

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

FCC MAIL ROOM

2001 MAR 20 P 1:27

In the Matter of)
)
Request for Review)
of the Decision of)
the Universal Service Administrator by)
)
Flour Bluff Independent School District)
Corpus Christi, Texas)
)
Federal-State Joint Board on Universal Service)
)
Changes to the Board of Directors)
Of the National Exchange Carrier)
Association, Inc.)

File No. SLD-122142

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: February 28, 2001

Released: March 1, 2001

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Request for Review filed by the Flour Bluff Independent School District (Flour Bluff), Corpus Christi, Texas, on April 13, 2000, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Flour Bluff seeks review of the SLD's denial of its application for discounts under the schools and libraries universal service support mechanism.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 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 Darrell Earwood, Flour Bluff Independent School District, to Federal Communications Commission, filed April 13, 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.

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 agreements for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carriers 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 Approval of an 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. By letter dated October 12, 1999, SLD denied Flour Bluff's application for discounts relating to Funding Request Number 176716.⁶ Specifically, SLD concluded that "30% or more of this FRN includes a request for E-MAIL ACCOUNT FEES which is an ineligible product(s)/service(s) based on program rules."⁷ By letter dated March 31, 2000, SLD denied an appeal of this decision filed by Flour Bluff.⁸ Flour Bluff challenges this decision, indicating that it does not pay its service provider, Education Service Center, for e-mail service.⁹

4. We have reviewed Flour Bluff's appeal and conclude that SLD properly denied funding in accordance with program rules. On appeal, Flour Bluff argues that it does not receive or pay for e-mail service accounts from its service provider. Under program rules, e-mail service is eligible for support only when it is bundled within Internet access and does not have its own associated cost.¹⁰ Therefore, account fees for individual user access to e-mail service provided

⁴ 47 C.F.R. § 54.504 (b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ Letter from Schools and Libraries Division, Universal Service Administrative Company to Flour Bluff Independent School District, dated October 12, 1999.

⁷ See Letter from Universal Service Administrative Company to Flour Bluff Independent School District, dated October 12, 1999 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.

⁸ Letter from Universal Service Administrative Company to Flour Bluff ISD, dated March 31, 2000.

⁹ Request for Review.

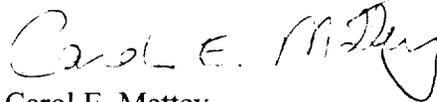
¹⁰ See 47 C.F.R. § 54.5. See also *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9013, para. 444 (1997) (*Universal Service Order*), affirmed in part in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), motion for stay granted in part (September 28, 1999), (continued....)

by the Internet provider are ineligible for support.

5. In documentation supporting its original application, however, Flour Bluff indicates that its funding request seeks support for "IP Address/Email Accounts."¹¹ Based on this documentation, we find that SLD reasonably concluded that Flour Bluff's request should be denied under program rules. Nothing in the original documentation submitted with the application supports Flour Bluff's contention that it does not pay for e-mail service. We decline to overturn SLD's decision when the applicant effectively revises its application on appeal. In light of the thousands of applications that SLD must review and process each year, we find that it is administratively necessary to require an applicant to be responsible for providing complete and accurate information in its FCC Form 471 upon which its ultimate funding is dependent.¹²

6. 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 the Flour Bluff Independent School District, Corpus Christi, Texas, April 13, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief, Common Carrier Bureau

(Continued from previous page)

petitions for rehearing and rehearing en banc denied (September 28, 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), cert. denied in *Celpage, Inc. v. FCC*, 120 S.Ct. 2212 (May 30, 2000), cert. granted in *GTE Service Corp. v. FCC*, 120 S.Ct. 2214 (June 5, 2000), cert. denied in *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).

¹¹ See Interlocal Governmental Agreement For The Provision Of Connectivity To The Education Service Center, Region 2 Private Wide Area Network Between Education Service Center, Region 2 and Flour Bluff ISD – Exhibit A Fee Schedule. This document was provided to SLD as part of its Program Integrity Assurance (PIA) review following submission of FCC Form 471. The PIA team reviews the FCC Form 471 and is responsible for determining whether the discounts sought by applicants are eligible for funding.

¹² The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470, which is posted to the Administrator's website for all potential competing service providers to review. 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. SLD reviews the FCC Form 471 and issues funding commitment decisions in accordance with the Commission's rules.