

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request To Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Western Heights School District 1-41)	File No SLD-I37613
Oklahoma City, Oklahoma)	
)	
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: January 14, 2003

Released: January 15, 2003

By the Wireline Competition Bureau:

1. Before the Wireline Competition Bureau is a Request To Review filed by Western Heights School District 1-41 (Western), Oklahoma City, Oklahoma.¹ Western requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying one of Western's Funding Year 2000 requests for discounts under the schools and libraries universal service support mechanism.² 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.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, which is posted to the Administrator's website for all

¹ Request for Review of the Decision of the Universal Service Administrator By Western Heights School District 1-41, CC Docket Nos 96-45 and 97-21, Request for Review, filed May 10, 2001 (Request for Review).

² *Id.* Previously, Funding Year 2000 was referred to as Funding Year 3. Funding periods are now described by the year in which the funding period starts. Thus, the funding period that began on July 1, 1999 and ended on June 30, 2000, previously known as Funding Year 2, is now called Funding Year 1999. The funding period that began on July 1, 2000 and ended on June 30, 2001 is now known as Funding Year 2000, and so on.

³ 47 C.F.R. §§ 54.502, 54.503.

potential competing service providers to review.⁴ 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.⁵ Each such request is submitted on a separate Block 5 worksheet.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 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 more than 30 percent of the total.¹⁰ Thus, an applicant

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

⁵ 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).

⁶ FCC Form 471, Block 5.

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) (September 1999) at 18 (Form 471 Instructions).

⁹ Form 471 Instructions at 23.

¹⁰ See *Request for Review of the Decision of the Universal Service Administrative Company by Ugly 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, 15 FCC Red 23267 (Com. Car. Bur. 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.*, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Red 25610, 25612-13, para. 8 (Com. Car. Bur. 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 Fifth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Red 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 30 percent or less of the request is for funding of ineligible services, SLD normally will issue a funding commitment for the eligible services. If more than 30 percent 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

that seeks support for eligible services in an FRN that also includes ineligible services can avoid denial by subtracting out the cost of the ineligible services at the time of its initial application.

4. At the time of Western's application, SLD's Eligible Services List listed file servers and web servers as eligible." Under the Commission's precedents, however, such servers are only conditionally eligible products. In general, storage (the function provided by servers) is not an eligible service pursuant to the *Universal Service Order*.¹² However storage is an eligible service when it is an "essential element in the transmission of information within the school or library."¹³ Thus under the Commission's rules and precedents, schools and libraries universal service discounts are available to support storage of network operation systems and storage that assists with internet connection, but not for the storage of end user files or software applications.¹⁴ Consistent with this standard, the Commission found that servers such as "network file servers" were eligible for funding because they were "needed to switch and route messages within a school or library."¹⁵ The Commission emphasized that the eligible server's "function is solely to transmit information over the distance from the classroom to the Internet service provider."¹⁶ Conversely, the Commission determined that file servers that were also "built to provide storage functions to supplement personal computers on the network" were not eligible for discounts."

5. Similar limitations on eligible use apply to other equipment. For example, the December 1999 Eligible Services List stated that a device known as a Redundant Array of Independent Disks (RAID), defined as "a category of disk that employs two or more drives in combination for fault tolerance and performance," was eligible so long as it is "used in an eligible component." Consistent with the *Universal Service Order*, RAID disks are only

without expending significant fund resources working with applicants that, for the most part, are requesting funding of ineligible services.

¹¹ See Schools and Libraries Eligible Services List (December 2, 1999) (December 1999 Eligible Services List), at 25.

¹² *Universal Service Order*, 12 FCC Red at 9021, para. 461.

¹³ *Universal Service Order*, 12 FCC Red at 9021, para. 459.

¹⁴ See SLD website, Eligible Services List, "Storage Products" and "Servers" entries (December 10, 2002) <<http://www.sl.universalservice.org/reference/eligible.asp>>.

¹⁵ *Universal Service Order*, 12 FCC Red at 9021, para. 460 (emphasis added).

¹⁶ *Id.* (emphasis added). Another example of a server necessary to the transport of information are e-mail servers, which act to route e-mail to and from end-users, which were determined to be eligible in the pending application. See Funding Commitment Decision Letter, at 8.

¹⁷ *Universal Service Order*, 12 FCC Red at 9022, para. 461. Thus, in a similar situation, the Bureau upheld SLD's denial of funding for servers that, while performing web-server functions, would also have been used to provide storage for a district-wide student database application. *Request for Review by Cleveland Municipal School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Red 15372 (Com. Car. Bur. 2001).

¹⁸ December 1999 Eligible Services List at 24.

eligible if they are used for eligible purposes. *e.g.*, network access. RAID disks are not eligible to provide storage functions to supplement personal computers on the network.¹⁹

6. At issue is Funding Request Number (FRN) 429028, requesting discounts for internal connections, specifically for what Western refers to as a "multi-box web server." Western's funding request consisted of processing servers, computers used solely to perform the processing functions of a web server, and Powervault Storage servers, used to provide storage for the processing servers through the use of RAID technology (Powervault Storage servers).²¹ On July 28, 2000, SLD issued a Funding Commitment Decision Letter denying funding for FRN 429028.²² Although SLD found that the processing servers were eligible web servers, it concluded that the PowerVault Storage servers were ineligible for discounts.²³ Finding that the ineligible PowerVault Storage servers constituted 30% or more of the request, SLD denied funding for all of FRN 429028.²⁴

7. Western then appealed to SLD.²⁵ Western asserted the Powervault Storage servers, as used in Western's service, were being used to provide storage for eligible web servers.²⁶ On April 27, 2001, SLD denied the appeal.²⁷ It stated:

"It should be noted that Powervault 650F RAID Storage System is a highly scalable fiber channel RAID storage system with dual active redundant controllers. It supports up to 10 internal drives and 11 expansion units. Data storage is not eligible for discount."²⁸

Western then filed the pending Request for Review.

