

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
Mankato Area Public Schools
Mankato, Minnesota
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.
File No. SLD-161004
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: October 30, 2001

Released: October 31, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division is a Request for Review by Mankato Area Public Schools (Mankato), Mankato, Minnesota. Mankato seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying a Funding Year 3 request under the schools and libraries program. At issue is whether the request should be construed as one seeking internal connections or telecommunications. Because we find that SLD correctly construed the request as seeking discounted internal connections, 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. The Commission's rules require that the applicant make a bona fide request for services by filing

1 Letter from Douglas Johnson, Mankato Area Public Schools, to Federal Communications Commission, filed March 12, 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.

with the Administrator an FCC Form 470,⁴ which is posted to the Administrator's website for all potential competing service providers to review.⁵ 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.⁶ 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.⁷ 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).⁸ 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.⁹ 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.¹⁰ 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.¹¹ In Funding Year 3, funding of discounted internal connections was available only for schools with

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470).

⁵ 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), *dismissed, GTE Service Corp. v. FCC*, 121 S.Ct. 423 (November 2, 2000).

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

⁷ *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*).

⁸ 47 C.F.R. §§ 54.502, 54.503.

⁹ 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).

¹⁰ *Fifth Order on Reconsideration*, 13 FCC Rcd at 14938, para. 36.

¹¹ 47 C.F.R. § 54.507(g)(1)(iii).

discount rates of 82% or higher.¹² Because Mankato is entitled to discounts of 58%, it was not eligible for discounted internal connections in Funding Year 3.¹³

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.¹⁴ 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.¹⁵ The Common Carrier Bureau has previously found this SLD operating procedure for evaluating mixed priority requests to be a reasonable exercise of its authority.¹⁶ Accordingly, we affirm the practice here.

5. On April 14, 2000, SLD issued a Funding Commitment Decision Letter granting some of Mankato's Funding Year 3 requests and denying others. At issue here is SLD's denial of Funding Request Number (FRN) 350525, which sought discounts for what Mankato's FCC Form 471 characterized as "internal connections."¹⁷ On May 8, 2000, Mankato appealed to SLD, asserting that FRN 350525 involved leased lines that helped create Mankato's Wide Area Network (WAN), and that it should be treated as a telecommunications service because it delivered data and video only to a single point of presence to each building, and did not cover

¹² *Request for Review by Hamilton County School Board, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-173624, CC Dockets No. 96-45 and 97-21, Order, DA 01-876, paras. 3, 6 (Com. Car. Bur. rel. April 17, 2001).

¹³ FCC Form 471, Mankato Area Public Schools, January 14, 2000, at 3-4 (Mankato FCC Form 471).

¹⁴ 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).

¹⁵ 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.").

¹⁶ *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.

¹⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Douglas Johnson, Mankato Area Public Schools, dated February 15, 2001 (Administrator's Decision on Appeal), at 1.

any local area network.¹⁸ On February 15, 2001, SLD denied the appeal.¹⁹ SLD conceded that, because papers attached to the original application suggested that the request might be for telecommunications services, SLD reviewers should have contacted Mankato for further information before denying FRN 350525.²⁰ The record shows that SLD sought clarification from Mankato on appeal, and found, based on the answers it received from Mankato, that FRN 350525 was properly classified as internal connections.²¹

6. The Administrator's Decision on Appeal informed Mankato that equipment would be treated as telecommunications services only if, among other criteria, there was no indication of a present or future transfer of ownership of the equipment to the applicant.²² The decision further stated that Mankato's responses to SLD's inquiries indicated that FRN 350525 was a lease arrangement with an option to buy.²³ As a result, SLD concluded, FRN 350525 did not satisfy the criteria for telecommunications.²⁴

7. In its Request for Review, Mankato alleges that only \$29,160.00 of the \$73,584.00 request was for lease-to-own equipment.²⁵ It asserts that the remaining sum covers the lease of WAN lines that should be funded as Priority One telecommunications services.²⁶

8. We conclude that Mankato's assertions, even if accurate, do not justify funding the request. By Mankato's own assertion, \$29,160.00 of the total \$73,584.00 sought in FRN 350525 is internal connections. As discussed above, under SLD procedures in Funding Year 3, if it found that any part of a funding request constituted internal connections, it would characterize the entire request as seeking internal connections.²⁷ Because it is undisputed that part of FRN 350525 is for discounted internal connections, we find that under its Funding Year 3 procedure, SLD correctly characterized FRN 350525 as internal connections. Mankato was not

¹⁸ Letter from Douglas Johnson, Mankato Area Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed May 8, 2000, at 1. A WAN is "a voice or data network that provides connections from one or more computers within an eligible school or library to one or more computers or networks that are external to such eligible school or library." 47 C.F.R. § 54.500(l). Excluded from this definition is "a voice or data network that provides connections between or among instructional buildings of a single school campus or between or among non-administrative buildings of a single library branch." *Id.*

¹⁹ Administrator's Decision on Appeal at 1.

²⁰ *Id.*

²¹ *Id.* at 1-2.

²² *Id.* at 2.

²³ *Id.*

²⁴ *Id.*

²⁵ Request for Review at 1.

²⁶ *Id.*

²⁷ *See supra*, para. 4.

eligible to receive discounts on internal connections in Funding Year 3 because its FCC Form 471 indicated that Mankato's discount percentage for Funding Year 3 was only 58% based on the National School Lunch Program discount matrix.²⁸ Due to demand in Funding Year 3, only schools eligible for an 82% discount or higher received discounts for internal connections.²⁹ We therefore conclude that SLD correctly denied funding for the entire request.

9. 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 Mankato Area Public Schools, Mankato, Minnesota, on March 12, 2001 is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
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Common Carrier Bureau

²⁸ Mankato FCC Form 471, at 3-4.

²⁹ *See, supra*, para. 3.