

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review)	
of the Decision of the)	
Universal Service Administrator by)	
)	
Franklin County Public Schools)	SLD-115024
Rocky Mount, VA)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: September 6, 2000

Released: September 7, 2000

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Letter of Appeal filed by the Franklin County Public Schools (Franklin County), of Rocky Mount, Virginia, on February 25, 2000.¹ Franklin County seeks review of a funding commitment decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator) pursuant to a funding request for dedicated services.² For the reasons set forth below, we remand Franklin County’s appeal to SLD and direct SLD to take action on Franklin County’s Year 2 funding request consistent with the provisions of 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.³ Schools and

¹ Letter from Leonard A. Gereau, Superintendent, Franklin County Public Schools, to Federal Communications Commission, filed February 25, 2000 (Letter of Appeal).

² See Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Joe Gann, Franklin County Public Schools, issued January 31, 2000 (SLD Appeal Determination Letter); Letter from Schools and Libraries Division to Joe Gann, Franklin County Public Schools, issued July 8, 1999 (Funding Commitment Letter).

³ 47 C.F.R. §§ 54.402, 54.503.

libraries must apply for support each funding year.⁴ In order to receive discounts on eligible services, the Commission's rules require that an applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth the school's technological needs and the services for which it seeks discounts.⁵ Once the school has complied with the Commission's competitive bidding requirements and signed a contract for the eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the school has signed the contract, and an estimate of funds needed to cover the discounts to be given for eligible services.⁶ This information is generally provided in Block 5 of FCC Form 471. Among other information, Block 5 requires the applicant to indicate the date the contract was awarded, the expiration date of the contract, the service start date, the estimated monthly pre-discount cost, the estimated total annual prediscount cost, and the percentage discount for which the school is qualified pursuant to the discount matrix.

3. At issue here is SLD's denial of support to Franklin County for the Year 2 funding year, which began July 1, 1999, and ended on June 30, 2000. On March 17, 1999, Franklin County filed its Form 471 with SLD.⁷ In its Form 471, Franklin County indicated that it would receive "Internet Service and Access" for the Year 2 funding year, pursuant to a contract with Interlink Communications Partners, LLP (Interlink).⁸ In its Form 471 attachments, Franklin County included a summary of the monthly costs for Internet access to be provided by Interlink, at a "total recurring cost" of \$4,250 a month, for a total pre-discount funding amount of \$51,000 for the Year 2 funding year.⁹ In this summary, Franklin County indicated that \$3,850 of the \$4,250 monthly charge would be for "cable modem costs by site."¹⁰ On July 8, 1999, SLD issued to Franklin County a Funding Commitment Letter in which it indicated that Franklin County's request for support for Year 2 Internet access services were denied, on the basis that "a significant portion of this FRN includes a request for Cable Modems which is an ineligible product(s) based

⁴ 47 C.F.R. § 54.507(d).

⁵ 47 C.F.R. § 54.504(b)(1), (b)(3). In submitting its FCC Form 470, an applicant is required to provide only general information about the services for which it seeks discounts, *e.g.*, number of phones that require service, number of dial-up connections necessary, as well as an assessment of the applicant's existing technology that may be necessary for the effective use of eligible services.

⁶ 47 C.F.R. § 54.504(c).

⁷ Franklin County Public Schools Year 2 Form 471 Filing, application no. 115024, filed March 17, 1999 (Franklin County Form 471).

⁸ Franklin County Form 471, Attachment, Appendix A, Page 1 (Block 5, Item 17 explanation).

⁹ Franklin County Form 471, Attachment, Appendix A, Page 2.

¹⁰ Franklin County Form 471, Attachment, Appendix A, Page 2.

on program rules.”¹¹

4. Franklin County filed an appeal of this decision with SLD on August 3, 1999, and included a letter from Cablevision Communications, Inc. (Cablevision), an Interlink division, asserting that SLD had erroneously interpreted Franklin County’s Form 471.¹² Specifically, Cablevision stated that while it appears the proposal could have been “misconstrued to represent that the cost of the cable modems was included in the request for funding,” in reality “the amount billed to the schools is clearly for Internet access – not hardware.”¹³ On January 31, 2000, SLD denied Franklin County’s appeal, stating that “[t]he Item 17 attachments you provided in support of your original Form 471 application showed that 30% or more of the FRN included cable modem cost instead of the cable modem access service cost, which resulted in the denial of the entire amount of the FRN.”¹⁴

5. Franklin County now requests that the Commission overturn SLD’s decision on its August 3, 1999 appeal, and direct SLD to award it support for the Internet access services it has received from Interlink.¹⁵ In support of its appeal before the Commission, Franklin County argues that SLD misconstrued its application and its SLD appeal, and that its appeal to SLD made clear that substantially less than 30 percent of the recurring charges for Internet access was attributable to ineligible items.¹⁶ Franklin County also argues that any marginal cost for the cable modems should be considered as costs for leased equipment, and the cost of the lease should be deducted from the pre-discount funding request for services.¹⁷ Franklin County states that the total “lease” cost would be \$91.63 of \$3,350.05 of eligible monthly recurring charges.¹⁸

6. We find that the information submitted by Franklin County suggests that the large majority of the funding sought by Franklin County was for eligible recurring charges for Internet

¹¹ See Funding Commitment Letter. An applicant’s FCC Form 471 may contain several different funding requests, for different types of services or for services to be provided by different service providers. SLD assigns a “Funding Request Number,” or FRN, to each individual funding component in the application.

¹² Letter of Florella H. Johnson, Associate Superintendent, Franklin County Public Schools, to Schools and Libraries Division, dated August 3, 1999 (SLD Appeal).

¹³ Letter of Chuck Flournoy, Cablevision Communications, to Schools and Libraries Division, dated July 28, 1999.

¹⁴ See SLD Appeal Determination Letter.

¹⁵ See Letter of Appeal, *passim*.

¹⁶ Letter of Appeal at 2. Cablevision states that, based on a three-year depreciation schedule, the cost of cable modems is \$8.33 per month per site, well below the 30% threshold set by SLD for ineligible services. Letter of Randolph Coleman, Cablevision, to Joe N. Gann, Franklin County, dated February 9, 2000, included in Franklin County’s Letter of Appeal as Attachment E.

¹⁷ Letter of Appeal at 2-3.

¹⁸ Letter of Appeal at 3.

access services. We find, therefore, that Franklin County's appeal should be granted, and we remand this appeal to SLD with the direction that SLD reconsider Franklin County's funding request. As a general matter, in light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of clearly explaining the purposes to which the funding they request will be put. In this case, however, while Franklin County's Form 471 was vague, we believe nonetheless that it was unreasonable to assume that the majority of the \$4,250 monthly charge labeled as "recurring costs" was for hardware costs alone. Because SLD incorrectly determined that the funding request from Franklin County was for ineligible services or products, Franklin County's request for review is granted, and SLD is directed to reconsider Franklin County's funding request.

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 February 25, 2000, by Franklin County Public Schools, Rocky Mount, Virginia, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau