

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of	)	
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Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Cotulla Independent School District	)	File No. SLD-150101
Cotulla, Texas	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45 ✓
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.	)	

**ORDER**

**Adopted:** January 30, 2002

**Released:** January 31, 2002

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Request for Review filed by Cotulla Independent School District (Cotulla), Cotulla, Texas.<sup>1</sup> Cotulla seeks review of four funding decisions of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company, denying Cotulla's requests for support. For the reasons discussed below, we grant in part and deny in part Cotulla's Request for Review.

2. Cotulla's FRN 289407 & FRN 289409. Cotulla requests review of a decision by SLD to deny Cotulla's Funding Request Numbers (FRNs) 289407 and 289409.<sup>2</sup> In its funding denials, SLD concluded that ineligible services constituted more than 30 percent of Cotulla's

<sup>1</sup> Letter from John P. Ristaino, Cotulla Independent School District, to Federal Communications Commission, filed June 14, 2000 (Request for Review). 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>2</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to John P. Ristaino, Cotulla Independent School District, dated November 16, 1999 (Funding Commitment Decision Letter); Letter from Schools and Libraries Division, Universal Service Administrative Company, to John P. Ristaino, Cotulla Independent Schools, dated May 15, 2000 (Administrator's Decision on Appeal).

funding requests.<sup>3</sup> In requesting review, Cotulla argues that SLD inadvertently added ineligible services listed in attachments accompanying Cotulla's application to Cotulla's actual application, which caused Cotulla to exceed the 30% threshold.<sup>4</sup> Specifically, Cotulla claims it contracted with its service provider for the provision of both eligible and ineligible services.<sup>5</sup> Cotulla further maintains that its service provider refused to separate the eligible services from the ineligible services in its invoices for the contract that Cotulla needed to calculate its funding request.<sup>6</sup> Realizing these invoices contained ineligible services, Cotulla contends that it manually separated the eligible services and only requested funding for those services.<sup>7</sup> Consequently, Cotulla argues its funding request only included eligible services but the documentation accompanying its request included both eligible and ineligible services.<sup>8</sup>

3. If Cotulla did separately identify the eligible services in its application, then SLD erroneously applied the 30% policy to deny Cotulla's funding.<sup>9</sup> Neither the Funding Commitment Decision Letter nor the Administrator's Decision on Appeal, however, indicate the basis for SLD's determination that Cotulla's application requested funding for ineligible services. In other instances where SLD has failed to provide an explanation for its determination of ineligibility, the Commission has remanded the application to SLD for further consideration.<sup>10</sup>

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<sup>3</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 of 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 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, for the most part, are requesting funding of ineligible services.

<sup>4</sup> See Request for Review.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> The only evidence that supports SLD's denial for violation of the 30% policy is the fact that Cotulla indicated in its appeal to SLD that Lucent was "in the process of separating the telephone maintenance from the service agreement to provide clarification of the percentage of eligible services. This information will be provided as soon as possible." Letter from John P. Ristaino, Cotulla Independent School District, to Schools and Libraries Division, filed December 16, 1999.

<sup>10</sup> See, e.g., *Request for Review by Terral School District 3, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-118223, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 17969 (Com. Car. Bur. 2000) (*Terral School District 3 Order*).

We believe that such action is also appropriate here and remand Cotulla's application to SLD for further consideration.<sup>11</sup>

4. Cotulla's FRN 252674 & FRN 289404. Cotulla also requests review of a decision by SLD to deny Cotulla's FRN 252674 and FRN 289404 on separate grounds.<sup>12</sup> In the Funding Commitment Decision Letter, SLD concluded that FRNs 252674 and 289404 requested funding for telecommunications services from non-telecommunications carriers, in violation of the Commission's rules prohibiting funding for such requests.<sup>13</sup> In requesting review, Cotulla contends that these FRNs requested funding for *non-telecommunications services* from non-telecommunications carriers in compliance with program rules.<sup>14</sup> We grant Cotulla's Request for Review on FRN 252674 and deny Cotulla's Request for Review on FRN 289404 for the reasons stated below.

5. Education Service Center Region 20. In requesting review of FRN 252674, Cotulla challenges SLD's decision to categorize its funding request as telecommunications services.<sup>15</sup> Specifically, in FRN 252674 of its FCC Form 471, Cotulla requested discounts for services that it characterized as internal connections to be provided by Education Service Center Region 20 (ESCR 20), a non-telecommunications carrier, but SLD changed the service classification to telecommunications services.<sup>16</sup> SLD then denied Cotulla's request because it determined that Cotulla was requesting funding for telecommunications services from a non-telecommunications carrier in violation of the Commission's rules.<sup>17</sup>

6. It is incumbent on applicants to clearly distinguish requests for telecommunications services from Internet access or internal connections. This is particularly important in cases where the service provider is a non-telecommunications provider and thus prohibited by the Commission's rules from receiving funding for the provision of telecommunications services. At the same time, it is equally important for SLD to explain its determination of eligibility or ineligibility based on findings of misclassification by the applicant.

