

Before the  
Federal Communications Commission  
Washington, DC 20554

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In the Matter of )  
)  
Request for Review of the )  
Decision of the )  
Universal Service Administrator by )  
)  
Boone County School District )  
Madison, West Virginia )  
)  
Federal-State Joint Board on )  
Universal Service )  
)  
Changes to the Board of Directors of the )  
National Exchange Carrier Association, Inc. )

File No. SLD-199596

CC Docket No. 96-45 ✓

CC Docket No. 97-21

**ORDER**

**Adopted: November 28, 2001**

**Released: November 29, 2001**

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Request for Review filed by Boone County School District (Boone), Madison, West Virginia, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).<sup>1</sup> Boone seeks review of the SLD's denial of its application for discounts for internal connections under the schools and libraries universal service support mechanism.<sup>2</sup> For the reasons set forth below, we deny Boone's Request for Review.

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> In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative

<sup>1</sup> Letter from Gary D. Sumpter, Boone County School District, to Federal Communications Commission, filed May 19, 2000 (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.

Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.<sup>4</sup> Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.<sup>5</sup>

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.<sup>6</sup> 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).<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

4. Boone filed its Funding Year 3 FCC Form 471, seeking support for telecommunication services in Funding Request Number (FRN) 446446 on January 15, 2000.<sup>11</sup>

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<sup>4</sup> 47 C.F.R. §§ 54.504(b)(1), (b)(3).

<sup>5</sup> 47 C.F.R. § 54.504(c).

<sup>6</sup> See *Federal-State Joint Board on Universal Service*, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915, 14934, at para. 31 (1998) (*Fifth Reconsideration Order*).

<sup>7</sup> See 47 C.F.R. § 54.507(g)(1)(i).

<sup>8</sup> 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).

<sup>9</sup> *Fifth Reconsideration Order*, 13 FCC Rcd at 14938, para. 36. The schools and libraries discount matrix reflects both an applicant's urban or rural status as well as the percentage of its students eligible for the national school lunch program. 47 C.F.R. § 54.505.

<sup>10</sup> 47 C.F.R. § 54.507(g)(1)(iii). In the *Eleventh Order on Reconsideration*, the Commission clarified that to the extent that there are single discount percentage levels associated with "shared services," the Administrator shall allocate funds for internal connections beginning at the ninety percent discount level, then for eighty-nine percent, eighty-eight percent and so on. *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, *Federal-State Joint Board on Universal Service*, Fifth Order on Reconsideration in CC Docket No. 97-21, Eleventh Order on Reconsideration in CC Docket No. 96-45, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 6033, 6035, para. 6 (1999) (*Eleventh Order on Reconsideration*).

<sup>11</sup> FCC Form 471, Boone County, filed January 15, 2000 (Boone County FCC Form 471).

Based on the discount matrix, Boone qualified for a 75% discount rate in Funding Year 3.<sup>12</sup> In addition, documentation accompanying the application indicated that the cost for 56 kbps access lines was \$120.00 per month, per school with \$114.00 representing the monthly charge for the service and \$6.00 for Channel Service Unit/Data Service Unit (CSU/DSU) maintenance.<sup>13</sup> On April 21, 2000, SLD issued a Funding Commitment Decision Letter that reclassified FRN 446446 as internal connections and denied funding.<sup>14</sup> In so doing, SLD stated that the "funding cap [in year three] will not provide for Internal Connections less than 81% discount to be funded."<sup>15</sup>

5. In response, Boone filed the instant Request for Review with the Commission.<sup>16</sup> In its Request for Review, Boone states that FRN 446446 was primarily for line charges, but it accidentally included an item that is classified as internal connections, thus causing the entire request to be classified as internal connections.<sup>17</sup> Boone argues that 95% of the FRN was for telecommunication service and only 5% for internal connections.<sup>18</sup> Boone disagrees with the procedure used to deny its funding request.<sup>19</sup> Specifically, Boone argues that because its funding request 446446 included both eligible and ineligible products or services, SLD should have excluded the ineligible products from the request because they amounted to only 5% of the funding request, and then funded the remaining eligible services.<sup>20</sup> In particular, Boone argues that SLD should have applied its so-called 30 percent policy to the instant funding request.<sup>21</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* A 56 kbps line transmits data at 56 kilobits per second. A Channel Service Unit/Data Service Unit is a device used to connect a digital phone line (T-1 or Switched 56 line) coming in from the phone company to either a multiplexer, channel bank or directly to another device producing a digital signal, e.g. a digital private branch exchange, a personal computer, or data communications device.

<sup>14</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company to the Boone County School District, dated April 21, 2000 (Funding Commitment Decision Letter).

<sup>15</sup> Funding Commitment Decision Letter.

