

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of )  
)  
Request for Review of the )  
Decision of the )  
Universal Service Administrator by )  
)  
Chelmsford Public Schools )  
North Chelmsford, Massachusetts )  
)  
Federal-State Joint Board on )  
Universal Service )  
)  
Changes to the Board of Directors of the )  
National Exchange Carrier Association, Inc. )

File No. SLD-121771

CC Docket No. 96-45 ✓

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 Chelmsford Public Schools (Chelmsford), North Chelmsford, Massachusetts.<sup>1</sup> Chelmsford seeks review of the decision of the Schools and Libraries Division (SLD) of the Universal Service Administrator Company (Administrator) to deny Chelmsford's Funding Year 2 request for discounts under the schools and libraries universal service support mechanism.<sup>2</sup> For the reasons set forth 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.<sup>3</sup> The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470,<sup>4</sup> which is posted to the Administrator's website for all

<sup>1</sup> Letter from Bernard DiNatale, Chelmsford Public School District, to the Federal Communications Commission, File No. SLD-121771, filed June 5, 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.

<sup>4</sup> Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (December 1998) (FCC Form 470).

potential competing service providers to review.<sup>5</sup> 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.<sup>6</sup> SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. Applicants may only seek support for eligible services.<sup>7</sup> SLD carefully reviews all FCC Forms 471 to determine whether this requirement is met. The instructions for the FCC Form 471 clearly state: "YOU MAY NOT SEEK SUPPORT ON THIS FORM FOR INELIGIBLE SERVICES."<sup>8</sup> The instructions further clarify that "[w]hile you may contract with the same service provider for both eligible and ineligible services, your contract or purchase agreement must clearly break out costs for eligible services from those for ineligible services."<sup>9</sup> Although SLD reduces a funding request to exclude the cost of ineligible services in circumstances where the ineligible services represent less than 30 percent of the total funding request, SLD will deny a funding request in its entirety if ineligible services constitute 30 percent or more of the total.<sup>10</sup> An applicant can avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services.

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<sup>5</sup> 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).

<sup>6</sup> 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1998) (FCC Form 471).

<sup>7</sup> 47 C.F.R. § 54.504 *et seq.*

<sup>8</sup> Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471) (December 1998), at 15 (Form 471 Instructions).

<sup>9</sup> Form 471 Instructions, at 16.

<sup>10</sup> *See Request for Review of the Decision of the Universal Service Administrative Company by Ugly Community Schools*, *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, DA 00-1517 (Com. Car. Bur. rel. July 10, 2000); *Request for Review of the Decision of the Universal Service Administrator by Anderson School*, *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, DA 00-2630, para. 8 (Com. Car. Bur. rel. November 24, 2000). 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 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 application in its entirety. The

4. At issue is SLD's denial of Funding Request Number (FRN) 175176 of Chelmsford's Funding Year 2 application.<sup>11</sup> FRN 175176 requested discounts on the purchase of a private branch exchange (PBX) system referred to as a Telecenter System 21.<sup>12</sup> The prediscount price of the Telecenter System 21 was \$210,000.<sup>13</sup> In the course of its review of the eligibility of this item, SLD contacted Chelmsford for detailed documentation on the Telecenter System 21 and for further information on the charges.<sup>14</sup> In response, Chelmsford faxed SLD 12 pages of material, including Chelmsford's purchase order and detailed specifications of the system's functions and components.<sup>15</sup> Based on these specifications, SLD concluded that certain functions of the Telecenter System 21 were ineligible, including an enhanced 911 function, integrated intercom/public address functions, tone distribution, audio program distribution, and master clock functions.<sup>16</sup> It then contacted the vendor to determine the portion of the overall cost of the Telecenter System 21 attributable to these components.<sup>17</sup> However, the vendor refused to break out pricing on the requested components.<sup>18</sup> On November 16, 1999, SLD denied funding for FRN 175176, stating: "Applicant has not provided sufficient documentation to determine the eligibility of this item."<sup>19</sup>

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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, for the most part, are requesting funding of ineligible services.

<sup>11</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bernard DiNatale, Chelmsford Public School District, dated November 16, 1999 (Funding Commitment Decision Letter).

