

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
Most Holy Trinity School
Brooklyn, New York
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.
File No. SLD-161422
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: October 19, 2001

Released: October 23, 2001

By the Common Carrier Bureau:

1. Before the Common Carrier Bureau (Bureau) is a Request for Review filed by the Most Holy Trinity School (MHT), Brooklyn, New York, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). MHT seeks review of SLD's denial of one of MHT's Funding Year 3 requests for discounts under the schools and libraries universal service mechanism. For the reasons discussed below, the Request for Review is denied.

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 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 potential competing service providers to review. After the FCC Form 470 is posted, the

1 Letter from Philip McHugh, Most Holy Trinity School, to Federal Communications Commission, filed March 22, 2001 (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 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-

applicant must wait at least 28 days before entering an agreement for services and submitting a FCC Form 471, which requests support for eligible services.⁵ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. In the *Fifth Reconsideration Order*, the Commission established rules to govern how discounts would be allocated when total demand exceeds the amount of funds available and a filing window is in effect.⁶ These rules provide that requests for telecommunications and Internet access service 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).⁷ Thus, when total demand exceeds the total support available, SLD is directed to give first priority for available funding to telecommunications service and Internet access.⁸ Any funding remaining is allocated to requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.⁹ Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their request for internal connections. To the extent that funds remain, the Administrator would continue to allocate funds for discounts to eligible applicants at each descending single discount percentage, e.g., eighty-nine percent, eighty-eight percent, and so on until there are no funds remaining.¹⁰ In Funding Year 3, funding of discounted internal connections was available only for schools with discount rates of 82% or higher.¹¹

4. In Funding Year 3, in an effort to ensure that the priority rules were not violated, SLD implemented a review procedure of reclassifying a request that the applicant designated telecommunications or Internet access (Priority One) as one seeking Priority Two services if any

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 (November 2, 2000).

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

⁶ *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 (1998) (*Fifth Order on Reconsideration*).

⁷ 47 C.F.R. §§ 54.502, 54.503.

⁸ The annual cap on federal universal service support for schools and libraries is \$2.25 billion per funding year. *See* 47 C.F.R. § 54.507(a).

⁹ *Fifth Order on Reconsideration*, 13 FCC Rcd at 14938, para. 36.

¹⁰ 47 C.F.R. § 54.507(g)(1)(iii).

¹¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rule Making and Order, FCC 01-143, n.13 (rel. April 30, 2001) (*Further Notice of Proposed Rulemaking*).

portion of the services requested were found to be Priority Two.¹² Absent such a procedure, SLD would be unable to act on funding requests that mixed Priority One and Priority Two services until Priority Two availability could be determined with certainty. This, in turn, would create a substantial backlog of application reviews late in the Funding Year 3 application review period, potentially causing funding delays injurious to applicants.¹³

5. In MHT's Funding Year 3 FCC Form 471, it requested, in Funding Request Number (FRN) 313503, support for telecommunications services to be provided by Metrocon Communications, Inc. (Metrocon), with a monthly pre-discount cost of \$470.00 and a one-time cost of \$895.00.¹⁴ The total pre-discount cost for the request was reported as \$6,535.00.¹⁵ Documentation accompanying the FCC Form 471 further specified that the \$895.00 was for a backup router and \$470.00 per month was to maintain previously funded T-1 line internet access.¹⁶ On June 9, 2000, SLD issued a Funding Commitment Decision Letter that classified FRN 313503 as internal connections and denied funding.¹⁷

6. MHT then appealed to SLD, asserting that although the request for the router should not have been included in FRN 313503, the \$470.00 per month portion of the request for the T-1 line should still be granted, although as Internet access rather than telecommunications.¹⁸ On March 8, 2001, SLD denied the appeal.¹⁹ It found first that the router was an internal connections service.²⁰ SLD then stated that because the request included some internal

¹² See SLD Web Site, <http://www.sl.universalservice.org/reference/471_App_Guid_Docs/471_dozen.asp> (last updated April 15, 1999) ("To correctly apply the Rules of Priority (fund Telecommunications and Internet Access first, then Internal Connections beginning with neediest), SLD must 'scrub' telecommunications and Internet Access requests to assure no Internal Connections are included. A piece of equipment at the user's location listed in one of these categories risks having the entire service redefined as Internal Connections."); see also SLD Web Site, <<http://www.sl.universalservice.org/reference/ServCategories.asp>> (describing review procedure used in Funding Year 3 and new procedure applied in Funding Year 4).

