

Before the  
Federal Communications Commission  
Washington, DC 20554

2001 DEC 05 11:14 AM

In the Matter of )  
)  
Request for Review of the )  
Decision of the )  
Universal Service Administrator by )  
)  
Children's Home Society )  
Sioux Falls, South Dakota )  
)  
Federal-State Joint Board on )  
Universal Service )  
)  
Changes to the Board of Directors of the )  
National Exchange Carrier Association, Inc. )

File No. SLD-183026

CC Docket No. 96-45 ✓

CC Docket No. 97-21

**ORDER**

**Adopted: December 3, 2001**

**Released: December 4, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by Children's Home Society (Children's Home), Sioux Falls, South Dakota, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).<sup>1</sup> Children's Home seeks review of SLD's reduction of one of its Funding Year 3 requests for discounts under the schools and libraries universal service mechanism on the grounds that the request included ineligible services.<sup>2</sup> For the reasons discussed below, we grant the Request for Review, reverse SLD's determination that the services were ineligible, and remand the application to SLD for further action consistent with this Order.

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.<sup>3</sup> The Commission's rules require that the applicant make a bona fide request for services by filing

<sup>1</sup> Letter from Michael Madigan, Children's Home Society, to Federal Communications Commission, filed March 21, 2001 (Request for Review).

<sup>2</sup> 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).

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

with the Administrator an FCC Form 470,<sup>4</sup> which is posted to the Administrator's website for all potential competing service providers to review.<sup>5</sup> 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.<sup>6</sup> In Block 4 of the FCC Form 471, an applicant lists the individual schools or libraries that will be receiving service, along with information demonstrating the discount each is entitled to receive.<sup>7</sup> In Block 5, the applicant lists its service requests, indicating for each which entity or entities from Block 4 will receive the service.<sup>8</sup> SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.<sup>9</sup>

3. Applicants may only seek support for eligible services.<sup>10</sup> The instructions for the FCC Form 471 clearly state: "You may not seek support for ineligible services, entities, and uses."<sup>11</sup> 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."<sup>12</sup> 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.<sup>13</sup>

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<sup>4</sup> Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

<sup>5</sup> 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).

<sup>6</sup> 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

<sup>7</sup> FCC Form 471, Block 4.

<sup>8</sup> FCC Form 471, Block 5.

<sup>9</sup> *Request for Review by Folsom Cordova Unified 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-81646, CC Dockets No. 96-45 and 97-21, Order, DA 01-2645, para. 2 (Com. Car. Bur. rel. November 14, 2001).

<sup>10</sup> 47 C.F.R. § 54.504 *et seq.*

<sup>11</sup> Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471) (September 1999) at 18 (Form 471 Instructions).

<sup>12</sup> Form 471 Instructions at 23.

<sup>13</sup> *See Request for Review of the Decision of the Universal Service Administrative Company by Ugly 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

4. At issue is Funding Request Number (FRN) 376389, which requested discounted internal connections, specifically, a web server and an e-mail server.<sup>14</sup> As documented in the product description accompanying the application, both servers had the software Microsoft Back Office pre-installed, at a cost of \$1,015 for each server.<sup>15</sup> On May 5, 2000, SLD issued a Funding Commitment Decision Letter, granting FRN 376389 but stating that the “dollars requested were reduced to remove the ineligible product: Microsoft Back Office.”<sup>16</sup>

5. Children’s Home filed an appeal with SLD, asserting that the pre-installed software was eligible as a component of eligible internal connections, namely, the servers.<sup>17</sup> It attached another specification of the components of the servers. In connection with the pre-installed software for the web server, the specification noted: “Preinstalled software required for Web Server. Includes NT Server, Web Server, Proxy Server, and Cache Server.”<sup>18</sup> In connection with the pre-installed software for the E-mail server, the specification stated: “Preinstalled software required for Email Server. Includes NT Server and Exchange Server.”<sup>19</sup>

6. SLD denied the appeal, finding that “Back Office Software is an ineligible component because it does not meet the definition of being needed to deliver information to the classroom or library patron.”<sup>20</sup> Children’s Home then filed the pending Request for Review. In

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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 Red 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 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 application 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, for the most part, are requesting funding of ineligible services.

<sup>14</sup> FCC Form 471, Children’s Home Society, filed January 17, 2000, Attachment.

<sup>15</sup> *Id.*

<sup>16</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Michael Madigan, Children’s Home Society, dated May 5, 2000 (Funding Commitment Decision Letter), at 7.

<sup>17</sup> Letter from Michael Madigan, Children’s Home Society, to Schools and Libraries Division, Universal Service Administrative Company, filed May 24, 2000 (Appeal to SLD).

<sup>18</sup> *Id.*, Attachment.

<sup>19</sup> *Id.*

<sup>20</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Michael Madigan, Children’s Home Society, dated February 27, 2001 (Administrator’s Decision on Appeal), at 1.

its Request for Review, Children's Home asserts that Microsoft Back Office is an operating system, and is thus eligible for discounts as a component of an eligible server.<sup>21</sup> In support, it attaches a detailed specification of the Back Office's functions, taken off of Microsoft's web site.<sup>22</sup>

7. As stated on SLD's web site, software is only eligible if provided as a component of an eligible internal connection.<sup>23</sup> Software is further restricted to operational software (*i.e.*, operating systems) and E-mail server software.<sup>24</sup> Here, it is undisputed that the software was pre-installed on servers eligible for discounts as internal connections. However, SLD concluded that the software was not operational software. After reviewing the record, however, we find that it is eligible software.

8. We find initially that because the new information provided with the Request for Review was not in the record before SLD, it should not be considered.<sup>25</sup> However, even looking only to the information that was before SLD, we find that the record supports the conclusion that the components in question were operational and e-mail server software and thus eligible for discounts. Although the character of the software was not described in Children's Home's original application, the specifications provided with Children's Home's Appeal to SLD state that the software is "required" for the servers, and that it consists of operational software including "NT Server" and "Web Server."<sup>26</sup> Based on this documentation, we find that the software is eligible for discounts. We therefore grant the Request for Review.

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<sup>21</sup> Request for Review, at 1.

<sup>22</sup> *Id.*, Attachment.

<sup>23</sup> See SLD web site, Eligible Services List, <[http://www.sl.universalservice.org/data/pdf/EligibleServicesList\\_12\\_29\\_00.pdf](http://www.sl.universalservice.org/data/pdf/EligibleServicesList_12_29_00.pdf)>.

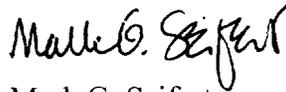
<sup>24</sup> *Id.*

<sup>25</sup> In reviewing the decisions of SLD, we do not consider new information on an issue where SLD has previously provided the applicant with notice of the issue and opportunity to submit evidence addressing it. See *Request for Review by Richland Parish 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-127412, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 15871, para. 9 (Com. Car. Bur. 2001).

<sup>26</sup> Appeal to SLD, Attachment.

9. 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 Children's Home Society, Sioux Falls, South Dakota, on March 21, 2001, IS GRANTED, and this application is REMANDED to SLD for further action consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION



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