¹⁹ The current Eligible Services List more clearly reflects this limitation, stating that "RAID disk drives are eligible only if used in an eligible component, for an eligible use" SLD website, Eligible Services List (October 18, 2002) <<http://www.sl.universalservice.org/data/pdf/Eligible%20Services%20List%2010-18-02.pdf>>, at 24

²⁰ Request for Review at 2; FCC Form 471, Western Heights School District 41, filed January 12, 2000

²¹ Request for Review at 4; *see also* E-mail from John Harrington, Funds for Learning, to Richard Nyquist, dated March 14, 2000, at Attachment (Service Cost Breakdown).

²² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Joe Kitchens, Western Heights School District 41, dated July 28, 2000, at 6 (Funding Commitment Decision Letter).

²³ *Id.*

²⁴ *Id.*

²⁵ Letter from John Harrington, Funds for Learning, to Schools and Libraries Division, Universal Service Administrative Company, filed August 28, 2000 (SLD Appeal).

²⁶ *Id.* at 1-2

²⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to John Harrington, Funds for Learning, LLC, dated April 27, 2001 (Administrator's Decision on Appeal).

²⁸ *Id.* at 2

8. After reviewing the record, we affirm SLD's decision. SLD must ensure compliance with the Commission's rules, including the restrictions on eligible storage that the Commission has previously established.²⁹ Because the schools and libraries universal service support mechanism has, in recent years, had very limited ability to fund any internal connections requests, it is particularly important that SLD ensure that the limited funds available are used *to* support only those internal connections services that are eligible under program rules.³⁰ In this case; based on the record before it, SLD found that the amount of storage capacity did not reflect a request for storage solely for use as a web server.³¹ The documentation submitted to SLD indicated that the requested web server system would include 24 PowerVault servers with ten 18 Gigabyte drives each.³² Western, with 3,260 students, thus requested a total storage space of approximately 4.3 Terrabytes, more than a Gigabyte of storage per student.³³ To support the eligibility of this storage, Western provided only generalized and unsupported assertions that the storage would be used to support web page service.³⁴ SLD reasonably found that Western's bare assertion that a storage request of this magnitude was solely for eligible web service was implausible and insufficient to demonstrate eligibility.³⁵

9. Western argues that SLD never requested further evidence that the server system would be used solely to support web access, and that, "[i]f due diligence required the SLD to ask for additional certifications to this effect, it could certainly have requested one."³⁶ However, we have held that the ultimate burden of demonstrating eligibility is on the applicant.³⁷ Therefore,

²⁹ 47 C.F.R. § 54.705(a)(1)(iii)

³⁰ In Funding Year 2001, funds were sufficient only for requests from applicants with a discount rate of at least 85%. See SLD website, What's New (August 7, 2001), <<http://www.sl.universalservice.org/whatsnew/082001.asp#080601>>. For Funding Year 2002, SLD has not yet determined whether it will be able to fund any requests from applicants with less than a 90% discount rate. See SLD website, What's New (September 26, 2002), <http://www.sl.universalservice.org/whatsnew/default.asp#092602b>.

³¹ Administrator's Decision on Appeal; Funding Commitment Decision Letter

³² Service Cost Breakdown. More specifically, this breakdown specified that Western would purchase 2 PowerVault 650F servers and 22 PowerVault 630F servers. *Id.* Although the Administrator's Decision on Appeal referenced only the 650F, this was evidently used as a shorthand for both the 630F and the 650F, because its Funding Commitment Decision Letter was based on the ineligibility of all of the PowerVault servers and the 650F alone did not consist of 30% or more of the request. See *id.*; Funding Commitment Decision Letter. In addition, we find no reason in the record to distinguish between the 630F and the 650F for eligibility purposes. We therefore review SLD's funding decision considering both the 630F and the 650F servers requested.

³³ See Western Form 471

³⁴ SLD Appeal at 1-2; Request for Review at 6.

³⁵ As a rough comparative example, SLD personnel have informed us that their entire website occupies approximately 640 Megabytes. Western thus seeks discounts on equipment that provides storage that could hold 6613 of such sites.

³⁶ Request for Review at 6.

³⁷ *Request for Review by Carrollton-Farmers Branch Independent School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No.

applicants have the affirmative burden to provide evidence on any issues of eligibility challenged by SLD. Western has not provided any concrete and specific evidence regarding how it would use the substantial amount of storage requested with either its SLD Appeal or the Request for Review sufficient to demonstrate that the servers will be used solely for eligible purposes. We therefore uphold SLD's determination that Western failed to demonstrate that the Powervault servers were eligible for funding.³⁸

10 We further find that the Powervault servers comprise more than 30% of the funding request. Specifically, the Powervault servers cost \$375,118, or 69% of the total request of \$539,888.³⁹ Because more than 30% of FRN 429028 ~~was~~ properly found to be ineligible, we affirm SLD's decision denying funding for the entire request.

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 Western Heights School District 1-41, Oklahoma City, Oklahoma, on May 10, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matte)
Deputy Chief, Wireline Competition Bureau

SLD-229384, CC Dockets No. 06-45 and 97-21, Order, DA 02-2009, para. 9 (Wireline Comp. Bur. rel. August 27, 2002)

³⁸ Western also argues that web servers should be eligible regardless of whether the storage and processing functions are **provided** in one computer or in multiple computer systems such as Western's. *See generally* Request for Review. Because wither SLD's determination nor our own is based on the fact that the storage here was provided in a computer separate from the computer responsible for processing, we need not address these arguments.

³⁹ *See* Service Cost Breakdown