

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



In the Matter of)
)
Request for Review of the Decision of the)
Universal Service Administrative)
Company by)
)
Schaumburg Community)
Consolidated School District 54)
Schaumburg, Illinois)
)
Federal-State Joint Board on Universal)
Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)
)

File No. SLD-139065

CC Docket No. 96-45

CC Docket No. 97-21 ✓

ORDER

Adopted: February 20, 2002

Released: February 22, 2002

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Request for Review from the Schaumburg Community Consolidated School District 54 (Schaumburg) of Schaumburg, Illinois.¹ Schaumburg seeks review of a funding commitment decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) pursuant to a funding request for telecommunications service.² For the reasons set forth below, we remand Schaumburg's appeal to SLD for further consideration pursuant to this Order.

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

¹ Letter from Patricia McGee, Schaumburg Community Consolidated School District 54, to the Federal Communications Commission, filed April 20, 2000 (Request for Review).

² See Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Moshin Dada, Schaumburg Community School District 54, dated November 23, 1999 (Funding Commitment Decision Letter).

³ 47 C.F.R. §§ 54.402, 54.503.

Schools and libraries must apply for support each funding year.⁴ In order to receive discounts on eligible services, the Commission's rules require that an applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth the school's technological needs and the services for which it seeks discounts.⁵ Once the school has complied with the Commission's competitive bidding requirements and signed a contract for the eligible services, it must file an FCC Form 471 application to notify the Administrator, among other things, of the services that have been ordered, the carrier with whom the school has signed the contract, and an estimate of funds needed to cover the discounts to be given for eligible services.⁶

3. At issue here is the distribution of support to Schaumburg for the Funding Year 2, which began July 1, 1999, and ended on June 30, 2000. In its FCC Form 471, Schaumburg requested, among other things, funding for telecommunications services from Ameritech Credit Corporation (Ameritech Credit), for the total annual pre-discount cost of \$95,103.72.⁷ SLD issued a Funding Commitment Decision Letter to Schaumburg on November 23, 1999, which, among other things, denied in full any support to Schaumburg for the telecommunications services to be provided by Ameritech Enhanced Business Services (Ameritech EBS) and financed by Ameritech Credit.⁸ SLD stated that this funding request was denied because "30% or more of this FRN includes a request for finance charges which is an ineligible product(s)/service (s) based on program rules."⁹

4. Schaumburg appealed this denial of funding to SLD on December 6, 1999.¹⁰ On

⁴ 47 C.F.R. § 54.507(d).

⁵ 47 C.F.R. § 54.504(b)(1), (b)(3).

⁶ 47 C.F.R. § 54.504(c).

⁷ Schaumburg Community Consolidated School District 54, FCC Form 471, Block 5, filed April 1, 1999. Unless specifically stated otherwise, all amounts discussed in this Order are pre-discount amounts.

⁸ Funding Commitment Letter at 5 (Funding Request Number 0000243562).

⁹ *Id.* The "30-percent policy" is not a Commission rule, but rather is an internal SLD benchmark utilized during its application review process, to enable SLD to approve funding requests for eligible services without having to spend an excessive amount of time working with an applicant that for the most part is requesting funding of ineligible services. If 30 percent or less of the request is for funding of ineligible services, SLD normally will approve the portion that is for eligible services. If more than 30 percent of the request is for funding of ineligible services, SLD will deny the application in its entirety. See, e.g., *Request for Review of the Decision of the Universal Service Administrator by New Kensington-Arnold School District New Kensington, Pennsylvania, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, File No. SLD-28754, CC Dockets No. 96-45, 97-21, 1999 WL 1216147 (FCC, Dec 21, 1999); *Request for Review of the Decision of the Universal Service Administrator by Western Heights Public School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, File No. SLD-54054, CC Dockets No. 96-45, 97-21, 15 FCC Rcd 8502 (Com. Car. Bur. 1999).

¹⁰ Letter from Patricia McGee, Schaumburg Community Consolidated School District 54, to Schools and Libraries Division, Universal Service Administrative Company, dated December 6, 1999.

March 28, 2000, SLD denied Schaumburg's appeal, reiterating that Schaumburg's Year 2 funding request for \$95,103.72 included more than 30% of ineligible finance charges, resulting in denial of the entire funding request.¹¹ Specifically, SLD stated that Schaumburg had purchased a Centrex system from Ameritech EBS, which included a one-time charge of \$439,490, financed over 7 years (which equals \$5,232 monthly).¹² Schaumburg, however, requested \$7,925.31 monthly. SLD found that, because only the principal was eligible for funding, Schaumburg's request included ineligible finance charges.¹³ This ineligible portion was in excess of 30% of the funding request, and, therefore, SLD denied the entire funding request.¹⁴

