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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	)	
	)	
Rochester Public Library Rochester, New York	)	File No. SLD-156399
	)	
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 (Division) is a Request for Review filed by Rochester Public Library (Rochester), Rochester, New York.[1] Rochester seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to deny Rochester's Funding Year 3 request for discounts.[2] For the reasons discussed below, we deny the Request for Review and affirm the decision of SLD.

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] Letter from Richard Panz, Rochester Public Library, to Federal Communications Commission, filed May 2, 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.

[4] Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (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 (September 1999) (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 (September 1999) (Form 471 Instructions), at 18.

[9] Form 471 Instructions, at 23.

[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. In Funding Request Number (FRN) 304074 of its Funding Year 3 application, Rochester requested discounted internal connections, specifically the maintenance of a Private Branch Exchange (PBX) system by Ronco Communications and Electronics, Inc. (Ronco).[11] Rochester indicated that the total monthly charges were $1,667.00, with $400 per month ineligible and $1,267 eligible.[12] FRN 304074 thus requested $1,267.00 for twelve months, a total pre-discount eligible cost of $15,204.[13] On April 14, 2000, SLD issued a Funding Commitment Decision Letter, denying FRN 304074 on the grounds that "30% or more of this FRN includes a request for MAINTENANCE OF PHONES which is an ineligible product . . . based on program rules."[14] SLD based its determination of the content of the request on a copy of Rochester's service agreement with Ronco (Service Agreement) that Rochester submitted to SLD during SLD's review of Rochester's Funding Year 2 application, which also sought discounts for the PBX.[15]

5. Rochester appealed the denial to SLD, alleging that it had not included the maintenance costs for telephones in FRN 304074.[16] SLD denied the appeal, finding that, "[a]ccording to the original lease agreement there is a request for maintenance service on the control unit, phones, ACD phones, Voice Mail and Call Accounting system and maintenance charges on the phone system."[17] SLD concluded that 34% of the funding request was ineligible

[11] FCC Form 471, Rochester Public Library, filed November 29, 1999 (Rochester Form 471), at 2-3, attachment #Ronco 1.

[12] Rochester Form 471, at 3.

[13] *Id.*

[14] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Paula Smith, Rochester Public Library, dated April 14, 2000 (Funding Commitment Decision Letter), at 6.

[15] *See* Letter from Kevin Loughran, Rochester Public Library, to George Viteri, Schools and Libraries Division, Universal Service Administrative Company, dated October 7, 1999, attachment (Service Agreement). The Funding Year 2 application, Application No. 137367, was denied by decision on appeal dated June 15, 2000 on grounds including but not limited to those that led to denial in Funding Year 3. *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Richard Panz, Rochester Public Library, dated June 15, 2000. Rochester has not sought review of this Funding Year 2 denial.

[16] Letter from Richard Panz, Rochester Public Library, to Schools and Libraries Division, Universal Service Administrative Company, filed May 8, 2000, at 1; *see also* Service Agreement. SLD refers to the Service Agreement as a "lease agreement" because it incorporates an agreement by a company named Real Lease, Inc. to pay the $210,836 cost for the purchase and installation of the PBX in the first year and then obtain semi-annual payments from Rochester of $20,015.42 over a seven year period. *See* Service Agreement, at 2 (Section 3, "Fee.") From the language of the Service Agreement, this lease arrangement appears to be limited to satisfaction of purchase and installation costs, leaving Rochester to pay the subsequent maintenance costs directly to Ronco. We therefore do not address the possible impact of a third-party financing arrangement for service on the eligibility of the service. *See* SLD web site, <http://www.sl.universalservice.org/data/pdf/EligibleServicesList.pdf> ("finance charges assessed by third party entities for loans to fund the lease or purchase by applicants of items that would normally be eligible for funding are not eligible"). However, we do not preclude SLD from investigating on remand whether a financing arrangement extends to maintenance charges.

[17] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Paula Smith, Rochester Public Library, dated April 2, 2001 (Administrator's Decision on Appeal), at 1.

and therefore that the entire funding request must be denied under SLD procedures.[18] Rochester then filed the pending Request for Review.

6. In its Request for Review, Rochester does not dispute that it seeks discounts for the maintenance of its PBX systems in accordance with the terms of its lease agreement. It also does not dispute that it seeks support for maintenance charges as specified by Section VIII.5 of the Service Agreement, or that this section specifies that maintenance charges will be imposed for "single and two line telephone[s], . . . multiline telephone[s], ACD telephone[s], [and] Voice Mail."[19] However, Rochester asserts that the reference to "telephones" was meant only to refer to the maintenance of the telephone ports to which those telephones were connected, not the telephones themselves.[20]

7. Upon review, we find that SLD correctly determined that Rochester seeks discounts for the maintenance of telephones. Section VIII.5, Figure D-3 of the Service Agreement specifies the purchase price of various kinds of telephones, and for each kind, specifies a maintenance cost in connection with it.[21] Because the purchased equipment specified in Figure D-3 are telephones, not telephone ports, we find that SLD correctly concluded on the record that the maintenance costs specified in Figure D-3 are for the telephones as well. It is true that the Service Agreement also indicates that maintenance costs will be determined on a "per port" basis.[22] However, this does not demonstrate that the actual equipment being maintained are ports, because it is also consistent with the conclusion that the cost of maintaining telephones will be calculated on a per-port basis. Because we find that Rochester sought discounts on ineligible telephone maintenance costs, we affirm SLD's determination that 30% or more of FRN 304074 sought discounts on ineligible services.

[18] *Id.*

[19] Service Agreement, VIII.5, Figure D-4.

[20] Request for Review, at 1.

[21] Service Agreement, VIII.5, Figure D-3.

[22] Service Agreement, VIII.5, Figures D-4, C-20; *see also* Letter from Kevin Loughran, Rochester Public Library, to Tom Gill, Schools and Libraries Division, Universal Service Administrative Company, dated March 9, 2001, attachment (Maintenance Bill) (specifying maintenance costs on "per port" basis).

8. 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 Rochester Public Library, Rochester, New York, on May 2, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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