<sup>12</sup> FCC Form 471, Chelmsford Public School District, filed April 1, 1999, at 3; Request for Review, at 1, attachment. Chelmsford labeled this as a request for telecommunications service. We note that because Chelmsford is purchasing the Telecenter System 21, the request is more properly construed as one seeking discounted internal connections.

<sup>13</sup> *Id.*

<sup>14</sup> Universal Service Administrative Company, Schools and Libraries Division Program Integrity Assurance Review Contact Log, Chelmsford Public School District, App. No. 121771, June 18, 1999 and August 23, 1999 (showing that applicant was contacted by phone for more information on service charges and additional detail on PBX, respectively).

<sup>15</sup> Letter from Marilyn Ryan, Chelmsford Public Schools, to Cherie Tabor, Schools and Libraries Division, dated August 26, 1999 (Specifications Letter).

<sup>16</sup> Universal Service Administrative Company, Schools and Libraries Division Program Integrity Assurance Review FRN Data, Chelmsford Public School District, App. No. 121771, FRN 175176.

<sup>17</sup> Universal Service Administrative Company, Schools and Libraries Division Program Integrity Assurance Review Report, Chelmsford Public School District, App. No. 121771.

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

<sup>19</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bernard DiNatale, Chelmsford Public School District, dated November 16, 1999, at 5.

5. Chelmsford appealed to SLD, arguing that FRN 175176 was for a PBX system, and that such systems were eligible under SLD's Eligible Services List.<sup>20</sup> Chelmsford also noted that it had provided detailed specifications upon SLD's request.<sup>21</sup> On May 12, 2000, SLD denied the appeal, finding that "[m]ore than 30% of this request is for the Telecenter 21 System, which has been deemed an ineligible product in accordance to program rules."<sup>22</sup> Chelmsford then filed the pending Request for Review.

6. In its Request for Review, Chelmsford again argues that the Telecenter 21 System is eligible as a PBX telephone system.<sup>23</sup> Suggesting that the references in the Telecenter 21 specifications to intercom functionality may have resulted in the ineligibility determination, Chelmsford asserts that these references only indicate that the system is designed to work with existing intercom systems, not that it includes its own integrated intercom system.<sup>24</sup>

7. We find that SLD correctly found that the system contains ineligible components. For example, enhanced 911 is specified as ineligible on SLD's Eligible Services List.<sup>25</sup> The Master Clock function is also ineligible. It is not a telecommunications service or Internet access service, and does not constitute eligible internal connections because it is not necessary for the transport of these services.<sup>26</sup>

8. We further find that, because the vendor refused to provide a breakdown of the separate costs for the ineligible components, SLD was justified in holding the entire request ineligible. The Commission established in the *Universal Service Order* that, where a funding request includes both eligible and ineligible services, the burden is on the provider and the applicant to provide a break-down of the cost of the eligible and ineligible components.<sup>27</sup> Thus, where SLD has requested but not received a specific breakdown of ineligible and eligible costs in a funding request, SLD is warranted and, indeed, obligated to construe the entire request as ineligible so as to avoid funding ineligible services.

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<sup>20</sup> Letter from Bernard DiNatale, Chelmsford Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed December 6, 1999, at 1.

<sup>21</sup> *Id.*

<sup>22</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bernard DiNatale, Chelmsford Public Schools, dated May 12, 2000.

<sup>23</sup> Request for Review, at 1.

<sup>24</sup> *Id.*

<sup>25</sup> See SLD web site, Eligible Services List, <<http://www.sl.universalservice.org/data/pdf/EligibleServicesList.pdf>>.

<sup>26</sup> 47 C.F.R. §§ 54.502 (eligible services include all "commercially available telecommunications services" that are "provided by telecommunications carriers"), 54.503 (eligible services include Internet access), 54.506 (internal connections).

<sup>27</sup> *Universal Service Order*, 12 FCC Rcd at 9022, para. 462.

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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 by Chelmsford Public Schools, North Chelmsford, Massachusetts, on June 5, 2000, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert  
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Common Carrier Bureau