

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
Atlanta C-3 School District) File No. SLD-92325
Atlanta, Missouri)
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: May 16, 2000

Released: May 17, 2000

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Letter of Appeal filed on May 18, 1999 by Atlanta C-3 School District (Atlanta), Atlanta, Missouri, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator). Atlanta seeks review of the SLD's denial of a request for discounts for services under the schools and libraries universal service support mechanism. For the reasons set forth below, we grant Atlanta's appeal, and remand Atlanta's funding application to the SLD for further determination in accordance with this order.

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. The universal service program has been administered to direct support toward the most economically disadvantaged schools and libraries. Under the program's discount matrix, the most economically disadvantaged schools are eligible for the greatest levels of discount. In the Fifth

1 Letter from Gary Nuhn, Atlanta C-3 School District, to Federal Communications Commission, filed on May 18, 1999 (Letter of Appeal).

2 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 47 C.F.R. § 54.507(g).

Reconsideration Order, the Commission established new rules to govern how discounts would be allocated when available funding is less than total demand and a filing window is in effect.⁵ These rules provide that requests for telecommunications and Internet access services for all discount categories shall receive first priority for available funds (Priority One services), and requests for internal connections shall receive second priority (Priority Two services). Thus, when total demand exceeds the total support available, the SLD is directed to give first priority for available funding to telecommunications services and Internet access. Any funding remaining is allocated to the requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.⁶ Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their requests for internal connections. To the extent funds remain, the Administrator would continue to allocate funds for discounts to applicants at each descending single discount percentage, *e.g.*, eighty-nine percent, eighty-eight percent, and so on. During the first funding year (January 1, 1998 - June 30, 1999) of the support mechanism, SLD granted all approved requests for discounts for telecommunications services and Internet access and granted all approved requests for internal connections down to the 70 percent discount level.

3. By letter dated February 24, 1999, SLD denied Atlanta's application for discounts for services.⁷ Specifically, SLD denied Atlanta's request for internal connections, Funding Request Number (FRN) 132190. In the Funding Commitment Decision Letter, SLD explained that requests for discounts for internal connections would not be provided for schools and libraries with discount levels below 70 percent. Because Atlanta's discount level was 67 percent, its request for discounts for internal connections was denied. On March 3, 1999, Atlanta filed a letter of appeal with the Administrator, stating that SLD had erroneously categorized FRN 132190 as a request for discounts for internal connections, rather than one for telecommunications services, as listed in Atlanta's FCC Form 471. Upon review, SLD affirmed its decision to deny FRN 132190.⁸ SLD explained that, because FRN 132190 included internal connection services within the request, the entire funding request was categorized as internal connections in order to avoid the possibility of treating a Priority Two service (internal connections) as a Priority One service (telecommunications services).⁹ In response to the Administrator's Decision on Appeal, Atlanta filed the instant Letter of Appeal, requesting reconsideration of the telecommunications portion of FRN 132190.

⁵ See *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, 14934 at para. 31 (1998) (*Fifth Reconsideration Order*).

⁶ *Id.* at 14938, para. 36. The schools and libraries discount matrix reflects both an applicant's urban or rural status and the percentage of its students eligible for the national school lunch program. 47 C.F.R. § 54.505.

⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kim Bevill, Atlanta C-3 School District, dated February 24, 1999 (Funding Commitment Decision Letter).

⁸ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kim Bevill, Atlanta C-3 School District, dated April 30, 1999 (Administrator's Decision on Appeal).

⁹ Administrator's Decision on Appeal at 1.

4. The record reflects that Atlanta filed its FCC Form 471 on April 14, 1998. The Commission, however, did not release the *Fifth Reconsideration Order* setting out the applicable schools and libraries rules of priority until June 22, 1998. In *Williamsburg-James City*,¹⁰ the Commission determined that, in cases where, as here, an FCC Form 471 was submitted before the establishment of the Commission's rules of priority, applicants could not have been aware of the need to segregate carefully their service requests. Consequently, the Commission held that, in appeals addressing such circumstances, applications should be remanded to SLD for reprocessing, with Priority One and Priority Two services being considered separately on their own merits. We, therefore, remand Atlanta's application to SLD, and direct SLD to reconsider Atlanta's FCC Form 471 and, if warranted, to issue a new funding commitment decision letter providing discounts for all appropriate Priority One services request by Atlanta.¹¹

5. 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 Letter of Appeal filed by Atlanta C-3 School District, Atlanta, Missouri, on May 18, 1999, IS GRANTED.

6. IT IS FURTHER ORDERED that the Administrator IS DIRECTED to implement the decision herein.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau

¹⁰ *Request for Review of the Decision of the Universal Service Administrator by Williamsburg-James City Public Schools*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 20152 (1999) (*Williamsburg-James City*).

¹¹ Whether Atlanta will be entitled to funding for its Priority One services will depend upon the extent that ineligible products and services were included within its request. *See, e.g., Request for Review of the Decision of the Universal Service Administrator by Redwood City School District*, CC Docket Nos. 96-45 and 97-21, Order, DA 99-2616, at para. 5 (Common Carrier Bur. rel. Nov. 22, 1999).