5. On April 11, 2000, Schaumburg filed its Request for Review of SLD's determination with the Commission.¹⁵ On appeal, Schaumburg argues that SLD erred in its determination of the percentage of ineligible services because (1) SLD failed to consider the total amount for which Schaumburg was seeking discounts, and (2) SLD failed to use the correct term of years for the financing of the contract.¹⁶ Specifically, Schaumburg asserts that, in addition to the Centrex system, it also had contracted with Ameritech for "SMDI-E" connections in the amount of \$90,616.77, resulting in a total cost of \$530,106.77 for the contract.¹⁷ Schaumburg also asserts that its financing term with Ameritech Credit was for five years, rather than the seven-year term used by SLD in its decision.¹⁸ In support of this assertion, Schaumburg points to an "Equipment Lease-Purchase Agreement" dated June 29, 1998, with attachments dated July 16, 1998.¹⁹ This lease agreement between Schaumburg and Ameritech Credit indicates that financing for the \$530,106.77 contract price would be for a 60-month lease-purchase term, with 59 monthly payments of \$7,925.63, and one final balloon payment of \$185,453.98, with financing provided at an interest rate of 6.89%.²⁰ According to Schaumburg, the \$530,106.77 principal breaks down into 60 monthly payments of \$8,835.12 per month. Thus, Schaumburg

¹¹ Letter of Schools and Libraries Division, Universal Service Administrative Company, to Patricia McGee, Schaumburg Community Consolidated School District 54, dated March 28, 2000 (Administrator's Decision on Appeal).

¹² *Id.* at 1.

¹³ *Id.* at 1.

¹⁴ *Id.* at 1.

¹⁵ *See* Request for Review.

¹⁶ *Id.*

¹⁷ Request for Review at 2. \$439,490 for the Centrex service, plus \$90,616.77 for the SMDI-E service, equals \$530,106.77.

¹⁸ *Id.*

¹⁹ Request for Review, Attachment, "Equipment Lease-Purchase Agreement."

²⁰ *Id.*

argues, because it only seeks discounts on \$7,925.63 a month, it is actually seeking less than it is entitled to under the universal service support mechanism.²¹ Schaumburg does not expressly state whether it plans to file for universal service support for the final balloon payment.

6. The record includes the underlying multi-year contract between Schaumburg and Ameritech EBS, dated May 5, 1998.²² The May 5, 1998 contract provides that Schaumburg purchased a Centrex system from Ameritech for the amount of \$439,490 for a seven-year term. On its face, it appears to be a contract for Centrex services alone and identifies a one-time common equipment system charge of \$439,490.00. The May 5, 1998 contract makes no express mention of the SMDI-E services that Schaumburg asserts are part of its agreement with Ameritech Credit. Finally, the record shows that, for the first funding year of the schools and libraries program, SLD funded telecommunications services pursuant to this multi-year contract for a pre-discount cost of \$99,799.00, and the service provider was identified as Ameritech Credit.²³

II. DISCUSSION

7. As an initial matter, we note that Schaumburg is entitled to receive universal service support for a reasonable *pro rata* portion of any multi-year contract with a telecommunications service provider.²⁴ SLD is also correct that finance charges associated with a lease or financing agreement are not eligible for universal service support. Universal service support is provided to eligible schools and libraries for telecommunications services, Internet access, and internal connections.²⁵ Applicants are on notice that finance charges assessed by third party entities for loans to fund the lease or purchase of eligible items are not eligible for universal service support.²⁶ Schaumburg does not challenge that determination.

²¹ Request for Review at 1.

²² Letter of Ameritech EBS to Mohsin Dada, Schaumburg Community Consolidated School District 54, dated May 11, 1998, Attachment ("Agreement for Ameritech Centrex Service Between Ameritech and Schaumburg School District 54," dated May 5, 1998).

²³ Letter of Schools and Libraries Division, Universal Service Administrative Company, to Schaumburg Community Consolidated District 54, at 4, Funding Request No. 00079390 (dated December 2, 1998). The first program year of the universal service support mechanism for eligible schools and libraries ran from July 1, 1998 to June 30, 1999.

²⁴ See, e.g., *Request for Review of the Decision of the Universal Service Administrator by Brooklyn Public Library, Brooklyn, New York, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, File No. SLD-149423, FCC 00-354, 15 FCC Rcd 18598 (2000).

²⁵ See 47 C.F.R. § 54.502 –505.

²⁶ See Schools and Libraries Division, Eligible Services List, <<http://www.sl.universalservice.org/data/pdf/eligibleserviceslist.pdf>> at 37 (January 24, 2001).

