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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	)	
	)	
Massillon City School District Massillon, Ohio	)	File No. SLD-220108
	)	
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: May 10, 2002 **Released: May 13, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division is a Request for Review filed by the Massillon City School District (Massillon), Massillon, Ohio.[1] Massillon seeks review of the decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying one of Massillon's Funding Year 4 requests for discounts under the schools and libraries universal service mechanism.[2] For the reasons set forth 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,[4] which is posted to the Administrator's website for all

[1] *Request for Review of the Decision of the Universal Service Administrator by Massillon City School District*, CC Docket Nos. 96-45 and 97-21, Request for Review, filed September 4, 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.

[4] Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 470).

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 for ineligible services, entities, and uses."[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]

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[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 (October 2000) (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 (October 2000), at 17 (Form 471 Instructions).

[9] Form 471 Instructions, at 21.

[10] *See Request for Review of the Decision of the Universal Service Administrative Company by Ubly 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 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.

4. On August 7, 2001, SLD issued a Funding Commitment Decision Letter denying two of Massillon's funding requests.[11] The first request, Funding Request Number (FRN) 636943, sought discounts on the cost of internal connections, including a multi-computer system for running a local area network (LAN), to be provided by BPI Information Systems.[12] SLD denied FRN 636943 on the grounds that more than 30% of the request was for Compaq Sandwork, which SLD found to be an ineligible product.[13] The second request, FRN 637013, sought discounts on the costs of LAN installation and maintenance, also to be performed by BPI Information Systems.[14] SLD denied this request on the grounds that "30% or more of this FRN includes a request for maintenance [and] installation of [an] ineligible product based on program rules."[15] In response to the Funding Commitment Decision Letter, Massillon filed the pending Request for Review with the Commission, appealing only the denial of FRN 637013.[16]

5. In its Request for Review, Massillon argues that "there is no evidence to support the SLD's position"[17] This argument incorrectly assigns the burden of proof on eligibility questions to SLD. The Commission established in the *Universal Service Order* that, where a funding request includes both eligible and ineligible services, the burden is on the provider and the applicant to provide a break-down of the cost of the eligible and ineligible components.[18] Thus, in the absence of evidence demonstrating the amount of eligible services in a request, SLD is warranted in denying the request.[19] Accordingly, we must affirm SLD's denial of FRN 637013 unless the record provides evidence from which SLD might determine a specific percentage of ineligible costs that is less than 30%.

6. Here, the only evidence in the record that might support a specific breakdown of eligible and ineligible LAN maintenance costs is the breakdown of the costs of the multi-computer LAN system.[20] SLD concluded that 30% or more of this system was ineligible, and

[11] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Paul Karas, Massillon City School District, dated August 7, 2001 (Funding Commitment Decision Letter), at 8-9.

[12] FCC Form 471, Massillon City School District, filed January 17, 2001 (Massillon Form 471), at 5, Attachment S; *see also* Letter from Paul Karas, Massillon City School District, to Bob Hellwig, Schools and Libraries Division, dated May 3, 2001, Attachment (FRN 636943 Description and Breakdown).

[13] Funding Commitment Decision Letter, at 8.

[14] Massillon Form 471, at 5-6, Attachment M.

[15] Funding Commitment Decision Letter, at 9.

[16] Request for Review, at 1.

[17] *Id.* at 2.

[18] *Universal Service Order*, 12 FCC Rcd at 9022, para. 462.

[19] *Request for Review by Chelmsford 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-121771, CC Dockets No. 96-45 and 97-21, Order, DA 02-95, para. 8 (Com. Car. Bur. rel. January 18, 2002).

[20] FRN 636943 Description and Breakdown.

that determination has not been challenged.[21] Because this was the only evidence supporting a breakdown of eligible and ineligible maintenance costs, we find that SLD properly attributed the percentage of ineligibility of the LAN hardware to the LAN maintenance contract. We therefore conclude that SLD correctly found 30% or more of the LAN maintenance contract ineligible.

7. ACCORDINGLY, IT IS HEREBY 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 Massillon City School District, Massillon, Ohio, on September 4, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

[21] *See* Funding Commitment Decision Letter, at 8.