

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review)	
of the Decision of)	
the Universal Service Administrator by)	
)	
Boston Public Library)	File No. SLD-151107
Boston, Massachusetts)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	
)	CC Docket No. 97-21
Changes to the Board of Directors)	
of the National Exchange Carrier)	
Association, Inc.)	

ORDER

Adopted: March 13, 2001

Released: March 14, 2001

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Request for Review filed by the Boston Public Library, Boston, Massachusetts, on June 5, 2000, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Boston Public Library seeks review of the SLD's denial of its application for discounts under the schools and libraries universal service support mechanism.² For the reasons set forth below, we grant in part and deny in part the Request for Review.

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

¹ *Request for Review By Boston Public Library of Decision of the Universal Service Administrator*, CC Docket Nos. 96-45 and 97-21, filed June 5, 2000 (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).

for eligible telecommunications services, Internet access, and internal connections.³ The program's rules state that universal service funds support only eligible services.⁴ In addition, the instructions for the FCC Form 471 clearly state: "YOU MAY NOT SEEK SUPPORT ON THIS FORM FOR INELIGIBLE SERVICES."⁵ The instructions further clarify that "[w]hile you may contract with the same service provider for both eligible and ineligible services, your contract or purchase agreement must clearly break out costs for eligible services from those for ineligible services."⁶ Although SLD reduces a funding request to exclude the cost of ineligible services in circumstances where the ineligible services represent less than 30 percent of the total funding request, SLD will deny a funding request in its entirety if ineligible services constitute more than thirty percent of the total.⁷ An applicant can avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services.

3. On October 12, 1999, SLD denied the Boston Public Library's application for discounts relating to Funding Request Number (FRN) 264644 based on Boston Public Library's request for ineligible services.⁸ On November 11, 1999, the Boston Public Library filed an appeal

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504 *et seq.*

⁵ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471) (December 1998) at 15 (Form 471 Instructions).

⁶ Form 471 Instructions at 16.

⁷ *See Request for Review of the Decision of the Universal Service Administrative Company by Ugly Community Schools, 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, DA 00-1517 (Com. Car. Bur. rel. July 10, 2000); *Request for Review of the Decision of the Universal Service Administrator by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, DA 00-2630, para. 8 (Com. Car. Bur. rel. November 24, 2000). The "30 percent policy" is not a Commission rule, but rather is an SLD operating procedure established pursuant to FCC policy. *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998). This operating procedure, used during SLD's application review process, enables SLD to efficiently process requests for funding for services that are eligible for discounts but that also include some ineligible components. If 30 percent or less of the request is for funding of ineligible services, SLD normally will consider the application and issue a funding commitment for the eligible services. If more than 30 percent of the request is for funding of ineligible services, SLD will deny the funding request in its entirety. The 30 percent policy allows SLD to efficiently process requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants that are requesting funding of ineligible services.

⁸ Letter from Schools and Libraries Division, Universal Service Administrative Company to Boston Public Library, dated October 12, 1999.

of the decision with SLD.⁹ On May 4, 2000, SLD denied Boston Public Library's appeal, stating that the funding request included "more than 30 percent of ineligible products/services which resulted in the denial of the entire amount of the FRN. Ineligibles include four-fifths of the warranty (\$8,557), premium warranty (\$10,500), voice mail (\$34,332), years 2 & 3 maintenance (\$83,715), and ACD Abacus Software Package (\$4,882)."¹⁰

4. Boston Public Library challenges this decision contending that items listed as ineligible by SLD, and contributing to the total of thirty percent of the requested funding, were not purchased by Boston Public Library, nor were they included in its funding request.¹¹ Specifically, Boston Public Library argues that the years 2 and 3 maintenance cost was an option offered by its service provider that was not purchased and should be removed from the calculation of ineligible services.¹² Boston Public Library notes that removal of this cost will reduce its ineligible services below the thirty percent level calculated by SLD. In addition, Boston Public Library asserts that items deemed ineligible by SLD are eligible under the program rules. Specifically, Boston Public Library contends that the five-year extended warranty for maintenance service is an eligible maintenance expense. Boston Public Library also asserts that "voice mail and ACD, are critical to meeting the information needs of disabled patrons and should be eligible for support."¹³

5. We have reviewed Boston Public Library's appeal and conclude that it should be granted in part and denied in part. In its Form 471 application,¹⁴ Boston Public Library requested funding for internal connections in the total amount of \$302,715. The record supports Boston Public Library's contention that the years 2 and 3 maintenance costs, totaling \$83,715, were not included in the total funding request of \$302,715 in FRN 264644.¹⁵ We agree with Boston Public

⁹ Letter from Patrick Cafferty, Boston Public Library, to Schools and Libraries Division, filed November 11, 1999.

¹⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company to Boston Public Library, dated May 4, 2000.

¹¹ Request for Review at 2.

¹² Request for Review at 4.

¹³ Request for Review at 4.

¹⁴ 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. 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. SLD reviews the FCC Form 471 and issues funding commitment decisions in accordance with the Commission's rules.

¹⁵ Boston Public Library clarifies that the service maintenance cost quote of \$83,715 was an alternative to the 5-year warranty that was actually purchased by the Boston Public Library. *See* Request for Review at 4. *See also* BPL Summary Cost Response provided to SLD as part of its Program Integrity Assurance (PIA) review following (continued....)

Library that because this service was not purchased and funding support from SLD was not requested for this service, this item should be excluded from the calculation of the ineligible support amount.¹⁶ Removal of this cost from the ineligible services results in less than thirty percent of the funding request as ineligible. We conclude, therefore, that Boston Public Library should receive funding consistent with the findings discussed herein.

6. The record demonstrates that Boston Public Library has requested funding for ineligible services, the cost of which must be deducted from its funding request. The ineligible services are (1) the portion of the total warranty that extends beyond the funding year; (2) voice mail; and, (3) computer software. Specifically, we agree with SLD that four-fifths of the extended warranty maintenance service should be excluded. Boston Public Library contracted for a five-year maintenance warranty relating to this funding request at a cost of \$10,696.¹⁷ Under our rules, applicants may only receive discounts for services that are provided during the funding year.¹⁸ This request must be prorated to ensure that support is provided for only the funding year (*i.e.* one-year of the five-year request). Therefore, Boston Public Library is entitled to the prorated amount for this service. The Request for Review makes no mention of the “premium warranty” deemed ineligible and denied in the amount of \$10,500 by SLD. Because SLD’s decision on this issue was not challenged, we do not disturb SLD’s decision to deduct \$10,500 from the funding request.

7. In addition, we deny Boston Public Library’s request to include voice messaging and ACD software as eligible for support. The Commission has previously concluded that voice messaging is not a service eligible for support.¹⁹ Although Boston Public Library contends that voice messaging may be a valuable service to some of its patrons, including those with special needs or disabilities, we do not find this to be a sufficient basis to grant Boston Public Library a waiver of the Commission’s decision. Therefore, we affirm SLD’s decision that the requested voice messaging service is ineligible for support.

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submission of its FCC Form 471 (indicating that the cost of the years 2 and 3 maintenance warranty was not included in the calculation of the total funding request). The PIA team reviews the FCC Form 471 and is responsible for determining whether the discounts sought by applicants are eligible for funding.

¹⁶ Request for Review at 2-4.

¹⁷ The supporting documentation indicates that the cost of the 5-year warranty for the main library (Copley Square) that is the subject of this funding request is \$10,696. *See* BPL Summary Cost Response.

¹⁸ 47 C.F.R. § 54.507(e).

¹⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (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 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).

8. Similarly, we reject Boston Public Library's contention that its ACD software is an eligible service.²⁰ The Commission has concluded that a given service is eligible for support only if the service is an "essential element in the transmission of information" within the school or library.²¹ In its Request for Review, Boston Public Library indicates that the ACD software package merely "enhances" the basic function of a telephone switch.²² Moreover, upon review of Boston Public Library's funding request, we conclude that the software is not an essential element in the transmission of information to the publicly accessible rooms of a library.²³ Accordingly, we affirm SLD's decision that the ACD software package is ineligible for support.

9. In light of our conclusion that Boston Public Library did not include ineligible maintenance costs in its application, we find that the ineligible services requested in FRN 264664 totals less than 30 percent of the total request.²⁴ We therefore remand Boston Public Library's application to SLD for further consideration and to issue a revised Funding Commitment Decision Letter consistent with this order.

10. 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 Boston Public Library, Boston, Massachusetts, on June 5, 2000 IS GRANTED IN PART to the extent described herein, and is otherwise DENIED. We direct the Schools and Libraries Division to review Boston Public Library's funding application and to issue a revised Funding Commitment Decision Letter in accordance with the above-stated decision.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau

²⁰ Automatic Call Distribution System (ACD) software provides a means of automatically distributing calls evenly, on a next available basis so that inbound calls are handled efficiently.

²¹ *Universal Service Order*, 12 FCC Rcd at 9021, para. 459.

²² Request for Review at 6.

²³ See SLD website, <http://www.sl.universalservice.org/data/pdf/EligibleServicesList.pdf>, defining Call Sequencers or Automatic Call Sequencers and stating that such equipment is not eligible for discount. Although SLD defines an Automatic Call Sequencer as a device or adjunct piece of equipment, used with a PBX or Key system, we make no distinction or exception for call sequencing software that would essentially perform the same function as adjunct pieces of equipment.

²⁴ The sum of the ineligible items is \$58,271 (\$8,557 ineligible warranty, \$10,500 premium warranty, \$34,332 voice mail, and \$4,882 ACD software) which is 19% of the total support requested of \$302,715.