JUN 13 2003
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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
General Communication, Inc. Anchorage, Alaska	)	SPIN 143001199
	)	
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 12, 2003 **Released: June 13, 2003**

By the Wireline Competition Bureau:

1. Before the Commission is a Request for Review by General Communication, Inc. (GCI), Anchorage, Alaska.[1] GCI seeks review of the decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), dismissing GCI's appeal to SLD as untimely.[2] For the reasons set forth below, we affirm SLD's decision and 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,[4] which is posted to the Administrator's website for all

[1] *Request for Review of the Decision of the Universal Service Administrator by General Communication, Inc.*, CC Docket Nos. 96-45 and 97-21, Request for Review, filed March 29, 2001 (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.

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

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. The dispositive issue here is the timeliness of GCI's appeal to SLD. However, because GCI's arguments that its pleading was timely rest on the fact that the duration of the schools and libraries mechanism's first funding "year," which began on January 1, 1998, was actually eighteen months, we first review how this circumstance arose. The Commission, when it initially established the mechanism in the *Universal Service Order*, concluded that the mechanism's funding year should correspond to the calendar year.[7] In the *Fifth Order on Reconsideration*, released on June 22, 1998, however, the Commission changed the funding year from the calendar year to a fiscal year running from July 1 to June 30.[8] To effect the transition between the calendar year basis of Funding Year 1998 and the fiscal year basis of Funding Year 1999, the Commission directed that, for applications for discounts on telecommunications services and Internet access in Funding Year 1998, the Administrator should provide funding that exceeded the approved amount sufficient to fund the services at the approved monthly rate for the period between January 1, 1999 and June 30, 1999.[9] In contrast, for applications seeking discounts on internal connections, the Commission directed the Administrator to commit only the originally approved amount of funding, but provided that these funds could be utilized during the transition period through June 30, 1999.[10]

4. At issue are 83 Funding Request Numbers (FRNs) in applications from fifteen Alaskan schools and school districts.[11] Each FRN on appeal requested discounts in Funding Year 1998 on services characterized by the applicant as internal connections to be provided by

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[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 (FCC Form 471).

[7] *Universal Service Order*, 12 FCC Rcd at 9057.

[8] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915, para. 8 (1998) (*Fifth Order on Reconsideration*).

[9] *Id.*, para. 12.

[10] *Id.*, para. 13.

[11] The applicants, application numbers, and associated FRNs are listed in Appendix A.

GCI.[12] The FRNs specifically sought discounts for the monthly charges for servers provided by GCI to the schools to support GCI's Internet access service.[13] Each FRN specified monthly and total charges for the service.[14]

5. Between November 1998 and February 1999, SLD issued Funding Commitment Decision Letters on each of the pending applications, granting, with one exception, each appealed FRN in an amount equal to the total discount requested by the applicant in its FCC Form 471, which covered only the costs in 1998.[15] Subsequently, GCI realized that the Funding Commitment Decision Letters had not awarded additional discounts on these FRNs for the monthly costs of the servers during the first six months of 1999.[16] GCI contacted SLD to determine why SLD had not awarded the additional discounts, and was informed that, under the

[12] *See* Appendix A for a complete list of the applications and FRNs at issue.

[13] *See, e.g.*, FCC Form 471, Alaska Gateway School District, filed April 15, 1998 (Alaska Gateway Form 471), at FRN 117391; *see also* Request for Review at 2-3.

[14] *See, e.g.*, Alaska Gateway Form 471 at FRN 117391.

