

Before the  
Federal Communications Commission  
Washington, DC 20554

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In the Matter of )  
)  
Request for Review of the )  
Decision of the )  
Universal Service Administrator by

Colorado City Public Library )  
Colorado City, Arizona )

File No. SLD-255830

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: November 26, 2002**

**Released: November 27, 2002**

By the Wireline Competition Bureau:

1. Before the Wireline Competition Bureau (Bureau) is a Request for Review is a Request for Review filed by Colorado City Public Library (Colorado), Colorado City, Arizona.<sup>1</sup> Colorado appeals the decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company to reduce Colorado's requested discount rate in Funding Year 2001 from 90% to 70%.<sup>2</sup> For the reasons set forth below, we deny the 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.<sup>3</sup> The Commission's rules require that the applicant make a bona fide request for services by filing

<sup>1</sup> Facsimile from Dennis Darger, Colorado City Public Library, to Federal Communications Commission, filed March 29, 2002 (Request for Review).

<sup>2</sup> 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). In prior years, Funding Year 2001 was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 2001 and ended on June 30, 2002, is now called Funding Year 2001. The funding period that began on July 1, 2002 and ends on June 30, 2003 is now known as Funding Year 2002, and so on.

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503,

with the Administrator an FCC Form 470,<sup>4</sup> which is posted to the Administrator's website for all potential competing service providers to review.<sup>5</sup> 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.<sup>6</sup> SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. Under the Commission's rules, the discount available to a particular school or library is determined by indicators of poverty and high relative cost of service.<sup>7</sup> The level of poverty for libraries is based on the percentage of the student enrollment in the school district in which the library is located that is eligible for a free or reduced price lunch under the national school lunch program (NSLP) or a federally-approved alternative mechanism.<sup>8</sup> A library's high-cost status is derived from rules that classify it as urban or rural.<sup>9</sup> The Commission's rules provide a matrix reflecting both the library's urban or rural status and the percentage of students who are eligible for the school lunch program to establish its discount rate, ranging from 20 percent to 90 percent.<sup>10</sup>

4. In its FCC Form 471 for Funding Year 2001, Colorado requested a 90% discount rate on all of its funding requests.<sup>11</sup> During application review, SLD contacted Colorado for discount rate validation, and received a document entitled "LEA Data Collection Report To Determine FY 2002 Federal Program Allocations For All LEAs" (LEA Data Collection Report), indicating that out of a total of 944 students, 347 were entitled to free or reduced-priced

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

<sup>5</sup> 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*, *CTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

<sup>6</sup> 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).

<sup>7</sup> 47 C.F.R. § 54.505(b)

<sup>8</sup> 47 C.F.R. § 54.505(b)(2)

<sup>9</sup> 47 C.F.R. §§ 54.505(b)(3)(i), (ii)

<sup>10</sup> 47 C.F.R. § 54.505(c).

<sup>11</sup> Request for Review; Universal Service Administrative Company, Schools and Libraries Division, Exception Documentation, Entity Level Notes, Colorado City Public Library, July 26, 2001 (Exception Report) (September 4, 2001 entry noting 90% discount request).

lunches.<sup>12</sup> After SLD contacted Colorado a second time and confirmed that the **347** figure included both free and reduced-price eligible students, SLD reduced the requested discount rate from 90% to 70% and issued a Funding Commitment Decision Letter with funding awards reflecting the lower discount rate.<sup>13</sup>

5. Colorado appealed to SLD, asserting that the 90% discount rate was correct.<sup>14</sup> It attached new evidence to support its position, including a survey that had been sent recently to 89 families in the school district, to which **34** families had responded, all indicating that all of their children were eligible for free or reduced price lunches.<sup>15</sup> Colorado argued that the survey had been used by the Colorado City Unified School District #14 to support its 90% rate, and that Colorado should not be treated differently than the school district with which it is co-terminus.<sup>16</sup>

6. SLD denied the appeal.” It found that, based on the LEA Data Collection Report, which had been filed by Colorado and signed on May 1, 2001 by Oliver Barlow, the individual submitting the appeal, SLD had correctly reduced the 90% rate to 70%.<sup>18</sup> Colorado then filed the pending Request for Review.

