

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Guidance by)	
Universal Service Administrator)	
Concerning the Request of)	
)	
Los Angeles Unified School District)	File No. SLD-198056
Los Angeles, California)	
)	
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: February 13, 2001

Released: February 14, 2001

By the Common Carrier Bureau:

1. In this Order, we conclude that the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) should consider the service change proposed by Los Angeles Unified School District (LAUSD) in its letter to USAC, dated September 20, 2000. USAC referred LAUSD’s request to the Commission under section 54.702(c) of the Commission’s rules.¹ USAC requests guidance on SLD’s ability to approve LAUSD’s request for a service change pursuant to current program regulations and procedures. For the reasons discussed below, we conclude that the request is consistent with the Commission’s ruling in the *Copan Order*,² and we remand the matter to SLD for resolution consistent with this Order.

¹ USAC Letter from D. Scott Barash to Carol E. Matthey, Common Carrier Bureau, Federal Communications Commission, dated February 9, 2001 (Request for Guidance) (attaching LAUSD Letter from Candace Younger to Universal Service Administrator, dated September 20, 2000). Section 54.702(c) states, in relevant part, that “[w]here the Act or the Commission’s rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.” 47 C.F.R. § 54.702(c).

² *In the Matter of Request for Review of the Decision of the Universal Service Administrator by Copan Public Schools, Copan Oklahoma, 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, 15 FCC Rcd 5498 (2000). (*Copan Order*).

I. BACKGROUND

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 In order to receive discounts on eligible services, schools must file certain information with SLD. Specifically, the Commission's rules require that an applicant submit to SLD a completed FCC Form 470, in which the applicant sets forth the school's technological needs and the services for which it seeks discounts.⁴ Once the school has entered into an agreement for eligible services, it must file an FCC Form 471 application to notify SLD of the services that have been ordered, the carrier with whom the school has signed a contract, and an estimate of the funds needed to cover the discounted portion of the price of the eligible services.⁵

3. SLD has established procedures for applicants that seek to change their service provider, post-funding commitment. Recently, the Commission modified those procedures in its *Copan Order*.⁶ The Commission concluded that an applicant should be allowed to change service providers whenever the applicant certifies that (1) the service provider change is allowed under its state and local procurement rules and under the terms of the contract between the applicant and its original service provider, and (2) the applicant has notified its original service provider of its intent to change service providers.⁷ In so ruling, the Commission rejected the pre-existing, more stringent approach enumerated in the SLD guidelines.⁸ The Commission found that this broader approach was consistent with the Commission's goal of affording schools and libraries maximum flexibility to choose the offering that meets their needs most effectively and efficiently.⁹

4. Similar to its procedures governing requests for service provider changes, SLD also has in place procedures relating to requests for service or equipment changes. Currently, SLD grants post-funding approval requests for service changes to applicants in two limited

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3). In submitting its FCC Form 470, an applicant is required to provide only general information about the services for which it seeks discounts, *e.g.*, number of phones that require service, number of dial-up connections necessary, as well as an assessment of the applicant's existing technology that may be necessary for the effective use of eligible services.

⁵ 47 C.F.R. § 54.504(c).

⁶ In the *Copan Order*, the Commission addressed the appeal of an applicant that had been granted discounts for service by a particular service provider but post-funding, sought to change to another service provider. After its request for a service provider change was rejected by SLD, the applicant appealed to the Commission. *Copan Order*, 15 FCC Rcd 5498-5500.

⁷ *Copan Order*, 15 FCC Rcd at 5501, para. 6.

⁸ Under the prior SLD policies, applicants could request service provider changes only if the current service provider refused to participate, had gone out of business, or had breached its contract. *Copan Order*, 15 FCC Rcd at 5501, para. 6.

⁹ *Copan Order*, 15 FCC Rcd at 5502, para. 7.

situations. First, when the product or service originally planned for is no longer available, SLD will approve a service change for a substitute product or service that performs the same functionality. Second, SLD will also approve a service change when an upgraded product or service is available which performs the same function. The policy currently applies only to requests for changes in individual pieces of equipment.

5. In either case, under current SLD procedures, three further criteria apply. First, the product or service substitution will only be allowed if there is no increase in price. Second, the service substitution must not violate any contract provisions or state or local bidding laws. Finally, the proposed service substitution will be denied if it results in an increase to the percentage of ineligible services or functions.

6. After receiving a decision on its request for discounts, LAUSD has asked to substitute one configuration of equipment identified in its Year 3 Form 471 with a different configuration. The change request involves more than an individual piece of equipment.¹⁰ LAUSD states that the substitution does not increase the cost, decrease the functionality, or alter the proportion of discounts requested for ineligible services. LAUSD states the substituted equipment provides improved functionality, at a lesser cost. LAUSD also submits information that the substituted equipment is permitted under the governing procurement rules and LAUSD's contract with its vendor.

II. DISCUSSION

7. In essence, LAUSD seeks to expand SLD's existing policy, which allows service changes for individual pieces of equipment, to allow service changes for multiple pieces of equipment. LAUSD represents that its service change complies with the program's existing procedures: the new configuration performs the same functionality, there will be no increase in price, the substitution complies with LAUSD's contract and with governing procurement laws, and the new configuration will not increase the percentage of ineligible functions or services.¹¹

8. LAUSD's request is consistent with the principle of flexibility that the Commission articulated for service provider changes in its *Copan Order*. In the *Copan Order*, the Commission stated its "express goal of affording schools and libraries the maximum flexibility to choose the offering that meets their needs most effectively and efficiently."¹² The Commission expressly declined to set forth and maintain categories of permissible service provider changes because it concluded that it "[could] not anticipate the variety of circumstances under which it may be reasonable for an applicant to substitute service providers."¹³ The Commission changed the criteria for service provider changes so that such changes would be

¹⁰ LAUSD's request concerns its computer networking configuration. Specifically, LAUSD seeks to replace 58 8-port gigabyte modules from one manufacturer with 87 6-port gigabyte modules from another manufacturer. See LAUSD Letter from Candace Younger to Universal Service Administrator, dated September 20, 2000.

¹¹ See LAUSD Letter from Candace Younger to Universal Service Administrator, dated September 20, 2000.

¹² *Copan Order*, 15 FCC Rcd at 5502, para. 7.

¹³ *Copan Order*, 15 FCC Rcd at 5501-5502, para. 7.

granted whenever an applicant certifies that the proposed change is allowable under its state and local procurement rules and the terms of the contract between the applicant and its original service provider.

9. Consistent with the Commission's ruling in the *Copan Order*, we conclude applicants should be afforded similar freedom to make these types of service changes. We find no reason to limit service changes to those circumstances where a single piece of equipment is being substituted. Thus, we conclude SLD should grant service change requests for a substitute service or product where (1) that service or product has the same functionality; (2) the substitution does not result in an increase in price; (3) the substitution does not violate any contract provisions or state or local procurement laws; and (4) the substitution does not result in an increase in the percentage of ineligible services or functions. In order to ensure the integrity of the competitive bidding process, we will require the applicant's request for a service change to include a certification that the requested change in service is consistent with the controlling Form 470 and Request For Proposal (RFP) for the original services. Accordingly, we conclude that LAUSD's request for a service change should be considered by SLD in accordance with this Order.

10. Accordingly, IT IS ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and the Commission's rules, sections 54.702, 54.719 and 54.722, 47 U.S.C. §§ 54.702, 54.719 and 54.722, that the Request for Guidance by the Universal Service Administrative Company concerning the Request of Los Angeles Unified School District, Los Angeles, California, filed on February 9, 2001 IS GRANTED to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau