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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)
)
Lake County School District)
)
Tavares, Florida)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File Nos. SLD-200211, 200282,
200237, 200217

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: December 19, 2001

Released: December 20, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration Requests for Review filed by Lake County School District (Lake County), Tavares, Florida.¹ Lake County requests review of decisions by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC), denying Lake County's applications for discounted services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny Lake County's Requests for Review.

¹ Letter from David Coggsall, Lake County School District, Tavares, Florida, to Federal Communications Commission on behalf of Lake Hills School (SLD File Number 200211), filed February 9, 2001; Letter from David Coggsall, Lake County School District, Tavares, Florida, to Federal Communications Commission on behalf of Spring Creek Elementary School (SLD File Number 200282), filed February 23, 2001; Letter from David Coggsall, Lake County School District, Tavares, Florida, to Federal Communications Commission on behalf of Beverly Shores Elementary School (SLD File Number 200217), filed March 20, 2001; Letter from David Coggsall, Lake County School District, Tavares, Florida, to Federal Communications Commission on behalf of Eustis Elementary School (SLD File Number 200237), filed April 13, 2001 (collectively, Requests 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).

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, which is posted to the Administrator's website for all potential competing service providers to review.⁴ 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.⁵ 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.⁶ 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).⁷ 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.⁸ 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.⁹ 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,

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); 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).

⁵ 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).

⁶ 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*).

⁷ See 47 C.F.R. § 54.507(g)(1)(i).

⁸ 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).

⁹ *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 and the percentage of its students eligible for the national school lunch program. 47 C.F.R. § 54.505.

e.g., eighty-nine percent, eighty-eight percent, and so on until there are no funds remaining.¹⁰ In Funding Year 3, there were not sufficient funds to provide internal connections to applicants that qualified for less than an 82 % discount under the discount matrix.¹¹

4. In accordance with 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 A school's discount rate is then applied to the cost of eligible services requested by the school.¹⁶ Moreover, pursuant to our rules, a school district may apply for eligible services on behalf of the individual schools using a district wide weighted average. Alternatively, school districts could apply on behalf of individual schools and use the percentage discounts rule for which the school is eligible.¹⁷

5. Lake County filed individual FCC Forms 471 for schools within the school district, seeking discounts for internal connections.¹⁸ SLD issued Funding Commitment Decision Letters denying each of Lake County's funding requests.¹⁹ In these letters, SLD stated that the "funding

¹⁰ 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*).

¹¹ *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).

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 *Id.*

¹⁷ 47 C.F.R. § 54.505(b).

¹⁸ FCC Forms 471, Lake County School District, filed January 17-18, 2000.

¹⁹ Letters from the Schools and Libraries Division, Universal Service Administrative Company, to David Cogshall, Lake County School District, dated April 14, 2000 for Lake Hill School and Spring Creek Elementary School; dated July 14, 2000 for Eustis Elementary School; and dated June 9, 2000 for Beverly Shores Elementary School (collectively, Funding Commitment Decision Letters).

cap [in year three] will not provide for Internal Connections less than 81% discount to be funded."²⁰

6. Lake County then filed appeals with SLD for each denied application.²¹ Lake County indicated that because it filed individual FCC Forms 471 for each school in the district it was forced to use the discount matrix in Block 4 Item 10b Column 7.²² Lake County maintained that had the district been granted the ability to prorate between the 80 and 90 percent discount levels, then the number of students on free and reduced lunch at the individual schools would yield discount rates above 80%.²³ Lake County also asserts that with the ability to prorate, its schools would have been eligible for Priority Two funding.²⁴

7. SLD subsequently upheld its original funding decisions.²⁵ SLD explained that the methodology by which discounts are calculated is determined by the program rules set forth by the FCC and are beyond the power of the Administrator to change.²⁶ SLD explained, because Lake County filed as individual schools, its discount level was determined by the discount matrix.²⁷ SLD also reiterated that for Funding Year 3 there were not sufficient funds to provide internal connections to applicants below the 82% discount level.²⁸

8. In response, Lake County filed the instant Requests for Review with the Commission.²⁹ In its Requests for Review, Lake County reiterates its contention that it was unfairly denied funding because it had to use the discount matrix.³⁰ Lake County urges the

²⁰ *Id.*

²¹ Letters from David Coggshall, Lake County School District, to the Schools and Libraries Division, Universal Service Administrative Company, filed April 24, 2000 for Lake Hills School and Spring Creek Elementary School, filed August 7, 2000 for Eustis Elementary School, and filed June 8, 2000 for Beverly Shores Elementary (collectively, SLD Appeals).

²² *Id.* See also Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB Approval No. 3060-0806 (FCC Form 471 Instructions) (September 1999) at p. 13; SLD website, <<http://www.sl.universalservice.org>>.

²³ *Id.*

²⁴ *Id.*

²⁵ Schools and Libraries Division, Universal Service Administrative Company, to David Coggshall, Lake County School District, dated February 1, 2001 for Lake Hills School and Spring Creek Elementary School, dated March 7, 2001 for Beverly Shores Elementary School, and dated March 19, 2001 for Eustis Elementary School (collectively, Administrator's Decisions on Appeal).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Requests for Review.

³⁰ *Id.* See also SLD Appeals.

Commission to allow it to assign discount levels according to the true number of students on the free and reduced lunch program.³¹

9. We conclude that SLD properly applied the Commission rules concerning the discount matrix and funding priorities for individual school applications. The record shows that Lake County chose to apply for discounts for the four individual schools at issue, based on each school's own discount eligibility rate.³² Each school was eligible for an 80 percent discount based on the NSLP count and our rules.³³ Lake County presents no other argument supporting its Request for Review. Additionally, Lake County does not assert that USAC erred in applying its rules. Thus, to the extent that Lake County is appealing SLD's action, we find no basis for granting relief to Lake County. We uphold SLD's decision and deny Lake County's Requests for Review.

10. Lake County also argues that the Commission's rule treats individual schools unfairly.³⁴ A Request for Review is not the appropriate means for requesting such consideration. Instead, Lake County should file a Petition for Rulemaking to change the Commission's rules. Lake County's requested relief might also be construed as a Request for Waiver. The Commission may waive any provision of its rules if the Request for Waiver is supported by good cause.³⁵ Good cause is demonstrated if special circumstances warrant a deviation from the general rule and such deviation would serve the public interest.³⁶ In this case, the facts presented by Lake County do not merit deviation from Commission rules regarding the discount level received by participants in the universal service mechanism for schools and libraries. Thus, to the extent Lake County seeks a waiver of our rules, Lake County has failed to meet its burden, and thus such request is also denied.

³¹ *Id.*

³² Requests for Review.

³³ Lake County's FCC Forms 471, Block 5, Item 23j, filed January 17-18, 2000.

³⁴ Requests for Review.

³⁵ 47 C.F.R. § 1.3. *See, e.g., Northeast Cellular Telephone Co. v. FCC*, 897 F2d 1164 (D.C. Cir. 1990).

³⁶ *Id.*

11. 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 Requests for Review filed by Lake County School District, Tavares, Florida, February 9, 2001, February 23, 2001, March 20, 2001 and April 14, 2001, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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