

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
Pike County School District
Troy, Alabama
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.
File No. SLD-135522
CC Docket No. 96-45
CC Docket No. 97-21

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 Pike County School District (Pike County), Troy, Alabama, on May 12, 2000, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). Pike County seeks review of SLD's November 2, 1999 decision to deny in part Pike County's request for discounts under the schools and libraries universal service support mechanism. For the reasons set forth below, we deny the Request for Review and affirm SLD's denial of Pike County's request for discounts.

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

1 Letter from Sherry A. Key and Dr. John R. Key, Pike County School District, to Federal Communications Commission, filed May 12, 2000 (Request for Review).

2 Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sherry A. Key, Pike County School District, dated November 2, 1999 (Funding Commitment Decision Letter); see also Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sherry A. Key, Pike County School District, dated May 2, 2000 (Administrator's Decision on Appeal). 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.

Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470,<sup>4</sup> which is posted to the Administrator's website for all potential competing service providers to review.<sup>5</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>6</sup> SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. Applicants may only seek support for eligible services.<sup>7</sup> The instructions for the FCC Form 471 clearly state: "YOU MAY NOT SEEK SUPPORT ON THIS FORM FOR INELIGIBLE SERVICES."<sup>8</sup> 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."<sup>9</sup> 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 30 percent of the total.<sup>10</sup> An applicant can avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services.

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<sup>4</sup> Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470).

<sup>5</sup> 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>6</sup> 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471).

<sup>7</sup> 47 C.F.R. § 54.504 *et seq.*

<sup>8</sup> Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471) (December 1998) at 15 (Form 471 Instructions).

<sup>9</sup> Form 471 Instructions at 16.

<sup>10</sup> 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,

4. On November 2, 1999, SLD issued a Funding Commitment Decision Letter denying Pike County's Funding Request Number (FRN) 202627, because "30% or more of this FRN includes a request for Network Management Services which is an ineligible service based on program rules."<sup>11</sup> Pike County appealed that decision to SLD in a letter submitted on November 30, 1999.<sup>12</sup> SLD subsequently denied Pike County's appeal, stating, "[y]our funding request included more than 30% ineligible services which resulted in the denial of the entire amount of the FRN. Network management services are ineligible for funding according to program rules."<sup>13</sup> Pike County filed the instant appeal with the Commission on May 12, 2000.

5. In this appeal to the Commission, Pike County states its belief that "program rules were changed after [its FCC] Form 471 was filed," because it is of the understanding that the managed network services it requested were eligible under program rules when it applied for them in March of 1999.<sup>14</sup> Pike County appears to assert in the alternative that the services it requested were not in fact "network management services."<sup>15</sup> Pike County lastly requests that if part of FRN 202627 is deemed ineligible, Pike County should be permitted to receive funding for that portion of the request that comprises only eligible services.<sup>16</sup>

6. After reviewing documentation submitted in its appeal by Pike County, we find no basis upon which to grant Pike County's appeal. In the instant appeal, Pike County argues that it was not aware that Network Management Systems were ineligible for support, and that those systems only became ineligible after it submitted its FCC Form 471. At the time Pike County submitted its FCC Form 471, however, it was very clear that Network Management Services were ineligible services. Pike County sought discounts on services provided by BellSouth that are described in the documentation for the appeal as "Managed Connection Services," providing "network maintenance, monitoring, and management and coordination of network status . . . ."<sup>17</sup> SLD's eligible services list, which describes Network Management Systems as ineligible for discounts under the program, defines the equipment as "[a] system of

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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 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 application 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, for the most part, are requesting funding of ineligible services.

<sup>11</sup> Funding Commitment Decision Letter at 5.

<sup>12</sup> Letter from Sherry A. Key, Pike County School District, to the Schools and Libraries Division, Universal Service Administrative Company, filed November 30, 1999.

<sup>13</sup> Administrator's Decision on Appeal at 1.

<sup>14</sup> Request for Review at 2.

<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Id.* at 6-7.

<sup>17</sup> Request for Review, attachments.

equipment used in monitoring, controlling, and managing a data communications network.”<sup>18</sup> This description, which was available to Pike County at the time it applied for services, clearly indicates that the services sought by Pike County would not be funded by the program. Pike County was therefore sufficiently on notice at the time of its application that the services it had applied for were ineligible.

7. We are unpersuaded by Pike County’s alternative argument that the denied services are not ineligible Network Management Systems. Pike County has submitted no evidence that would indicate otherwise. Indeed, the documentation it has provided merely demonstrates that the requested services are ineligible Network Management Systems as described by the SLD eligible services list. SLD reasonably determined that the “network maintenance, monitoring, and management and coordination of network status” services requested by Pike County involve a “system of equipment used in monitoring, controlling, and managing a data communications network,” which is ineligible for funding under the program.

8. We cannot allow Pike County to amend its original application to eliminate ineligible services from its funding request.<sup>19</sup> SLD has established a policy that applicants are not permitted to amend completed FCC Forms 471 to remove ineligible service requests after the closure of the filing window.<sup>20</sup> This policy imposes upon applicants the responsibility of preparing their applications carefully and obtaining appropriate assistance to avoid including ineligible expenses.<sup>21</sup> If applicants were permitted to correct their applications after SLD has denied them, it would eliminate any incentive for them to avoid including ineligible expenses in their funding requests. This would significantly increase the administrative burden SLD would face while carrying out its obligation to guard against the occurrence of errors and fraud. In light of the thousands of applications that SLD reviews and processes each funding year, administrative necessity requires that each applicant be responsible for providing complete and accurate information in its FCC Form 471 upon which its ultimate funding is dependent. The applicant must ensure that its request for discounts satisfies program rules, which limit universal service funds to eligible services only.<sup>22</sup>

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<sup>18</sup> See SLD web site, <http://www.sl.universalservice.org/reference/eligible.asp>, dated March 27, 1998.

<sup>19</sup> See Request for Review at 7.

<sup>20</sup> The Commission’s rules require that applicants file a completed Form 471 by the filing window deadline to be considered pursuant to the funding priorities for “in-window” applicants. 47 C.F.R. §§ 54.504(c), 54.507(c).

<sup>21</sup> Assistance is available to applicants from many sources, including SLD’s website.

<sup>22</sup> 47 C.F.R. §54.504 *et seq.*

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 May 12, 2000 Request for Review filed by Pike County School District, Troy, Alabama, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey  
Deputy Chief, Common Carrier Bureau