

**Before the
Federal Communications Commission
Washington, DC 20554**

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In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Philadelphia School District)
Philadelphia, Pennsylvania)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-200041

CC Docket No. 96-45

CC Docket No. 97-21 ✓

JED

ORDER

Adopted: April 27, 2001

Released: April 30, 2001

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Request for Review filed by School District of Philadelphia (Philadelphia), Philadelphia, Pennsylvania, on August 25, 2000.¹ Philadelphia requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to deny its application for discounted services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we grant the Request for Review and remand to SLD.

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 Applicants may only seek support for eligible services.⁴ The instructions for the FCC Form 471 clearly state:

¹ Request for Review from Ramsey L. Woodworth, Counsel for the School District of Pennsylvania, to Federal Communications Commission, filed August 25, 2000 (Request for Review).

² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robert Westall, School District of Philadelphia, dated July 28, 2000 (Funding Commitment Decision Letter).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. §§ 54.501, *et seq.*; see also *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*

“You may not seek support on this form for ineligible services, entities and uses.”⁵ 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.”⁶ 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 30 percent of the total.⁷ An applicant can avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services.

3. By letter dated July 28, 2000, SLD denied Philadelphia’s Funding Request Number (FRN) 446637.⁸ SLD asserted that “30% or more of this FRN includes a request for ineligible Sun Microsystems DHCP servers which are ineligible products based on program rules.”⁹ Philadelphia now seeks review of SLD’s July 28, 2000 decision from the FCC pursuant to our

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).

⁵ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471) (December 1998) at 18 (Form 471 Instructions).

⁶ Form 471 Instructions at 23.

⁷ See *Request for Review of the Decision of the Universal Service Administrative Company by Ubyly 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 (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 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 Funding Commitment Decision Letter.

⁹ *Id.* at 14.

rules.¹⁰ Philadelphia argues that its proposed use of the DHCP servers is consistent with other equipment SLD has deemed eligible for approval.¹¹

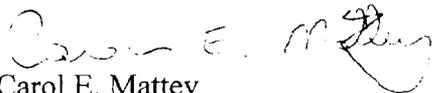
4. Upon review of the record, the Bureau concludes that the record does not support SLD's denial of Philadelphia's request for funding of FRN 446637. Philadelphia has provided technical information with its Request for Review that supports its assertion that the proposed configuration of the DHCP server should be deemed eligible because its function will parallel other servers SLD has deemed eligible.

5. The record demonstrates that SLD did not evaluate whether Philadelphia's proposed use of the server is similar to other instances in which SLD has concluded the proposed use is an eligible service. Consequently there is no support in the record to sustain SLD's conclusion that the DHCP server application is an ineligible service.

6. In reaching this decision, we find our decision in *Terral School District 3* to be instructive.¹² There, SLD denied support for certain components despite their integration with products deemed eligible by SLD. The Bureau remanded SLD's decision, finding no support in the record for SLD's conclusion in light of the integration of eligible services with the rejected components. Here, SLD has not adequately justified its conclusion that this equipment should be deemed eligible. We therefore remand to SLD for further consideration.

7. 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 Philadelphia School District, on August 25, 2000, IS GRANTED to the extent provided herein. We direct the Schools and Libraries Division to review Philadelphia's application, and if warranted, to 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

¹⁰ Section 54.719 of the Commission's rules provided 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).

¹¹ See Request for Review.

¹² *In the Matter of Request for Review of the Decision of the Universal Service Administrator by Terral School District 3, Terral, Oklahoma, Federal State Joint Board on Universal Service, Changes to the Board of the National Exchange Carriers Association, Inc.*, Order, File No. SLD 118223, CC Docket Nos. 96-45 and 97-21, 15 FCC Rcd 17969 (Com. Car. Bur. rel. September 19, 2000) (*Terral School District 3*).