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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	)	
	)	
Shawnee Library System Carterville, Illinois	)	File No. SLD-147437
	)	
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 25, 2002 **Released: June 26, 2002**

By the Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) denies in part and grants in part a Request for Review filed by Shawnee Library System (Shawnee System), Carterville, Illinois, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).[1] In addition, we grant, on our own motion, a one-time limited waiver of section 54.501(c)(2) of the Commission's rules for Shawnee System. This waiver will apply only to the first funding year of the schools and libraries support mechanism, and will allow Shawnee System to retain funds committed to it for that year.

2. Under the schools and libraries universal service support mechanism, consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.[2] In order for applicants to receive discounts on eligible services, the Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470, which is

[1] Letter from Jeanette M. Halldorson, Shawnee Library System, to Federal Communications Commission, filed June 7, 2000 (Request for Review).

[2] 47 C.F.R. §§ 54.502, 54.503.

posted to the Administrator's website for all potential competing service providers to review.[3] After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering into an agreement for services and submitting an FCC Form 471, which requests support for eligible services.[4] Using information provided by the applicant in its FCC Form 471, the Administrator determines the amount of discounts for which the applicant is eligible.[5]

3. Shawnee System is a consortium of school districts and libraries in southern Illinois.[6] On April 5, 1999, Shawnee System filed an FCC Form 471 application seeking Funding Year 2 support on behalf of forty-two Illinois libraries.[7] On November 2, 1999, SLD issued a funding decision denying Shawnee System's application.[8] SLD found that a significant portion of Shawnee System's funding request was for "school libraries," which are ineligible to receive funding under the program's rules because they do not maintain separate budgets from their affiliated schools.[9]

4. On November 29, 1999, Shawnee System appealed the decision to SLD.[10] Shawnee System contended that, although its FCC Form 471 requested funding for school libraries, those requests should have been filed on behalf of affiliated school districts, which are

[3] Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (December 1998) (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 (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 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).

[4] 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).

[5] *See Request for Review by Metropolitan School District of Pike Township, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-120821, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 13891, para. 2 (2000).

[6] *See* Shawnee Library System, General Information (October 16, 1999) <http://www.shawls.lib.il.us/docs.admin.about_shw.html>.

[7] FCC Form 470, Shawnee Library System, filed April 5, 1999.

[8] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeanette M. Halldorson, dated November 2, 1999 (Funding Commitment Decision Letter).

[9] *Id.* at 5. Under the Commission's rules, a library includes "[a] public elementary school or secondary school library." 47 C.F.R. § 54.500(c)(2). Also, "[a] library's eligibility for universal service funding shall depend on its funding as an independent entity." 47 C.F.R. § 54.501(c)(2). Consequently, libraries within schools that do not have separate budgets are not eligible for discounts under the universal service mechanism for schools and libraries. Such libraries are described as "school libraries" and may receive benefits from the E-rate program through the school of which they are a part.

[10] Letter from Jeanette M. Halldorson, Shawnee Library System, to Schools and Libraries Division, Universal Service Administrative Co., filed December 2, 1999 (Shawnee Appeal).

eligible entities under program rules. Shawnee System further argued that because it was awarded funding for a similar application filed in Funding Year 1, SLD should not be permitted to deny its subsequent Funding Year 2 filing. Finally, in an effort to remedy its application error, Shawnee System submitted a revised Block 4 with its appeal listing the entities receiving service as school districts instead of school libraries.[11]

5. By decision dated May 9, 2000, SLD denied the appeal. SLD affirmed its earlier finding that a significant number of Shawnee System's original funding request was filed on behalf of school libraries, which were ineligible to receive funding under program rules.[12] Further, SLD refused to reconsider Shawnee System's amended application because it was filed after the release of SLD's funding decision.[13] Shawnee System filed its instant Request for Review on June 7, 2000.

6. In its Request for Review, Shawnee System asks the Commission to reconsider SLD's funding denial based on a number of arguments. First, Shawnee System asserts that because the ineligible school libraries listed in its application were part of eligible school districts, it should receive Year 2 funding.[14] Second, Shawnee System questions SLD's funding denial in light of SLD's funding grant for a similar application that Shawnee System filed in Funding Year 1.[15] Third, Shawnee System requests that the Commission reconsider Shawnee System's amended Year 2 application, which requests funding for school districts instead of school libraries.[16] Finally, in the event the Commission affirms SLD's funding decision, Shawnee System asks the Commission to grant funding to the eligible consortium members listed in Shawnee System's initial FCC Form 471.[17]

7. Shawnee System has asserted that although the consortia members listed in its FCC Form 471 for Funding Year 2 were described as school libraries, Shawnee System was actually seeking funding for eligible school districts.[18] We find this argument unconvincing. The instructions to FCC Form 471 clearly state that applicants may not seek support for

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[11] *See* Request for Review, Attachment C.

[12] Letter from Schools and Libraries Division, Universal Service Administrative Co., to Jeanette M. Halldorsen, Shawnee Library System, dated May 9, 2000 (Administrator's Decision on Appeal). *See also* 47 C.F.R. § 54.501(c)(2).