¹³ See SLD Web Site, <<http://www.sl.universalservice.org/reference/ServCategories.asp>> ("While some applicants might prefer to wait until they know for sure whether funding will be sufficient to fund Internal Connections . . . SLD must process tens of thousands of applications and cannot leave these decision until the end and still meet its goal of notifying applicants of the decisions on their requests before the start of the fund year.").

¹⁴ FCC Form 471, Most Holy Trinity School, filed January 3, 2000 (Year 3 Form 471), at 3.

¹⁵ *Id.*

¹⁶ Year 3 Form 471, Appendix MHTS #4.

¹⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Phil McHugh, Most Holy Trinity School, dated June 9, 2000 (Funding Commitment Decision Letter), at 6.

¹⁸ Letter from Phil McHugh, Most Holy Trinity School, to Schools and Libraries Division, Universal Service Administrative Company, filed June 19, 2000 (Appeal to SLD), at 1.

¹⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Phil McHugh, Most Holy Trinity School, dated March 8, 2001 (Administrator's Decision on Appeal).

²⁰ *Id.* at 1-2.

connections services, the entire request would be re-characterized as internal connections.²¹ It concluded that MHT was not eligible for internal connections in Funding Year 3 because it was entitled to a discount rate of only 80% based on the discount matrix.²² MHT then timely filed the pending Request for Review.

7. In its Request for Review, MHT does not present any specific argument for overturning SLD's decision, but merely reasserts its request that the part of FRN 313503 that consists of Priority One services (the \$470.00 per month for a T-1 line) should be reviewed separately as Priority One and funded.²³

8. After consideration, we uphold SLD's decision in Funding Year 3 to characterize a request as Priority Two if the request contained any Priority Two services. The Commission's regulations authorize SLD to establish rules and procedures for the administration of the schools and libraries support application process in an efficient and effective manner, including procedures for the review of applications and the implementation of the Commission's rules of priority.²⁴ We find that SLD's operating procedure for mixed priority requests was a reasonable exercise of its authority.²⁵

9. We further find that SLD correctly applied this procedure in the instant application when it reclassified FRN 313503 as internal connections. The record demonstrates that FRN 313503 included \$895.00 for the purchase of a router, which constitutes internal connections, not telecommunications or Internet access service.²⁶ Thus, based on the inclusion of the router, SLD correctly reclassified the request as Priority Two internal connections.

²¹ *Id.* at 2.

²² *Id.*

²³ Request for Review at 1-2.

²⁴ See 47 C.F.R. §§ 54.701(a), 54.702, 54.705(a)(iii), 54.705(a)(vii).

²⁵ While the application of this procedure leads to a denial of funding in this instance, that result could have been avoided by submitting two separate funding requests, one for the Priority One services, and the second for the Priority Two services. In *Request for Review by Williamsburg-James City County Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-90495, CC Dockets No. 96-45 and 97-21, 14 FCC Rcd 20152 (1999), the Commission reviewed whether SLD's priority review procedure should be applied to applications filed before the issuance of the *Fifth Reconsideration Order* and thus before the applicant had notice of the Commission's priority rules and "the need to carefully segregate its service requests . . ." *Id.* at para. 6. The Commission decided that "[u]nder these circumstances, . . . the Priority One and Priority Two services . . . should be considered separately . . ." *Id.* at para. 6 (emphasis added). Thus, the Commission implicitly affirmed the use of SLD's review procedure where, as here, the application was not filed until after the Commission's priority rules had been established.

²⁶ *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc., of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the Universal Service Administrator, 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, 14 FCC Rcd 13734, para. 39 (1999) (*Tennessee Order*).

10. Finally, SLD correctly determined that MHT was not eligible for internal connections. In Funding Year 3, internal connections were funded for schools and libraries with at least an 82% discount rate.²⁷ MHT was entitled to only an 80% discount rate.²⁸ We therefore deny the Request for Review.

11. 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 March 29, 2001, by the Most Holy Trinity School, Brooklyn, New York is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau

²⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rule Making and Order, FCC 01-143, n. 13 (rel. April 30, 2001).

²⁸ Year 3 Form 471, at 3.