

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

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Karval School District RE 23)	File No. SLD-180749
Karval, Colorado)	
)	
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: November 2, 2001

Released: November 5, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by Karval School District RE 23 (Karval), Karval, Colorado, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Karval seeks review of SLD’s denial of one of East Grand’s Funding Year 3 requests for discounts under the schools and libraries universal service mechanism.² 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.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 Ashley A. Anderson, Karval School District RE 23, to Federal Communications Commission, filed March 2, 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 (September 1999) (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 (September 1999) (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

5. At issue in the pending Request for Review is Funding Request Number (FRN) 378473 of Karval's Funding Year 3 application, which Karval listed as a request for discounted Internet access.¹⁴ During its application review, however, SLD re-classified the request from Internet access to internal connections, and on April 14, 2000, SLD denied the request on the grounds that the "[f]unding cap will not provide for [i]nternal [c]onnections less than 81% discount to be funded."¹⁵

6. Karval appealed to SLD, asserting that SLD had mislabeled FRN 378473 as one seeking internal connections and requesting that it again be characterized as Internet access and funded.¹⁶ On February 5, 2001, SLD denied the appeal.¹⁷ It explained that it had intentionally reclassified FRN 378473 from Internet access to internal connections because the request included the purchase of a router.¹⁸ Karval then filed the pending Request for Review.

7. In its Request for Review, Karval asserts that the vendor's service description, which shows that a large part of the request is monthly charges for 56K internet access,

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, Karval School District RE 23, filed January 17, 2000, at 4 (Karval Form 471).

¹⁵ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ashley A. Anderson, Karval School District RE 23, dated April 14, 2000, at 5.

¹⁶ Letter from Ashley A. Anderson, Karval School District RE 23, to Schools and Libraries Division, Universal Service Administrative Company, filed April 24, 2000, at 1.

¹⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ashley A. Anderson, Karval School District RE 23, dated February 5, 2001.

¹⁸ *Id.* at 1.

demonstrates that the request is not for internal connections.¹⁹ However, the same description supports SLD's conclusion that part of the request was for the purchase of a router, and Karval has offered no evidence to the contrary. As discussed above, in Funding Year 3, SLD reclassified a request that the applicant designated telecommunications or Internet access as one seeking internal connections services if any portion of the services requested were found to be internal connections.²⁰ We find that SLD correctly characterized the purchased router as internal connections, and therefore, under its Funding Year 3 review procedures, properly classified FRN 378473 as an internal connections request. As noted above, in Funding Year 3, funding of discounted internal connections was available only for schools with discount rates of 82% or higher.²¹ Because Karval had a discount rate of only 70%, it was not eligible for internal connections discounts in Funding Year 3.²²

8. 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 Karval School District RE 23, Karval, Colorado, on March 2, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁹ Request for Review, at 1.

²⁰ *See supra*, para. 4.

²¹ *See supra*, para. 3.

²² *See* Karval Form 471.