[13] *See* Administrator's Decision on Appeal at 1.

[14] Request for Review at 1.

[15] *See id.* at 2; Letter from Jeanette M. Halldorson, Shawnee Library System, to Federal Communications Commission, Office of the Secretary, filed November 1, 2000.

[16] *See* Request for Review at 2.

[17] Request for Review at 2.

[18] Request for Review at 1. According to Shawnee Library, it listed school libraries as the eligible entities for which it sought support on its FCC Form 471 because school librarians were the consortium's information contacts. Shawnee Appeal at 1.

ineligible entities.[19] Section 54.501(c)(2) of the Commission's rules conditions a school library's eligibility upon its maintenance of a completely separate budget from any institution of learning.[20] The record indicates that, instead of certifying it represented both school districts and libraries, Shawnee System specifically certified that it only represented libraries "whose budgets are completely separate from any schools' . . ."[21] However, in its appeal, Shawnee concedes that the school libraries listed in Shawnee System's application do not maintain independent budgets as required by section 54.501(c)(2).[22] Therefore, SLD correctly concluded that Shawnee System's application included requests for funding for ineligible school libraries.

8. We also reject Shawnee System's argument that the erroneous acceptance of a similar application in a prior funding year estops SLD from denying Shawnee System's Year 2 FCC Form 471, which is the subject of this Order. In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding and complying with all relevant program rules and procedures. Further, failure to detect violations in prior funding years does not preclude SLD or the Commission from requiring compliance with Commission rules in later funding years.[23] Otherwise, applicants would have no incentive to comply with program rules once they discovered a prior violation was erroneously undetected. Therefore, Shawnee System bore the risk that its application would be dismissed in Year 2 despite the failure of SLD staff to detect a similar violation of the Commission's rules by Shawnee System in Year 1.[24]

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[19] *See* Instructions to Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (Form 471) (December 1998), at 16.

[20] 47 C.F.R. § 54.501(c)(2). The independent library requirement ensures that an "elementary or secondary school library cannot collect universal service support twice for the same services." *Universal Service Order* at para. 559.

[21] *See* FCC Form 471, Item 21, Shawnee Library System, filed April 5, 1999. Item 21 specifically requires that an applicant certify that its application includes either schools, libraries, or both.

[22] *See* Shawnee Appeal at 1.

[23] *See generally In re Applications of Roy E. Henderson d/b/a Pueblo Radio Broadcasting Service Sanchez Communications, Inc., Hal S. Widsten Classic Media, Inc., Buena Suerte Broadcasting Corp., O-V Communications for Construction Permit for a New FM Station in Oro Valley, Arizona*, 5 FCC Rcd 6278, para. 6 (1990) (failure of FCC staff to detect errors in an application does not excuse applicant from compliance with the Commission's rules). Shawnee Library also indicated that SLD staff advised it to list school libraries instead of school districts in its FCC Form 471. *See* Shawnee Appeal at 2. If SLD staff did verbally instruct Shawnee Library to do so, the rules would still govern. *See Request for Review of the Decision of the Universal Service Administrator by Ruidoso Municipal School District Ruidoso, New Mexico, 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, 15 FCC Rcd. 15547, n.10 (2000) (citing *In Re Applications of Mary Ann Salvatoriello*, 6 FCC Rcd 4705 (1991), *citing Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990) (Erroneous advice from a government employee has never been found to create estoppel against the Federal Government, particularly when the relief requested would be contrary to an applicable statute or rule. Persons relying on informal advice given by Commission staff do so at their own risk.)).

[24] Shawnee Library also asserts that an application by the same consortium was granted in Year 3. Letter from Jeanette M. Halldorson, Shawnee Library System, to Federal Communications Commission, filed November 1, (continued....)

9. We further find that SLD correctly rejected Shawnee System's request to substitute a new Block 4 page listing school districts as the entities receiving service instead of school libraries.[25] Applicants may not amend an application after SLD has issued a funding commitment decision letter denying that application.[26] If applicants were permitted to correct their applications after SLD has denied them, it would eliminate any incentive for them to avoid including ineligible requests.[27] This would significantly increase the administrative burden SLD would face while carrying out its obligation to guard against the occurrence of errors and fraud.[28] In light of the thousands of applications that SLD reviews and processes each funding year, administrative necessity requires that each applicant be responsible for providing complete and accurate information in its FCC Form 471 upon which its ultimate funding is dependent. The applicant must act to ensure that its request for discounts satisfies program rules, which limit universal service mechanism funds to eligible services and entities only.[29]

10. Although we reject Shawnee System's request that it be permitted to modify its original FCC Form 471 to reflect only eligible school districts, we find that SLD should not have denied support for the entire consortium based on the inclusion of ineligible libraries in Shawnee System's FCC Form 471. We note there is no evidence that Shawnee System was acting in bad faith in seeking support for ineligible school libraries, a factor that might warrant a more general

(Continued from previous page)
2000. However, in contrast to Shawnee Library's Years 1 and 2 application, Shawnee Library's Year 3 application sought discounts on behalf of the schools rather than the school libraries and, again in contrast to Years 1 and 2, Shawnee Library certified in Year 3 that it represented schools as well as libraries in its Year 3 application. *See* FCC Form 471, Shawnee Library System, filed Jan. 19, 2000, Block 6, Items 24a, 24b.

