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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	)	
	)	
School District of Grand Island Grand Island, Nebraska	)	File No. SLD-172421
	)	
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: February 20, 2002 **Released: February 21, 2002**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by the School District of Grand Island (Grand Island), Grand Island, Nebraska, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).[1] Grand Island seeks review of SLD's denial of its application for discounts under the schools and libraries universal service mechanism in Funding Year 3.[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 Sue Burch, School District of Grand Island, to Federal Communications Commission, filed March 14, 2001 (Request for Review).

[2] *See* 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).

[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% 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., 89%, 88%, 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, 16 FCC Rcd 9880, 9882, n.13 (2001).

4. Grand Island appeals the denial of Funding Request Number (FRN) 372002, which Grand Island classified as Internet access.[12] During SLD's review of FRN 372002, however, SLD reclassified the request from Internet access to internal connections and, on May 5, 2000, SLD denied the request on the grounds that the "[f]unding cap will not provide for internal connections less than 81% discount to be funded."[13] Grand Island appealed to SLD, requesting that the internal connections amount be excluded and that the remainder of the funding request be changed back to Internet access and funded.[14] SLD denied the appeal, stating that FRN 372002 included some internal connections, specifically charges associated with the maintenance of school-owned routers, and that because of this service, the entire request was reclassified as internal connections.[15] SLD further stated that there were insufficient funds in Funding Year 3 to provide discounted internal connections to applicants with Grand Island's discount rate.[16] As to Grand Island's request that the internal connections portion be excluded, SLD stated that "[c]orrections to the Form 471 are not allowed once a Funding Commitment Decision has been made, unless there has been an error on the part of the SLD, which is not the case here."[17]

5. Subsequently, Grand Island filed the instant Request for Review.[18] In its Request for Review, Grand Island does not dispute that a portion of its request constitutes internal connections. However, it argues that the internal connections portion should be taken out of FRN 372002 and the remainder funded as a Priority One telecommunications service request.[19]

6. 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.[20] 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

[12] FCC Form 471, School District of Grand Island, filed January 19, 2000 (Grand Island FCC Form 471).

[13] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sue Burch, Grand Island Public Schools, dated May 5, 2000, at 6.

[14] Letter from Sue Burch, School District of Grand Island, to Schools and Libraries Division, Universal Service Administrative Company, filed May 11, 2000.

[15] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sue Burch, School District of Grand Island, dated February 14, 2001 (Administrator's Decision on Appeal).

[16] *Id.* at 2.

[17] *Id.* at 1.

[18] Request for Review.

[19] *Id.*

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

portion of the services requested were found to be Priority Two.[21] In fact, the Common Carrier 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.[22]

7. Applying the Funding Year 3 mixed-priority review procedure, we find that FRN 372002 included the costs for an internal connections service, and that SLD therefore correctly reclassified FRN 372002 from Internet access to internal connections.[23] In Funding Year 3, only applicants with an 82% discount or higher received internal connections.[24] The recipients of FRN 372002 were only eligible for a 69% discount.[25] We acknowledge, as Grand Island points out in its Request for Review, that the application of the mixed-priority review procedure leads to a denial of funding in this instance, but 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.[26] Because the services were grouped together in one funding request, SLD appropriately reclassified the request as Priority Two internal connections. We therefore conclude that FRN 372002 was correctly denied.

8. Finally, we affirm SLD's rejection of Grand Island's request to modify FRN 372002 to exclude the Priority Two service. Grand Island's request contravenes the Commission's policy that applicants should not be permitted to amend completed FCC Forms 471 in order to change service categories after closure of the filing window deadline.[27] If applicants were permitted to amend a request by removing Priority Two services after SLD has denied the request, it would eliminate any incentive to separate out the Priority Two service

[21] *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).

[22] *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).

[23] Administrator's Decision on Appeal.

[24] *Id.* at 2.

[25] *See* Grand Island FCC Form 471.

[26] Request for Review.

[27] *See Request for Review by Free Library of Philadelphia, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-112605, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 23820 (2000).

beforehand.[28] This would significantly increase the difficulty SLD would face in detecting Priority Two services.[29] Furthermore, if applicants were permitted to amend their requests after the filing window closed, it could jeopardize SLD's ability to accurately predict the total amount of Priority One services requested in a year as required to apply the rules of priority in years where requests for funding exceed the annual funding cap.[30] Therefore, we conclude that SLD properly denied Grand Island's request for funding.

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 the School District of Grand Island, Grand Island, Nebraska, on March 14, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

[28] *See Request for Review by Cheney Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-142969, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 5192, 5195 (2001).

[29] *Id.*

[30] *Id.*