[15] *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to John Rusyniak, Alaska Gateway School District, dated February 25, 1999; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Brett Hill, Lower Yukon School District, dated February 25, 1999; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Chick Beckley, Aleutian East Borough School District, dated February 24, 1999; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Greg Culbert, Yukon-Koyukuk School District, dated February 24, 1999; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Greg Johnson, Bering Strait School District, dated February 18, 1999; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Dennis Niedermeyer, Lake & Peninsula School District, dated February 18, 1999; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Scott VonGemmingen, Yukon Flats School District, dated February 18, 1999; Letters from Schools and Libraries Division, Universal Service Administrative Company, to Isabelle Harrington, Iditarod Area School District, dated February 9 and February 18, 1999 (February 18 Iditarod FCDL); Letters from Schools and Libraries Division, Universal Service Administrative Company, to Karl Kowalski, Northwest Arctic Borough School District, dated February 9 and February 18, 1999 (February 18 Northwest Arctic FCDL); Letter from Schools and Libraries Division, Universal Service Administrative Company, to John Weise, Yupiit School District, dated February 9, 1999; Letters from Schools and Libraries Division, Universal Service Administrative Company, to Jack Detzel, Delta-Greely School District, dated January 26 and February 18, 1999; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Hal Spackman, Mount Edgecumbe High School, dated January 19, 1999; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Terry Bentley, Nenana City School District, dated January 19, 1999; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Dave Piazza, Southwest Region School District, dated January 19, 1999; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Richard Curtis, Tanana City School District, dated November 20, 1998 (collectively, Funding Commitment Decision Letters).

The exception, FRN 70499 in the application from Yukon-Koyukuk, seeking a 60% discount on internal connections, was denied on the grounds that the funding cap would not support internal connections for schools with less than a 62% discount. *See* February 28 Iditarod FCDL. GCI does not address this denial or offer any reason for its failure to timely appeal the decision, nor does GCI dispute SLD's reasons for denying funding, and we therefore do not further address FRN 70499.

[16] Request for Review at 3.

terms of the *Fifth Order on Reconsideration*, only requests for telecommunications services and Internet access services were eligible for such additional funding.[17]

6. GCI then filed an appeal with SLD on July 7, 1999, arguing that the internal connections requests, because they involved recurring costs, should have been granted additional funding for the months from January to June, 1999.[18] Shortly thereafter, SLD issued a decision in each of the affected applications, addressed to the applicant, not GCI, in which SLD dismissed the SLD Appeal as untimely because it was filed more than 30 days after the issuance of the relevant Funding Commitment Decision Letter.[19]

7. For requests seeking review of decisions issued before August 13, 2001 under section 54.720 of the Commission's rules, an appeal must be filed with the Commission or SLD within 30 days of the issuance of the decision as to which review is sought.[20] Documents are considered to be filed with the Commission or SLD only upon receipt.[21]

8. On January 11, 2001, having received no notice of the outcome of its appeal, GCI inquired with SLD to determine the status of the appeal, and, on March 1, 2001, was issued a decision informing it that the appeal had been treated as an "applicant appeal" and dismissed as untimely.[22] GCI then filed the pending Request for Review.

9. We first address the timeliness of the Request for Review before us. We find that, because the SLD Appeal was filed by GCI as an appeal on its own behalf, and because the Administrator's Decisions on Appeal were addressed to the applicants, not to GCI, the Administrator's Decisions on Appeal are not the relevant decisions on appeal for purposes of determining the timeliness of the instant Request for Review.[23] Rather, the decision on appeal to the Commission is the e-mail notification issued to GCI on March 1, 2001, informing GCI that

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[17] *Id.* at 3-4; *see also* E-mail from Gary Porter, gporter@gci.com, to Mickey Revenaugh, dated June 24, 1999 (attached to Request for Review); E-mail from Robert Haga, rhaga@universalservice.org, to Gary Porter, dated June 24, 1999 (attached to Request for Review).

[18] Letter from James R. Jackson, General Communication, Inc., to Schools and Libraries Committee, Universal Service Administrative Company, filed July 7, 1999 (SLD Appeal).

[19] *See, e.g.*, Letter from Schools and Libraries Division, Universal Service Administrative Company, to John Rusyniak, Alaska Gateway School District, dated July 13, 1999 (Alaska Gateway Administrator's Decision on Appeal).

[20] 47 C.F.R. § 54.720.

[21] 47 C.F.R. § 1.7.

[22] *See* E-mail from Mark Moderow, to ewolfhagen@universalservice.org, dated January 11, 2001 (attached to Request for Review); E-mail from ewolfhagen@universalservice.org, to mmoderow@gci.com, dated March 1, 2001 (attached to Request for Review).

[23] *See* Request for Review at 8; *see also* E-Mail from ewolfhagen@universalservice.org, to mmoderow@gci.com, dated March 1, 2001 (stating that "[y]our original appeal letter was treated as an 'applicant' appeal" and that "the letter(s) indicating that it was not timely filed" were sent only to the applicants).

the SLD Appeal had been dismissed.[24] The Request for Review is therefore timely, and we proceed to review on the merits SLD's decisions to dismiss the SLD Appeal as untimely.[25]

10. We find that GCI's SLD Appeal was filed more than 30 days after the issuance of each of the Funding Commitment Decision Letters on appeal.[26] Therefore, we find that SLD correctly concluded that, for each Funding Commitment Decision Letter, the SLD Appeal was untimely under the Commission's regulations.[27]

11. GCI argues that requiring it to respond within 30 days of the Funding Commitment Decision Letters violated its due process right to adequate notice because the Funding Commitment Decision Letters did not give it constitutionally sufficient notice that only 12 months of internal connections service were being funded.[28] GCI notes that, in the Funding Commitment Decision Letters, the FRNs at issue stated that the "funding status" was "COMMITTED-FULL" and that the FRNs had been "approved as submitted."[29] GCI asserts that it had no notice from these statements that funding for the extension period had been denied or of the reasons for the denial, and that GCI did not receive adequate notice until SLD personnel explained in June of 1999 why SLD had not awarded additional internal connections funding.[30] Because the Request for Review was filed within 30 days of this notice, GCI argues, it must be found timely. As set forth below, however, we find that GCI's argument fails first, because GCI had no legal right to notice, and second, because the funding commitment decision letters provide adequate notice of SLD's funding decisions to those parties entitled to notice.

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[24] *Id.*; SLD Appeal.

[25] GCI submitted a Supplement to Request for Review. *See Request for Review of the Decision of the Universal Service Administrator by General Communication, Inc.*, CC Docket Nos. 96-45 and 97-21, Request for Review, filed August 3, 2001 (Supplement). The Supplement fails to raise substantive arguments that were not presented in the Request for Review.

[26] *Compare* Funding Commitment Decision Letters (dating between November 20, 1998 and February 25, 1999) *with* SLD Appeal (filed July 7, 1999).

[27] 47 C.F.R. § 54.720(a); *see also Request for Review by Massachusetts Department of Education, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-149217, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 7768, para. 14 (Com. Car. Bur. 2001) (stating that, under Commission rules, SLD is required to dismiss as untimely any appeal filed more than 30 days after the issuance of the decision being appealed).

[28] Request for Review at 6-8.

[29] Request for Review at 7. Subsequently (after funding had been distributed), the funding status was changed to "funded." *See* Northwest Arctic Funding Commitment Decision Letter. We note that in two applications, FRNs were specified as "471 approved; modified by SLC." *See* February 18 Iditarod FCDL (FRNs 13186, 13236, 13252, 13262, 13269, 13274, and 13193); February 18 Northwest Arctic FCDL (FRNs 24959, 24963, 24968, 24972, 24980, 24982, 24984, 24987, 24991, and 25003). However, the actual amount approved was the amount requested in the applicant's original FCC Form 471. *Id.*

[30] Request for Review at 7-8.

12. We are not persuaded by GCI's argument that the dismissal of the SLD Appeal violated GCI's due process rights. While the individual schools and libraries are entitled to adequate notice of a funding decision, service providers are not.[31] The underlying interest in the discounts that gives rise to notice requirements involving Funding Commitment Decision Letters is solely that of the applicant schools and libraries, not that of indirect beneficiaries such as GCI. The applicants themselves received sufficient notice. The Funding Commitment Decision Letters specified the exact amount of funding awarded, which was equal to the total amount applicants requested in the FCC Forms 471 for the 12-month period of 1998, not the additional six-month period ending in June, 1999.[32] It was therefore clear that SLD was awarding the amount requested and no more, and any applicant that felt that additional funding should have been awarded was given adequate notice of the need to appeal at that time.

