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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	)	
	)	
Kansas Public Schools Kansas, Oklahoma	)	File No. SLD-174935
	)	
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 19, 2001 **Released: December 20, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by Kansas Public Schools (Kansas), Kansas, Oklahoma, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).[1] Kansas seeks review of SLD's denial of its Funding Year 3 application 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, which is posted to the Administrator's website for all

[1] Letter from Mary Ingersoll, Kansas Public Schools, to Federal Communications Commission, filed March 2, 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.

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, e.g., eighty-nine percent, eighty-eight percent, and so on until there are no funds remaining.[10] In Funding Year 3, funding of discounted internal connections was available only for schools with discount rates of 82% or higher.[11]

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[4] Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (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] *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*).

[7] 47 C.F.R. §§ 54.502, 54.503.

[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 Order on Reconsideration*, 13 FCC Rcd at 14938, para. 36.

[10] 47 C.F.R. § 54.507(g)(1)(iii).

[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) (*Further Notice of Proposed Rulemaking*); Letter from Schools

4. At issue in this Request for Review is Funding Request Number (FRN) 349687 of Kansas' Funding Year 3 application, which Kansas classified as Internet access.[12] During its application review of FRN 349687, however, SLD reclassified the request from Internet access to internal connections, and on April 28, 2000, SLD denied the request on the grounds that the "[f]unding cap will not provide for [i]nternal [c]onnections [less than] 81% discount to be funded."[13]

5. Kansas appealed to SLD, asserting that SLD had erroneously classified FRN 349687 as internal connections and requesting that it again be classified as Internet access and funded.[14] On January 31, 2001, SLD denied the appeal.[15] It explained that it had reclassified FRN 349687 from Internet access to internal connections because the request included a charge for maintenance of a router owned by Kansas.[16] SLD further explained that because FRN 349687 contained some internal connections, the entire FRN was converted to that category.[17] Kansas then filed the pending Request for Review.

6. In its Request for Review, Kansas does not dispute that a portion of FRN 349687 consists of internal connections. However, it argues that denying the entire request because of a small ineligible component is inconsistent with SLD's "line item approach taken in Telecommunications Funding."[18] Kansas points to a telecommunications services request that Kansas submitted in Funding Year 3 in a separate application, in which SLD, acting pursuant to its 30% policy, deleted the cost of certain ineligible services and funded the remainder of the request.[19] Kansas argues that SLD should follow this approach in the instant case.[20]

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and Libraries Division, Universal Service Administrative Company, to Jim Burgess, Kansas Independent School District, dated January 31, 2001, at 1 (Administrator's Decision on Appeal).

[12] FCC Form 471, Kansas Independent School District, filed January 14, 2000, at 3 (Kansas Form 471).

[13] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Mary Ingersoll, Kansas Independent School District, dated April 28, 2000, at 6.

[14] Letter from Jim Burgess, Kansas Independent School District, to Schools and Libraries Division, Universal Service Administrative Company, filed May 18, 2000, at 1.

[15] Administrator's Decision on Appeal.

[16] *Id.* at 1.

[17] *Id.* at 2.

[18] Request for Review, at 1.

[19] *See* Request for Review, attachment (App. No. 168716 Funding Letter) (indicating that FRN 348280 was granted, but the funding award was reduced to remove ineligible products). 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

7. 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.[21] 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.[22] In contrast, with respect to mixed eligibility requests, SLD reduced 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 treated a funding request as entirely ineligible only if ineligible services constitute 30% or more of the total.[23]

8. Kansas asserts that SLD should have applied the latter procedure to mixed priority requests. However, the Common Carrier Bureau (Bureau) previously found that SLD's Funding Year 3 operating procedure for evaluating mixed priority requests was a reasonable exercise of its authority to establish procedures for the administration of the schools and libraries support application process.[24] The Bureau further held specifically that SLD's decision to use this procedure rather than the 30 percent policy applicable to mixed eligibility requests was also

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

[20] Request for Review, at 1.

[21] See 47 C.F.R. §§ 54.701(a), 54.702, 54.705(a)(iii), 54.705(a)(vii).

[22] *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).

[23] *See supra*, para. 21.

[24] *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 22, 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.

reasonable.[25] We therefore reject Kansas's argument that SLD should have applied a 30% policy to FRN 349687.

9. Applying the Funding Year 3 mixed-priority review procedure, we find that FRN 349687 included the costs for maintenance of a router owned by Kansas, which is an internal connections service, and that SLD therefore correctly reclassified FRN 349687 from Internet access to internal connections.[26] In Funding Year 3, only applicants with an 82% discount or higher received internal connections.[27] Kansas had only a 77% discount.[28] We therefore conclude that FRN 349687 was correctly denied.

10. In its Request for Review, Kansas also argues that SLD's decision should be reversed because SLD has adopted a new approach to mixed priority requests in Funding Year 4 that does not automatically convert the entire request to Priority Two based on the presence of any amount of Priority Two services.[29] However, the fact that SLD has adopted a new approach in Funding Year 4 does not undermine the Bureau's determination that the policy adopted in Funding Year 3 was reasonable. Further, because Kansas filed the pending application in Funding Year 3, it is properly subject to the procedures in place for Funding Year 3. We therefore decline to reverse SLD based on its adoption of a new procedure.

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 Request for Review filed by Kansas Public Schools, Kansas, Oklahoma, on March 2, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

[25] *Request for Review by Boone County 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-199596, CC Dockets No. 96-45 and 97-21, Order, DA 01-2770, para. 7 (Com. Car. Bur. rel. November 29, 2001).

[26] Administrator's Decision on Appeal, at 1.

[27] *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) (*Further Notice of Proposed Rulemaking*); Administrator's Decision on Appeal, at 2.

[28] *See* Kansas Form 471, at 3.

[29] Request for Review, at 1; *see also* SLD Web Site, <http://www.sl.universalservice.org/reference/ServCategories.asp>.