7. In its Request for Review, Colorado again asserts that the survey evidence establishes that its student eligibility is 100%.<sup>19</sup> It asserts that the LEA Data Collection Report is “being applied wrong.”<sup>20</sup> It asserts that the Colorado City Unified School District #14 does not have a school lunch program, and must send out surveys each year to determine the number of eligible students, and that the survey evidence submitted with its Appeal to SLD should therefore be accepted as establishing the correct discount rate of 90%.<sup>21</sup>

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<sup>12</sup> LEA Data Collection Report To Determine **FY** 2002 Federal Program Allocations For All LEAs, Colorado City Unified School District, dated May 1, 2001 (LEA Data Collection Report).

<sup>13</sup> Universal Service Administrative Company, Schools and Libraries Division, Contact Report, September 5, 2001 (noting September 21, 2001 telephone contact with Dennis Darger in which he “confirmed that the number of students described as “FREE” on the LEA report he supplied as discount verification includes both **free** and reduced eligibility.”); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Dennis Darger, Colorado City Public Library, dated September 28, 2001 (Funding Commitment Decision Letter).

<sup>14</sup> Letter from Dennis Darger, Colorado City Public Library, to Schools and Libraries, Universal Service Administrative Company, filed October 18, 2001 (Appeal to SLD), at 2.

<sup>15</sup> Appeal to SLD, attachment.

<sup>16</sup> Appeal to SLD at 3

<sup>17</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Dennis Darger, Colorado **City** Public Library, dated February 8, 2002.

<sup>18</sup> *Id.* at 1-2.

<sup>19</sup> Request for Review at 2.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

8. We find that, based on the student eligibility data that Colorado provided in response to SLD's request for discount validation, SLD correctly concluded that Colorado was only entitled to a 70% discount. Specifically, Colorado's LEA Data Collection Report indicated that the Colorado Unified School District in which Colorado is located had 347 eligible students out of a total of 944, or 37%.<sup>22</sup> A rural school with 37% eligible students is entitled to a 70% discount under the Commission's discount matrix.<sup>23</sup>

9. Colorado asserts that this data reflects the outdated eligibility rate in 2000, and that the survey submitted with Colorado's Appeal to SLD reflects the current eligibility rate for the school district.<sup>24</sup> The LEA Data Collection Report does indeed state that its eligibility figures were for "the year ending June 30, 2000," the funding year prior to Funding Year 2001.<sup>25</sup> However, Colorado submitted this data during application review as the only evidence in support of the discount rate that it requested in Funding Year 2001. Because Colorado put forward the LEA Data Collection Report as the sole evidence for its Funding Year 2001 discount rate, its assertion that SLD wrongfully relied on the LEA Data Collection Report for that purpose must be rejected.

10. Further, we find no error in SLD's refusal to consider new evidence submitted on appeal to demonstrate that the eligibility in the current year was contrary to that demonstrated by the LEA Data Collection Report. Where we do allow new evidence to correct the rate established by the originally submitted documentation, this would significantly increase the administrative burden SLD would face while carrying out its obligation to guard against the occurrence of errors and fraud.<sup>26</sup> 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 in its FCC Form 471 and during the subsequent review process.

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<sup>22</sup> LEA Data Collection Report.

<sup>23</sup> 47 C.F.R. § 54.505(c)

<sup>24</sup> Request for Review at 1-2.

<sup>25</sup> LEA Data Collection Report

<sup>26</sup> *Request for Review by Baltimore Junior Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-195870, CC Dockets No. 96-45 and 97-21. Order, 16 FCC Rcd 14776, para. 10 (Com. Car. Bur. 2001).

11. 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 Colorado City Public Library, Colorado City, Arizona, on March 29, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey                    U  
Deputy Chief, Wireline Competition Bureau