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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	)	
	)	
New York City Board of Education Brooklyn, New York	)	File No. SLD-200299
	)	
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 9, 2002 **Released: May 13, 2002**

By the Wireline Competition Bureau:

1. Before the Wireline Competition Bureau (Bureau) is a Request for Review filed by the New York City Board of Education, Brooklyn (NYC BOE), New York, on behalf of applicant, NYC BOE/WYNE (WYNE), New York, New York.[1] NYC BOE seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), which denied WYNE's application 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 Jackson S. N. Tung, New York City Board of Education, to Federal Communications Commission, filed May 21, 2001 (Request for Review). In its Request for Review, NYC BOE also appeals the denial of Application No. 203292. Request for Review, at 1-2. Because Application No. 203292 involves a different applicant and raises distinct issues, it will be addressed in a separate Order.

[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, which is posted to the Administrator's website for all 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. WNYE is a television station run by the NYC BOE, and transmits educational video programming to the schools within its jurisdiction.[6] In Funding Year 3, WNYE made three requests for discounted telecommunications services to be provided to WNYE, and asked for a discount rate equal to the average rate of the schools to which WNYE transmitted video programming.[7] In its Funding Commitment Decision Letter, SLD denied funding for all three requests on the grounds that "[t]he service being requested is not being used in accordance with program rules."[8]

4. NYC BOE appealed this decision to SLD, asserting that, under Commission precedent, "[s]upport for the administrative functions of library or education programs is permitted so long as the services are part of the network of shared services for learning."[9] NYC BOE argued that WNYE's application satisfied this standard.[10] On April 20, 2001, SLD denied the appeal.[11] It explained that an administrative building was eligible for discounts only if (1) the building was a centralized district office or similar facility; and (2) the discounted services were being provided to the building as part of a network whose primary function was the delivery of such services to places of instruction in instructional buildings or rooms available to

[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] Request for Review at 1-2.

[7] FCC Form 471, NYC BOE/WYNE, filed January 17, 2000 (NYC BOE/WYNE Form 471), at 65-66.

[8] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Terrance O'Driscoll, NYC BOE/WYNE, dated September 15, 2000 (Funding Commitment Decision Letter), at 5.

[9] Letter from Aaron Rosenberg, New York City Board of Education, to Schools and Libraries Division, Universal Service Administrative Company, filed October 2, 2000 (Appeal to SLD), at 1.

[10] *Id.*

[11] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Aaron Rosenberg, Board of Education of the City of New York, dated April 20, 2001.

the public in libraries.[12] SLD found that the television station did not satisfy this test, because it was not a centralized district office or similar facility, and was therefore ineligible to receive discounts under the program.[13] NYC BOE appealed this ruling to the Commission by filing the pending Request for Review.

5. In its Request for Review, NYC BOE asserts that WNYE is part of NYC BOE, and that NYC BOE is eligible for discounts.[14] It argues that WNYE is therefore eligible for discounts.[15] It concedes that WNYE's actual broadcasting system is not eligible for support, but asserts that the funding requests are made only for eligible telecommunication carrier services supporting station operation, including local, long distance, and cellular phone service provided to WNYE.[16]

6. As defined by statute, the only entities eligible for discounted services are elementary schools, secondary schools, and libraries.[17] Although NYC BOE can apply for discounts on services to be received by its member schools and libraries that meet the statutory criteria, NYC BOE is not itself eligible to receive discounted services unless it meets the exception to the non-eligibility of administrative facilities established in the *Fourth Order on Reconsideration*.[18] In that Order, the Commission found that the non-instructional buildings of a school district may be eligible for internal connections under certain limited circumstances.[19]

7. We find that WYNE does not meet the limited exception to the statutory definition of eligibility for non-instructional buildings, because it seek discounts on telecommunications services, not internal connections. Further, WYNE is not a school or library, and thus does not meet the statutory definition of eligibility. Thus, the mere association of WNYE with NYC BOE does not create eligibility if WYNE is otherwise ineligible. Eligibility is based on the function of the site, not the association with eligible entities. Because WNYE is not eligible to receive discounted local, long distance, and cellular service, we affirm SLD's denial of WNYE's application.

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[12] *Id.* at 1.

[13] *Id.* at 2.

[14] Request for Review at 1.

[15] *Id.*

[16] *Id.* at 2.

[17] *See* 47 U.S.C. § 254(h)(1)(B).

[18] *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, para. 210 (1997) (*Fourth Order on Reconsideration*).

[19] *Id.*

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 New York City Board of Education, Brooklyn, New York, on behalf of applicant, NYC BOE/WYNE, New York, New York, on May 21, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey

Carol E. Mattey
Deputy Chief, Wireline Competition Bureau