

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

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Cleveland Municipal School District)	File No. SLD-190883
Cleveland, Ohio)	Funding Request No. 421840
)	
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: August 15, 2001

Released: August 16, 2001

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Request for Review filed by the Cleveland Municipal School District (Cleveland Municipal), Cleveland, Ohio, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). The decision under review granted in part Cleveland Municipal's application for Year 3 funding pursuant to the schools and libraries universal service support program.¹ Cleveland Municipal's Request for Review challenges SLD's decision not to grant Funding Request Number (FRN) 421840, which seeks funding for file servers. For the reasons discussed, we deny the Request for Review and affirm SLD's decision.

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.² 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 Letter from Nathaniel Hawthorne, Esq., on behalf of Cleveland Municipal School District, Cleveland Ohio, to Federal Communications Commission, filed November 13, 2000 (Request for Review).

² 47 C.F.R. §§ 54.502, 54.503.

potential competing service providers to review.³ 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.⁴ SLD subjects each FCC Form 471 application that it receives to a Program Integrity Assurance (PIA) review and issues funding commitment decisions in accordance with the Commission's rules.⁵

3. On January 20, 2000, Cleveland Municipal filed an FCC Form 471 application seeking Year 3 funding.⁶ One of its funding requests, FRN 421840, requested funding for 4 IBM file servers, with a pre-discount cost of \$1,700,000.⁷ The servers were to provide a number of functions, acting as web servers, hosting the domain name of Cleveland Municipal, and hosting an application known as the "Student Data Warehouse."⁸ In its Request for Review, Cleveland Municipal describes this application in following terms: "The student data warehouse servers store data which consists of student records, teacher records concerning student grades, student evaluations, and student addresses, telephone numbers, any discussions with students, parents/guardians about student learning issues, [and] student progress reports."⁹

4. Documentation provided with Cleveland Municipal's FCC Form 471 explains that the need for the database server is to provide a central storage device for this data which teachers from any member school can easily access: "In a large urban district such as Cleveland, there is a very large student mobility. This mobility, (as much as 2000 student changes per day) creates a need for a repository of student information that can be easily accessed by teachers and not dependent on what school the student is enrolled."¹⁰

³ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (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 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 (Nov. 2, 2000).

⁴ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471).

⁵ See Universal Service Fund Schools and Libraries Program Description for the 2000-2001 Funding Year, issued October, 1999, at 11; *Request for Review by Metropolitan School District of Pike Township, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-120821, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 13891, para. 2 (rel. 2000).

⁶ FCC Form 471, Cleveland Municipal School District, App. No. 190883, filed January 20, 2000 (FCC Form 471).

⁷ The request includes the actual servers and certain intended components of the servers purchased separately, such as SCSI controllers. See FCC Form 471, attachment, "Attachment for E-mail, Web Servers and Student Data Warehouse."

⁸ *Id.*

⁹ Request for Review at 2.

¹⁰ FCC Form 471, attachment, "Attachment for E-mail, Web Servers and Student Data Warehouse," at 2.

5. On October 13, 2000, SLD issued a funding decision which, *inter alia*, denied FRN 421840 on the grounds that “30% or more of this FRN includes a request for STUDENT DATA WAREHOUSES which is an ineligible product(s)/service(s) based on program rules.”¹¹ Cleveland Municipal appealed this decision directly to the Commission.

6. Applicants may only seek support for eligible services.¹² The instructions for the FCC Form 471 clearly state: “You may not seek for ineligible service, entities, and uses.”¹³ 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.”¹⁴ 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.¹⁵ An applicant can avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services.

7. File servers are conditionally eligible products. In the *Universal Service Order*, the Commission held that a file server would be classified as a component of internal connections, and thus potentially eligible for discount funding, only if the server “is an essential element in the transmission of information within the school or library.”¹⁶ Consistent with this

¹¹ Letter from Schools and Libraries Division, Universal Service Administrative Co., to Cleveland City School District, dated October 13 2000, at 8 (Funding Commitment Decision Letter).

¹² 47 C.F.R. § 54.504 *et seq.*

¹³ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471) (September 1999) at 18 (Form 471 Instructions).

¹⁴ Form 471 Instructions at 23.

¹⁵ See *Request for Review of the Decision of the Universal Service Administrative Company by Ubyly 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, DA 00-1517 (Com. Car. Bur. rel. July 10, 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.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, DA 00-2630, para. 8 (Com. Car. Bur. rel. November 24, 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 Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 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 without expending significant fund resources working with applicants that, for the most part, are requesting funding of ineligible services.

¹⁶ *Universal Service Order*, para. 459.

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.”¹⁷ 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”¹⁸ In a subsequent Public Notice, the Bureau reaffirmed that we support such servers because they are “needed to switch and route messages within a school or library.”¹⁹ Thus, to determine whether any file server is eligible for funding as a component of the applicant’s internal connections, we look to whether the server is needed as a conduit for information.

8. We find that the Student Data Warehouse servers clearly fail to satisfy that test. These database servers act as the source of content, not as conduits for content which originates elsewhere. Hence, they are not providing “internal connections” as that term was defined in the *Universal Service Order*. Accordingly, we affirm SLD’s conclusion that Student Data Warehouse servers are ineligible products.

9. We note that the proposed servers requested by Cleveland Municipal would perform other functions besides acting as host for the Student Data Warehouse. However, we need not determine whether these other functions are fundable. Assuming this is the case, we would still deny the request in full. In the *Universal Service Order*, the Commission held that “schools and libraries may not receive support for contracts that provide only a single price for a package that bundles services eligible for support with those that are not eligible for support. Schools and libraries may contract with the same entity for both supported and unsupported services and still receive support only if any purchasing agreement covering eligible services specifically prices those services separately from ineligible services so that it will be easy to identify the purchase amount that is eligible for a discount.”²⁰ The Commission specifically noted as an example of an improper request the case of an eligible file server which is also “built to provide storage functions to supplement personal computers on the network.”²¹ That is precisely the case here, and accordingly, under the *Universal Service Order*, the entire request must be denied.

¹⁷ *Universal Service Order*, para. 460 (emphasis added).

¹⁸ *Id.* (emphasis added). Another good 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 and were upheld as eligible in the pending application. *See*

¹⁹ Public Notice, *Common Carrier Bureau Reiterates Services Eligible For Discounts To Schools and Libraries*, CC Docket No. 96-45, DA 98-1110, 13 FCC Rcd 16570, n.2 (Com. Car. Bur. rel. 1998).

²⁰ *Universal Service Order*, para. 462.

²¹ *Universal Service Order*, para. 461.

10. 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 on November 13, 2000 by Cleveland Municipal School District, seeking review of FRN 421840, is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau