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Before the
Federal Communications Commission
Washington, DC 20554

2001 FEB 23 P 3: 19

In the Matter of	)	
	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Buffalo & Erie County Public Library Buffalo, New York	)	File No. SLD-137691
	)	
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

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ORDER

Adopted: February 16, 2001 **Released: February 20, 2001**

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration an appeal, filed on May 19, 2000, by the Buffalo & Erie County Public Library, New York (Buffalo and Erie) seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).[1] Buffalo and Erie seeks review of a funding commitment decision issued by SLD pursuant to funding requests for internal connections.[2] For the reasons set forth below, we remand Buffalo and Erie's funding application to SLD for further determination in accordance with 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

[1] *Request for Review by Buffalo and Erie County Public Library of the Decision of the Administrator*, filed May 19, 2000 (Request for Review).

[2] *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Shirley P. Whelan, Buffalo & Erie County Public Library, issued November 2, 1999 (Funding Commitment Decision Letter); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Shirley P. Whelen, Buffalo & Erie County Public Library, issued April 25, 2000 (Administrator's Decision on Appeal).

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

an FCC Form 470 with the Administrator,[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. The instant appeal arises from Buffalo and Erie's application for discounted services for the second funding year. In its FCC Form 471, filed on April 1, 1999, Buffalo and Erie sought support in multiple funding requests for telecommunications services and internal connections that it valued at $8,367. In its Funding Commitment Decision Letter, SLD denied Buffalo and Erie's requests for internal connections on the grounds that Buffalo and Erie sought funding for ineligible maintenance and memory upgrades for Cisco 2500 series routers.[7] Buffalo and Erie filed an appeal to SLD on November 18, 1999, claiming that the schools and libraries eligibility list identifies router maintenance and upgrades as eligible services.[8] In response, SLD denied Buffalo and Erie's appeal, stating that Cisco 2500 series routers are remote access routers, which are ineligible.[9] SLD found that because remote access routers are ineligible, maintenance and memory upgrades associated with such routers are also ineligible.[10]

4. On appeal, Buffalo and Erie argues that its funding request should not be denied simply because some models of the router series in question are capable of providing remote access. Buffalo and Erie states that its use of the router in question is solely for eligible services.[11] Buffalo and Erie further states that the Cisco model 2501 it purchased does not

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[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); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (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, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S.Ct. 423 (Nov. 2, 2000).

[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] *See* Funding Commitment Decision Letter at 4-8.

[8] *See* Letter from Shirley P. Whelen, Buffalo and Erie County Public Library, to Schools and Library Division, filed November 19, 1999 at 2.

[9] Remote access routers allow access to the Internet from any location by any individual knowing the dial-in telephone number. Access routers, with no remote capabilities, cannot provide dial-in access to the Internet from remote locations.

[10] *See* Administrator's Decision on Appeal.

[11] *See* Request for Review at 4.

function as a remote access router, and the operating software purchased with the unit does not support remote access. According to Buffalo and Erie, it uses the router as a "Single LAN router," routing traffic only among the equipment located within the individual library in which it is located.[12] Finally, Buffalo and Erie argues that denial of funding based on the capabilities of a router family of products rather than the capabilities, configuration, and use of the specific router purchased results in arbitrary disqualification of numerous school and library funding requests that, in actuality, are for eligible services.[13]

5. In *White Sulphur Springs*, the Bureau found that, although White Sulphur Springs' remote access router was capable of supporting wide area network (WAN) connections, White Sulphur Springs was not using the router to connect to any facilities other than to its Internet service provider in order to receive Internet access.[14] Accordingly, the Bureau granted White Sulphur Springs' appeal and remanded White Sulphur Springs' funding application to SLD for further determination. Applying *White Sulphur Springs* to the instant situation, remote access routers may be considered for discounts if they are not being used to provide remote access.[15] In the appeal before us, Buffalo and Erie asserts that the Cisco 2501 routers, as installed and used by Buffalo and Erie, do not and cannot perform remote access functions. In light of our decision in *White Sulphur Springs*, we conclude that it is appropriate to remand Buffalo and Erie's application to SLD for further review. We direct SLD to review Buffalo and Erie's use of its remote access routers to determine whether such use is eligible for discounts, and consequently, whether maintenance and memory upgrades of such routers are also eligible for funding.

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[12] *See* Request for Review at 4-5.

[13] *See* Request for Review at 5.

[14] *Request for Review of the Decision by the Universal Service Fund Administrator by White Sulphur Springs School District, White Sulphur Springs, Montana,* CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 3396, 3398, para. 7 (Common Carrier Bur. 1999) (*White Sulphur Springs*). Under section 54.500 of the Commission's rules, a wide area network is defined as "a voice or data network that provides connections from one or more computers within an eligible school . . . to one or more computers or networks that are external to such eligible school." 47 C.F.R. § 54.500(l). Section 54.518 of the Commission's rules states that "[t]o the extent that states [or] schools . . . build or purchase a wide area network to provide telecommunications services, the cost of such wide area networks shall not be eligible for universal service discounts." 47 C.F.R. § 54.518. *See also Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc., of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the Universal Service Administrator, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13734, para. 28 (1999) (discussing the Commission's rules regarding the eligibility of internal connections for discount funding, and the ineligibility of wide area network facilities for discount funding).

[15] *See* SLD website, <http://www.sl.universalservice.org/whatsnew/052000.asp#052500_2>, clarifying SLD's policy regarding the eligibility of remote access routers. Applicants must certify that the requested remote access routers will not be used to provide remote access in the funding year or, if the product is to be used remotely, applicants must ensure that only entities eligible for support under the Schools and Libraries program have the capability to access it. If a router is to be used for remote access, such access must only be from sites for which services would be eligible for discount under the program.

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 Request for Review filed by Buffalo and Erie County Public Library on May 19, 2000, IS GRANTED to the extent provided herein. We direct the Administrator to review Buffalo's funding application and, if warranted, issue a revised Funding Commitment Decision Letter.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey

Carol E. Mattey
Deputy Chief, Common Carrier Bureau