

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)
)
Northern Waters Library Service)
Ashland, Wisconsin)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-182024

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: January 29, 2002

Released: January 30, 2002

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by Northern Waters Library Service (NWLS), Ashland, Wisconsin, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ NWLS seeks review of a Funding Year 3 funding commitment decision issued by SLD, relating to several requests for support from NWLS for internal connections.² For the reasons discussed below, we deny the Request for Review. To the extent that NWLS also may be requesting a waiver of the Commission's rules, we deny that request as well.

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 universal service support mechanism for schools and libraries has been administered to

¹ Letter from Jay Moynihan, Northern Waters Library Service, Ashland, Wisconsin, to Federal Communications Commission, filed April 12, 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.

direct support toward the most economically disadvantaged schools and libraries. Under the program's discount matrix, the most economically disadvantaged schools are eligible for the greatest levels of discount.⁴

3. In the *Fifth Reconsideration Order*, the Commission established new rules to govern how discounts will be allocated when available funding is less than total demand and a filing window is in effect.⁵ These rules provide that requests for telecommunications and Internet access services 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).⁶ Thus, when total demand exceeds the total support available, SLD is directed to give first priority for available funding to telecommunications services or Internet access.⁷

4. Any funding remaining after allocation to Priority One Services is allocated to the requests for support for internal connections beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.⁸ To determine their discount level, applicants calculate the percentage of their student body eligible for the National School Lunch Program and find the corresponding discount percentage in the discount matrix. Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their requests for internal connections. To the extent funds remain, the Administrator would continue to allocate funds for discounts to applicants at each descending single discount percentage, e.g., 89 percent, 88 percent, and so on.⁹ During Funding Year 3 (July 1, 2000 – June 30, 2001), SLD granted all approved requests for discounts for telecommunications services and Internet access and granted

⁴ 47 C.F.R. § 54.505(c).

⁵ 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, para. 31 (1998) (*Fifth Reconsideration Order*).

⁶ See 47 C.F.R. § 54.507(g)(1)(i).

⁷ 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).

⁸ *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.

⁹ 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*).

all approved requests for internal connections down to the 81 percent discount level.¹⁰

5. On January 17, 2001, NWLS filed a FCC Form 471 application with SLD.¹¹ NWLS, a Wisconsin consortium of 21 libraries, applied for discounts on a site-specific basis.¹² By letter dated June 2, 2000, SLD denied 20 of NWLS's funding requests for internal connections.¹³ SLD explained that because the corresponding site for each funding request was only eligible for discounts below the 81 percent level, the requests for discounts could not be granted.¹⁴ According to NWLS's FCC Form 471 application, the funding request numbers (FRNs) at issue in this Request for Review were eligible for discounts at the 47, 58, 60, 63, 64, 67, 75, 77, and 80 percent level.¹⁵ NWLS filed the instant Request for Review on April 12, 2001 asking that the Commission reconsider SLD's decision.¹⁶ NWLS argues that the denial is not in accord with the program's rules and regulations, and will create a hardship for NWLS and its member libraries.¹⁷

6. After review of the record, we conclude that SLD correctly denied the FRNs at issue in this Request for Review. In Funding Year 3, there were insufficient funds to provide discounts for all eligible requests. Consequently, after funding all eligible Priority One Services, SLD distributed the remaining funds for Priority Two Services according to the discount matrix.¹⁸ There were only sufficient funds for SLD to provide discounts for Priority Two Services (internal connections) that were eligible for more than an 81 percent discount.¹⁹ As noted above, pursuant to the Petitioner's own calculations, the funding requests pending before the Commission were not eligible for discounts above the 81 percent discount level.²⁰ Accordingly, we conclude that SLD properly denied funding for those funding requests under the

¹⁰ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rule Making and Order, 16 FCC Rcd 9880, 9882, n.13 (2001) (*Further Notice of Proposed Rulemaking*).

¹¹ FCC Form 471, Northern Waters Library Services, filed January 24, 2000 (NWLS Form 471).

¹² *Id.*

¹³ Letter from Schools and Libraries Division, Universal Service Administrative Company to Jay Moynihan, Northern Waters Library Services, dated June 2, 2000. Specifically, SLD denied Funding Request Numbers (FRNs) 375709, 375772, 375870, 375921, 375985, 376039, 376086, 376139, 376191, 376232, 376301, 376364, 376420, 376473, 376527, 376598, 376650, 376721, 376845, and 376912. These FRNs are at issue in the instant Request for Review.

¹⁴ *Id.*

¹⁵ NWLS Form 471.

¹⁶ Request for Review.

¹⁷ *Id.*

¹⁸ *Fifth Reconsideration Order*, 13 FCC Rcd at 14938, para. 36.

¹⁹ See *Further Notice of Proposed Rulemaking*.

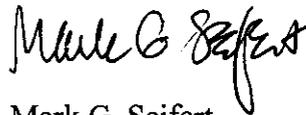
²⁰ NWLS Form 471.

Commission's rules, and we find that SLD correctly applied its rules and procedures with respect to NWLS's application.

7. Furthermore, to the extent that NWLS is requesting that we waive the Commission's rules of priority on the basis that the denial may create a hardship for NWLS and its member libraries, we deny that request.²¹ Although the Commission may waive any provision of its rules, a showing of good cause must support a waiver request.²² A waiver from the Commission is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.²³ A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.²⁴ NWLS has not shown good cause beyond a simple assertion that the failure of NWLS to receive its requested discounts for internal connections would cause it hardship.²⁵ Thus, we find that NWLS has not demonstrated the special circumstances or particular facts that warrant a waiver of the Commission's rules of priority. Therefore, we deny NWLS's Request for Review.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed by Northern Waters Library Service on April 12, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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

²¹ See Request for Review.

²² 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

²³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁴ *Id.*

²⁵ See Request for Review.