

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

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Elmont Public Library)	File No. SLD-199353
Elmont, New York)	
)	
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: October 30, 2001

Released: October 31, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by the Elmont Public Library (Elmont), Elmont, New York, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Elmont seeks review of SLD's denial of its Funding Year 3 application for discounts under the schools and libraries universal service mechanism.² For the reasons discussed below, 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.³ 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 Frank Marino, Elmont Public Library, to Federal Communications Commission, filed February 20, 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.

potential competing service providers to review.⁴ 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.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 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 (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*).

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 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 The Common Carrier Bureau has previously found this SLD operating procedure for evaluating mixed priority requests to be a reasonable exercise of its authority.¹⁴ Accordingly, we affirm the practice here.

5. On March 7, 2000, Elmont filed a Funding Year 3 application with one request, Funding Request Number (FRN) 434574, seeking \$17,088.00 for Internet access.¹⁵ On April 14, 2000, SLD issued a Funding Commitment Decision Letter denying FRN 434574, finding that it constituted a request for internal connections and that the “[f]unding cap will not provide for Internal Connections less than 81% discount to be funded.”¹⁶ Elmont appealed to SLD on April 20, 2000.¹⁷ Elmont conceded that because its Funding Year 3 discount was 56% based on the discount matrix, it was not eligible for internal connections, but it asserted that its funding request was for T-1 Internet access, not internal connections.¹⁸ It submitted a copy of its service

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 *Request for Review by Most Holy Trinity, 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 Dockets No. 96-45 and 97-21, Order, DA 01-2456 (Com. Car. Bur. rel. October 22, 2001). We note that, 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.

¹⁵ FCC Form 471, Elmont Public Library, filed March 7, 2000 (Elmont Form 471), at 2.

¹⁶ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Frank Marino, Elmont Public Library, dated April 14, 2000 (Funding Commitment Decision Letter), at 5. Later, SLD determined that it could not fund discounts beyond the 82% discount level. Letter from Schools and Libraries Division, Universal Service Administrative Company, to Frank Marino, Elmont Public Library, dated February 1, 2001 (Administrator’s Decision on Appeal), at 1-2.

¹⁷ Letter from Frank Marino, Elmont Public Library, to Schools and Libraries Division, Universal Service Administrative Company, filed April 20, 2000 (Appeal to SLD), at 1.

¹⁸ *Id.*

agreement to support its assertion.¹⁹ Nevertheless, on February 1, 2001, SLD denied the appeal, finding that the request included a “one-time charge that included the purchase and maintenance of a Cisco 1601 Router” and that “the purchase and maintenance of applicant owned equipment, such as a router, must be classified” as internal connections.²⁰ SLD further stated that in Funding Year 3, there were “not sufficient funds to provide internal connections discounts to applicants below 82%.”²¹ Elmont then filed the pending Request for Review.

6. On review, we conclude that SLD correctly re-characterized FRN 434574 as internal connections. The service agreement that Elmont attached to its FCC Form 471, identical to the agreement it submitted to SLD on appeal, provides for a total of \$17,087.68 in recurring costs and \$4,978.00 in non-recurring costs, the latter including the purchase and installation of a Router, Modem and “CSU.”²² In making its application, Elmont did not attempt to claim the \$4,978.00 as Internet access, and sought support only for the \$17,087.00 resulting from the recurring costs, which result in part from the lease of a T-1 line and 12 local loops.²³ However, the service agreement reveals that the \$17,087.00 also includes the costs of Router and CSU annual maintenance.²⁴ The maintenance of internal connections is appropriately characterized as internal connections.²⁵ Because Elmont commingled its requests for discounts for Internet access service and internal connections within a single funding request, SLD correctly placed the entire funding request into the internal connections category for Funding Year 3 funding. Because Elmont is not entitled to internal connections discounts in Funding Year 3, we must deny the Request for Review.

¹⁹ Appeal to SLD, attachment.

²⁰ Administrator’s Decision on Appeal, at 1.

²¹ *Id.* at 1-2.

²² Elmont FCC Form 471, Attachment 1.

²³ *Id.*

²⁴ *Id.*

²⁵ SLD Web Site, Eligible Services List, <<http://www.sl.universalservice.org/data/pdf/EligibleServicesList.pdf>> (“The Service Category used for labor should reflect the same service category of the product, or service being installed or maintained”).

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 Request for Review filed by Elmont Public Library, Elmont, New York, on February 20, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau