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

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In the Matter of	)	
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Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Southeast Webster Community Schools Burnside, Iowa	)	File No. SLD-166575
	)	
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: June 13, 2002 **Released: June 14, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by the Southeast Webster Community Schools (SWCS), Burnside, Iowa, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).[1] SWCS seeks review of SLD's denial of its application for discounts for Internet access under the schools and libraries universal service support mechanism.[2] For the reasons set forth below, we deny SWCS's Request for Review.

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] In order to receive discounts on eligible services, the Commission's rules require that the applicant

[1] Letter from Mike Jorgensen, Southeast Webster Community Schools, to Federal Communications Commission, filed May 29, 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.

submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.[4] Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.[5]

3. In the *Fifth Reconsideration Order*, the Commission established rules to govern how discounts would be allocated when total demand exceeds the amount of funds available and a filing window is in effect.[6] These rules provide that requests for telecommunications and Internet access service for all discount categories shall receive first priority for available funds (Priority One services), and requests for internal connections shall receive second priority (Priority Two services).[7] Thus, when total demand exceeds the total support available, SLD is directed to give first priority for available funding to telecommunications service and Internet access.[8] Any funding remaining is allocated to requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.[9] Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their request for internal connections. To the extent that funds remain, the Administrator would continue to allocate funds for discounts to eligible applicants at each descending single discount percentage, e.g., eighty-nine percent, eighty-eight percent, and so on until there are no funds remaining.[10]

4. SWCS filed its Funding Year 3 FCC Form 471 on January 12, 2000, seeking support for telecommunication services in Funding Request Numbers (FRNs) 336873 and

[4] 47 C.F.R. §§ 54.504(b)(1), (b)(3).

[5] 47 C.F.R. § 54.504(c).

[6] *See Federal-State Joint Board on Universal Service*, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915, 14934, at para. 31 (1998) (*Fifth Reconsideration Order*).

[7] *See* 47 C.F.R. § 54.507(g)(1)(i).

[8] The annual cap on federal universal service support for schools and libraries is $2.25 billion per funding year. *See* 47 C.F.R. § 54.507(a).

[9] *Fifth Reconsideration Order*, 13 FCC Rcd at 14938, para. 36. The schools and libraries discount matrix reflects both an applicant's urban or rural status as well as the percentage of its students eligible for the national school lunch program. 47 C.F.R. § 54.505.

[10] 47 C.F.R. § 54.507(g)(1)(iii). In the *Eleventh Order on Reconsideration*, the Commission clarified that to the extent that there are single discount percentage levels associated with "shared services," the Administrator shall allocate funds for internal connections beginning at the ninety percent discount level, then for eighty-nine percent, eighty-eight percent and so on. *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, Fifth Order on Reconsideration in CC Docket No. 97-21, Eleventh Order on Reconsideration in CC Docket No. 96-45, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 6033, 6035, para. 6 (1999) (*Eleventh Order on Reconsideration*).

336982, with services to be provided by Lehigh Valley Telephone Cooperative.[11] Based on the discount matrix, SWCS qualified for discount rates of 60% and 70% in Funding Year 3.[12] In addition, documentation accompanying the application indicated that SWCS sought support for a key telephone system ($36.00 per month) and components of that system including, three key lines ($38.25 per month), and 13 key phones ($84.50 per month).[13] On April 28, 2000, SLD issued a Funding Commitment Decision Letter that reclassified FRNs 336873 and 336982 as internal connections and denied funding.[14] In so doing, SLD stated that the "funding cap [in year three] will not provide for Internal Connections less than 81% discount to be funded."[15]

5. SWCS then filed an appeal with SLD.[16] In this appeal, SWCS stated that FRNs 336873 and 336982 were requests for telecommunications services, not internal connections. By letter dated May 1, 2001, SLD denied SWCS' appeal.[17] SLD explained that, according to support documentation included in its funding request, SWCS had requested discounts relating to a key system, which program rules classify as internal connections.[18] SLD explained that, program procedures require that funding requests for telecommunications services (or Internet access) that include internal connections services be re-categorized as internal connections to prevent Priority Two services (internal connections) from being treated as Priority One services (telecommunications services and Internet access) for funding requests.[19] Finally, SLD indicated that for Funding Year 3, there were not sufficient funds to provide internal connections discounts to applicants below the 82% shared discount level.[20]

6. In response, SWCS filed the instant appeal with the Commission.[21] SWCS states

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[11] FCC Form 471, Southeast Webster Community Schools, filed January 12, 2000 (Southeast Webster Community Schools FCC Form 471).

[12] *Id.* SWCS qualified for a 60% discount for FRN 336873 and a 70% discount for FRN 336982.

[13] *Id. See also* SLD's Eligible Services List, Eligible Services List, http://www.sl.universalservice.org/reference/eligible.asp (Eligible Services List). A key system is a type of phone system that permits more than one telephone line, PBX extension, private line, or intercom line to appear on a single telephone.

[14] Letter from Schools and Libraries Division, Universal Service Administrative Company to Southeast Webster Community Schools, dated April 28, 2000 (Funding Commitment Decision Letter).

[15] Funding Commitment Decision Letter.

[16] Letter from Southeast Webster Community Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed May 5, 2000.

[17] Letter from Schools and Libraries Division, Universal Service Administrative Company to Southeast Webster Community Schools, dated May 1, 2001.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] Request for Review.

that it is not requesting any internal connections or equipment with its telecommunications request, but that the key system is owned by Lehigh and used to provide telephone services to one of its school districts.[22] Thus, SWCS, now for the first time, appears to be asserting that its request is eligible for funding pursuant to the *Tennessee Order.*[23] In the *Tennessee Order*, Commission considered whether certain facilities on school premises could be properly considered Internet access, rather than internal connections.[24] The Commission concluded that a facility located on an applicant's premises is presumed to be a component of internal connections.[25] The Commission indicated that this presumption may be rebutted during the application evaluation process, if the facility at issue functions exclusively as a point of presence for an Internet service provider and there are no other indications that the facility is mischaracterized as a component of an Internet access service.[26] Relevant indicia include ownership of the facility used to provide service, any lease-purchase arrangements regarding such facility, exclusivity arrangements regarding such facility, maintenance agreements regarding such facility, and upfront capital costs.[27]

7. To the extent that SWCS is asserting eligibility under the *Tennessee Order*, this is not permissible. In order to assert the applicability of the *Tennessee Order,* SWCS would have had to raise this claim during the application review process.[28] SWCS failed to submit any information to SLD to support its claim either with its original application or during the subsequent application review. Under the Commission's precedent in the *Tennessee Order,* we shall not now consider this argument.[29] In light of the thousands of applications that SLD must review and process each year, we find that it is administratively necessary to require an applicant to be responsible for providing complete and accurate information to SLD. Applicants must act to ensure that their funding requests satisfy the Commission's policies and program rules.[30]

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[22] *Id.*

[23] *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc., of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the Universal Service Administrator, 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, 14 FCC Rcd 13734 (1999) (*Tennessee Order*).

[24] *Tennessee Order*, 14 FCC Rcd at 13746-55, paras. 25-42.

[25] *Tennessee Order*, 14 FCC Rcd at 13753-54, para. 37.

[26] *Tennessee Order*, 14 FCC Rcd at 13754, para. 38.

[27] *Tennessee Order*, 14 FCC Rcd at 13574-55, paras. 39-40.

[28] *Tennessee Order*, 14 FCC Rcd at 13754, para. 38.

[29] *Id.*

[30] 47 C.F.R. § 54.504 *et seq.*; *See Request for Review by Free Library of Philadelphia, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-112605, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 23820 (2000).

8. We now turn to the question of whether the Administrator properly denied SWCS funding requests at issue in this appeal. We have reviewed the record before us and conclude that SLD correctly followed Commission priority rules and its own application review procedures. The Commission's regulations authorize SLD to establish procedures for the administration of the schools and libraries support application process in an efficient and effective manner, including procedures for the review of applications and the implementation of the Commission's rules of priority.[31] In Funding Year 3, to ensure that the priority rules were not violated, SLD followed the review procedure of reclassifying a Priority One request as one seeking Priority Two services if any portion of the services requested were found to be Priority Two.[32] The Wireline Competition Bureau has previously affirmed this procedure.[33]

9. We find that in its requests for telecommunications services, SWCS included requests for key systems components, which are internal connections pursuant to program guidelines.[34] We find that, in applying its Funding Year 3 mixed-priority procedure, SLD correctly reclassified all of FRNs 336873 and 336982 as internal connections based on the information provided with its application.[35] We also find that SLD correctly determined that SWCS was not eligible for internal connections. In Funding Year 3, internal connections were funded for schools and libraries with at least an 82% discount rate.[36] The record demonstrates that for the FRNs at issue, SWCS was entitled to only 60% and 70% discount rates based on the discount matrix.[37] We therefore deny SWCS's Request for Review based on arguments that the

[31] See 47 C.F.R. §§ 54.701(a), 54.702, 54.705(a)(iii), 54.705(a)(vii).

[32] *See* SLD Web Site, <http://www.sl.universalservice.org/reference/471_App_Guid_Docs/471_dozen.asp> (last updated April 15, 1999) ("To correctly apply the Rules of Priority (fund Telecommunications and Internet Access first, then Internal Connections beginning with neediest), SLD must 'scrub' telecommunications and Internet Access requests to assure no Internal Connections are included. A piece of equipment at the user's location listed in one of these categories risks having the entire service redefined as Internal Connections."); *see also* SLD Web Site, <http://www.sl.universalservice.org/reference/ServCategories.asp> (describing review procedure used in Funding Year 3).

[33] *Request for Review by Most Holy Trinity School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-161422, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2456 (Com. Car. Bur. rel. October 23, 2001).

[34] *See* SLD's Eligible Services List.

[35] While the application of this procedure leads to a denial of funding in this instance, that result could have been avoided by submitting two separate funding requests, one for the Priority One services, and the second for the Priority Two services. In *Request for Review by Williamsburg-James City County 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-90495, CC Dockets No. 96-45 and 97-21, 14 FCC Rcd 20152 (1999), the Commission reviewed whether SLD's priority review procedure should be applied to applications filed before the issuance of the *Fifth Reconsideration Order* and thus before the applicant had notice of the Commissions' priority rules and "the need to carefully segregate its service requests . . . ." *Id.* at para. 6. The Commission decided that "*[u]nder these circumstances*, . . . the Priority One and Priority Two services . . . should be considered separately. . . ." *Id.* at para. 6 (emphasis added). Thus, the Commission implicitly affirmed the use of SLD's review procedure where, as here, the application was not filed until after the Commission's priority rules had been established.

[36] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rule Making and Order, FCC 01-143, n.13 (rel. April 30, 2001).

[37] Southeast Webster Community Schools, FCC Form 471.

services sought were incorrectly classified as internal connections.

10. 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 on May 19, 2001, by Southeast Webster Community Schools, Burnside, Iowa, is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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