¹ Letter from Steve Simoneau, West Texas Telecommunications Consortium, to Federal Communications Commission, filed May 3, 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).

³ 47 C.F.R. §§ 54.502, 54.503.

connections from non-telecommunications providers.⁴

3. In its application, West Texas requested discounts for a service it characterized as "Internet access" provided by the Texas State Technical College. By letter dated November 16, 1999, SLD denied West Texas' application for discounts.⁵ Although West Texas characterized the services it sought as Internet access, SLD found that the requested services were in fact telecommunications services. Because Texas State Technical College is not a telecommunications carrier, SLD denied the funding request based on its finding that West Texas had requested discounts for telecommunications service from a provider that is not a telecommunications carrier.⁶ By letter dated April 3, 2000, SLD denied an appeal of this decision filed by West Texas.⁷ In the present appeal to the Bureau, West Texas challenges the fact that its service request was deemed a telecommunications service, and contends that the service category should remain Internet access.

4. West Texas does not contest SLD's conclusion that the Texas State Technical College is not a telecommunications carrier, as defined in our rules.⁸ Therefore, the West Texas appeal hinges on whether the services on which it has requested discounts are characterized as telecommunications service or Internet access.⁹ West Texas contends that the service should be characterized as Internet access because "our ISP is the provider for the consortium's complete

⁴ 47 C.F.R. §§ 54.501(a), 54.517. See also *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9084-85, para. 589 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, Errata, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *affirmed in part in Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *motion for stay granted in part* (Sept. 28, 1999), *petitions for rehearing and rehearing en banc denied* (Sept. 28, 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied in Celpage, Inc. v. FCC*, 120 S.Ct. 2212 (May 30, 2000), *cert. granted in GTE Service Corp. v. FCC*, 120 S.Ct. 2214 (June 5, 2000), *cert. denied in AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S.Ct. 2237 (June 5, 2000).

⁵ Letter from Universal Service Administrative Company to West Texas Telecommunications Consortium, dated November 16, 1999.

⁶ The Commission's rules define "telecommunications service" as the "offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used." Telecommunications is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in form or content of the information as sent and received." See 47 C.F.R. § 54.5.

⁷ Letter from Universal Service Administrative Company to West Texas Telecommunications Consortium, dated April 3, 2000.

⁸ See 47 C.F.R. § 54.5.

⁹ See 47 C.F.R. § 54.517(b):

(b) *Supported services.* Non-telecommunications carriers shall be eligible for universal service support under this subpart for providing Internet access and installation and maintenance of internal connections.

package of Internet services.”¹⁰

5. In the *Universal Service Order*, the Commission determined that schools and libraries may receive discounts for “basic conduit access to the Internet.”¹¹ The Commission’s rules define “conduit” services to include, “[t]he transmission of information as part of a gateway to an information service, [and] may include data transmission, address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to access information services.”¹²

6. We conclude that SLD properly denied funding in accordance with program rules. Because eligible schools, libraries, and consortia may receive discounted telecommunications services only from a telecommunications carrier, it is incumbent upon the applicant to clearly distinguish requests for telecommunications services from Internet access. This is particularly important where the service provider is a non-telecommunications carrier, prohibited by Commission rules from receiving funding for the provision of telecommunications services. West Texas’ service agreement with Texas State Technical College on its face encompasses services that extend beyond basic conduit to Internet access.¹³ For example, the services provided by Texas State Technical College include long distance telephone service and other services that are characterized as “telecommunications services” in the service agreement between West Texas and Texas State Technical College.¹⁴ Given the prohibition on funding of telecommunications services provided by a non-telecommunications provider under program rules, we conclude that SLD properly denied funding.

¹⁰ Letter of Appeal at 2. In addition, West Texas also contends that its conclusion was based on information provided on the SLD web site and conversations with SLD staff by phone. As to this assertion, we find that such statements are insufficient to exempt West Texas from complying with the program rules. We note that rules and policies are enforced, even where a party may have 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 would be contrary to an applicable statute or rule. *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)).

¹¹ *Universal Service Order*, 12 FCC Rcd at 9008-09, para. 436.

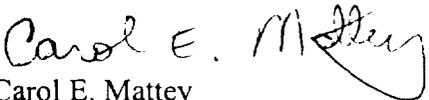
¹² 47 C.F.R. § 54.5.

¹³ See Service Agreement, West Texas Telecommunications Consortium and Texas State Technical College, dated March 29, 1999.

¹⁴ See Service Agreement, West Texas Telecommunications Consortium and Texas State Technical College, dated March 29, 1999.

7. 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 the West Texas Telecommunications Consortium, Abilene, Texas, May 3, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION


Carol E. Matthey
Deputy Chief, Common Carrier Bureau