13. Applicants frequently contract with a variety of different entities to provide discounted services, and ensuring that all service providers receive proper notice would be wasteful of limited program resources. Indeed, under GCI's rationale of notification for service providers, service providers' subcontractors might similarly be entitled to notice, as might the various schools within a school district where the district has applied for discounted services. We conclude that it is sufficient to provide notice directly to the applicant and allow the applicant to act on that notice if it so chooses. Because applicants ultimately receive the benefits of the support mechanism, or bear the burden of the loss of potential discounts, sufficient incentives exist for applicants to pursue any desired relief following notice.

14. GCI also argues that mere notice of the denial of extended funding was inadequate without a further discussion of the reason why such funding is denied, suggesting that the amount awarded might have been the result of a clerical error.[33] However, as noted above, we find that the basis for the funding decision was sufficiently evident from the Funding Commitment Decision Letters to give applicants a meaningful opportunity to appeal. Further, to the extent that GCI argues that SLD was required to provide express notice in each affected funding decision of the terms of the *Fifth Order on Reconsideration*, we disagree. Here, the Commission determined in the *Fifth Order on Reconsideration* that internal connections requests should not receive any additional funds for the extension period. The Commission then published this decision in the Federal Register, providing legal notice to all parties.[34] Therefore, SLD was not required to re-announce this policy in each affected Funding Year 1998 funding decision.

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[31] Procedural due process protections do not extend to those who suffer merely indirect harms from the government action. *See O'Bannon v. Town Court Nursing Center*, 447 U.S. 773, 787-88 (1980); *Ridder v. Office of Thrift Supervision*, 146 F.3d 1035, 1041 (D.C. Cir. 1998).

[32] *See supra* note 15.

[33] Request for Review at 7-8.

[34] *See* 63 Fed. Reg. 43088, 43089 (August 12, 1998) (6-month extension applies to telecommunications and Internet access only).

15. In sum, we conclude that SLD correctly found the SLD Appeal to be untimely, and uphold SLD's dismissal of the GCI's appeal.

16. 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 General Communication, Inc., Anchorage, Alaska, on March 29, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey

Carol E. Mattey
Deputy Chief, Wireline Competition Bureau

APPENDIX A

Applicant Name:	File No:	Funding Request Nos.:
Alaska Gateway School District	102570	117391, 117411, 117460
Aleutian East Borough School District	70690	73774
Bering Strait School District	35820	36679, 36746, 36784, 36848, 68750, 68798, 68877, 68913, 69024, 69087, 69134, 69265, 69314, 70369
Delta-Greely School District	34217	34496, 34646
Iditarod Area School District	16250	13186, 13193, 13236, 13252, 13262, 13265, 13269, 13274, 13279
Lake and Peninsula School District	14089	11520
Lower Yukon School District	7673	107386, 107407, 160826, 160833, 160841, 160852, 160867, 160873
Mt. Edgecumbe High School	17098	14411
Nenana City School District	109193	124643
Northwest Arctic Borough School District	25442	24959, 24962, 24968, 24972, 24980, 24982, 24984, 24987, 24991, 25033
Southwest Region School District	35567	36338, 36431, 36599, 36635, 36701, 36739, 36772, 36832, 36868, 36911
Tanana City School District	15846	12379
Yukon Flats School District	52918	98051, 98108, 98113, 98125, 98141, 98152, 98166, 98183, 98185, 98189
Yukon-Koyukuk School District	30005	70423, 70499, 70673, 70865, 70902, 70925, 70983, 71002, 71035, 71055, 71081
Yupiit School District	21246	19930