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

2001 MAR 15 P 12: 02

In the Matter of	)	
	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Paducah Public Schools Paducah, Kentucky	)	File No. SLD-150710
	)	
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: March 13, 2001 **Released: March 14, 2001**

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Request for Review filed June 7, 2000 by the Paducah Public Schools (Paducah), Paducah, Kentucky, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administration Company (USAC or Administrator).[1] Paducah seeks review of SLD's May 11, 2000 decision (Administrator's Decision on Appeal), denying Paducah's request for discounts under the schools and libraries universal service support mechanism.[2] For the reasons set forth below, we deny the Request for Review and affirm SLD's denial of Paducah's request for discounts.

2. Under the schools and libraries universal service support mechanism, eligible

[1] Letter from Jeff Nelson, Paducah Public Schools, to Federal Communications Commission, filed June 7, 2000 (Request for Review).

[2] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Nelson, Paducah Public Schools, dated May 11, 2000 (Administrator's Decision on Appeal). The Commission's rules provide that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 CFR § 54.419(c).

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 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. Applicants may only seek support for eligible services.[7] The instructions for the FCC Form 471 clearly state: "YOU MAY NOT SEEK SUPPORT ON THIS FORM FOR INELIGIBLE SERVICES."[8] 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."[9] Although SLD reduces a funding request to exclude the cost of ineligible services in circumstances where the ineligible services represent less than 30 percent of the total funding request, SLD will deny a funding request in its entirety if ineligible services constitute more than thirty percent of the total.[10] An applicant can avoid denial by subtracting out, at the time of its

[3] 47 C.F.R. §§ 54.402, 54.503.

[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 First Report and 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] 47 C.F.R. § 54.504 *et seq.*

[8] Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471) (December 1998) at 15 (Form 471 Instructions).

[9] Form 471 Instructions at 16.

[10] *See Request for Review of the Decision of the Universal Service Administrative Company by Ubly Community Schools, 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, DA 00-1517 (Com. Car. Bur. rel. July 10, 2000); *Request for Review of the Decision of the Universal Service Administrator by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, DA 00-2630, para. 8 (continued....)

initial application, the cost of ineligible services.

4. In its FCC Form 471, Paducah listed a request for $39,518.00 for Shared Internal Connections Telecommunications Services from BellSouth Communications Systems, and described the services as Telephone Key Systems in its Form 471 Pre-Discount Cost Calculation Optional Grid.[11] In an August 9, 1999 facsimile submitted pursuant to SLD's request for clarification, Paducah provided a list of products and services under the proposed BellSouth contract that included a substantial proportion of ineligible services, in particular Norstar Voice Mail 4.0 and Digital Telephones with Speakerphones and Display.[12]

5. In its August 24, 1999 Funding Commitment Decision Letter, SLD denied Paducah's Funding Request Number (FRN) 256010 because "30% or more of this FRN includes a request for voice mail and phone sets which are ineligible products based on program rules."[13] SLD upheld the decision in its Administrator's Decision on Appeal.[14]

6. In the instant appeal to the Commission, Paducah asserts that its September 16, 1999 letter to SLD appealing the denial of funding clearly indicated that it had never requested funding for ineligible voicemail and phonesets.[15] Paducah contends that SLD improperly denied its appeal by failing to take into consideration the additional documentary evidence it supplied in

(Continued from previous page)
(Com. Car. Bur. rel. November 24, 2000). 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 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 application 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, for the most part, are requesting funding of ineligible services.

[11] FCC Form 471, Paducah Public Schools, Paducah, KY, filed April 2, 1999.

[12] Facsimile from Jeff Nelson, Paducah Public Schools, to Judith Crook, Schools and Libraries Division, Universal Service Administrative Company, dated August 9, 1999, at 2-4. *See* SLD web site, Eligible Services (March 27, 1998) http://www.sl.universalservice.org/reference/eligible.asp.

[13] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeff Nelson, Paducah Public Schools, dated August 24, 1999 (Funding Commitment Decision Letter) at 6.

[14] Administrator's Decision on Appeal at 1-2. In the Administrator's Decision on Appeal, the Administrator also denied Paducah's FRN 256034. *See id.* Paducah has not appealed the denial of that request, and therefore we do not address it here.

[15] Request for Review at 1-2.

its September 16, 1999 letter indicating that it had not requested ineligible services.[16]

7. In its September 16, 1999 Letter of Appeal to SLD, however, Paducah conceded that documents it provided to SLD during the review period, pursuant to SLD's request for clarification, included itemized ineligible products and services.[17] Only in its appeal to SLD did Paducah attempt to explain, for the first time, that the requested $39,518.00 for telephone key systems did not include requests for the ineligible products and services it had specified in its August 9, 1999 submission. Therefore, based on the information it had been provided as of the time of its initial decision, SLD properly denied Paducah's claim. Nothing in the original documentation submitted with the application supports Paducah's contention on appeal that it was not seeking funding for the ineligible products.

8. We cannot allow Paducah to amend its original application to eliminate ineligible services from its funding request.[18] 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.[19] This policy imposes upon applicants the responsibility of preparing their applications carefully and obtaining appropriate assistance to avoid including ineligible expenses.[20] 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 providing complete and accurate information in its FCC Form 471 upon which its ultimate funding is dependent. The applicant must act to ensure that its request for discounts satisfies program rules, which limit universal service mechanism funds to eligible services only.[21] We therefore deny Paducah's Request for Review.

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[16] *Id.*

[17] Letter from Jeff Nelson, Paducah Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, dated September 16, 1999. *See also* facsimile from Jeff Nelson, Paducah Public Schools, to Judith Cook, Schools and Libraries Division, Universal Service Administrative Company, dated August 9, 1999, at 2-4 (listing proposed services from Bellsouth, including ineligible voicemail and phonesets).

[18] *See* Request for Review.

[19] 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).

[20] Assistance is available to applicants from many sources, including SLD's website.

[21] 47 C.F.R. §54.504 *et seq.*

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 June 7, 2000, by Paducah Public Schools, Paducah, Kentucky, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey
Deputy Chief, Common Carrier Bureau