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

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In the Matter of	)	
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Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Caribou School District Caribou, Maine	)	File No. SLD-148247
	)	
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

ORDER

Adopted: February 28, 2001 **Released: March 1, 2001**

By the Common Carrier Bureau:

1. In this Order, we deny a Request for Review filed by the Caribou School District (Caribou), Caribou, Maine on May 18, 2000,[1] seeking 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 Internet access.[2]

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 its

[1] Letter from Lynn McNeal, Caribou Regional School District, to the Federal Communications Commission, filed May 18, 2000 (Letter of Appeal).

[2] *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lynn McNeal, Caribou Regional School District, issued October 12, 1999 (Funding Commitment Decision Letter); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lynn McNeal, Caribou Regional School District, issued May 9, 2000 (Administrator's Decision on Appeal).

[3] 47 C.F.R. §§ 54.502, 54.503.

technological needs and the services for which it seeks discounts.[4] Once the applicant has complied with the Commission's competitive bidding requirements and signed a contract for eligible services, it must file an FCC Form 471 to notify the Administrator of the services that have been ordered, the carrier with whom the applicant 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, the award and expiration dates, 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 applicant is eligible.

3. The instant appeal arises from SLD's denial of Caribou's Year 2 application for discounted Internet access, Funding Request Number (FRN) 285516, on the grounds that more than 30 percent of Caribou's funding request included products ineligible for discounts.[6] In its FCC Form 471, filed on April 6, 1999, Caribou sought support for Internet access, which it valued at $5,000.00 and which was to be provided by Novell Academic Sales. On October 12, 1999, SLD denied funding for the requested Internet access, stating that more than 30 percent of FRN 265516 included ineligible products, such as Border Manager, Z.E.N. Works, GroupWise, and ManageWise.[7]

4. Caribou filed an appeal with SLD on October 20, 1999, requesting to alter its original funding request to exclude the ineligible products.[8] SLD denied Caribou's appeal on May 9, 2000, stating that a significant portion of Caribou's funding request included products ineligible for discounts and that, under SLD's rules, Caribou could not, at that late date, amend its original funding request.[9] Caribou filed the instant appeal with the Commission on May 18, 2000.[10] In this

[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. The "30 percent policy" is not a Commission rule, but rather is an SLD operating procedure established pursuant to FCC policy. *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998). This operating procedure, used during SLD's application review process, enables SLD to efficiently process requests for funding for services that are eligible for discounts but that also include some ineligible components. If 30 percent or less of the request is for funding of ineligible services, SLD normally will consider the application and issue a funding commitment for the eligible services. If more than 30 percent of the request is for funding of ineligible services, SLD will deny the funding request in its entirety. The 30 percent policy allows SLD to efficiently process requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants that are requesting funding of ineligible services.

[7] *See id.*

[8] Letter from Lynn McNeal, Caribou Regional School District, to Schools and Libraries Division, Universal Service Administrative Company, filed October 20, 1999 (SLD Letter of Appeal).

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

appeal, Caribou claims that it was unaware that Border Manager, Z.E.N. Works, GroupWise, and ManageWise were ineligible for funding, and that SLD had previously funded such services.[11] Caribou also states that it was not notified that its application included ineligible products until after the deadline for amending the FCC Form 471.[12] Without providing any specifics, Caribou also states that its receipt of contradictory information from SLD contributed to its failure to exclude the ineligible products from its funding request.[13]

5. We find no basis upon which to grant Caribou's appeal. In the instant appeal, Caribou requests relief on the grounds that it was not aware that Border Manager, Z.E.N. Works, GroupWise, and ManageWise were ineligible for support. The program's rules state that universal service funds support only eligible services.[14] The instructions for the FCC Form 471 clearly state: "YOU MAY NOT SEEK SUPPORT ON THIS FORM FOR INELIGIBLE SERVICES."[15] The instructions further clarify that "[w]hile you may contract with the same service provider for both eligible and ineligible services, your contract or purchase agreement must clearly break out costs for eligible services from those for ineligible services."[16] The instructions for the FCC Form 471 also describe which types of Internet service provider software are eligible for discounts.[17] The instructions explicitly state that software is not eligible for discounts unless it is provided in bundled access to the Internet.[18] SLD's web site contains a list of eligible services, including a section listing the software that is eligible for discounts, and instructions on filing the FCC Form 471.[19] Based on our review of the record, it does not appear that the software was bundled with access to the Internet. In fact, according information provided by Caribou to SLD, Caribou already receives Internet access from the University of Maine System and the contract with Novell Academic Sales is purely for the purchase of software. We therefore conclude that Caribou should have been aware that it was seeking discounts for ineligible services.

6. We also decline to grant Caribou's request that the Commission allow it to amend

(Continued from previous page)

[10] *See* Request for Review.

[11] *See id.* at 2.

[12] *Id.* at 2.

[13] *Id.* at 1-2.

[14] 47 C.F.R. §§54.502, 54.503.

[15] Form 471 Instructions at 15.

[16] *Id.* at 16.

[17] *Id.*

[18] *Id.*

[19] *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), OMB Approval No. 3060-0806 (December 1998) at pp. 5-6 (Form 471 Instructions).

its original application to eliminate ineligible services from its funding request.[20] SLD has established a policy that applicants are not permitted to amend completed FCC Forms 471 to remove ineligible service requests after the closure of the filing window.[21] This policy imposes upon applicants the responsibility of preparing their applications carefully and obtaining appropriate assistance to avoid including ineligible expenses.[22] If applicants were permitted to correct their applications after SLD has denied them, it would eliminate any incentive for them to avoid including ineligible expenses in their funding requests. This would significantly increase the administrative burden SLD would face while carrying out its obligation to guard against the occurrence of errors and fraud. In light of the thousands of applications that SLD reviews and processes each funding year, administrative necessity requires that each applicant be responsible for clearly and accurately describing its funding request and for understanding all applicable program rules. The applicant must act to ensure that its request for discounts satisfies program rules, which limit universal service mechanism funds to eligible services only.[23]

7. As to Caribou's general assertion that it has received contradictory information from SLD, we find that such statements are an insufficient basis to overturn SLD's decision. We note that rules and policies are enforced, even where a party has received incorrect 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.[24] Caribou'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.[25] Here, we find no grounds for relieving Caribou from having to comply with our policies regarding ineligible services.

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[20] *See* SLD Letter of Appeal at 1.

[21] 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), 54.507(c).

[22] Assistance is available to applicants from many sources, including SLD's website. *See* note 12.

[23] 47 C.F.R. §54.504 *et seq.*

[24] *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).

[25] *See e.g. Request for Review of Decision Universal Service Administrative Company by Arizona Call-A-Teen Center, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 96-45, Order, 15 FCC Rcd 18634, 18637, para. 6 (Common Carrier. Bur. 2000).

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 Request for Review filed on May 18, 2000 by Caribou School District, Caribou, Maine, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey
Deputy Chief, Common Carrier Bureau