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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Sargent School District RE-33J Monte Vista, Colorado	)	File No. SLD-196181
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	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 Sargent School District RE-33J (Sargent), Monte Vista, Colorado, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).[1] Sargent seeks review of SLD's denial of its mixed-priority request for discounts under the schools and libraries universal service mechanism.[2] For the reasons discussed 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 with the Administrator an FCC Form 470,[4] which is posted to the Administrator's website for all

[1] Letter from Ronna Cochran, Sargent School District RE-33J, to Federal Communications Commission, filed March 20, 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.

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

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] In Funding Year 3, funding of discounted internal connections was available only for schools with discount rates of 82% or higher.[12]

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[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), *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).

[12] *Request for Review by Hamilton County School Board, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-173624, CC Dockets No. 96-45 and 97-21, Order, DA 01-876, paras. 3, 6 (Com. Car. Bur. rel. April 17, 2001).

4. In Funding Year 3, in an effort to ensure that the priority rules were not violated, SLD implemented a review procedure of reclassifying a request that the applicant designated telecommunications or Internet access (Priority One) as one seeking Priority Two services if any portion of the services requested were found to be Priority Two.[13] Absent such a procedure, SLD would be unable to act on funding requests that mixed Priority One and Priority Two services until Priority Two availability could be determined with certainty. This, in turn, would create a substantial backlog of application reviews late in the Funding Year 3 application review period, potentially causing funding delays injurious to applicants.[14] The Common Carrier Bureau has previously found this SLD operating procedure for evaluating mixed priority requests to be a reasonable exercise of its authority.[15] Accordingly, we affirm the practice here.

5. On April 14, 2000, SLD issued a Funding Commitment Decision Letter denying Sargent's two Funding Year 3 funding requests.[16] At issue here is SLD's denial of Funding Request Number (FRN) 424523, which sought discounts for what Sargent's FCC Form 471 characterized as Internet access.[17] During its application review, SLD re-characterized FRN 424523 as internal connections and denied it on the grounds that the "[f]unding cap will not provide for [i]nternal [c]onnections less than 81% discount to be funded."[18] On May 8, 2000, Sargent appealed the denial of FRN 424523 to SLD, conceding that $2400 of the funding request was internal connections but arguing that the remaining $9600 was Internet access and should be funded.[19] SLD denied the appeal.[20] It found that FRN 424523 contained a request for discounts

[13] *See* SLD Web Site, <http://www.sl.universalservice.org/reference/471_App_Guid_Docs/471_dozen.asp> (last updated April 15, 1999) ("To correctly apply the Rules of Priority (fund Telecommunications and Internet Access first, then Internal Connections beginning with neediest), SLD must 'scrub' telecommunications and Internet Access requests to assure no Internal Connections are included. A piece of equipment at the user's location listed in one of these categories risks having the entire service redefined as Internal Connections."); *see also* SLD Web Site, <http://www.sl.universalservice.org/reference/ServCategories.asp> (describing review procedure used in Funding Year 3 and new procedure applied in Funding Year 4).

[14] *See* SLD Web Site, <http://www.sl.universalservice.org/reference/ServCategories.asp> ("While some applicants might prefer to wait until they know for sure whether funding will be sufficient to fund Internal Connections . . . SLD must process tens of thousands of applications and cannot leave these decisions until the end and still meet its goal of notifying applicants of the decisions on their requests before the start of the fund year.").

[15] *Request for Review by Most Holy Trinity, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-161422, CC Dockets No. 96-45 and 97-21, Order, DA 01-2456 (Com. Car. Bur. rel. October 23, 2001). We note that, while the application of this procedure leads to a denial of funding in this instance, that result could have been avoided by submitting two separate funding requests, one for the Priority One services, and the second for the Priority Two services.

[16] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Terry Parrish, Sargent School District RE 33-J, dated April 14, 2000 (Funding Commitment Decision Letter).

[17] FCC Form 471, Sargent School District RE 33-J, filed January 19, 2000, at 2.

[18] Funding Commitment Decision Letter, at 5.

[19] Letter from Ronna Cochran, Sargent School District RE 33-J, to Schools and Libraries Corporation, filed May 8, 2000, at 1.

[20] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Patricia Sholar, Sargent School District RE 33-J, dated February 26, 2001.

on the purchase of switches, and that the request was correctly re-categorized as internal connections and denied on this basis.[21] SLD interpreted Sargent's argument as a request to amend FRN 424523 to remove the $2400 of internal connections, and stated that program rules did not allow amendments after the deadline for amendments had passed.[22] Sargent then filed the pending Request for Review.

6. In its Request for Review, Sargent again requests that the $9600 of the request that seeks Internet access services be reviewed and funded separately from the internal connections.[23] As noted above, we have affirmed SLD's Funding Year 3 review procedure of reclassifying a request that the applicant designated telecommunications or Internet access as one internal connections services, if any portion of the services requested were found to be internal connections.[24] Therefore, because FRN 424523 contained $2400 of internal connections, we find that SLD correctly characterized the entire request as internal connections. The record demonstrates that, based on the discount matrix, Sargent was entitled to a 70% discount in Funding Year 3.[25] Because the funding cap did not accommodate funds to applicants below the 81% discount level in Funding Year 3, we conclude that FRN 424523 was correctly denied.

7. To the extent that Sargent's Request for Review seeks a post-denial amendment to its application to eliminate the ineligible services from FRN 424523, this request must be denied. SLD has established a policy that applicants are not permitted to amend completed FCC Forms 471 to remove ineligible service requests after the closure of the filing window.[26] This policy imposes upon applicants the responsibility of preparing their applications carefully and obtaining appropriate assistance to avoid including ineligible expenses.[27] If applicants were permitted to correct their applications after SLD has denied them, it would eliminate any incentive for them to avoid including ineligible expenses in their funding requests. This would significantly increase the 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 in its FCC Form 471 upon which its ultimate funding is dependent.

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[21] *Id.* at 1.

[22] *Id.*

[23] Request for Review, at 1.

[24] *See supra*, para. 4.

[25] FCC Form 471, Sargent School District RE 33-J, filed January 19, 2000, at 2.

[26] The Commission's rules require that applicants file a completed Form 471 by the filing window deadline to be considered pursuant to the funding priorities for "in-window" applicants. 47 C.F.R. §§ 54.504(c), 54.507(c).

[27] Assistance is available to applicants from many sources, including SLD's website.

8. 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 Sargent School District RE-33J, Monte Vista, Colorado, on March 20, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert

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