Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
School District of La Crosse La Crosse, Wisconsin	)	File No. SLD-176503
	)	
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: January 17, 2002 **Released: January 18, 2002**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division (Division) has under consideration a Request for Review filed by the School District of La Crosse (La Crosse), La Crosse, Wisconsin, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).[1] La Crosse seeks review of SLD's denial of its application for discounts under the schools and libraries universal service support mechanism.[2] For the reasons set forth below, we deny La Crosse'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.[3] In order to receive discounts on eligible services, the Commission's rules require that the applicant

[1] Letter from Tom Ward, School District of La Crosse, to Federal Communications Commission, filed February 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.

submit to SLD a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.[4] 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.[5]

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]

4. La Crosse filed its Funding Year 3 FCC Form 471 on January 15, 2000, seeking discounts for telecommunications services in Funding Request Number (FRN) 353814.[11] La

[4] 47 C.F.R. §§ 54.504(b)(1), (b)(3).

[5] 47 C.F.R. § 54.504(c).

[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.

[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] FCC Form 471, School District of La Crosse, filed January 15, 2000 (La Crosse FCC Form 471).

Crosse's FCC Form 471 indicated that La Crosse was eligible for a 59% discount rate based on the discount matrix.[12] During its application review, SLD reclassified La Crosse's FRN 353814 as internal connections and denied funding for the request on the basis that, in Funding Year 3, the funding cap would not provide for discounts to applicants with a discount rate below 81%.[13]

5. La Crosse filed an appeal with SLD.[14] In its SLD Appeal, La Crosse stated that its funding request was for telecommunication services and included a one-time charge of $10,000 for the installation of three wide area network (WAN) upgrades.[15] La Crosse further stated that it would be willing to remove the charges from the funding request that resulted in the request being changed from telecommunication services to internal connections.[16]

6. By letter dated January 23, 2001, SLD upheld its original funding decision.[17] SLD explained that La Crosse's funding request included the purchase of a router and that the purchase of a router is classified as internal connections.[18] SLD further explained that program procedures require that funding requests for telecommunication services that include internal connections services be recategorized as internal connections to prevent Priority Two services being treated as Priority One services in funding decisions.[19] In addition, SLD informed La Crosse that SLD could not remove the internal connection charges from the funding request because program rules state that corrections to the FCC Form 471 cannot be made after a commitment decision has been made, unless there was an error on the part of SLD.[20]

7. La Crosse then filed the instant Request for Review with the Commission.[21] In its Request for Review, La Crosse argues that, even if FRN 353814 included "ineligible" services, SLD should have reduced the ineligible component by applying the "30% policy" because the charge at issue represented only 3.8% of the total funding request.[22]

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[12] *Id.*

[13] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Tom Ward, School District of La Crosse, dated April 14, 2000 (Funding Commitment Decision Letter).

[14] Letter from Tom Ward, School District of La Crosse, to Schools and Libraries Division, Universal Service Administrative Company, filed May 4, 2000 (SLD Appeal).

[15] *Id.*

[16] *Id.*

[17] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Tom Ward, School District of La Crosse, dated January 23, 2001 (Administrator's Decision on Appeal).

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] Request for Review.

[22] *Id.*

8. We conclude, however, 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.[23] 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.[24] 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.[25]

9. La Crosse asserts that SLD should have applied the latter procedure to mixed priority requests. However, the Common Carrier Bureau (Bureau) has 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.[26] The Bureau has further held specifically that SLD's decision to use this procedure rather than the 30 percent policy applicable to mixed eligibility requests was also reasonable.[27] We therefore reject La Crosse's argument that SLD should have applied a 30% policy to FRN 353814.[28]

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

[24] *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).

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

[26] *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.

[27] *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).

[28] *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.")

10. La Crosse alternately argues that SLD incorrectly found the equipment in FRN 353814 to constitute internal connections instead of telecommunications services.[29]

11. In the *Tennessee Order*, the Commission held that when evaluating funding requests, SLD should determine if services nominally characterized by the applicant as Internet access (Priority 1) were actually internal connections (Priority 2) by looking for certain specified indicia of an internal connections service.[30] These indicia include whether the equipment being used to provide the service will be owned by the applicant and whether the equipment is subject to a lease-purchase arrangement providing the applicant with ownership at some future date.[31] In the *Brooklyn Order*, the Commission found the same approach applicable to funding requests nominally seeking telecommunications service, such as La Crosse's FRN 353814.[32]

12. In its Request for Review, La Crosse maintains that the $10,000 one-time charge in FRN 353814 is for upgrades to three WAN connections, and that the upgrades involve equipment that is to be owned by the service provider and merely leased to the school district.[33] However, this assertion is directly contradicted by the documentation that La Crosse provided to SLD during application review, which stated that the $10,000 charge was for the "purchase" of the equipment.[34] We therefore find that FRN 353814 includes a one time cost of $10,000 for the purchase of equipment including a router, and that under the *Tennessee Order*, SLD correctly found this service to be internal connections.

13. Because FRN 353814 contained some internal connections services, we find SLD correctly applied its procedures for processing mixed priority requests and deemed the entire FRN to be a Priority Two request. We further find that SLD correctly determined that La Crosse 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.[35] Pursuant to information provided

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[29] Request for Review, at 2.

[30] *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc., of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the Universal Service Administrator, 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, 14 FCC Rcd 13734, para. 39 (1999) (*Tennessee Order*).

[31] *Id.*

[32] *Request for Review by Brooklyn Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-149423, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 18598, para. 12 (2000)

[33] *Id.*

[34] *See* Telecommunications Proposal, School District of La Crosse, DS3 data network option, Equipment Description (stating that "Purchase Option" was $10,477.74).

[35] *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).

on its FCC Form 471, La Crosse was entitled to only a 59% discount rate in Funding Year 3.[36]

14. La Crosse asserts that it has now decided not to pursue the equipment upgrades, including the internal connections.[37] In essence, La Crosse renews the request made to SLD that it be permitted to amend FRN 353814 to exclude the equipment. However, we find that SLD appropriately denied La Crosse's request to amend its FCC Form 471 to remove the Priority Two request from FRN 353814. Under the rules of the program, applicants are not permitted to amend their FCC Form 471s to remove ineligible services, including Priority Two services to which an entity is not entitled, after the closure of the FCC Form 471 filing window deadline.[38] Because none of La Crosse's arguments provide grounds for relief, we deny the Request for Review.

15. 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 February 20, 2001, by the School District of La Crosse, La Crosse, Wisconsin, is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

[36] La Crosse FCC Form 471.

[37] Request for Review, at 2.

[38] 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), 54.5079(c).