

MAIL ROOM

Before the
Federal Communications Commission
Washington, DC 20554

2001 JUL -5 P 3: 19

In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Southeastern Ohio Voluntary Education)
Cooperative)
Athens, Ohio)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

RECEIVED

File No. SLD-172713

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: July 3, 2001

Released: July 5, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by Southeastern Ohio Voluntary Education Cooperative (SEOVEC), Athens, Ohio.¹ SEOVEC seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying both of SEOVEC's Funding Year 3 requests under the schools and libraries program on the grounds that they constituted requests for internal connections, for which SEOVEC was not eligible.² We find that only one of these requests should be considered a request for internal connections. We therefore grant in part and deny in part the Request for Review, and remand this application to SLD for further consideration consistent with this opinion.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for

¹ Request for Review of the Decision of the Universal Service Administrator by Southeastern Ohio Voluntary Education Cooperative, CC Dockets No. 96-45 and 97-21, Request for Review, filed March 16, 2001 (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).

discounts on 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, which is posted to the Administrator's web-site for all 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. In the *Fifth Reconsideration Order*, the Commission established rules to govern how discounts would be allocated when total demand exceeds the amount of funds available and a filing window is in effect.⁶ These rules provide that requests for telecommunications and Internet access service for all discount categories shall receive first priority for available funds (Priority One services), and requests for internal connections shall receive second priority (Priority Two services).⁷ Thus, when total demand exceeds the total support available, SLD is directed to give first priority for available funding to telecommunications service and Internet access.⁸ Any funding remaining is allocated to requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.⁹ Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their request for internal connections. To the extent that funds remain, the Administrator would continue to allocate funds for discounts to eligible applicants at each descending single discount percentage, e.g., eighty-nine percent, eighty-eight percent, and so on until there are no funds remaining.¹⁰ In Funding Year 3, funding of discounted internal connections was available only for schools with

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); 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 First Report and 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 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 *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915 (1998) (*Fifth Order on Reconsideration*).

⁷ 47 C.F.R. §§ 54.502, 54.503.

⁸ The annual cap on federal universal service support for schools and libraries is \$2.25 billion per funding year. See 47 C.F.R. § 54.507(a).

⁹ *Fifth Order on Reconsideration*, 13 FCC Rcd at 14938, para. 36.

¹⁰ 47 C.F.R. § 54.507(g)(1)(iii).

discount rates of 82% or higher.¹¹ Because SEOVEC is entitled to discounts of only 48%, it was not eligible for discounted internal connections in Funding Year 3.¹²

4. SEOVEC's Funding Year 3 application included two requests, Funding Request Number (FRN) 381223 and 381313. SEOVEC characterized both FRNs as requests for Internet access on its FCC Form 471.¹³ In documentation accompanying the application, SEOVEC explained that FRN 381223 sought support from Ameritech-Ohio for "continuation of Internet access circuits installed under Program Year 2 and upgrades to those circuits."¹⁴ SEOVEC's supporting documentation also stated that FRN 381313 sought discounts on a contract with Digital Data Solutions (DDS) for "maintenance and support of equipment used for Internet access by schools participating in the consortium."¹⁵

5. During its review of the application, SLD contacted SEOVEC by e-mail and asked, in relevant part, whether "the equipment included in both FRNs [was] owned by the vendor or by the school[.]"¹⁶ SLD also sent an e-mail to SEOVEC requesting copies of the contracts for both FRNs.¹⁷

6. SEOVEC responded to these requests by e-mail. In response to whether the equipment in both requests was owned by the vendor or the school, SEOVEC stated that the "equipment is owned by us, the consortium, not the schools."¹⁸ It also stated that it would send SLD a copy of its contract with DDS.¹⁹ With regard to its agreement with Ameritech-Ohio, SEOVEC explained that it was a "master contract" that Ameritech-Ohio had with the State of Ohio, and that it was over 400 pages long.²⁰ Instead of providing a copy, SEOVEC provided SLD with the web address where the contract could be found.²¹ SEOVEC also asked for further

¹¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rule Making and Order, FCC 01-143, n. 13 (rel. April 30, 2001) (*Further Notice of Proposed Rulemaking*).

¹² FCC Form 471, Southeastern Ohio Voluntary Education Cooperative, filed January 18 (SEOVEC Funding Year 3 Form 471), at 2-3.

¹³ SEOVEC Funding Year 3 Form 471 at 2-3.

¹⁴ SEOVEC Funding Year 3 Form 471, Attachment NP-1.

¹⁵ SEOVEC Funding Year 3 Form 471, Attachment NP-2.

¹⁶ Letter from Christopher Florio, Schools and Libraries Division, Universal Service Administrative Company, to rlindsev@seovec.org, dated January 2, 2001.

