

Before the
Federal Communications Commission
Washington, DC 20554

2001 AUG -3 P 1: 27

In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Baltimore Junior Academy)
Baltimore, Maryland)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

RECEIVED

File No. SLD-195870

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: July 30, 2001

Released: July 31, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by Baltimore Junior Academy (BJA), Baltimore, Maryland.¹ BJA seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying its Funding Year 3 request for discounted internal connections under the schools and libraries program.² For the reasons set forth below, we deny the Request for Review and affirm SLD's decision.

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

¹ Letter from Paul Jean-Pierre, Baltimore Junior Academy, to Federal Communications Commission, filed April 9, 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).

³ 47 C.F.R. §§ 54.502, 54.503.

with the Administrator an FCC Form 470,⁴ which is posted to the Administrator's website for all 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. 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.⁷ 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).⁸ 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.⁹ 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.¹⁰ 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.¹¹

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

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, 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).

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 *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*).

⁸ 47 C.F.R. §§ 54.502, 54.503.

⁹ 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).

¹⁰ *Fifth Order on Reconsideration*, 13 FCC Rcd at 14938, para. 36.

¹¹ 47 C.F.R. § 54.507(g)(1)(iii).

4. Under the Commission's rules, the discount available to a particular school or library is determined by indicators of poverty and high relative cost of service.¹² The level of poverty for schools and school districts is measured by the percentage of their student enrollment that is eligible for a free or reduced-price lunch under the National School Lunch Program (NSLP) or a federally-approved alternative mechanism.¹³ A school's high-cost status is derived from rules that classify it as urban or rural.¹⁴ The Commission's rules provide a matrix reflecting both the school's urban or rural status and the percentage of its students who are eligible for the school lunch program to establish its discount rate, ranging from 20 percent to 90 percent.¹⁵

5. In Funding Year 3, BJA applied for discounted internal connections.¹⁶ On its original FCC Form 471, it indicated that its discount rate was 90 percent.¹⁷ However, on review, SLD determined that this discount was not supported by appropriate documentation.¹⁸ Specifically, after being contacted by SLD, BJA sent a letter that stated that 80 of 226 of its students were eligible for the NSLP.¹⁹ Based on this information, SLD adjusted BJA's discount rate to 60% consistent with Commission rules.²⁰ On September 15, 2000, SLD issued a Funding Commitment Decision Letter denying BJA's internal connections request, stating that in Funding Year 3, internal connections were not being funded for applicants with discount rates below 81 percent.²¹

6. BJA then appealed to SLD.²² In a letter to SLD, BJA's principal, Mr. Jean-Pierre, stated that he had only assumed the position of Principal in August of 2000, shortly before SLD contacted him for discount documentation, that he was not fully familiar with the rules of the schools and libraries program, and that he gave the number of students actually participating in the NSLP instead of the number who were eligible for such participation, the relevant number for

¹² 47 C.F.R. § 54.505(b).

¹³ 47 C.F.R. § 54.505(b)(1).

¹⁴ 47 C.F.R. §§ 54.505(b)(3)(i), (ii).

¹⁵ 47 C.F.R. § 54.505(c).

¹⁶ FCC Form 471, Baltimore Junior Academy, filed January 20, 2000, at 2.

¹⁷ FCC Form 471, Baltimore Junior Academy, filed January 20, 2000, Attachment; *see also* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Paul Jean-Pierre, Baltimore Junior Academy, dated March 23, 2001 (Administrator's Decision on Appeal), at 1.

¹⁸ Administrator's Decision on Appeal at 2.

¹⁹ Letter from Paul Jean-Pierre, Baltimore Junior Academy, to Schools and Libraries Division, Universal Service Administrative Company, dated August 29, 2000 (Discount Letter), at 1.

²⁰ Administrator's Decision on Appeal at 2; 47 C.F.R. § 54.505(c).

²¹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Purette Mills, Baltimore Junior Academy, dated September 15, 2000 (Funding Commitment Decision Letter), at 6.

²² Letter from Paul Jean-Pierre, Baltimore Junior Academy, to Schools and Libraries Division, Universal Service Administrative Company, filed October 12, 2000 (Appeal to SLD) at 1.

discount purposes.²³ He asserted that based on a count of eligible students, the 90% discount rate was the correct rate, and stated that he would subsequently be forwarding survey results which established the higher eligibility figure.²⁴

7. On March 23, 2001, SLD denied the appeal.²⁵ It stated that the accuracy of the information submitted on review was the applicant's responsibility and that SLD would not consider new information on appeal unless there was an error in the determinations that was attributable to SLD.²⁶ BJA then filed the pending Request for Review with the Commission.

8. In its Request for Review, BJA repeats its assertion that the discount date that it reported during SLD review was an error resulting from the new Principal's lack of familiarity with the program.²⁷ BJA also asserts that when it contacted SLD for guidance, SLD informed BJA to provide the number of students "participating" in the program, not the number "eligible."²⁸ BJA further asserts that the use of the term "participate" led it to believe that only students actually participating were to be reported.²⁹

9. We find that, based on the student eligibility data that BJA provided, SLD correctly concluded that, under the Commission's Funding Priority rules, BJA was not entitled to funding of internal connections in Funding Year 3. In Funding Year 3, funding of discounted internal connections was available only for schools with discount rates of 82% or higher.³⁰ BJA specifically stated that the total number of students "eligible for free and reduced lunch" was 80 out of a total enrollment of 226.³¹ This data established that BJA was entitled to a discount rate of only 60 percent.³² As a result, we find that SLD correctly concluded that BJA was not eligible for internal connections discounts.

10. Further, we find no error in SLD's refusal to consider new evidence submitted on appeal to correct the allegedly erroneous student eligibility data that Mr. Jean-Pierre had earlier provided. Were we to allow such new evidence, this would significantly increase the

²³ *Id.*

²⁴ *Id.*

²⁵ Administrator's Decision on Appeal at 1.

²⁶ *Id.*

²⁷ Request for Review at 1.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Request for Review by Dallas Independent 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-172949, CC Dockets No. 96-45 and 97-21, Order, DA 01-1358, paras. 2 (Act. Pol. Div. rel. June 7, 2001).

³¹ Discount Letter at 1.

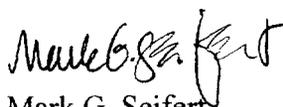
³² 47 C.F.R. § 54.505(c).

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 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 to SLD in its FCC Form 471 and during the subsequent review process. The applicant must act to ensure that its request for discounts satisfies the Commission's policies as well as program rules.³³ Here, Mr. Jean-Pierre's assertion that he misunderstood the program rules regarding the calculation of discounts provides no basis for deviating from the Commission's policy of placing on the applicant the responsibility for understanding program rules and procedures.

11. As to the assertion that SLD personnel misleadingly asked for the number of "participating" students, we find that this claim is undermined by the fact that Mr. Jean-Pierre's letter specifically stated that he was providing the number of students "eligible" for the NLSP, not the number of students "participating" in the program, and by the fact that BJA failed to mention this assertion in its appeal to SLD.³⁴ Moreover, even if some ambiguous or misleading reference to "participation" was made by SLD personnel, this does not relieve BJA of its responsibility for knowing the applicable regulations, which clearly state that "the level of poverty [by which discounts are determined] shall be measured by the percentage of their student enrollment that is *eligible* for a free or reduced price lunch"³⁵ Thus, assuming BJA's allegations are accurate, they do not warrant granting relief.

12. 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 Baltimore Junior Academy, Baltimore, Maryland, on April 9, 2001 is DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division

³³ 47 C.F.R. § 54.504 *et seq.*

³⁴ Discount Letter at 1; Appeal to SLD at 1.

³⁵ See *Request for Review by Ubyly 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, Order, 15 FCC Rcd 23267, para. 6 (Com. Car. Bur. 2000); 47 C.F.R. § 54.505(a)(1).