

Before the
Federal Communications Commission
Washington, DC 20554



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

File No. SLD-209013

CC Docket No. 96-45

CC Docket No. 97-21 ✓

ORDER

Adopted: February 28, 2002

Released: March 6, 2002

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by Lunenburg County Public Schools (Lunenburg), Victoria, Virginia, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Lunenburg seeks review of SLD's denial of one of its Funding Year 2 requests for discounts under the schools and libraries universal service mechanism.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

¹ Letter from Marie Gee, Lunenburg County Public Schools, to Federal Communications Commission, filed May 17, 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.

with the Administrator an FCC Form 470,⁴ which is posted to the Administrator's website for all potential competing service providers to review.⁵ 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.⁶ 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.⁷ The instructions for the FCC Form 471 clearly state: "YOU MAY NOT SEEK SUPPORT ON THIS FORM FOR INELIGIBLE SERVICES."⁸ 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."⁹ 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.¹⁰ An applicant can avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services.

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

⁵ 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).

⁶ 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).

⁷ 47 C.F.R. § 54.504 *et seq.*

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

⁹ Form 471 Instructions, at 16.

¹⁰ 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

4. At issue is Funding Request Number (FRN) 481380, which sought discounted internal connections at a pre-discount cost of \$62,850.00.¹¹ Documentation provided with the application indicated that this cost included \$14,750 for Aironet 4800 802 11 PC Cards, \$29,900 for 4800 Series Turbo DS802 11 Ethernet AC (a wireless LAN), and \$18,200 for installation.¹² During its review process, SLD contacted Lunenburg for more information on the PC Cards, and based on this information, determined that they would be located in the PC workstations and were thus ineligible.¹³ On April 27, 2001, SLD issued a Funding Commitment Decision Letter denying FRN 481380 on the grounds that “30% or more of this FRN includes a request for Aironet 4800 pc cards which is an ineligible product based on program rules.”¹⁴ Lunenburg then filed the pending Request for Review.

5. In its Request for Review, Lunenburg argues that the PC Cards are \$14,750.00 of the total \$62,850.00, and thus only 23.47% of the total cost.¹⁵ However, the cost of the ineligible product includes its cost of installation.¹⁶ Here, a single installation cost was provided for the installation of both eligible and ineligible products. In such a case, an amount of the installation cost is assigned to each product equal to the proportion of the cost of the ineligible product to the total purchase cost. The total purchase cost was \$14,750 (PC Cards) + \$29,900 (Ethernet AC) = \$44,650. The PC Cards cost 33% of this total. Thus, 33% of the installation costs (or \$6,006) was attributed to the PC Cards, raising the total cost of ineligible services to 33% of the total service. Lunenburg has presented no information that would suggest that the attribution of 33% of the installation costs to the PC Cards was incorrect. Accordingly, as explained above, we affirm SLD’s decision.

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 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.

¹¹ FCC Form 471, Lunenburg County School District, filed March 29, 2000, at 3.

¹² *Id.*, attachment.

¹³ PIA Review Contact Report, Lunenburg County School District, App. No. 209013.

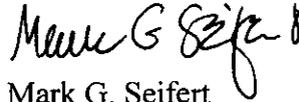
¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Marie Gee, Lunenburg County School District, dated April 27, 2001, at 8.

¹⁵ Request for Review, at 1.

¹⁶ *Request for Review by Maine School Administrative District #49, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-126566, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 4795, para. 4 (Com Car. Bur. 2001).

6. 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 Lunenburg County Public Schools, Victoria, Virginia, on May 17, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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