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Before the
Federal Communications Commission
Washington, DC 20554

2001 MAR 15 P 12: 00

In the Matter of	)	
	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Petersburg City Public Schools Petersburg, Virginia	)	File No. SLD-147805
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the National Exchange Carriers Association, Inc.	)	CC Docket No. 97-21

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ORDER

Adopted: March 7, 2001 **Released: March 8, 2001**

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Request for Review submitted by Petersburg City Public Schools (Petersburg), Petersburg, Virginia, filed June 6, 2000.[1] Petersburg seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying its request for funding of telecommunication services under the schools and libraries program.[2] For the reasons set forth below, we deny the Request for Review.

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 with the Administrator an FCC Form 470,[4] which is posted to the Administrator's website for all

[1] Letter from Herbert H. Morris, Petersburg Public Schools, to Federal Communications Commission, filed June 6, 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 C.F.R. §§ 54.502, 54.503.

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

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. On the FCC Form 471, the applicant indicates the products or services for which it has entered into an agreement, the carrier with whom the applicant has entered into the agreement, and an estimate of the funds needed to cover the discounts requested.[7] This information is generally provided in Block 5 of FCC Form 471. Among other information, Block 5 requires that, for each request, the applicant specify the service requested, the name of the service provider, the type of service or product, the estimated annual pre-discount cost and the claimed discount rate. Applicants also breakdown the total annual cost by specifying the estimated one-time cost, if any, and the estimated monthly cost, if any.

4. In Block 5 of its FCC Form 471, Petersburg City Schools listed three requests. The second, Funding Request Number (FRN) 293659, which is at issue here, was for "Telecommunications Services" to be provided by Bell Atlantic. Petersburg indicated that the estimated one-time pre-discount cost for these services was $145,978.32, the estimated monthly pre-discount cost was $7,145.50, and the estimated total annual pre-discount cost was $212,524.32. Petersburg also provided several attachments intended to support its figures. An attachment titled "Petersburg Public Schools Telephone System Proposal," detailed costs as follows:

(1) $82,222.36 for Telephone Equipment,
(2) $50,734.76 for Equipment Installation/Wiring Costs,
(3) $11,021.20 for ISDN Service Installation,
(4) $2,000.00 for Enhanced Call Processing (needed "To Support Homework Hotline Application" on the ISDN lines),
(5) $5,545.50 for monthly ISDN costs, and
(6) $1,600 for the monthly cost to support "Enhanced Call Processing."[8]

SLD determined that the estimated pre-discount annual cost of $212,524.32 results from adding the costs of (1) through (4) with 12 times the cost of (5). Our independent review of the

[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 (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).

[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(c).

[8] FCC Form 471, Petersburg City Schools, filed April 6, 1999, Attachment.

documents does not reveal any other calculation consistent with the $212,524.32 total. We therefore accept it for purposes of this appeal.[9]

4. In its Funding Commitment Letter dated October 12, 1999, SLD denied Petersburg's $212,524.32 request on the ground that 30 percent or more of the request was for telephone equipment, an ineligible product under the program rules.[10] On November 9, 1999, Petersburg appealed to SLD, asserting that the inclusion of the telephone unit cost in the request was not intended to indicate that Petersburg was requesting funding of those products, but merely to indicate its "compliance with [its] State Technology long range goals."[11] Petersburg alleged that its actual request was only for three items of the six noted above (items 2, 3 and 5, including equipment installation, ISDN installation and monthly ISDN costs) and for $11,391 in "Monthly circuit costs."[12]

5. On May 8, 2000, SLD denied the appeal. It reiterated its conclusion that the funding request included more than 30 percent of ineligible services or products because of the request for telephone equipment. It also stated that "corrections to the application can not be made once the application is approved, unless proven the error is the fault of SLD."[13] Petersburg then timely filed the pending appeal with the Commission.

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[9] Thus, although item (6), "Enhanced Call Processing," was included in Petersburg's stated monthly costs ($7,145.50, which is the sum of (5) and (6)), it was not included in the applicant's estimated total annual costs (which, again, were derived only from items (1) through (5)). This error was not remarked upon by either Petersburg or SLD. In any case, it does not affect the issue presented by this Request for Review. Even had the cost for item (6) been included in the total annual costs, and further assuming that "Enhanced Call Processing" were found to be an eligible service, the ineligible Telephone Equipment would still be more than 30 percent of the total. Specifically, the total annual costs would be $231,724.32, and the cost of the Telephone Equipment would be 35.5 percent of those costs.

