E-RATE CENTRAL DOCKET FILE COPY ORIGINAL

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Winston E. Himsworth

November 2, 2001

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TWB-204
Washington, DC 20024

96-45
97-24

Ref.: Appeal of Universal Service Administrator and Common Carrier Bureau decisions regarding Most Holy Trinity School of Brooklyn, New York

Dear Ms. Salas:

Attached are an original and four copies of a full Commission appeal by E-Rate Central, the E-rate coordinator for the New York State Education Department, on Most Holy Trinity School of Brooklyn, New York.

A receipt copy is also enclosed. Please stamp it received and return it to us in the self-addressed stamped envelope.

Sincerely,

Winston E. Himsworth

No. of Copies rec'd 0+4
List A B C D E

Attachments

/abm

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Visit our website at www.E-RateCentral.com

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of:	)	
	)	
Request for Review of Decisions	)	CC Docket No. 96-45
of the Universal Service Administrator	)	
and the Common Carrier Bureau by	)	CC Docket No. 97-24
	)	
Most Holy Trinity School	)	
Brooklyn, New York	)	
	)	

In this appeal, E-Rate Central, the E-rate coordinator for the New York State Education Department, asks the full Commission to review the decision of the Schools and Libraries Division ("SLD"), subsequently confirmed by the FCC's Common Carrier Bureau, that effectively denied discounts for a telecommunications service being used during Program Year Three ("PY3") by one of our State's parochial schools, Most Holy Trinity School of Brooklyn, New York ("MHT").

The issue in this appeal is the use of a SLD administrative procedure used for the review of PY3 applications that was subsequently deemed to be unfair and that was substantially changed for the review of current year (PY4) applications. Under the new SLD procedures, in place at the time of the Common Carrier Bureau's decision (DA 01-2456), MHT's request, in major part, would have been approved for funding. Since this appeal continues a chain of timely appeals dating from the original Universal Service Administrator decision during PY3, we believe the Commission can properly remand this funding request to the SLD for reconsideration under its current procedures.

Background:

The history of this appeal is concisely and accurately set forth in the Common Carrier Bureau's Decision, DA 01-2456, adopted October 19, 2001, as quoted below.

5. In MHT's Funding Year 3 FCC Form 471, it requested, in Funding Request Number (FRN) 313503, support for telecommunications services to be provided by Metrocon Communications, Inc. (Metrocon), with a monthly pre-discount cost of $470.00 and a one-time cost of $895.00. The total pre-discount cost for the request was reported as $6,535.00. Documentation accompanying the FCC Form 471 further specified that the $895.00 was for a backup router and $470.00 per month was to maintain previously funded T-1 line internet access. On June 9, 2000, SLD issued a Funding Commitment Decision Letter that classified FRN 313503 as internal connections and denied funding.

6. MHT then appealed to SLD, asserting that although the request for the router should not have been included in FRN 313503, the $470.00 per month portion of the request for the T-1 line should still be granted, although as Internet access rather than telecommunications. On March 8, 2001, SLD denied the appeal. It found first that the router was an internal connections service. SLD then stated that because the request included some internal connections services, the entire request would be re-characterized as internal connections. It concluded that MHT was not eligible for internal connections in Funding Year 3 because it was entitled to a discount rate of only 80% based on the discount matrix. MHT then timely filed the pending Request for Review.

7. In its Request for Review, MHT does not present any specific argument for overturning SLD's decision, but merely reasserts its request that the part of FRN 313503 that consists of Priority One services (the $470.00 per month for a T-1 line) should be reviewed separately as Priority One and funded.

8. After consideration, [the Common Carrier Bureau upheld] SLD's decision in Funding Year 3 to characterize a request as Priority Two if the request contained any Priority Two services. The Commission's regulations authorize SLD to establish rules and procedures for the administration of the schools and libraries support application process in an efficient and effective manner, including procedures for the review of applications and the implementation of the Commission's rules of priority. [The Common Carrier Bureau found] that SLD's operating procedure for mixed priority requests was a reasonable exercise of its authority.