8. In this case, the record is clear that SLD fully funded the Year 1 portion of the services to be provided pursuant to Schaumburg's multi-year contract with Ameritech Credit, for a pre-discount amount of \$99,799.00.²⁷ SLD apparently based its determination that Schaumburg's Year 2 funding request was contaminated with ineligible finance charges on an assumption that the financing for the multi-year contract would be the same length as the original May 1998 seven-year contract. No such seven-year financing agreement between Schaumburg and either Ameritech Credit or Ameritech EBS is present in the record. It is thus unclear whether SLD took into account the "downstream" 5-year financing agreement that Schaumburg had negotiated with Ameritech Credit in its determination, especially when Schaumburg presented this financing information to SLD in its initial appeal of the funding denial.²⁸

9. It is also unclear from the record as to whether the additional SMDI-E services identified in the "downstream" financing agreement were part of the original multi-year contract, and thus competitively bid as part of that contract. It is furthermore unclear from the record whether these SMDI-E services were screened by SLD for eligibility.

10. The Commission's rules set forth certain procedures that all applicants must follow to ensure that all services that receive universal service support for eligible schools and libraries were obtained through an open and fair bidding process. To comply with the competitive bidding requirement, the Commission's rules first require that an applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and lists the services for which it seeks discounts.²⁹ The Administrator must post the FCC Form 470 to its web site, where all potential service providers can consider it.³⁰ Once the FCC Form 470 has been posted for 28 days and the applicant has signed a contract for eligible services with a service provider, the applicant must then submit a completed FCC Form 471 application to notify the Administrator of the services that have been ordered, the service provider with which the applicant has signed a contract, and an estimate of the funds needed to cover the discounted portion of the price of the eligible services.³¹

11. As a general matter, when an applicant has a multi-year contract and the services remain the same as the contract underlying the original FCC Form 471, the applicant does not have to re-post a new FCC Form 470 for each year of the multi-year contract. In this case, however, it is unclear from the record whether the additional \$90,616.77 in SMDI-E services

²⁷ See Letter of Schools and Libraries Division, Universal Service Administrative Company, to Jack Rubin, Schaumburg Community Consolidated School District 54, dated December 2, 1998, Funding Request No. 00079390 (Year 1 Funding Commitment Letter).

²⁸ See Letter of Patricia McGee, Schaumburg Community Consolidated School District 54, to Schools and Libraries Division, Universal Service Administrative Company, dated December 6, 1999.

²⁹ 47 C.F.R. § 54.504(b)(1), (b)(3).

³⁰ 47 C.F.R. § 54.504(b)(3).

³¹ 47 C.F.R. § 54.504(c).

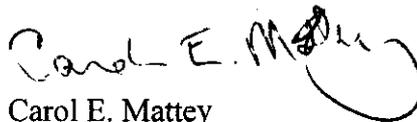
identified in the 5-year financing agreement were part of the original May 8, 1998 contract. We instruct SLD, on remand, to ascertain whether: (1) those SMDI-E services are eligible for universal service funding, if such an eligibility assessment has not yet been done; and (2) if so, whether those SMDI-E services are consistent with the terms of the original multi-year contract between Schaumburg and Ameritech EBS, and thus have been contracted for in compliance with the Commission's competitive bidding requirements.

12. We reverse SLD's finding that Schaumburg's Year 2 funding request was excessively contaminated by ineligible finance charges and we remand this issue to SLD for further consideration. Specifically, we conclude that, in light of the evidence presented by Schaumburg in its appeal to SLD regarding its five-year agreement with Ameritech Credit, SLD should have further examined this issue and resolved any ambiguities regarding the financing terms before issuing its determination. It is unclear from the terms of the lease agreement as to how much of the finance charge is recovered in each of the 59 monthly payments, if any, and the final balloon payment. The total cost of the 5-year lease, however, clearly exceeds the purchase price of the services and thus the ineligible finance charges must be identified and separated from Schaumburg's funding request. It is also unclear whether Schaumburg in fact plans to seek recovery for any of the final \$185,453.98 balloon payment from the universal service support mechanism. To the extent that the first 59 payments to Ameritech Credit represent payments of the principal alone, then such payments are eligible for universal service funding. We stress, however, that SLD should not fund this multi-year contract beyond the principal value of the contract, and to the extent the final balloon payment represents accumulated finance charges, universal service support cannot be used to fund that payment. On remand, therefore, we direct SLD to further examine Schaumburg's Year 2 funding request and ascertain that only the principal of this multi-year contract is funded by the schools and libraries universal service support mechanism.

13. In summary, given the many ambiguities in the record, we find that SLD should have further examined Schaumburg's Year 2 funding request to verify that this request was consistent with the original multi-year contract and any relevant financing agreements, especially when Schaumburg presented further information on appeal to SLD regarding the terms of its financing agreement with Ameritech Credit. Accordingly, we direct SLD to reconsider Schaumburg's Year 2 funding request and determine to what extent Schaumburg is entitled to universal service funding in Program Year 2 for services obtained pursuant to its multi-year contract with Ameritech Credit.

14. 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 Schaumburg Community Consolidated School District 54 (Schaumburg) of Schaumburg, Illinois, on April 20, 2000, IS REMANDED to the Schools and Libraries Division of the Universal Service Administrative Company for further processing pursuant to this Order.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief, Common Carrier Bureau