[25] We note that, had Shawnee Library filed a complete new Funding Year 2 FCC Form 471 containing the revised Block 4 on or around the time of its December 2, 1999 appeal to SLD, the new application would have been timely filed and entitled to consideration. Although the Funding Year 2 filing window initially closed on April 6, 1999, SLD announced on March 1, 2000 that it was re-opening the filing window and would consider applications for Funding Year 2 that were received by SLD after April 6, 1999 and before the close of the re-opened window on March 31, 2000. *See* SLD web site, What's New (March 2000), <http://www.sl.universalservice.org/whatsnew/032000.asp#consideryr2>. However, Shawnee Library did not submit a new application; it submitted only an amendment to its original application, consisting of the Block 4 noted above. *See* Request for Review, Attachment C.

[26] *See Request for Review by Old Town School Department, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-142237, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 9283, para. 9 (Com. Car. Bur. 2001); *cf. Request for Review by Delano Union Elementary School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-124472, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 7947, para. 6 (Com. Car. Bur. 2001) (noting that, if "the filing window has not closed and an applicant wishes to change the equipment that it is requesting, then the applicant must submit a new FCC Form 471 and cancel the previous request.").

[27] *See Request for Review by Cheney 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-142969, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 5192, para. 6 (Com. Car. Bur. 2001).

[28] *Id.*

[29] 47 C.F.R. § 54.504 *et seq.*

denial.[30] We conclude that to deny the entire application under these circumstances would unfairly penalize the entire consortium, where only a minority of the consortium were in violation of the independent library requirement. Further, it would tend to make applicants reluctant to apply as consortia, in contravention to the Commission's stated desire to "encourage schools and libraries to aggregate their demand with others to create a consortium with sufficient demand to attract competitors and thereby negotiate lower rates . . ."[31] Therefore, we affirm SLD's denial of funding to the consortium members that are ineligible school libraries, but reverse SLD's denial as to the eligible members of the consortium. We remand these applications to SLD for further review. In doing so, we make no determination as to whether the remaining members of the consortium are ultimately entitled to discounts, beyond our finding that they should not be denied on the basis of their inclusion with ineligible entities within Shawnee System's FCC Form 471.

11. As a final matter, we address the commitment of funds that SLD issued in Year 1 to Shawnee System. Where a commitment of funds has been made for an application which violated our regulations, the commitment will ordinarily be cancelled and efforts made to recoup any funds already disbursed.[32] However, the Commission determined in the *Commitment Adjustment Waiver Order* that certain regulations would be waived for Year 1 applicants who had violated those regulations and would otherwise be subject to funding adjustment.[33] The Commission reasoned that there was good cause to waive such regulations in Year 1 because the applicants in that year had reasonably relied on their funding commitments as establishing that funds were irrevocably granted.[34] We find that the Commission's reasoning applies in this situation, where Shawnee System obtained funds for libraries that did not satisfy the requirements of section 54.501(c)(2) and reasonably relied on this funding commitment. Accordingly, we find cause to waive section 54.501(c)(2) for the ineligible entities within Shawnee System's Year 1 request in the same manner and for the same reasons as the regulations waived in the *Commitment Adjustment Waiver Order*. Thus, Shawnee System's Year 1 commitment will not be subject to adjustment.

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[30] *See Request for Review of the Decision of the Universal Service Administrator by Project Interconnect, Brooklyn Park, Minnesota, 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, 16 FCC Rcd 13655 (Com. Car. Bur. 2001).

[31] *Universal Service Order*, 12 FCC Rcd 8776, 9027.

[32] *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Dockets No. 96-45 and 97-21, Order, FCC 99-292, para. 3 (rel. October 8, 1999) (*Commitment Adjustment Waiver Order*); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Dockets No. 96-45 and 97-21, Order, FCC 00-350 (rel. October 26, 2000) (*Commitment Adjustment Order*) (adopting adjustment procedures), *recon. pending*.

[33] *See Commitment Adjustment Waiver Order* at para. 13 (granting limited waivers of sections 54.504(a), 54.504(b)(4), and 54.504(c), relating to the Commission's competitive bidding rules and section 54.507(g)(1)(iii), relating to the Commission's funding priority rules).

[34] *Id.*, para. 7.

12. 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 Shawnee Library System on June 7, 2000, IS GRANTED IN PART AND DENIED IN PART, and the application IS REMANDED to SLD for further action consistent with this opinion.

13. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1-5, 201-205, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, and 303(r), and section 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that section 54.501(c)(2) of the Commission's rules, 47 C.F.R. § 54.501(c)(2), IS WAIVED for the Year 1 applicant specified above.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey

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Deputy Chief, Wireline Competition Bureau