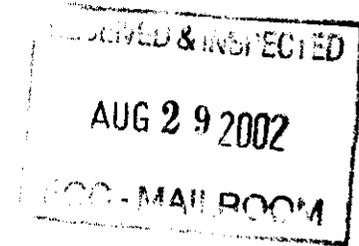


Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Carrollton-Farmers Branch Independent)	File No. SLD-229384
School District)	
Farmers Branch, Texas)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: August 26, 2002

Released: August 27, 2002

By the Wireline Competition Bureau:

1. Before the Wireline Competition Bureau is a Request for Review filed by the Carrollton-Farmers Branch Independent School District (Carrollton), Farmers Branch, Texas.¹ Carrollton seeks review of the funding decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying one of Carrollton's Funding Year 4 requests for discounts under the schools and libraries universal service mechanism.² For the reasons set forth below, we grant the Request for Review and remand to SLD for further consideration.

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 Dr. Andrew Berning, Carrollton-Farmers Branch Independent School District, to Federal Communications Commission, filed March 11, 2002 (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.

with the Administrator an FCC Form 470,⁴ which is posted to the Administrator's website for all 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

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

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) (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 Uby 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

4. Carrollton appeals SLD's denial of Funding Request Number (FRN) 594956, which sought discounts on cellular telephone service at a pre-discount rate of \$7,366.96 per month.¹¹ SLD denied funding on the grounds that "30% or more of this FRN includes a request for early contract termination fees which is ineligible based on program rules."¹² The attached bill indicated that total costs were \$7,328.79, of which \$3,314.67 or 45% was for the ineligible services.¹³

5. Carrollton appealed to SLD.¹⁴ It did not dispute that 30% or more of the costs on the monthly bill that it submitted to support its request for FRN 594956 consisted of ineligible contract cancellation fees.¹⁵ However, Carrollton asserted that the large amount of ineligible cancellation fees were the result of a one-time incident involving the cancellation of service on fourteen cellular phones, and that the ineligible fees did not, therefore, represent Carrollton's typical costs.¹⁶ To support its assertions, Carrollton submitted additional bills.¹⁷

6. SLD denied the appeal.¹⁸ It stated that it did not accept new information during the appeal process except under limited circumstances.¹⁹ Based on the original documentation and what was received during the application review process, SLD reaffirmed that FRN 594956 included ineligible contract termination fees amounting to 30% or more of the funding request.²⁰ Carrollton then filed the pending Request for Review.

7. In the Request for Review, Carrollton reasserts that the monthly bill it submitted with its application does not accurately reflect its typical monthly service costs for ineligible

30 percent policy allows SLD to process requests for funding that contain only a small amount of ineligible services efficiently without expending significant fund resources working with applicants that, for the most part, are requesting funding of ineligible services.

¹¹ See Request for Review; FCC Form 471, Carrollton-Farmers Branch Independent School District, filed January 17, 2001 (Carrollton Form 471), Attachment 4.

¹² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ellen Yates, Carrollton-Farmers Branch Independent School District, dated September 28, 2001 (Funding Commitment Decision Letter), at 7.

¹³ Carrollton Form 471, Attachment 4.

¹⁴ Letter from Dr. Andrew Berning, Carrollton-Farmers Branch Independent School District, to Schools and Libraries Division, Universal Service Administrative Company, filed October 25, 2001 (Appeal to SLD).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See *id.*, Attachments.

¹⁸ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Dr. Andrew Berning, Carrollton-Farmers Branch Independent School District, dated January 21, 2002.

¹⁹ *Id.* at 1.

²⁰ *Id.* at 1-2.

services.²¹ Carrollton again submits additional bills that, it claims, are more representative of its usual monthly costs.²²

8. We find that SLD should have considered the new evidence supplied by Carrollton in its Appeal to SLD. SLD Appeals Guidelines state that:

[i]n general, PIA will contact the applicant and ask for all information necessary to make decisions about an application. If that contact does not occur, however, and funding is denied based on an incorrect assumption, SLD will grant an appeal when the appellant points out the incorrect assumption and provides documentation about the issue that is consistent with information originally provided but also successfully resolves the ambiguity in the original file.²³

9. After reviewing the record, and in particular the single month's bill containing the one-time ineligible charge, we find that the record before SLD was ambiguous as to whether the amount of one-time ineligible services reflected in the single month bill reflected an equivalent amount of ineligible services in the full year of telecommunications service. We therefore find that it was appropriate for Carrollton to submit bills from other months to clarify that the entire year of cellular phone service did not contain 30% or more of ineligible service, and that SLD should have considered the additional documentation that Carrollton provided on appeal to determine whether the request overall seeks less than 30% ineligible services. To give SLD the opportunity to review this evidence in the first instance and determine what amount of funding, if any, is supported by the new bills and spreadsheets, we remand the application to SLD for consideration of FRN 594956 in light of Carrollton's additional evidence. We affirm, however, that the ultimate burden of proving eligibility remains with the applicant.

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 by Carrollton-Farmers Branch Independent School District, Farmers Branch, Texas, on March 11, 2002 IS GRANTED and this application is REMANDED to SLD for further consideration.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Bureau Chief, Wireline Competition Bureau

²¹ Request for Review.

²² *Id.*, Attachment.

²³ SLD website, Appeals – SLD Guidelines for Review (January 24, 2002), <<http://www.sl.universalservice.org/reference/AppealsSLDGuidelines.asp>>.