

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

2001 MAR 15 A 11: 59

In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Springfield Public Schools)
Springfield, Massachusetts)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

RECEIVED

File No. SLD-148247

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: March 5, 2001

Released: March 6, 2001

By the Common Carrier Bureau:

1. In this Order, we grant a Request for Review filed by Springfield Public Schools (Springfield), Springfield, Massachusetts on May 15, 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 internal connections.² For the reasons discussed below, we direct the Administrator to reconsider Springfield's funding request, and, if warranted, issue a revised Funding Commitment Decision Letter consistent with this decision.

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

¹ Letter from Peter J. Negroni, Springfield Public Schools, to Federal Communications Commission, filed May 15, 2000 (Request for Review).

² See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robert G. Hamel, Springfield Public Schools, issued September 8, 1999 (Funding Commitment Decision Letter); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robert G. Hamel, Springfield Public Schools, issued May 3, 2000 (Administrator's Decision on Appeal).

³ 47 C.F.R. §§ 54.502, 54.503.

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 technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement 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 entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ In the Year 2 application, this information generally is 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 contract 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. 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. In its Year 2 FCC Form 471, filed on April 6, 1999, Springfield sought support for internal connections, which it valued at \$1,096,180.28 and which were to be provided by LAN Tamers, Inc. SLD denied Springfield's Year 2 application for discounted internal connections (shared), Funding Request Number (FRN) 263421, on the grounds that a significant portion of Springfield's funding request included products ineligible for discounts.⁶ In particular, SLD stated that on-site engineering support, a contingency fund, computer head-end equipment, video head-end equipment, and shared head-end equipment were ineligible for discounts.

4. Springfield filed an appeal with SLD on October 4, 1999.⁷ SLD denied Springfield's appeal on May 3, 2000, stating that a significant portion of Springfield's funding request included products ineligible for discounts.⁸ Springfield filed the instant appeal with the Commission on May 15, 2000.⁹ In this appeal, Springfield states that, under the Commission's rules, on-site engineering support, a contingency fund, computer head-end equipment, and shared head-end equipment should be eligible for discounts.¹⁰ In particular, Springfield argues that on-site engineering support, which "supplies on-going labor for maintenance of this system," is "critical to support the proper operation of [the] system," and, therefore, should be eligible for

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 Peter J. Negroni, Springfield Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed October 4, 1999 (SLD Letter of Appeal).

⁸ See Administrator's Decision on Appeal at 1.

⁹ See Request for Review.

¹⁰ *Id.* at 2.

discounts.¹¹ Springfield notes that SLD's list of eligible services states that "labor charge[s] incurred for the installation and contractual maintenance of eligible Telecommunications Services, Internal Connections and Internet Access are eligible for discount."¹² With regard to the contingency fund, and the computer head-end and shared head-end equipment, Springfield argues "all of the other items associated with this installation were approved, so these items must also be grouped into the approved category."¹³ Springfield notes that SLD previously funded such services.¹⁴ Springfield also asserts that the SLD did not take into account revised information submitted in support of Springfield's request for discounts.¹⁵

5. We agree with Springfield that SLD should not have designated on-site engineering support as ineligible for discounts. In the *Universal Service Order*, the Commission concluded "support should be available to fund discounts on basic installation and maintenance services necessary to the operation of the internal connections network."¹⁶ As discussed above, SLD's eligibility list clearly states that "labor charges incurred for the installation and contractual maintenance of eligible . . . Internal Connections . . . are eligible for discount."¹⁷ SLD's eligibility list also states that the "Service Category used for labor should reflect the same service category of the product, or service being installed or maintained."¹⁸ In accordance with this requirement, the description of on-site engineering included in Springfield's FCC Form 471 included the parenthetical "Data services items."¹⁹ SLD designated as eligible for discounts all of

¹¹ See *id.* at 2.

¹² *Id.* at 2-3 (quoting Schools and Libraries Eligibility List (rel. Dec. 2, 1999), located on the SLD web site, <<http://www.sl.universalservice.org>>, at 34 (Schools and Libraries Eligibility List for 1999)).

¹³ *Id.* at 3.

¹⁴ See *id.* at 2.

¹⁵ See *id.* at 2, 4. We note that revised information in support of Springfield's request for discounts was not submitted to SLD until September 28, 1999, 20 days after the Funding Commitment Decision Letter was issued. SLD, therefore, was not able to incorporate Springfield's revised information into its review of Springfield's funding request until after its appeal was filed with SLD on October 4, 1999.

¹⁶ See *Universal Service Order*, 12 FCC Rcd at 9021, para. 460.

¹⁷ See Schools and Libraries Eligibility List (rel Nov. 16, 2000), located on the SLD web site, <<http://www.sl.universalservice.org>>, at 43. See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9021, paras. 459, 460 (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 (November 2, 2000).

¹⁸ *Id.*

¹⁹ See Springfield Public Schools FCC Form 471, at 10 (filed April 6, 1999).

the data services described in Springfield's FCC Form 471.²⁰ Therefore, labor charges incurred for the installation and maintenance of the data services described in Springfield's FCC Form 471 should be eligible for discount. Under these circumstances, we conclude that the record does not support SLD's finding that on-site engineering should be ineligible for discounts. Accordingly, we direct SLD to designate as eligible Springfield's request for discounts for on-site engineering support.

6. Based on the evidence presented, we are unable to determine whether contingency fund, computer head-end equipment, shared head-end equipment, and video head-end equipment included in Springfield's funding request are eligible for discounts. Springfield's "revised information," which included spreadsheets with more detailed line-items, contradicts information included in Springfield's original funding request, and, therefore, cannot without further investigation be relied upon in determining which services should be eligible for discount. Moreover, neither the Funding Commitment Decision Letter nor the Administrator's Decision on Appeal indicate the basis for SLD's determination that these components of Springfield's funding request were ineligible. For example, it is unclear whether the computer head-end equipment for which Springfield was denied funding was eligible equipment used to transmit data to the classroom or ineligible end-user equipment.²¹ In other instances where SLD has failed to provide an explanation for its determination of ineligibility, the Bureau has remanded the application to SLD for further consideration.²² We believe that such action is also appropriate here and shall remand Springfield's application to SLD for further consideration under applicable program rules and policies.²³

²⁰ See Funding Commitment Decision Letter at 5.

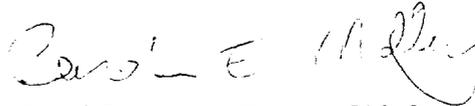
²¹ See Schools and Libraries Eligibility List for 2000 at 27. Computers used in the routing of information to individual classrooms are eligible for discounts.

²² See, e.g., *Request for Review by Terral School District 3, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-118223, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 17969 (Com. Car. Bur. 2000).

²³ As in *Terral School District 3*, we do not suggest that the circumstances require a decision in Springfield's favor, but find only that under the circumstances SLD's failure to explain the basis for its decision requires remand.

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 Letter of Appeal filed on May 18, 2000 by Springfield Public Schools, Springfield, Massachusetts, IS GRANTED to the extent provided herein. We direct the Schools and Libraries Division to review Springfield's funding application and, if warranted, issue a revised Funding Commitment Decision Letter in accordance with the above-stated decision.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey, Deputy Chief
Common Carrier Bureau