

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

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
North East Independent School District	)	File No. SLD-190816
San Antonio, Texas	)	
	)	
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 North East Independent School District (North East), San Antonio, Texas.<sup>1</sup> North East seeks review of the decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to deny one of North East's Funding Year 3 requests for discounts under the schools and libraries universal service support mechanism.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> After the FCC Form 470 is posted, the

<sup>1</sup> Letter from Steve Emilienburg, North East Independent School District, to Federal Communications Commission, filed April 26, 2001 (Request for Review).

<sup>2</sup> 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).

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>4</sup> 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 an FCC Form 471, which requests support for eligible services.<sup>5</sup> 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 new rules to govern how discounts will be allocated when available funding is less than total demand and a filing window is in effect.<sup>6</sup> These rules provide that requests for telecommunications and Internet access services 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). Thus, when total demand exceeds the total support available, SLD is directed to give first priority for available funding to telecommunications services or Internet access.

4. Any funding remaining after allocation to Priority One services is allocated to the requests for support for internal connections beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.<sup>7</sup> Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their requests for internal connections. To the extent funds remain, the Administrator would continue to allocate funds for discounts to applicants at each descending single discount percentage, e.g., eighty-nine percent, eighty-eight percent, and so on. During the third funding year (July 1, 2000 – June 30, 2001) of the support mechanism, SLD granted all approved requests for discounts for telecommunications services and Internet access and granted all approved requests for internal connections down to the 82 percent discount level.

5. 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

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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).

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

<sup>6</sup> See *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318 (1997).

<sup>7</sup> *Id.* at 14938, para. 36. The schools and libraries discount matrix reflects both an applicant's urban or rural status and the percentage of its students eligible for national school lunch program. 47 C.F.R. § 54.505.

portion of the services requested were found to be Priority Two.<sup>8</sup> 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.<sup>9</sup> The Common Carrier Bureau has previously found this SLD operating procedure for evaluating mixed priority requests to be a reasonable exercise of its authority.<sup>10</sup> Accordingly, we affirm the practice here.

6. By letter dated July 7, 2000, SLD denied Funding Request Number (FRN) 408532 of North East's Funding Year 3 requests for discounts, stating that the telecommunications services identified in North East's application, to be provided by Time Warner Connect (Time Warner), had been reclassified as internal connections.<sup>11</sup> SLD then determined that, because North East was only eligible for discounts below the 81 percent level, its request for discounts for internal connections could not be granted as internal connections were only funded at the 81 percent level or above in Funding Year 3.<sup>12</sup>

7. North East filed an appeal with SLD on July 28, 2000.<sup>13</sup> In response, SLD asked North East, *inter alia*, to clarify whether North East would own the equipment used to provide the service, and whether it had a lease-purchase arrangement regarding that equipment.<sup>14</sup> In response, North East indicated that the service was structured as a 10-year lease of Time

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<sup>8</sup> See SLD Web Site, <[http://www.sl.universalservice.org/reference/471\\_App\\_Guid\\_Docs/471\\_dozen.asp](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).

<sup>9</sup> 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.").

<sup>10</sup> *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.

<sup>11</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to North East Independent School District, dated July 7, 2000, at 5.

<sup>12</sup> *Id.* Later, SLD determined that it could not fund beyond the 82% discount level. See Administrator's Decision on Appeal, at 2.

<sup>13</sup> Letter from North East Independent School District, to Schools and Libraries Division, Universal Service Administrative Company, filed July 28, 2000.

<sup>14</sup> Letter from David Simpson, Schools and Libraries Division, Universal Service Administrative Company, to North East Independent School District, dated March 13, 2001.

Warner's fiber-optic Wide Area Network (WAN), but that the switches used by Time Warner to connect North East's Local Area Networks (LANs) to the end of Time Warner's WAN, referred to by North East as "edge switches," would be owned by North East at the end of the 10-year lease.<sup>15</sup> On March 27, 2001, SLD denied the appeal, finding that because the service included the future transfer of ownership of the edge switches, FRN 408532 was correctly characterized as internal connections.<sup>16</sup> North East then filed the pending Request for Review.

8. In its Request for Review, North East concedes that, because it is entitled to only a 57% discount based on the discount matrix, it is not eligible for discounts on switches "under the typical purchasing acquisition model."<sup>17</sup> It states that it structured its arrangement with Time Warner to provide it with ultimate ownership of the switches so that, when it sought local voter approval of a bond to help fund the Time Warner service, it could show "some level of ultimate ownership to the community."<sup>18</sup> North East argues that because ownership does not take place until the end of the 10-year lease, it will occur only after expiration of the switches' "life," which North East asserts is typically 3-5 years.<sup>19</sup> North East argues that because the equipment is only leased from Time Warner during the entirety of its "life" and is used solely for the purposes of connecting Time Warner's WAN with the LANs of North East member schools, it should be treated as part of Time Warner's telecommunications service.<sup>20</sup>

9. After reviewing of the record, we deny the Request for Review. In the *Tennessee Order*, the Commission held that when evaluating FRNs, SLD should determine if services nominally characterized by the applicant as Internet access (Priority 1) were actually internal connections (Priority 2) by looking for certain specified indicia of an internal connections service.<sup>21</sup> These indicia included whether the equipment being used to provide the service would be owned by the applicant and whether the equipment was subject to a lease-purchase arrangement providing the applicant with ownership at some future date.<sup>22</sup> In turn, the Bureau has relied on the fact that no lease-purchase agreement existed in finding that an FRN should not

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<sup>15</sup> Letter from Steve Emilienburg, North East Independent School District, to David Caron, Schools and Libraries Division, Universal Service Administrative Company, dated March 16, 2001.

<sup>16</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Steve Emilienburg, North East Independent School District, dated March 27, 2001.

<sup>17</sup> Request for Review at 1.

<sup>18</sup> *Id.* at 1-2.

<sup>19</sup> *Id.* at 2.

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *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*).

<sup>22</sup> *Id.*

be characterized as internal connections.<sup>23</sup> In the *Brooklyn Order*, the Commission found that the same approach was applicable to FRNs nominally seeking telecommunications service, such as North East's FRN 408532.<sup>24</sup> Here, because North East's service arrangement with Time Warner provides for North East's ownership of the edge switches at the expiration of the lease, we conclude that SLD properly characterized these switches as internal connections. Thus, FRN 408532, although characterized in the FCC Form 471 as a request for Priority One telecommunications services, sought discounts for services that were, in part, Priority Two internal connections.<sup>25</sup>

10. As noted above, in Funding Year 3, SLD characterized a funding request as seeking internal connections services if any part of the request consisted of internal connections.<sup>26</sup> Here, we find that North East commingled its requests for discounted telecommunications services and internal connections within FRN 408532. Therefore, we conclude that, under SLD's applicable Funding Year 3 review procedures, it correctly placed FRN 408532 in the internal connections category for Funding Year 3 funding. Because North East is not eligible for internal connections discounts in Funding Year 3, we affirm SLD's denial of funding.

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 by North East Independent School District, San Antonio, Texas, on April 26, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>23</sup> See, e.g., *Request for Review by Wathena Unified 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-106958, CC Dockets No. 96-45 and 97-21, Order, 14 FCC Rcd 20093, para. 5 (Com. Car. Bur. 1999).

<sup>24</sup> *Request for Review by Brooklyn Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-149423, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 18598, para. 12 (2000)

<sup>25</sup> FCC Form 471, North East Independent School District, filed January 19, 2000, at 7.

<sup>26</sup> See *supra*, para. 5.