

**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-151165
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 May 30, 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 May 30, 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 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. By letter dated October 12, 1999, SLD denied the Boston Public Library's application for discounts relating to Funding Request Numbers (FRN) 269172 and 269173.⁸ On

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.

November 11, 1999, the Boston Public Library filed separate appeals of this decision with SLD.⁹ By letter dated April 27, 2000, SLD denied Boston Public Library's appeals.¹⁰ Specifically, SLD concluded that FRN 269172 included "more than 30 percent of ineligible services which resulted in the denial of the entire amount of the FRN. Remote maintenance, remote monitoring, monitoring leased lines, voice compression maintenance and CD server maintenance are all ineligible according to program rules."¹¹ In addition, SLD denied FRN 269173, concluding that, "[f]ull time technicians are considered ineligible according to program rules."

4. Boston Public Library challenges SLD's decision that two of the five services requested in FRN 269172 are ineligible.¹² Specifically, Boston Public Library contends that "remote maintenance" and "voice compression maintenance" should be deemed eligible services in the context of its application.¹³ Boston Public Library contends that its funding request for "remote maintenance" is actually a request for "on-site" maintenance of eligible equipment at library branch locations.¹⁴ Boston Public Library indicates that use of the term "remote" was intended only to distinguish its branch library locations from its main library. In addition, Boston Public Library contends that a "voice compression module" is an eligible product so long as it is installed in an eligible component, and that it was indeed installed in an eligible product. Boston Public Library also notes that maintenance is an eligible service when performed on eligible equipment. Boston Public Library, therefore, argues that its request for voice compression maintenance satisfies these requirements.¹⁵

5. Boston Public Library also challenges SLD's decision that the salaries for two full-time technicians requested in FRN 269173 are ineligible for support. Specifically, Boston Public Library contends that these technicians are not employees of Boston Public Library or the City of

⁹ See Letter from Patrick Cafferty, Boston Public Library, to Schools and Libraries Division, filed November 11, 1999 (FRN 269172). See also Letter from Patrick Cafferty, Boston Public Library, to Schools and Libraries Division, filed November 9, 1999 (FRN 269173).

¹⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company to Boston Public Library, dated April 27, 2000.

¹¹ *Id.*

¹² Request for Review at 3-6. Boston Public Library requested total funding in the amount of \$188,320 in FRN 269172. On appeal, Boston Public Library does not contest SLD's conclusion that its request for remote monitoring (\$42,000), monitoring of leased lines (\$3,300), and CD server maintenance (\$7,200) totaling \$52,500 are ineligible under program rules. Boston Public Library contends that if the two services subject to its appeal are deemed eligible, and removed from consideration, the remaining ineligible services total only 28 percent of the total funding request.

¹³ See Request for Review at 6.

¹⁴ Boston Public Library seeks \$47,600 for "remote" maintenance. Request for Review at 4.

¹⁵ Boston Public Library seeks \$18,600 for voice compression maintenance. Request for Review at 5.

Boston. Because these technicians are responsible for installing telecommunications wiring for eligible services, Boston Public Library argues that funding for this service should be deemed eligible for support under program rules.

6. In regard to FRN 269172, we find that SLD erroneously concluded that Boston Public Library's request for "remote" maintenance violated program rules prohibiting support for internal connections "that extend beyond a single school campus or single library branch."¹⁶ Although Boston Public Library's characterization of its branch libraries as "remote" may have been somewhat confusing, we believe that it was reasonable to conclude from the information submitted in its original application that the "remote" locations in question were the branch libraries listed therein. Because SLD incorrectly determined that these were ineligible services, Boston Public Library's request for review is granted with respect to the maintenance services at its branch libraries.

7. We also find that SLD incorrectly denied Boston Public Library's request for voice compression maintenance. Funding of such service is conditional upon installation of the voice compression module in an otherwise eligible component. As a general matter, an applicant bears the responsibility of clearly explaining the purposes to which the funding it requests will be put. In this case, however, while the information submitted by Boston Public Library was vague, we believe nonetheless that it was possible to discern from the information submitted in its original application that such services were eligible for support. The voice compression module is installed on a router that is eligible for support. Charges incurred for the maintenance of eligible services are eligible for discount.¹⁷ Based on the evidence before us, we find that the maintenance on the voice compression module is eligible for funding because the voice compression module is installed on an eligible product.

8. In regard to FRN 269173, we agree with SLD that funding can not be approved for the salaries of two full-time technicians based upon the information submitted by Boston Public Library in its FCC Form 471.¹⁸ As noted, schools and libraries may obtain funding for the installation and maintenance of eligible services.¹⁹ Boston Public Library, however, provided no information in its FCC Form 471 to clearly associate any installation and maintenance cost to be

¹⁶ See 47 C.F.R. § 54.506.

¹⁷ 47 C.F.R. §§ 54.503, 54.517.

¹⁸ The Commission's rules require that the applicant make a bona fide request for service 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.

¹⁹ See 47 C.F.R. §§ 54.503, 54.517.

performed by these full-time technicians with eligible equipment.²⁰ In fact, its FCC Form 471 contains no description of the services that these technicians will perform or the equipment upon which the services will be performed. In addition, there is no indication as to whether these technicians will perform duties that extend beyond the services eligible for support under program rules. In light of the thousands of applications that SLD must review and process each year, we find that it is administratively necessary to require an applicant to be responsible for providing sufficient information in its FCC Form 471 to enable SLD to determine whether the requested services are eligible. In the absence of such information, we believe that SLD was justified in concluding that this request should be denied.

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 Boston Public Library on May 30, 2000 IS GRANTED IN PART AND DENIED IN PART, as discussed herein. 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 In Block B of its FCC Form 471, the service description for this request is identified as "Telecommunication Specialist."