

FEDERAL MAIL ROOM

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)	
)	
Winterset Community School District)	SLD-201905
Winterset, Iowa)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45 ✓
Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: November 21, 2000

Released: November 24, 2000

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Letter of Appeal filed by the Winterset Community School District (Winterset), Winterset, Iowa, on April 13, 2000, seeking review of a funding commitment letter issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (the Administrator).¹ Winterset disputes SLD's denial of Winterset's application for discounts for telecommunications services under the schools and libraries universal support mechanism.² For the reasons set forth below, we remand Winterset's appeal to SLD for further consideration in light of this Order.

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 The Commission's rules require that the applicant make a bona fide request for services by filing with

¹ Letter from Ivan T. Webber, on behalf of Winterset School District, to Federal Communications Commission, filed April 13, 2000 (Letter of Appeal).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 U.S.C. § 254(h); 47 C.F.R. §§ 54.502, 54.503.

the Administrator an FCC Form 470,⁴ which is posted to the Administrator's website for all potential competing service providers to review.⁵ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. At issue here is SLD's denial of support to Winterset for the Year 2 funding year, which began July 1, 1999, and ended on June 30, 2000. On March 24, 1999, Winterset filed its Form 471 with SLD.⁷ In its Form 471, Winterset indicated that it would receive telecommunication services for the Year 2 funding year, pursuant to a contract with Interstate 35 Telephone Company (Interstate), in the amount of \$25,900.⁸ In its Form 471 attachments, Winterset included a bid from Interstate dated January 26, 1999, which begins with a "high school quote" for \$25,843.80, and then goes on to set out quotes for "the remaining schools," one in the amount of \$19,632 for networking equipment, and another in the amount of \$6,200 for voice mail, for a total of \$25,832.00.⁹ The \$19,632 quote included telephones and cable modems. Telephones, cable modems, and voice mail service are ineligible for funding under program rules.

4. By letter dated October 12, 1999, SLD denied Winterset's two requests for discounts, finding that 30 percent or more of these funding requests included a request for telephones, modems, and voice mail, which are ineligible products and services based on program rules.¹⁰ In its Letter of Appeal, Winterset challenges SLD's findings in regards to one

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470).

⁵ 47 C.F.R. § 54.504(b); *Universal Service Order*, 12 FCC Rcd at 9078, para. 575.

⁶ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471).

⁷ Winterset Community Schools, Year 2 Form 471 Filing, application no. 135186, filed March 24, 1999 (Winterset Form 471).

⁸ Winterset Form 471, Block 5.

⁹ Letter from Mike Weis, Interstate 35 Telephone Company, to Gary Freeland, Winterset Community School District, dated January 26, 1999.

¹⁰ Letter from Universal Service Administrative Company to Barbara J. Tunell, Winterset Community School District, issued October 12, 1999. The "30-percent policy" is not a Commission rule, but rather is an internal SLD benchmark utilized during its application review process, to enable SLD to approve funding requests for eligible services without having to spend an excessive amount of time working with an applicant that for the most part is requesting funding of ineligible services. If 30 percent or less of the request is for funding of ineligible services, SLD normally will approve the portion that is for eligible services. If more than 30 percent of the request is for funding of ineligible services, SLD will deny the application in its entirety. The benchmark percentage, originally 50 percent, was adjusted to 30 percent by SLD as the program matured. *See, e.g., Request for Review of the Decision of the Universal Service Administrator by New Kensington-Arnold School District New Kensington*, (continued....)

of the requests, stating that SLD misconstrued the Interstate bid letter by considering the two elements of the bid for “the remaining schools” as components of the \$25,843.80 “high school” quote.¹¹ Winterset asserts that in fact, the three quotes are mutually exclusive quotes, and the two lesser quotes are not parts of the larger \$25,843.80 quote.¹² Winterset argues that SLD may have been misled by the coincidence that the two lesser “remaining schools” quotes add up to nearly the exact same amount (\$25,832.00) as the \$25,843.80 “high school” quote.¹³ Winterset argues that the two “remaining schools” quotes should not have been factored into SLD’s determination whether Winterset had requested funding for an unallowable amount of ineligible services.¹⁴

5. We find that the information submitted by Winterset suggests that SLD incorrectly assumed that the two lesser “remaining schools” quotes presented by Interstate were components of the larger “high school” quote for which Winterset sought universal service funding, and thus erroneously concluded that Winterset sought funding for an impermissible amount of ineligible services. We find, therefore, that Winterset’s appeal should be granted, and we remand this appeal to SLD with the direction that SLD reconsider Winterset’s funding request. As a general matter, 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 clearly explaining the purposes to which the funding they request will be put. In this case, however, while the letter from Interstate submitted with Winterset’s Form 471 was vague, we believe nonetheless that it was unreasonable to assume that the two lesser “remaining schools” quotes were components of the larger “high school” quote, especially when the letter from Interstate stated that the lesser quotes were for “the remaining schools,” implying that these were separate quotes. Because SLD incorrectly determined that the funding request from Winterset was for ineligible services or products, Winterset’s request for review is granted, and SLD is directed to reconsider Winterset’s funding request.

(Continued from previous page) _____
Pennsylvania, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Order, File No. SLD-28754, CC Dockets No. 96-45, 97-21, 1999 WL 1216147 (F.C.C., Dec 21, 1999); *Request for Review of the Decision of the Universal Service Administrator by Western Heights Public School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, File No. SLD-54054, CC Dockets No. 96-45, 97-21, 15 FCC Rcd 8502 (Com. Car. Bur. 1999).

¹¹ Letter of Appeal at 2.

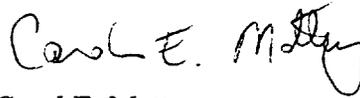
¹² Letter of Appeal at 2.

¹³ Letter of Appeal at 2.

¹⁴ Letter of Appeal at 2, 4.

6. 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 April 13, 2000, by Winterset Community School District, Winterset, Iowa, IS GRANTED to the extent stated herein.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Mathey
Deputy Chief, Common Carrier Bureau