[10] Letter from Schools and Libraries Division, Universal Service Administrative Co., to Herbert H. Morris, Petersburg City School District, dated October 12,1999, at 5 (Funding Commitment Decision Letter). 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.

[11] Letter from Herman Morris, Petersburg City Schools, to Schools and Libraries Division, Universal Service Administrative Co., filed November 11, 1999 at 1 (Appeal to SLD).

[12] Appeal to SLD at 1. The $11,391 figure does appear in a document attached to Petersburg's FCC Form 471 entitled "Petersburg City Schools Network Proposal" but as indicated above, it does not play any role in the calculation of the $212,524.32 requested.

[13] Letter from Schools and Libraries Division, Universal Service Administrative Co., to Herbert Morris, Petersburg City Schools, dated May 8, 2000 at 1 (Administrator's Decision on Appeal).

6. In its Request for Review, Petersburg again states that the inclusion of the telephone equipment costs in its funding request was not intended to indicate that Petersburg was requesting funding for that equipment, but only to indicate its compliance with its State Technology long-range goals.[14]

7. It is undisputed that, on its face, the request includes the cost of telephone equipment in the amount of $82,222.36, or 38.7 percent of the $212,524.32 requested. While Petersburg may not have intended its listing of telephone equipment costs in the request to be interpreted as seeking discounts on the telephones, the application on its face did appear to make such a request. There is nothing in the application that would lead an SLD reviewer to determine that the information relating to the cost of the telephones was provided to establish compliance with technology planning requirements. In light of the thousands of applications that SLD must review and process each year, we find that it is administratively appropriate to require an applicant to be responsible for correctly and unambiguously reporting its estimated pre-discount costs in completing its FCC Form 471 upon which its ultimate funding is dependent.[15] Petersburg's misleading presentation of information in its application, even if unintentional, thus provides no grounds for appeal.

8. In some cases involving denials of funding for allegedly ineligible services, we have granted an appeal where it appeared, after considering the application and supporting documents together, that the request in question was not reasonably understood as incorporating ineligible services in the amount determined by SLD.[16] Here, however, nothing within the bounds of the application demonstrates that SLD's interpretation is unreasonable or suggests that the inclusion of telephone equipment in the $212,524.32 request did not reflect an actual request. Rather, only on appeal did Petersburg argue for the first time that the cost of the telephone equipment was included in the application to demonstrate compliance with technology planning requirements. As Petersburg's stated intent is not reflected on the face of the application, it must be considered an amendment to that application.

9. 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.[17] This

[14] Request for Review at 1.

[15] *Request For Review By Scranton School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-112318, CC Docket Nos. 96-45, 97-21, Order , 15 FCC Rcd 181, 184 (Com. Car. Bur. 2000).

[16] *Request for Review By Franklin County Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc*, File No. SLD-115024, CC Docket Nos. 96-45 and 97-21, DA 00-2049, Order, para. 6 (Com. Car. Bur. rel. September 7, 2000) ("while Franklin County's Form 471 was vague, we believe nonetheless that it was unreasonable to assume that the majority of the . . . monthly charge labeled as 'recurring costs' was for hardware costs alone. Because SLD incorrectly determined that the funding request from Franklin County was for ineligible services or products, [the] request for review is granted . . . .").

[17] *Request for Review By Ubly Community Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc*, File No. SLD-113262, CC Dockets No. 96-45 and 97-21, DA 00-1517, Order, para. 7 (Com. Car. Bur. rel. July 10, 2000). The Commission's rules require that

policy imposes upon applicants the responsibility of preparing their applications carefully and obtaining appropriate assistance to avoid including ineligible expenses.[18] 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.[19] For that reason, Petersburg's Request for Review must be denied.

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 Petersburg City Public Schools, dated June 6, 2000, is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey

Carol E. Mattey
Deputy Chief, Common Carrier Bureau

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).

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

[19] 47 C.F.R. §§ 54.504 *et seq.*