

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
Bonner Springs Unified School District #204
Bonner Springs, Kansas
Federal-State Joint Board on Universal Service
Changes to the Board of Directors
of the National Exchange Carrier
Association, Inc.
File No. SLD 32985
CC Docket No. 96-45
CC Docket No. 97-21

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 July 2, 1999, by Bonner Springs Unified School District #204 (Bonner Springs), Bonner Springs, Kansas, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).1 Bonner Springs seeks review of the SLD's denial of its application for discounts under the schools and libraries universal service support mechanism.2 For the reasons set forth below, we grant in part and deny in part the Letter of Appeal.

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 universal service program has been administered to direct support toward the most economically disadvantaged schools and libraries. Under the program's discount matrix, the

1 See Letter of Appeal of Ken Clark, Bonner Springs Unified School District #204, to Federal Communications Commission, filed July 2, 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.

most economically disadvantaged schools are eligible for the greatest levels of discount.<sup>4</sup> In the *Fifth Reconsideration Order*, the Commission established new rules to govern how discounts will be allocated when available funding is less than total demand and a filing window is in effect.<sup>5</sup> 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.<sup>6</sup> 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 18, 1999, the SLD denied Bonner Springs' request for discounts, stating that the telecommunications services identified in its application were re-classified as internal connections.<sup>7</sup> The SLD determined that, because Bonner Springs was only eligible for discounts below the 62 percent level, Bonner Springs' request for discounts for internal connections could not be granted as internal connections were only funded at the 70 percent level or above.<sup>8</sup> Bonner Springs requested reconsideration of SLD's decision by letter, filed March 15, 1999.<sup>9</sup> On June 4, 1999, the SLD affirmed its initial funding decision, indicating that services listed by Bonner Springs as telecommunications services included charges for internal connections services, specifically, installation of an integrated data and video system.<sup>10</sup>

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<sup>4</sup> 47 C.F.R. § 54.507(g).

<sup>5</sup> 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, para. 31 (1998) (*Fifth Reconsideration Order*).

<sup>6</sup> *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.

<sup>7</sup> Letter from the Universal Service Administrative Company, to Ken Clark, Bonner Springs Unified School District #204, dated February 18, 1999.

<sup>8</sup> *Id.*

<sup>9</sup> Letter from Ken Clark, Bonner Springs Unified School District #204, to Schools and Libraries Corporation, filed March 15, 1999 (March 15, 1999 Letter).

<sup>10</sup> Letter from Universal Service Administrative Company to Ken Clark, Bonner Springs Unified School District #204, dated June 4, 1999 (Administrator's Decision on Appeal).

It further indicated that where a particular funding request included some internal connections, the entire funding request was recategorized by SLD as internal connection services so as to "avoid the possibility of treating Priority Two services (internal connections) as Priority One services (telecommunications, dedicated and Internet access services)."<sup>11</sup> SLD reiterated that, because Bonner Springs had not shown a discount level of 70 percent or above, internal connection services could not be supported for year one of the program. In response, Bonner Springs filed the instant Letter of Appeal, again requesting reconsideration of SLD's decision to classify the requested services as internal connections rather than telecommunications services. Bonner Springs states that its application requested funding for the provision of telecommunications services for wide area network ("WAN") connectivity through leased lines, and that it did not request funding for equipment that could be construed as internal connections.<sup>12</sup>

4. A review of the record reveals that Bonner Springs' March 15, 1999 letter enclosed an addendum describing the services to be provided in connection with its request. Contrary to Bonner Springs' contentions, the addendum states, *inter alia*, that support and maintenance for internal connections are included in the costs for service listed.<sup>13</sup> The addendum also specifically states that the service provider's proposed one time fees help cover the costs of items such as routers, multiplexers, switches, installation, and servers.<sup>14</sup> These items constitute internal connections. Accordingly, we affirm SLD's determination that Bonner Springs' application included a request for discounts for internal connection services.

5. In finding that SLD was correct in concluding that Bonner Springs' request for discounts covered internal connections, we must also determine whether or not Bonner Springs' application should have been denied in its entirety because requests for discounts for telecommunications services and internal connections were commingled within a single funding request. The SLD denied funding for all of the Priority One services in the disputed request pursuant to the rules of priority set out in the *Fifth Reconsideration Order*.

6. The record reflects, however, that Bonner Springs filed its FCC Form 471 on April 25, 1998. The Commission 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*,<sup>15</sup> 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

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<sup>11</sup> *Id.*

<sup>12</sup> Letter of Appeal at 2.

<sup>13</sup> March 15, 1999 Letter, Addendum at 1.

<sup>14</sup> *Id.*, Addendum at 2.

<sup>15</sup> *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*).

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separately on their own merits. We, therefore, remand Bonner Springs' application to SLD, and direct SLD to reconsider Bonner Springs' FCC Form 471 and, if warranted, to issue a new funding commitment decision letter providing discounts for all appropriate Priority One services requested by Bonner Springs.<sup>16</sup>

7. 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 Bonner Springs Unified School District #204, Bonner Springs, Kansas on July 2, 1999 IS GRANTED to the extent described herein and is otherwise DENIED.

9. 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

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<sup>16</sup> Whether Bonner Springs 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).