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Before the
Federal Communications Commission
Washington, DC 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	)	
	)	
Buffalo & Erie County Public Library Buffalo, New York	)	File No. SLD-137482
	)	
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: March 13, 2001 **Released: March 14, 2001**

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Request for Review filed by the Buffalo and Erie County Public Library (Buffalo and Erie), Buffalo, New York, 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 denying its request for year 2 funding of internal connections under the schools and libraries program.[2] For the reasons discussed below, we remand Buffalo and Erie's funding application to SLD for further action 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 an FCC Form 470 with the Administrator, which is posted to the Administrator's website for all

[1] Letter from Kenneth H. Stone, Buffalo and Erie County Public Library, to Federal Communications Commission, filed July 11, 2000 (Request for Review).

[2] Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

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

potential competing service providers to review.[4] 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.[5] SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. The instant Request for Review arises from one of Buffalo and Erie's applications for discounted services for the second funding year.[6] In its FCC Form 471, Buffalo and Erie sought support in multiple funding requests for internal connections for 52 of its library outlets. Specifically, Buffalo and Erie requested funding of Cisco 2501 router operating system upgrades addressing Y2K issues and for Cisco 2501 router DRAM memory upgrades. In its Funding Commitment Decision Letter, issued October 19, 1999, SLD denied the requests on the grounds that "Y2K and Cisco 2500 series routers" were ineligible products or services.[7]

4. Buffalo and Erie filed an appeal to SLD on October 29, 1999.[8] In its appeal, it challenged the finding that it was requesting ineligible products, claiming that the schools and libraries eligibility list identifies router maintenance and upgrades as eligible.[9] It further requested that the site numbers on two of its funding requests be corrected.

5. By decision dated June 13, 2000, SLD denied Buffalo and Erie's appeal in its entirety.[10] With regard to Buffalo and Erie's two requests for site number corrections, SLD

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[4] Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (Form 470); *see* 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).

[5] 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471).

[6] FCC Form 471, Buffalo and Erie County Public Library, Application No. 137482, filed April 1, 1999.

[7] *See* Letter from Kate L. Moore, Schools and Libraries Division, to Shirley P. Whelan, Buffalo and Erie County Public Library, issued October 19, 1999 (Funding Commitment Decision Letter) at 5-15.

[8] *See* Letter from Shirley P. Whelan, Buffalo and Erie County Public Library, to Schools and Libraries Division, filed October 29, 1999 (Letter of Appeal).

[9] Letter of Appeal at 2. SLD maintains an Eligibility List on its website which provides guidance on the eligibility of various products and services. *See* <http://www.sl.universalservice.org/reference/eligible.asp>

[10] Letter from Schools and Libraries Division to Shirley P. Whelan, Buffalo and Erie County Public Library, filed June 16, 2000 (Administrator's Decision on Appeal).

stated that the applicant was responsible for the information provided in the application prior to approval, and that no new information addressing an alleged error would be considered post-approval unless the error were shown to be the fault of SLD.[11] It also affirmed its ineligibility determinations, finding again that "Y2K upgrades for Cisco 2500 Routers are considered ineligible according to program rules."[12] Buffalo and Erie then filed the pending Request for Review on July 11, 2000.

6. In its Request for Review, Buffalo and Erie again challenges SLD's ineligibility determination.[13] Buffalo and Erie asserts that the underlying basis for SLD's determination is explained in a separate SLD decision denying Buffalo and Erie's other year 2 application (*Buffalo and Erie I*).[14] The application in *Buffalo and Erie I* also sought funding for Y2K software and memory upgrades for Cisco 2501 routers (for different library outlets than are involved in the instant application). When these requests were denied, Buffalo and Erie appealed to SLD. On appeal, SLD clarified that the requests were denied because "Cisco 2500 Series routers . . . are remote access routers."[15] It stated that since "remote access routers are ineligible products per program rules, maintenance and memory upgrades associated with these routers are also ineligible."[16]

7. In the instant appeal, Buffalo and Erie asserts that SLD must have similarly concluded that the routers in the instant case were ineligible "remote access routers." Buffalo and Erie disputes that the Cisco model 2501 is a remote access router. It concedes that some models in the Cisco 2500 series are remote access capable, but claims that the Cisco model 2501, the router which it uses, is physically incapable of functioning as a remote access router, and that the operating software purchased with the unit also 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 within the individual library in which it is located.[17] 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

[11] Administrator's Decision on Appeal at 2.

[12] *Id.*

[13] Buffalo and Erie's Request for Review does not address the denial of its request for site corrections. Therefore, this part of the Administrator's Decision on Appeal will not be further discussed in this Order.

[14] *Request for Review by Buffalo and Erie County Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of the National Exchange Carrier Association, Inc.*, File No. SLD-137691, CC Dockets No. 96-45 and 97-21, Order, DA 01-420 (Com. Car. Bur. rel. February 20, 2001) (*Buffalo and Erie I*).

[15] Letter from Schools and Libraries Division to Shirley P. Whelan, Buffalo and Erie County Public Library, File No. SLD-137691, filed April 25, 2000 (Administrator's Decision on Appeal, File No. SLD-137691), at 1.

[16] *Id.*

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

disqualification of numerous school and library funding requests that, in actuality, are for eligible services.[18]

8. Buffalo and Erie raised similar arguments in an appeal to the Commission from SLD's denial of the *Buffalo and Erie I* application. In an Order addressing that appeal, the Bureau held that remote access routers may be considered for discounts if they are not actually being used to provide remote access.[19] The Bureau then remanded the application to SLD for determination as to whether Buffalo and Erie's routers were being used as remote access routers.[20]

9. In the instant case, we find that this application must also be remanded. As an initial matter, we find that SLD's brief appeal decision, stating that "Y2K upgrades for Cisco 2500 Routers" are ineligible, is not clear as to whether SLD found that the requested router upgrades were ineligible products or whether SLD relied again on a determination that the Cisco 2501 routers themselves were ineligible products.[21] If the former, SLD should issue a new decision clarifying that this is the case and providing sufficient reasons for its conclusion. If, however, SLD again rests on the ineligibility of the routers themselves, then our decision in *Buffalo and Erie I* directly applies and on remand, SLD should review the capabilities and actual use of the Cisco 2501 routers in question to determine whether these routers are discount eligible and consequently, whether the requested operating system and memory upgrades are also eligible for funding.

10. 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 Public Library on July 11, 2000 is GRANTED to the extent provided herein, and this application is remanded to SLD for further action consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey
Deputy Chief, Common Carrier Bureau

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

[19] *Buffalo and Erie I* at 3.

[20] *Id.* at 4.

[21] Administrator's Decision on Appeal at 2.