

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

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Richland Parish School District)	File No. SLD-127412
Rayville, Louisiana)	
)	
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 27, 2001**Released: August 28, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by Richland Parish School District (Richland Parish), Rayville, Louisiana.¹ Richland Parish seeks review of SLD's partial denial of its Funding Year 2 application for discounts under the schools and libraries universal service mechanism.² For the reasons discussed below, we grant the Request for Review and remand to SLD for further consideration.

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 In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.⁴ Once the applicant has

¹ Letter from John Sartin, Richland Parish School District, to Federal Communications Commission, filed May 10, 2000 (Request for Review).

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. §§ 54.504(b)(1), 54.504(b)(3).

complied with the Commission's competitive bidding requirements and entered into an agreement for 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 applicant has entered an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵

3. Applicants may only seek support for eligible services.⁶ The instructions for the FCC Form 471 clearly state: "YOU MAY NOT SEEK SUPPORT FOR INELIGIBLE SERVICES."⁷ 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."⁸ 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 thirty percent of the total.⁹ An applicant can avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services.

4. On April 5, 1999, Richland Parish submitted a Funding Year 2 FCC Form 471, which included several funding requests.¹⁰ At issue here is Funding Request Number (FRN)

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. §§ 54.504 *et seq.*

⁷ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (September 1999), at 18 (FCC Form 471 Instructions).

⁸ FCC Form 471 Instructions at 23.

⁹ *See Request for Review of the Decision of the Universal Service Administrative Company by Uby 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, 15 FCC Rcd 23,267 (Com. Car. Bur. rel. 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, 15 FCC Rcd 25610, para. 8 (Com. Car. Bur. rel. 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 less than 30 percent of the request is for funding of ineligible services, SLD normally will consider the application and issue a funding commitment for the eligible services. If 30 percent or more of the request is for funding of ineligible services, SLD will deny the funding request 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 are requesting funding of ineligible services.

¹⁰ FCC Form 471, Richland Parish School District, filed April 5, 1999.

188457, which requested discounted internal connections from Send Technology, L.L.C.¹¹ In an attachment to its FCC Form 471, Richland Parish indicated that FRN 188457 was for “Network Support Services” in the amount of \$75 per hour at 40 hours per week for 52 weeks.¹²

5. On August 24, 1999, SLD issued a Funding Commitment Decision Letter that, *inter alia*, denied funding for FRN 188457 on the grounds that network support service “is an ineligible service based on program rules.”¹³ On September 20, 1999, Richland Parish filed an appeal with SLD, asserting that its contract for “network support services” was primarily a contract for the installation of the network hardware and wiring being purchased in Richland Parish’s other Funding Year 2 FRNs.¹⁴

6. On April 11, 2000, SLD denied the appeal, stating that “[t]he information you provided as an item 17 attachment describing services requested on the Form 471 referenced above indicated that the service you were requesting was “[n]etwork [s]upport [s]ervices,” which is ineligible for funding.”¹⁵ Richland Parish then filed the pending Request for Review.

7. Recurring network support services such as network “maintenance, monitoring and management, and coordination of network status” are ineligible for discounts.¹⁶ Conversely, the cost of installing eligible network equipment is eligible for discounts.¹⁷ Here, although SLD reasonably concluded in its initial review that the “network support services” at issue consisted of the former, ineligible management service, we find that the information supplied by Richland Parish in its appeal to SLD clarified that its request was in fact largely for eligible services. We note that, in the Administrator’s Decision on Appeal, SLD did not consider this information, relying entirely on the documentation supplied with the FCC Form 471. Although we do not

¹¹ *Id.* at 5.

¹² *Id.*, attachment.

¹³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeanie S. Green, Richland Parish School District, dated August 24, 1999, at 5.

¹⁴ Letter from Bonnie Adams, Richland Parish School Board, to Schools and Libraries Division, Universal Service Administrative Company, filed September 20, 1999, at 1-2.

¹⁵ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jeanie S. Green, Richland Parish School District, dated April 11, 2000, at 1.

¹⁶ See SLD Web Site, Eligible Services List, <http://www.sl.universalservice.org/data/pdf/EligibleServicesList_12_29_00.pdf> (Eligible Services List)(noting that “Network Management Systems” are ineligible, and also that “On-Site Technical Support” is ineligible except for the installation, maintenance or changes to eligible services under contract); see also *Request for Review by New Albany-Floyd County Consolidated School Corp., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133549, CC Dockets No. 96-45 and 97-21, Order, DA 01-798 (Com. Car. Bur. rel. March 30, 2001) (finding that network management services were not properly classified as Internet access, internal connections or telecommunications).

¹⁷ See Eligible Service List (providing that eligible services include the labor charges “incurred for the installation and contractual maintenance of eligible . . . Internal Connections” as well as “System Improvements and Upgrades”).

allow applicants to submit new information for purposes of correcting an error in their application after a funding decision has been made, an applicant may submit new information for purposes of clarifying an ambiguity in the record, at least where SLD did not previously give the applicant notice of the issue and opportunity to submit evidence supporting their position.¹⁸

8. Here, we find that Richland Parish's use of the term, network "support" services, was ambiguous and that Richland Parish's information on appeal should have been considered. Richland Parish's Appeal to SLD clarified that a large portion of the network services that they purchased are costs for the installation of eligible network equipment and upgrades to eligible equipment, both eligible services.¹⁹ Moreover, the record shows that SLD did not give Richland Parish notice of the issue or an opportunity to address it. Consequently, we feel that it is appropriate to remand this matter to SLD.

9. However, Richland Parish also conceded in its Appeal to SLD that some portion of FRN 188457 is not installation but "pure" network support, which would not be eligible. Under program procedures, where a request includes both eligible and ineligible services, the eligible portion may be funded so long as the ineligible portion is less than 30% of the total.²⁰ We therefore remand to SLD to determine, in light of Richland Parish's information on appeal and consistent with this decision, what portion of the request is ineligible and to process the request appropriately.

¹⁸ See *Request for Review by New Kensington-Arnold School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-28754, CC Dockets No. 96-45 and 97-21, Order, DA 99-2956 (Com. Car. Bur. rel. December 21, 1999) (noting that documentation was considered by SLD on appeal for purposes of clarifying whether request included ineligible services); *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, DA 01-855, para. 6 (Com. Car. Bur. rel. April 10, 2001) (noting SLD procedure of disallowing "new information, on appeal, unless there is evidence in the file that the applicant was not given the opportunity to provide [SLD] with documentation during the review process" and affirming SLD's application of the procedure).

¹⁹ See para. 7, *supra*; see also Eligible Service List (providing that eligible services include "System Improvements and Upgrades").

²⁰ See para. 3, *supra*.

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 by Richland Parish School District, Rayville, Louisiana, on May 10, 2000 is GRANTED and this application is remanded to SLD for further action consistent with this opinion.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
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Common Carrier Bureau