¹⁷ Letter from Christopher Florio, Schools and Libraries Division, Universal Service Administrative Company, to rlindsev@seovec.org, dated January 3, 2001

¹⁸ Letter from Rob Lindsey, SEOVEC Computer Center, to Christopher Florio, CLFLORIO@neca.org, dated January 3, 2001.

¹⁹ *Id.*

²⁰ Letter from Rob Lindsey, SEOVEC Computer Center, to Christopher Florio, CLFLORIO@neca.org, dated January 4, 2001.

²¹ *Id.* The web-site address referred to was www.state.oh.us/telecom/contamtson.htm.

indication of whether SLD required a hardcopy of the contract.²² On January 24, 2001, SEOVEC faxed a copy of its agreement with DDS.²³ The record does not reflect any further contact between the parties.

7. On May 5, 2000, SLD denied both of SEOVEC's Funding Year 3 requests, asserting that the requests were for internal connections services, not Internet access, and that funding for such services was not available to schools or libraries with less than an 81% discount rate.²⁴ On May 15 and May 16, 2000, SEOVEC filed separate appeals with SLD asserting that its requests were for Internet access only and seeking review of the denial of its two FRNs.²⁵

8. On February 14, 2001, SLD affirmed its earlier decisions.²⁶ It again found that "the services [SEOVEC] listed as Internet access on [its] Form 471 [were] actually internal connections services."²⁷ In connection with FRN 381223, SLD found that the request was for continuation of Internet access circuits installed during Funding Year Two and the upgrades to those circuits.²⁸ It further found that the request should be characterized as internal connections because "[SEOVEC had] provided additional support documentation which clearly states that the equipment is not owned by the vendor."²⁹ With regard to FRN 38133, SLD found that the funding request was for maintenance and support of equipment used for Internet access.³⁰ Again, SLD found that the equipment involved in the request was not owned by the vendor.³¹ It concluded that under the Commission's priority rules, there was insufficient funds in Funding

²² *Id.*

²³ Request for Review, Exhibit 2, Attachments 2, 3.

²⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Southeastern Ohio Voluntary Education Cooperative, dated May 5, 2000 (Funding Commitment Decision Letter), at 6. The Funding Commitment Decision Letter should have stated that funds for internal connections were unavailable to those applicants with less than an 82% discount rate, not an 81% rate. *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robert Lindsey, Southeastern Ohio Voluntary Education Cooperative, dated February 14, 2001 (Administrator's Decision on Appeal), at 2.

²⁵ Letter from Robert Lindsey, Southeastern Ohio Voluntary Education Cooperative, to Schools and Libraries Division, Universal Service Administrative Company, filed May 16, 2000 (FRN 381223 Appeal to SLD); Letter from Robert Lindsey, Southeastern Ohio Voluntary Education Cooperative, to Schools and Libraries Division, Universal Service Administrative Company, filed May 15, 2000 (FRN 381313 Appeal to SLD).

²⁶ Administrator's Decision on Appeal at 1-2.

²⁷ Funding Commitment Decision Letter, at 6; SEOVEC Year 3 Form 471 at 2-3; Administrator's Decision on Appeal, at 2.

²⁸ *Id.* at 1.

²⁹ *Id.*

³⁰ *Id.* at 2.

³¹ *Id.*

Year 3 to “provide discounts for internal connections requests for applicant[s] that are below the 82% discount level.”³² SEOVEC then filed the pending Request for Review.

9. In its Request for Review, SEOVEC states that FRN 381223 seeks support for the *leasing*, not the purchase of T-1 lines that will provide Internet access.³³ SEOVEC asserts that its e-mail statement that the equipment in “both FRNs” was owned by the consortium was intended only to refer to the second request, which sought discounts on the maintenance and support of router equipment.³⁴ Because the T-1 lines are leased, SEOVEC argues, SLD erred in characterizing them as internal connections.³⁵ SEOVEC argues that SLD also erred in denying funding for the maintenance of the router equipment.³⁶

10. In the *Tennessee Order*, the Commission held that when evaluating FRNs, SLD should determine if services nominally characterized by the applicant as Internet access or telecommunications (Priority 1) were actually internal connections (Priority 2) by looking for certain specified indicia of an internal connections service, including whether the equipment in question was owned by the vendor.³⁷ Thus, SLD was correct to inquire into the ownership of the equipment at issue here in determining whether the requests should properly be characterized as internal connections.

11. We find, however, that SLD was incorrect in concluding that the Internet access circuits involved in FRN 381223 would not be owned by the vendor. In determining whether an applicant seeks an ineligible service, we look to the entire record that was before SLD at the time it made its decision.³⁸ In this case, while SEOVEC’s e-mail statement in isolation was reasonably understood to mean that the equipment in FRN 381223 would be owned by the

³² *Id.*

³³ Request for Review at ii.

³⁴ *Id.* at 5.

³⁵ *Id.* at 7-9.

³⁶ *Id.* at 9-10.

³⁷ *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc., of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the Universal Service Administrator, 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, 14 FCC Rcd 13734, para. 39 (1999) (*Tennessee Order*).

³⁸ *See Request for Review by Petersburg City 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-147805, CC Dockets No. 96-45 and 97-21, Order, DA 01-506, para. (Com. Car. Bur. rel. March 8, 2001); *see also Request for Review by Paducah 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-150710, CC Dockets No. 96-45 and 97-21, Order, DA 01-652, para. 7 (Com. Car. Bur. rel. March 14, 2001) (denying appeal where nothing in the documentation before SLD at the time of its funding decision supported applicant’s contention on appeal that it was seeking funding of an eligible service).

consortium, not the vendor, the terms of the Ameritech-Ohio Master Contract, which SEOVEC identified as underlying the request, conclusively demonstrated that Ameritech was merely leasing the Internet circuit to SEOVEC, not selling them. The Master Contract derived from Ohio's Request for Proposal and Ameritech's Response, both of which are listed at the web-site address specified by SEOVEC.³⁹ In the Request for Proposal, Ohio described the proposal in relevant part as follows: "The State seeks to lease a network which will include all transmission, management, switching, cross-connect, regenerating and/or multiplexing equipment up to and including designated access points throughout Ohio in each county."⁴⁰ It also proposed that local circuits to each access point would be leased.⁴¹ It specified that "[t]he Contractor is responsible for end-to-end service for the underlying access and backbone transport."⁴²

12. The RFP Response, submitted by a consortium of telecommunications firms that included Ameritech and was named the Ohio Telecom Group and LCI International (OTG/LCI), confirmed that under the contract, "[t]he OTG/LCI Team will provide a SONET based lease network" and that "Ameritech, as the single point of contact, will be responsible for leasing the backbone services to DAS Telecom, allocating subrates of these links to State agencies as ordered and for billing these agencies, if required."⁴³ The Master Contract in turn provides monthly rates for obtaining service of various network lines, including T-1 lines.⁴⁴ Based on this information, all available at the web site address provided by SEOVEC, we conclude that the contract represented by FRN 381223 was for the lease of network lines, and not their purchase.

13. Generally, we would not consider documents that are available on the Internet but were not physically provided to SLD with the application or during review to be documents in the record, because SLD cannot possibly search through every document available on the Internet when reviewing pending applications. Here, however, SEOVEC referred SLD to the Internet address in response to SLD's own specific request for the contract, and SLD never objected or requested physical inclusion. Further, SEOVEC's manner of complying with SLD's request was reasonable given the physical size of the contract involved. Accordingly, we find that under the circumstances of this application, the documents available on the web site, including the Request for Proposal, the Response to the Request for Proposal, and the Master Contract itself, were part of the record before SLD on its application review. In light of these documents, we find that FRN 381223 was a request for Internet access, not internal connections. We therefore reverse and remand the application to SLD for further consideration of this request.

14. In contrast, we find that SLD properly characterized FRN 38133 as internal connections. SEOVEC concedes that that it reported to SLD that the equipment in this request

³⁹ See <<http://www.state.oh.us/telecom/contamtson.htm>>.

⁴⁰ See Request for Proposal, <<http://www.state.oh.us/telecom/pdfs/rfpsomacsrfp.PDF>>, at 19.

⁴¹ *Id.*

⁴² *Id.* at 23.

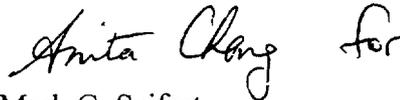
⁴³ See Response to Request for Proposal, <<http://www.state.oh.us/telecom/pdfs/rfpsomacsrespv1.PDF>>, at 2-11.

⁴⁴ See Contract, <<http://www.state.oh.us/telecom/pdfs/rfpsomacscontract.PDF>>, at 2.

was owned by the consortium.⁴⁵ Further, there is nothing in the record, including the copy of the agreement with DDS submitted to SLD by SEOVEC, that indicates to the contrary.⁴⁶ Thus, the maintenance and support of this equipment were properly characterized as internal connections, and funding was correctly denied.

15. 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 on March 16, 2001 by Southeastern Ohio Voluntary Education Cooperative, Athens, Ohio is GRANTED in part and DENIED in part, and this application is remanded to SLD for further consideration of FRN 381223 consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

⁴⁵ Request for Review at 5.

⁴⁶ See Letter from Southeastern Ohio Voluntary Education Cooperative to Digital Data Solutions, dated January 18, 2000 ("This letter confirms the intent of [SEOVEC] to accept your quotations of January 13 regarding maintenance of our Cisco equipment.")