<sup>16</sup> Request for Review.

<sup>17</sup> *Id.*

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

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

<sup>20</sup> *Id.*

<sup>21</sup> 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 Rcd 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 less than 30 percent of the request is for funding of ineligible services, SLD normally will consider the application and issue a funding commitment for the eligible services. If 30 percent or more of the request is for funding of ineligible services, SLD will deny the funding request in its entirety. The 30 percent policy allows SLD to efficiently process requests for funding that contain only a small amount of ineligible

6. We have reviewed the record before us and conclude that SLD correctly followed Commission priority rules and its own application review procedures. The Commission's regulations authorize SLD to establish 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.<sup>22</sup> In Funding Year 3, to ensure that the priority rules were not violated, SLD followed the review procedure of reclassifying a Priority One request as one seeking Priority Two services if any portion of the services requested were found to be Priority Two.<sup>23</sup> In contrast, with respect to mixed eligibility requests, SLD reduces a funding request to exclude the cost of the ineligible services in circumstances where the ineligible services represented less than 30 percent of the total funding request, and treats a funding request as entirely ineligible only if ineligible services constitute 30% or more of the total.<sup>24</sup>

7. We are not persuaded by Boone that it was inappropriate for SLD to utilize different review procedures for mixed priority requests than for requests for both eligible and ineligible services. SLD did not apply its 30% policy to mixed priority requests in Funding Year 3, *i.e.*, eliminating the internal connections portion and reviewing the remainder if the internal connections constituted less than 30% of the request, because, generally, an applicant's eligibility for internal connections was uncertain at the time the application was reviewed. Eligibility for internal connections can be determined only after SLD has determined the amount of funds that will remain after all requests for Priority One services are funded, and SLD has determined what discount rates can be supported with the remaining funds.<sup>25</sup> Delaying the processing of mixed priority applications until Priority Two availability was determined would have created a substantial backlog of application reviews late in the Funding Year 3 application review period, potentially causing funding delays injurious to applicants.<sup>26</sup> SLD appropriately adopted a review procedure that enabled it to process applications efficiently and as expeditiously as possible. For these reasons, we find that SLD's use of a different operating procedure for mixed priority

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services without expending significant fund resources working with applicants that are requesting funding of ineligible services.

<sup>22</sup> See 47 C.F.R. §§ 54.701(a), 54.702, 54.705(a)(iii), 54.705(a)(vii).

<sup>23</sup> See SLD Web Site, <[http://www.sl.universalservice.org/reference/471\\_App\\_Guid\\_Docs/471\\_dozen.asp](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).

<sup>24</sup> *See supra*, para. 21.

<sup>25</sup> *Fifth Order on Reconsideration*, 13 FCC Rcd at 14938, para. 36.

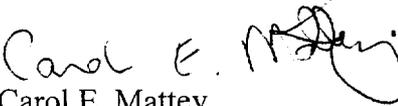
<sup>26</sup> See SLD Web Site, <<http://www.sl.universalservice.org/reference/ServCategories.asp>> ("While some applicants might prefer to wait until they know for sure whether funding will be sufficient to fund Internal Connections . . . SLD must process tens of thousands of applications and cannot 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.").

requests than for mixed eligibility requests was a reasonable exercise of its authority to establish procedures for the administration of the schools and libraries support application process in an efficient and effective manner.<sup>27</sup>

8. We find that, applying its Funding Year 3 mixed-priority procedure, SLD correctly reclassified all of FRN 446446 as internal connections based on the 5% of the request that consisted of internal connections. We also find that SLD correctly determined that Boone 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.<sup>28</sup> The record demonstrates that Boone was entitled to only a 75% discount rate based on the discount matrix.<sup>29</sup> We therefore deny Boone's Request for Review.

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 on May 19, 2000, by Boone County School District, Madison, West Virginia is DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey  
Deputy Chief, Common Carrier Bureau

<sup>27</sup> 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. We also note that, in *Request for Review by Williamsburg-James City County 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-90495, CC Dockets No. 96-45 and 97-21, 14 FCC Rcd 20152 (1999), the Commission reviewed whether SLD's priority review procedure should be applied to applications filed before the issuance of the *Fifth Reconsideration Order* and thus before the applicant had notice of the Commission's priority rules and "the need to carefully segregate its service requests . . ." *Id.* at para. 6. The Commission decided that "[u]nder these circumstances, . . . the Priority One and Priority Two services . . . should be considered separately . . ." *Id.* at para. 6 (emphasis added). Thus, the Commission implicitly affirmed the use of SLD's review procedure where, as here, the application was not filed until after the Commission's priority rules had been established.

<sup>28</sup> *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).

<sup>29</sup> Boone County FCC Form 471.