

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

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
New York Military Academy)	File No. SLD-242131
Cornwall-on-Hudson, New York)	
)	
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: May 20, 2002

Released: May 21, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division is a Request for Review filed by New York Military Academy (the Academy), Cornwall-on-Hudson, New York, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ The Academy seeks review of SLD’s denial of one of its Funding Year 4 requests for discounts under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny the Request for Review and affirm SLD’s decision.

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 The Commission’s rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470,⁴ which is posted to the Administrator’s website for all

¹ Letter from Donald Schwegler, New York Military Academy, to Federal Communications Commission, filed October 18, 2001 (Request for Review).

² See Request for Review. 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.

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (December 1998) (FCC Form 470).

potential competing service providers to review.⁵ 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.⁶ 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.⁷ The instructions for the FCC Form 471 clearly state: "YOU MAY NOT SEEK SUPPORT ON THIS FORM FOR INELIGIBLE SERVICES."⁸ 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."⁹ 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 30 percent or more of the total.¹⁰ An applicant can avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services.

⁵ 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).

⁶ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1998) (FCC Form 471).

⁷ 47 C.F.R. § 54.504 *et seq.*

⁸ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471) OMB 3060-0806 (December 1998), at 15 (Form 471 Instructions).

⁹ Form 471 Instructions, at 16.

¹⁰ *See Request for Review of the Decision of the Universal Service Administrative Company by Ubyly 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 less than 30 percent of the request is for funding of ineligible services, SLD normally will issue a funding commitment for the eligible services. If 30 percent or more 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

4. At issue is Funding Request Number (FRN) 580856, which sought discounted Internet access at a pre-discount annual cost of \$10,500.00.¹¹ In its FCC Form 470, the Academy specified that it was seeking discounts for Internet access, firewall software, and parental control software.¹² The required attachments that the Academy submitted as part of its FCC Form 471 also indicate that the services comprising the \$10,500.00 request include Internet access, firewall software, and parental control software.¹³ Under program rules, firewall software and parental control software are ineligible for discounts.¹⁴ However, rather than denying some or all of that FRN on the basis of ineligible services, SLD denied it on the grounds that the Academy had violated the program's competitive bidding rules.¹⁵ The Academy appealed this determination to SLD, pointing out that the FCC Form 470 had clearly included the request for Internet access.¹⁶ SLD concluded that the Academy adequately demonstrated that it had indeed complied with the competitive bidding rules.¹⁷

5. However, in reviewing the Academy's appeal, SLD realized that a portion of the FRN at issue consisted of requests for ineligible software. SLD consequently emailed the Academy for a breakdown of the \$10,500.00 request, in order to determine whether the entire FRN must be denied for the reason that at least 30 percent of the request is for ineligible services.¹⁸ The Academy responded with information indicating that it sought discounts for parental-control software (\$3,150.00), email filtering software (\$130.00), a firewall server (\$2,200.00), and Internet access (\$6,300.00), totaling \$11,780.00.¹⁹ The ineligible services (parental control software, email filtering software, and firewall server) comprise more than 30

ineligible services without expending significant fund resources working with applicants that are requesting funding for a large proportion of ineligible services.

¹¹ FCC Form 471, New York Military Academy, filed January 18, 2001, at 5 (Academy Form 471).

¹² FCC Form 470, New York Military Academy, posted December 13, 2000.

¹³ Academy Form 471, Attachment 7.

¹⁴ See SLD website, Eligible Services List, <http://www.sl.universalservice.org/data/pdf/EligibleServicesList_101701.pdf>.

¹⁵ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Don Schwegler, New York Military Academy, dated July 23, 2001 (Funding Commitment Decision Letter); see also 47 C.F.R. § 54.504(b) (requiring posting of relevant information for 28 days to allow for competitive bidding).

¹⁶ Letter from Don Schwegler, New York Military Academy, to Schools and Libraries Division, Universal Service Administrative Company, filed August 20, 2001.

¹⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Don Schwegler, New York Military Academy, dated October 1, 2001 (Administrator's Decision on Appeal).

¹⁸ See email from Andy Eisley, Schools and Libraries Division, Universal Service Administrative Company, to Donald Schwegler, New York Military Academy, dated September 19, 2001.

¹⁹ See email from Donald Schwegler, New York Military Academy, to Andy Eisley, Schools and Libraries Division, Universal Service Administrative Company, dated September 20, 2001.

percent of the FRN.²⁰ Thus, in its Administrator's Decision on Appeal, SLD agreed with the Academy that the Academy had followed the competitive bidding rules, but denied the FRN because at least 30 percent consisted of ineligible services.²¹

6. The Academy filed the instant Request for Review on October 18, 2001. The Academy asserts that the application process is overly complex, and expresses confusion regarding why it was denied discounts, but makes no substantive claim that the services it requested were eligible for discounts under our rules.

7. After a thorough review of the record, we deny the Academy's Request for Review. Although SLD did not initially determine that the Academy had applied for ineligible services, it rightly disallowed support for those services once it became aware of them. Furthermore, we conclude that it correctly calculated that the percentage of ineligible services was greater than 30 percent of the cost of the FRN, and therefore properly denied the entire FRN. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures.²²

8. 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 New York Military Academy, Cornwall-on-Hudson, on October 18, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

²⁰ In its breakdown, the Academy listed parental control software (\$3,150.00), email filtering software (\$130), and firewall server purchase (\$2,200.00), totaling \$5,480.00 in ineligible services, plus \$6,300.00 eligible Internet access, for a total request of \$11,780.00. SLD calculates the 30 percent policy on the basis of the original request, which was \$10,500.00. Therefore, because the \$5,480.00 in ineligible services the Academy seeks constitutes 52 percent of the \$10,500.00 in requested services, SLD properly denied discounts. We observe that even if the \$5,480.00 of ineligible services were compared against the \$11,780.00 total, the Academy's request would be denied, because ineligible services would account in that instance for 46 percent of services sought in that funding request, well in excess of the 30 percent threshold.

²¹ Administrator's Decision on Appeal.

²² See, e.g., *Request for Review by Anderson School Staatsburg, 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, 15 FCC Rcd 25610 (Com. Car. Bur. 2000) para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.").