

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
Worcester Public Schools
Worcester, Massachusetts
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.
File No. SLD-170908
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: December 3, 2001

Released: December 4, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by Worcester Public Schools (Worcester), Worcester, Massachusetts, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). Worcester seeks review of SLD's denial of its Funding Year 3 application for discounts under the schools and libraries universal service mechanism. 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. 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 John F. Burke, Worcester Public Schools, to Federal Communications Commission, filed March 15, 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.<sup>4</sup> 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.<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 rules to govern how discounts would be allocated when total demand exceeds the amount of funds available and a filing window is in effect.<sup>6</sup> 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).<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> In Funding Year 3, funding of discounted internal connections was available only for schools with discount rates of 82% or higher.<sup>11</sup>

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<sup>4</sup> 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).

<sup>5</sup> 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).

<sup>6</sup> *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*).

<sup>7</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>8</sup> 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).

<sup>9</sup> *Fifth Order on Reconsideration*, 13 FCC Rcd at 14938, para. 36.

<sup>10</sup> 47 C.F.R. § 54.507(g)(1)(iii).

<sup>11</sup> *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.<sup>12</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>13</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>14</sup> Accordingly, we affirm the practice here.

5. On January 19, 2000, Worcester filed a Funding Year 3 application with one request, Funding Request Number (FRN) 345237, seeking funding for discounted telecommunications services.<sup>15</sup> SLD issued a Funding Commitment Decision Letter denying FRN 345237, stating that the category of service was changed from telecommunication services to internal connections and that the “[f]unding cap will not provide for Internal Connections less than 81% discount to be funded.”<sup>16</sup> Worcester appealed to SLD on May 22, 2000, arguing that the attached documentation demonstrated that the request should have been changed to Internet access rather than internal connections.<sup>17</sup> On February 20, 2001, SLD denied the appeal, finding that the request included maintenance of a school-owned router, that this service constituted internal connections, and that FRN 345237 was, therefore, properly recategorized as internal

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<sup>12</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>13</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 decisions 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>14</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>15</sup> FCC Form 471, Worcester Public School District, filed January 19, 2000 (Worcester Form 471), at 6.

<sup>16</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to John F. Burke, Worcester Public School District, dated May 12, 2000 (Funding Commitment Decision Letter), at 6.

<sup>17</sup> Letter from John F. Burke, Worcester Public School District, to Schools and Libraries Division, Universal Service Administrative Company, filed May 22, 2000 (Appeal to SLD), at 1.

connections.<sup>18</sup> SLD further stated that in Funding Year 3, there were insufficient funds for Funding Year 3 to provide discounts for internal connections requests to applicants that are below the 82% shared discount level.<sup>19</sup> Worcester then filed the pending Request for Review.

6. On review, we conclude that SLD correctly re-characterized FRN 345237 as internal connections. Worcester does not dispute that FRN 345237 includes the cost for the maintenance of a school-owned router, and the maintenance of a school-owned router is appropriately characterized as internal connections.<sup>20</sup> Worcester does request that, if the cost for router maintenance cannot be funded, then the remainder be funded as Priority One Internet access service.<sup>21</sup> However, as noted above, we continue to affirm SLD's Funding Year 3 procedure of converting a request to Priority Two if it contains any Priority Two services.<sup>22</sup> Because Worcester commingled its requests for discounts for telecommunications (or 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.

7. In Funding Year 3, Worcester was entitled to a 71% discount.<sup>23</sup> Because only applicants with a discount rate of 82% or higher received discounted internal connections in Funding Year 3, we find that SLD correctly denied funding for FRN 345237.<sup>24</sup>

8. In its Request for Review, Worcester principally argues that Worcester's use of the router as a central gateway to connect its fifty-plus schools to the Internet is far more economical than providing each school with separate T-1 line access.<sup>25</sup> Because the latter service would be Priority One, and thus would not be barred by the priority rules, Worcester argues that it should not be denied funding for having used a far-more cost effective method for achieving the same result. In this case, the denial of funding for the entire request could have been avoided by submitting two separate funding requests, one for the Priority One services, and the second for the Priority Two services. Through that method, Worcester can, in the future, obtain virtually all of the benefit of choosing the more economical solution.

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<sup>18</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to John F. Burke, Worcester Public School District, dated February 20, 2001 (Administrator's Decision on Appeal), at 1.

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

<sup>20</sup> 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"); see also *Request for Review by East Grand School – SAD #14, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-160387, CC Dockets No. 96-45 and 97-21, Order, DA 01-2575, para. 9 (Com. Car. Bur. rel. November 5, 2001).

<sup>21</sup> Request for Review, at 1.

<sup>22</sup> See *supra*, para. 4.

<sup>23</sup> Worcester Form 471, at 6.

<sup>24</sup> Administrator's Decision on Appeal, at 2.

<sup>25</sup> Request for Review, at 1.

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 Worcester Public Schools, Worcester, New York, on March 15, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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