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

2000 NOV 28 P 3: 54

In the Matter of	)	
	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Anderson School Staatsburg, New York	)	File No. SLD-133664
	)	
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

VED

ORDER

Adopted: November 21, 2000 **Released: November 24, 2000**

By the Common Carrier Bureau:

1. The Bureau has under consideration a request for review filed by the Anderson School (Anderson), Staatsburg, New York on May 30, 2000.[1] Anderson seeks review of a funding commitment decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) pursuant to a funding request for internal connections.[2] For the reasons set forth below, we deny Anderson'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] In the Matter of Request for Review by Anderson School, to the Federal Communications Commission, filed May 30, 2000 (Letter of Appeal).

[2] *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to William Doyle, Anderson School, issued December 14, 1999 (Funding Commitment Decision Letter); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Maria A. Espie, Anderson School, issued May 1, 2000 (Administrator's Decision on Appeal).

[3] 47 C.F.R. §§ 54.502, 54.503.

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 Anderson's Funding Year 2 application for discounted internal connections, Funding Request Number (FRN) 198586. In its FCC Form 471, filed on March 17, 1999, Anderson sought support in a single funding request for internal connections services or products which it valued at $1,083,559 for 28 of its campus buildings. SLD denied Anderson's funding request, concluding that the funding request included internal connections valued at $658,852 for 21 ineligible residential dormitory buildings.[6]

4. Anderson filed an appeal with SLD on January 5, 2000, claiming that Anderson School is a large, single campus not traversed by a public right of way, and, therefore, the services purchased are wholly eligible under the rules.[7] In response, SLD affirmed its decision, stating that a significant portion of the funding request includes a request for wiring and equipment in dorm facilities that are ineligible to receive funding based on program rules.[8]

5. Anderson filed the instant appeal with the Commission on May 30, 2000. In this appeal, Anderson claims that the classification of these facilities as "dorms" is faulty and that these "[f]acilities will include a study center whereby students can complete homework assignments and have access to the internet for research, and other educational explorations with resident counselors who are available to assist the individual students with homework and give learning assistance."[9] Anderson further argues that the fact that these facilities additionally

[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 from Maria A. Espie, Anderson School, to Schools and Libraries Division, Universal Service Administrative Company, filed January 5, 2000 (SLD Letter of Appeal).

[8] *See* Administrator's Decision on Appeal at 1.

[9] *See* Letter of Appeal at 3.

contain dorm facilities or other non-classroom facilities is irrelevant to a funding decision.[10]

6. Although Anderson contends that its buildings containing residential dormitories also will contain "study centers," we find no basis upon which to grant Anderson's appeal. These study centers are not traditional classrooms or computer learning centers, but will be used for homework and research with assistence from residential counselors. The Commission has found that a given service is eligible for support as a component of the institution's internal connections only if it is necessary to "transport information all the way to the individual classroom."[11] The Commission stated in its *Fourth Order on Reconsideration* that this focus on access to classrooms followed from the conclusion that "Congress intended that telecommunications and other services be provided directly to classrooms."[12] The Commission clarified its position that discounts are not available for internal connections in non-instructional buildings unless those internal connections are essential for the effective transport of information to an instructional building or library.[13]

7. Based on our review of the record before us, Anderson's classrooms are contained in buildings physically separated from the 21 residential dormitory buildings, and the internal connections to the residential dormitory buildings are not necessary for the effective transport of information to Anderson's classrooms. The record shows that the seven non-residential buildings on the Anderson School campus provide traditional classrooms and computer learning centers. Consistent with Commission precedent, we conclude that Anderson requested funding for ineligible services when it sought discounts on internal connections in the 21 residential dormitories.

8. Moreover, we uphold SLD's decision to deny Anderson's funding request in its entirety because 60 percent of that request was for ineligible services. If more than 30 percent of the request is for funding of ineligible services, SLD ordinarily denies an application in its entirety.[14] In light of the thousands of applications that SLD reviews and processes each funding

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[10] *Id.*

[11] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9021 (1997) (*Universal Service Order*), as corrected by Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Errata, 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. denied in AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S.Ct. 2237 (June 5, 2000), *cert. dismissed in GTE Service Corp. v. FCC*, No. 99-1249, 2000 WL 1641148 (Nov. 2, 2000).

[12] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fourth Order on Reconsideration, Report and Order, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5440 (1997) (*Fourth Order on Reconsideration*). *See also Universal Service Order*, 12 FCC Rcd at 9017-9018.

[13] *Fourth Order on Reconsideration* at 5440. *See also* 47 C.F.R. § 54.506.

[14] 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 (continued....)

year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures. The program's rules state repeatedly that universal service funds support only eligible services.[15] Anderson should have been aware that it was seeking discounts for ineligible internal connections. We conclude SLD appropriately applied its 30 percent policy based upon the facts of this case.

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 request for review filed May 30, 2000, by Anderson School, Staatsburg, New York, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey

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Deputy Chief, Common Carrier Bureau

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ineligible services. If 30 percent or less of the request is for funding of ineligible services, SLD will normally approve the portion that is for eligible services. 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 Brooklyn Public Library, Brooklyn, New York, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, File No. SLD-149423, CC Dockets No. 96-45, 97-21, 2000 WL 1406973 (F.C.C., Sept 26, 2000); *Request for Review of the Decision of the Universal Service Administrator by New Kensington-Arnold School District New Kensington, 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).

[15] 47 C.F.R. §54.504 et seq.