

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
St. John the Baptist School)	File No. SLD-181667
Petersburg, Nebraska)	
)	
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: March 28, 2001

Released: March 29, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by St. John the Baptist School (St. John), Petersburg, Nebraska, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ St. John seeks review of 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 deny 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 for eligible telecommunications services, Internet access, and internal connections.³ Schools and libraries must apply for support each funding year.⁴ In order to receive discounts on eligible services, the Commission's rules require that an applicant submit to the Administrator

¹ Letter from Jean Reicks, St. John the Baptist School, to Federal Communications Commission, filed on May 23, 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).

³ 47 C.F.R. §§ 54.402, 54.503.

⁴ 47 C.F.R. § 54.507(d).

a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.⁵ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for the eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into the agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁶ Using information provided by the applicant in its FCC Form 471, the Administrator determines the amount of discounts for which the applicant is eligible.

3. St. John filed a FCC Form 471 requesting discounts for telecommunications services on January 16, 2000. Upon reviewing St. John's FCC Form 471, SLD determined that a significant amount of St. John's requested discounts was for a convent and rectory, ineligible entities under the program rules. Accordingly, by letter dated May 5, 2000, SLD denied St. John's request for discounts for Funding Year 3, on the grounds that a significant portion of St. John's request included a request for discounts for an ineligible entity.⁷ In response, St. John filed the instant Request for Review with the Commission requesting review of SLD's decision to deny St. John's request for discounts.

4. We have reviewed St. John's Request for Review and conclude that SLD properly denied St. John's application for discounts. We confirm that St. John requested discounts for services where more than thirty percent of the requested discounts were for ineligible entities.⁸ The Communications Act of 1934, as amended, states that the Commission shall establish rules to enhance access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms... and libraries.⁹ Only eligible entities

⁵ 47 C.F.R. § 54.504(b)(1), (b)(3).

⁶ 47 C.F.R. § 54.504(c).

⁷ Letter of the Schools and Libraries Division of the Universal Service Administrative Company to Jean Reicks, St. John the Baptist School, dated May 5, 2000 (Funding Commitment Decision Letter).

⁸ 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.

⁹ The Telecommunications Act of 1996 amends the Communications Act of 1934, 47 U.S.C. § 151, *et. seq.*, *see* 47 U.S.C. § 254(h)(2)(A); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9072-73 (1997) (*Universal Service First Report and Order*), *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.

may receive universal service funds, and only schools meeting the statutory definitions of elementary or secondary schools are eligible for discounts.¹⁰ The primary purpose for which support is sought must be the delivery of services to the classrooms or other places of instruction at schools and libraries meeting the statutory definition of an eligible institution.¹¹ In addition, the instructions to the FCC Form 471 state that applicants may not seek support for ineligible services, entities and uses.¹² In order to ensure that only eligible entities receive discounts, applicants must allocate the cost of shared services and facilities among eligible and ineligible entities.¹³ In its application, St. John clearly designated funds for entities that do not comply with the statutory definition of schools. St. John requested funds for both eligible and ineligible entities (the convent and rectory) without subtracting the cost of services for the ineligible entities. Moreover, St. John's does not challenge SLD's conclusion that St. John's funding request included services that would be used by ineligible entities.¹⁴ Therefore, SLD properly denied St. John's funding request.

5. In addition, St. John requests that the Commission review its application using data provided in its Request for Review which excludes the ineligible entities. However, under the rules of the program, applicants are not permitted to amend its FCC Form 471 to remove ineligible services after the closure of the FCC Form 471 filing window deadline.¹⁵ If applicants were permitted to make such correction, SLD would face significant additional administrative burdens. In light of the thousands of applications that SLD reviews and processes each funding year, administrative necessity requires that each applicant be responsible for clearly and accurately describing its funding request and for understanding all applicable program rules. We therefore deny St. John's request.

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).

¹⁰ 47 C.F.R. § 54.501; *see Universal Service Order* at 9066, para. 552. To be considered eligible, schools must meet the statutory definition of an elementary or secondary school found in the Elementary and Secondary Education Act of 1965. "Elementary school" is defined as "a nonprofit institutional day or residential school that provides elementary education, as determined under State law." 20 U.S.C. § 8801(14). "Secondary school" is defined as "a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that such term does not include any education beyond grade 12." 20 U.S.C. § 8801(25).

¹¹ Sections 245(b)(6) and 254(h)(2)(A) of the Communications Act specifically refer to the provision of telecommunications and other services directly to classrooms. 47 U.S.C. §§ 254(b)(6), 254(h)(2)(A). *See also* SLD web site, <<http://www.sl.universalservice.org>>.

¹² Instructions to Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471 Instructions) (September 1999), at 18.

¹³ *See id.* To the extent that an applicant seeks discounts for eligible services bundled with ineligible services, applicants must also apportion the costs of eligible and ineligible services. *Universal Service Order* at 9022, para. 461-462.

¹⁴ *See* Request for Review.

¹⁵ 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), 54.5079(c).

6. 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 St. John the Baptist School, Petersburg, Nebraska on May 23, 2000, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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