9. [The Common Carrier Bureau further found] that SLD correctly applied this procedure in the instant application when it reclassified FRN 313503 as internal connections. The record demonstrates that FRN 313503 included $895.00 for the purchase of a router, which constitutes internal connections, not telecommunications or Internet access service. Thus, based on the inclusion of the router, SLD correctly reclassified the request as Priority Two internal connections.

10. Finally, SLD correctly determined that MHT was not eligible for internal connections. In Funding Year 3, internal connections were funded for schools and libraries with at least an 82% discount rate. MHT was entitled to only an 80% discount rate. [The Common Carrier Bureau therefore denied] the Request for Review.

Discussion:

The problem with the SLD's PY3 administrative procedure with regard to an erroneously categorized service request is that it had the effect of unfairly penalizing an applicant for a minor error, particularly when compared with the SLD's more lenient policy of dealing with somewhat more serious errors on service eligibility.

Under a long-standing practice, upheld in several Commission decisions, the SLD has been applying a "30% rule" when dealing with requests erroneously including ineligible services. If the request incorrectly includes an ineligible amount of 30% or more of the total request, the entire request is denied. If the ineligible amount is less than 30%, however, the SLD reduces the request by the ineligible amount and funds the remainder.

The procedure at issue in this appeal deals with a similar problem, but can result in a much more severe penalty for an applicant error. During PY3, the SLD adopted the practice of re-categorizing a funding request as Priority Two if it found <u>any</u> portion of an otherwise Priority One request to include internal connection components.

Such was the case with MHT's request. Of the total pre-discount request of $6,535, the SLD found that $895 — <u>or 13.7%</u> — was for a backup router that should have been categorized as internal connections under a separate FRN. The SLD thus reclassified the entire request as Priority Two. Since MHT was at an 80% discount rate, below the cutoff point for internal connections funding in PY3, this change had the effect of completely denying the funding request.

We are not arguing that the SLD incorrectly treated the backup router as an internal connection device, but we note that the case for such a classification is less than clear given the complexity of the Commission's earlier Tennessee decision and the additional clarification included only in the SLD's most recently published Eligible Services List. In the interest of fairness, however, we do argue that an error in determining the proper classification of eligible services should be considered less grievous than an error in determining basic eligibility. Yet, under the SLD's "any percent rule" of PY3, the former error was treated more severely than the latter error subject to the "30% rule." Indeed, had the backup router been treated as ineligible — e.g., as "spare equipment" deemed ineligible as per the recent Eligible Services List — the SLD would have reduced the pre-discount request by $895 and would have funded the remaining $5,640.

Due in part to discussions last year with various state E-rate coordinators under the auspices of the Council of Chief State School Officers ("CCSSO"), the SLD acknowledged the basic unfairness of the "any percent rule" and changed the procedure for dealing with misclassified services in PY4. Essentially, the SLD is now applying a similar "30% rule." Apparently recognizing that a priority error is less severe than an eligibility error, however, the SLD actually offers the applicant two options if the

prioritization error is less than 30%. The applicant can chose to have the request reduced by the percent in question and treated as Priority One (with the assurance of funding) or to have the entire amount reclassified as Priority Two (with the chance that the full request will be funded).

Appeal request:

By this appeal, E-Rate Central asks the Commission to review the Common Carrier Bureau's decision with regard to Most Holy Trinity School and to remand their PY3 funding request to the SLD for reconsideration in light of the SLD's current — and fairer — procedures for dealing with misclassified service priorities.

Alternatively, should the Commission deem it necessary to uphold the SLD's outdated — and unfair — PY3 procedure, we ask the Commission to remand the funding request to the SLD with instructions to treat the backup router as an ineligible "spare" component and to apply the normal "30% rule" for ineligibility.

Respectfully submitted,

By: _____

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Dated: November 2, 2001