

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

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Virginia Department of Education	)	
Richmond, Virginia	)	
	)	
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: January 17, 2002**

**Released: January 18, 2002**

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by the Virginia Department of Education (Virginia DOE), Richmond, Virginia, seeking review of actions by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).<sup>1</sup> Virginia DOE seeks review of actions by SLD in connection with those applicants who filed applications for discounts in Funding Year 2 of the schools and libraries universal service support mechanism after the close of the first filing window.<sup>2</sup> For the reasons discussed, we deny the Request for Review.

2. Under the universal service support mechanism for schools and libraries, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its

<sup>1</sup> Letter from Lan Neugent, Virginia Department of Education, to Federal Communications Commission, filed March 14, 2000 (Request for Review).

<sup>2</sup> 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).

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

technological needs and the services for which it seeks discounts.<sup>3</sup> The Administrator must post the FCC Form 470 on its website, and the applicant is required to wait 28 days before making a commitment with a selected service provider. Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for 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 an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.<sup>6</sup> The Commission's rules allow the Administrator to implement an internal filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.<sup>7</sup> Applications that are received outside this filing window are subject to separate funding priorities under the Commission's rules.<sup>8</sup> It is to all applicants' advantage, therefore, to ensure that the Administration receives their applications prior to the close of the filing window.

3. The filing window for Funding Year 2 initially closed on April 6, 1999.<sup>9</sup> However, it was later determined that funds were available in excess of what had been requested by applicants who filed within the original window. On March 1, 2000, SLD announced that it would re-open the filing window to permit additional applications.<sup>10</sup> The re-opened window ("Second Window") closed on March 31, 2000.<sup>11</sup> In its March 1, 2000 announcement, SLD stated that it would consider all applications filed prior to March 1, 2000 and after the April 6, 1999 close of the first Funding Year 2 filing window as timely filed in the Second Window.<sup>12</sup> SLD also established rules of priority governing applications filed between March 2, 2000 and March 31, 2000, in the event that funds proved to be insufficient to satisfy these applications.<sup>13</sup> After the Second Window was closed, however, SLD determined that available funds were

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<sup>4</sup> 47 C.F.R. §§ 54.504(b)(1), (b)(3).

<sup>5</sup> 47 C.F.R. §§ 54.504(b)(3) and (4); § 54.511.

<sup>6</sup> 47 C.F.R. § 54.504(c).

<sup>7</sup> 47 C.F.R. § 54.507(c).

<sup>8</sup> 47 C.F.R. § 54.507(g).

<sup>9</sup> *Request for Review by Danbury Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-NEC.471.04-13-00.31900001, CC Dockets No. 96-45 and 97-21, Order, DA 01-1251, n.8 (Com. Car. Bur. rel. May 23, 2001).

<sup>10</sup> *Id.*; see also SLD web site, What's New (March, 2000), <<http://www.sl.universalservice.org/whatsnew/032000.asp#consideryr2>>.

<sup>11</sup> See SLD web site, What's New (March, 2000), <<http://www.sl.universalservice.org/whatsnew/032000.asp#consideryr2>>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

sufficient to fund all valid applications filed by the close of the Second Window on March 31, 2000.<sup>14</sup>

4. On October 25, 1999, prior to the opening of the Second Window, SLD switched to an application operating system for Funding Year 3. As a result, parties who filed FCC Form 470s requesting Funding Year 2 services on or after October 25, 1999, were forced to use the Funding Year 3 application system to do so. Thus, although the FCC Form 470s requested services in Funding Year 2, SLD posted them on its web site together with the Funding Year 3 FCC Form 470s.<sup>15</sup> To address this problem, SLD posted a list of the Applications Numbers of those Funding Year 2 FCC Form 470s that were received by SLD on or after October 25, 1999 in a separate location on its web site.<sup>16</sup> Vendors interested in providing service during the Second Window were instructed to review the list to identify Second Window FCC Form 470 application numbers on which they might be interested in bidding. Vendors were further notified that, to enter a bid for Second Window applications, they would need to enter Funding Year 3 from the drop-down box labeled “7/1/2000 - 6/30/2001” to access the FCC Form 470 and review the details.<sup>17</sup> SLD delayed the posting of some FCC Form 470s while this solution was being developed and implemented. The FCC Form 470s at issue in this matter were filed during this interim period.

5. Virginia DOE brings its Request for Review to address alleged mistakes by SLD in processing Funding Year 2 FCC Form 470s filed for discounts before the close of the Second Window.<sup>18</sup> Virginia DOE alleges that a number of Virginia applicants, including Madison County, Northampton County, Hampton City, Richmond County, Greene County, and Culpeper County, filed FCC Form 470s in November, December, and January of 1999, but that SLD delayed posting these FCC Form 470s until mid-February, 2000.<sup>19</sup> Virginia DOE asserts that the delay in posting the affected FCC Form 470s resulted “in a loss of funding opportunity from the time the applicants should have been posted to the time they were actually posted.”<sup>20</sup> It further asserts that, because of the delay, applicants could not file their FCC Forms 471 until after March 1, 2000, when the different priority rules could potentially deprive the applicants of funding.<sup>21</sup> In addition to these allegations regarding delayed posting, Virginia DOE asserts that the FCC Form

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<sup>14</sup> See SLD web site, What’s New (April, 2001),  
<<http://www.sl.universalservice.org/whatsnew/042001.asp#042601>>.

<sup>15</sup> See SLD web site, What’s New (March, 2000),  
<<http://www.sl.universalservice.org/whatsnew/032000.asp#considervr2>>.

<sup>16</sup> See SLD web site, What’s New (March, 2000),  
<<http://www.sl.universalservice.org/whatsnew/032000.asp#updates>>.

<sup>17</sup> *Id.*

<sup>18</sup> Request for Review, at 1-2.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.* at 2.

470 filed by Pulaski County for the Second Window of Funding Year 2 was erroneously posted on SLD's web site as a Funding Year 3 FCC Form 470.<sup>22</sup>

6. The Request for Review does not detail whether any of the named applicants were denied funding as a result of the alleged actions by SLD. However, the record demonstrates that, of those named applicants that Virginia DOE complains on behalf of, only Richmond County has been denied funding.<sup>23</sup> Richmond County filed a Request for Review with the Commission on its own behalf appealing its funding denial.<sup>24</sup> The Commission recently denied the request.<sup>25</sup>

7. As relief for the harm alleged, Virginia DOE requests that "the above-named Virginia applicants, and any other Virginia applicant the Virginia Department of Education, SLD, or FCC may identify as having filed timely year two 470 or 471 applications be granted the opportunity to receive funding for equipment and services retroactive to the time their applications should have been posted on the SLD Web site."<sup>26</sup> Virginia DOE also asks "that all form 470 applications incorrectly posted as year three services be considered as year two postings."<sup>27</sup>

8. We first address Virginia DOE's Request for Review of SLD's alleged delay in posting certain Funding Year 2 FCC Forms 470. Virginia DOE alleges that SLD's delay in the posting of the FCC Forms 470 caused applicants a loss of the opportunity to obtain discounts on services received from the time the FCC Forms 470 should have been posted to the time they were actually posted.<sup>28</sup> Based on our investigation, we find, as noted above, that SLD did delay in posting some FCC Form 470s. The posting dates for the FCC Form 470s filed by the named applicants suggests that these FCC Form 470s were among those delayed.<sup>29</sup> However, we find

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<sup>22</sup> *Id.* at 2.

<sup>23</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Nancy B. Royall, Richmond County School District, App. No. 210561, dated April 27, 2001; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Nancy B. Royall, Richmond County School District, App. No. 210679, dated April 27, 2001.

<sup>24</sup> See Letter from Karl G. O'Dell, Richmond County Public Schools, to Federal Communications Commission, filed May 9, 2001 (Richmond County Request for Review).

<sup>25</sup> *Request for Review by Richmond County Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-210561, 210679, CC Dockets No. 96-45 and 97-21, Order, DA 02-02-86 (Com. Car. Bur. January 14, 2002).

<sup>26</sup> Request for Review, at 3.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 2.

<sup>29</sup> FCC Form 470, Madison County School District, USCN 289480000288965, posted February 23, 2000; FCC Form 470, Northampton County School District, USCN 784000000271597, posted February 16, 2000; FCC Form 470, Hampton City School District, USCN 173960000284482, posted February 16, 2000; FCC Form 470, Richmond County School District, USCN 145120000288982, posted February 16, 2000; FCC Form 470, Greene County School District, USCN 708460000289000, posted February 16, 2000; FCC Form 470, Culpeper County Library, USCN 471760000289015, posted February 16, 2000.

that it is overly speculative to suppose that any particular applicant has, in fact, been prejudiced by delay without a specific record developed by an applicant making such a claim. In addition, we find that the claims on behalf of unspecified injured parties does not comply with the Commission's regulatory requirements for Requests for Review in two respects. First, section 54.721(b) requires a full statement of the relevant material facts.<sup>30</sup> At a minimum, the relevant facts must specify the identity of each party for whom relief is sought, and thus, an appeal on behalf of unspecified parties is inadequate. Second, actions by the Administrator may be challenged only by the parties that are "aggrieved by [the] action."<sup>31</sup> Virginia DOE has made no showing that the Administrator's actions with respect to unspecified parties have in any way caused it to be aggrieved or that it properly represents such parties. Therefore, we deny Virginia DOE's broad request that we direct SLD to provide retroactive discounts to all applicants who filed timely Funding Year FCC Form 470s.

9. Virginia DOE also asserts that SLD's delay in posting the FCC Form 470s forced a number of applicants to file their FCC Form 471 applications in March of 2000 instead of earlier, and that they were potentially subject to priority rules that might preclude them from funding. However, as noted above, although there were priority rules in place during March of 2000 that could potentially result in the exclusion of lower priority applications, SLD subsequently found that it had enough funds to grant all applications filed up to March 31, 2000. Thus, applicants were not prejudiced by having to file their applications under the priority rules. As a result, Virginia DOE's allegations of applicant harm are without merit.

10. We next turn to Virginia DOE's request in connection with Funding Year 2 FCC Form 470s that were incorrectly treated as having been filed in Funding Year 3. As noted above, Virginia DOE requests that we direct SLD to treat these FCC Form 470s as Funding Year 2 FCC Form 470s, and to process all applications relying on them accordingly.

11. We find that SLD identified numerous FCC Form 470s filed for Funding Year 2 that were placed in the drop-down box for Funding Year 3. We further find that SLD took reasonable and effective measures to ensure that vendors had a chance to review and bid upon these service requests. Whether SLD has successfully identified most or all of the relevant FCC Form 470s is impossible to determine on the current record. However, because SLD has put in place a reasonable solution, we find it inappropriate to take further action unless and until a specific applicant comes before us seeking review.

12. We therefore deny Virginia DOE's Request for Review in its entirety. In doing so, we offer no opinion as to the merits of any other Request for Review pending before us.

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<sup>30</sup> 47 C.F.R. § 54.521(b).

<sup>31</sup> 47 C.F.R. § 54.719(c).

13. 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 Virginia Department of Education, Warsaw, Virginia, on March 14, 2000 IS DENIED.

## FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert  
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