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<sup>11</sup> As in the *Terral School District 3-Order*, we do not suggest that the circumstances require a decision in Cotulla's favor, but find only that under the circumstances, SLD's failure to explain the basis for its decision requires remand.

<sup>12</sup> See Request for Review.

<sup>13</sup> The Telecommunications Act of 1996 and the Commission's rules state that only telecommunications carriers are eligible to receive support for providing telecommunications services to schools and libraries. 47 U.S.C. §§ 254 (e), 245 (h)(1)(B); 47 C.F.R. §§ 54.501, 54.502, and 54.517.

<sup>14</sup> See Request for Review. Cotulla does not contest SLD's conclusion that Education Service Center Region 20 (ESCR 20) or Southwest Texas Jr. College (Southwest Texas) are not telecommunications carriers, as defined in our rules. See *supra* note 13.

<sup>15</sup> See Request for Review.

<sup>16</sup> *Id.* See also FCC Form 471, Cotulla Independent School District, filed Apr. 6, 1999 (Cotulla Form 471), at 3.

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

7. We find that Cotulla adequately categorized its request in compliance with the Commission's rules. Cotulla requested discounts for a multipoint control unit (MCU). On SLD's Eligible Services List, MCUs are listed as eligible internal connections.<sup>18</sup> SLD, however, reclassified Cotulla's funding request as a telecommunications service<sup>19</sup> and then denied Cotulla's request because SLD determined that Cotulla had requested funding for telecommunications services from a non-telecommunications carrier. The reason why SLD found the funding request for the MCU to be a telecommunications service is not apparent in the Funding Commitment Decision Letter or the Administrator's Decision on Appeal. As stated above, in instances where SLD has failed to provide an explanation for its determination of ineligibility, the Bureau has remanded the application to SLD for further consideration.<sup>20</sup> We believe that such action is also appropriate here and remand Cotulla's FRN 252674 to SLD for further consideration.<sup>21</sup>

8. Southwest Texas Jr. College. In its FCC Form 471, Cotulla divided the services for which it requested funding into the categories of Internet access and telecommunications services to be provided by Southwest Texas Jr. College (Southwest Texas), a non-telecommunications carrier.<sup>22</sup> SLD assigned the services into two separate funding requests.<sup>23</sup> Specifically, it requested funding for telecommunications services in FRN 289404 and requested funding for Internet access services in FRN 289406.<sup>24</sup> SLD granted the funding request for Internet access but denied its funding request for telecommunications services because Southwest Texas is not a telecommunications carrier.<sup>25</sup> Based on the record before us, it appears that Cotulla could have requested funding for its Internet access service through a single FRN, and that request could appropriately have been funded, if otherwise consistent with program rules. It is not apparent on the record before us why Cotulla chose to break its request for service into two separate FRNs, as it was receiving service from a single provider.<sup>26</sup> It was appropriate for SLD to deny a request for funding for telecommunications services to be provided by a non-telecommunications carrier. We therefore deny Cotulla's Request for Review of FRN 289404.

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<sup>18</sup> See SLD website, Eligible Services List <<http://www.sl.universalservice.org/reference/eligible.asp>>.

<sup>19</sup> See Funding Commitment Decision Letter at 4; Administrator's Decision on Appeal at 1.

<sup>20</sup> See *supra* para. 3.

<sup>21</sup> As in the *Terral School District 3 Order*, we do not suggest that the circumstances require a decision in Cotulla's favor, but find only that under the circumstances, SLD's failure to explain the basis for its decision requires remand.

<sup>22</sup> FCC Form 471, Cotulla Independent School District, filed Apr. 6, 1999 (Cotulla Form 471), at 3.

<sup>23</sup> See Request for Review.

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

<sup>25</sup> *Id.*

<sup>26</sup> Indeed, upon requesting guidance from SLD, Cotulla states that it was told to submit the request under one FRN for Internet access. See 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 of Funding Request Number 289404 filed by the Cotulla Independent School District, Cotulla, Texas on June 14, 2000, IS DENIED.

10. ACCORDINGLY, IT IS FURTHER 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 of Funding Request Numbers 289407, 289409, and 252674 filed by the Cotulla Independent School District, Cotulla, Texas on June 14, 2000, IS GRANTED to the extent provided herein. We direct the Schools and Libraries Division to review Cotulla's funding application and, if warranted, to issue a revised Funding Commitment Decision Letter in accordance with the above-stated decision.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey  
Deputy Chief, Common Carrier Bureau