

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review of a Decision of the)	
Universal Service Administrative Company)	
By)	
)	
School for Language and Communication)	File No. SLD-246025
Development)	
Glen Cove, 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 Carriers Association, Inc.)	

ORDER

Adopted: August 5, 2002

Released: August 6, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by the School for Language and Communications Development (School for Language), Glen Cove, New York.¹ School for Language requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) relating to an application for discounts under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny School for Language's Request for Review and direct SLD to pursue commitment adjustment procedures with regard to certain funds already awarded.

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 In order to receive discounts on eligible services, the Commission's rules require that the applicant

¹ Letter from Susanne Lonigro, School for Language and Communication Development, 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.

submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carriers with whom the applicant has entered into an agreement, the eligible discount rate, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵

3. In accordance with the Commission's rules, the discount available to a particular school is determined by indicators of poverty and high cost.⁶ The level of poverty for schools and school districts is measured by the percentage of student enrollment that is eligible for a free or reduced price lunch under the National School Lunch Program (NSLP) or a federally-approved alternative mechanism outlined in Title I of the Improving America's Schools Act (IASA).⁷ Pursuant to IASA, comparable data may be collected by alternative means such as survey, or from existing sources such as AFDC or tuition scholarship programs.⁸ This is especially relevant to schools that may not have access to NSLP data, such as private schools.⁹ A school's high cost status is derived from rules that classify it as urban or rural.¹⁰ The rules provide a matrix reflecting both a school's urban or rural status and the percentage of its students

⁴ 47 C.F.R. § 54.504 (b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c). *See also* Schools and Libraries Universal Service, Service Ordered and Certification Form, OMB 3060-0806 (October 2000) (Form 471).

⁶ 47 C.F.R. § 505(b).

⁷ *See* 47 C.F.R. § 54.505(b)(1); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9045 (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 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) ("Schools that choose not to use an actual count of student eligible for the national school lunch program may use only the federally-approved alternative mechanisms contained in Title I of the Improving America's Schools Act, which equate one measure of poverty with another."); Instructions for Completing the Schools and Libraries universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2000) (Form 471 Instructions), at 10-12. For example, because most private schools do not participate in the NSLP, it would be necessary for a private school to assess discount eligibility through an alternative means.

⁸ *See* 34 C.F.R. § 200.28(a)(2)(i)(B); Form 471 Instructions at 11-12. Pursuant to the Form 471 Instructions, "[s]chools that choose not to use an actual count of students eligible for the national school lunch program may use only the federally approved alternative mechanisms contained in the Improving America's Schools Act (34 C.F.R. § 200.28(a)(2)(i)(B)). That law states that private schools without access to the same poverty data that public schools use to count children from low-income families, may use comparable data '(1) [c]ollected through alternative means such as survey' or '(2) [f]rom existing sources such as AFDC [Aid to Families with Dependent Children] or tuition scholarship programs.' *See* 34 C.F.R. § 200.28(a)(2)(i)(B). It should be noted that AFDC has been changed to Temporary Aid for Needy Families (TANF). Schools using a federally approved alternative mechanism may use participation in other income-assistance programs, such as Medicaid, food stamps, Supplementary Security Income (SSI), federal public housing assistance (Section 8), or Low Income Home Energy Assistance Program (LIHEAP) to determine the number of students that would be eligible for the NSLP."

⁹ *Id.*

¹⁰ 47 C.F.R. § 54.505(b)(3)(i), (ii).

eligible for the school lunch program to establish a school's discount rate, ranging from 20 percent to 90 percent, to be applied to eligible services.¹¹

4. Block 4 of the FCC Form 471, a Discount Calculation Worksheet, is used to help applicants determine the percentage discount to which each applicant is entitled.¹² In order to calculate a school's site-specific eligible discount percentage, applicants are requested to indicate the number of students in each school, along with the number of students eligible for the NSLP.¹³ If NSLP data is unavailable for the school, or, if an applicant wishes to do so, an applicant may instead use a federally-approved alternative mechanism.¹⁴ Once the applicant determines the percentage of students that may be eligible for the NSLP (either from NSLP data or by a federally-approved alternative mechanism) the discount matrix is used to determine the percentage discount for the applicant.¹⁵ The eligible discount percentage is also entered into Block 4.¹⁶

5. On January 19, 2001, School for Language filed a FCC Form 471 with SLD.¹⁷ In Block 4 of its application, School for Language indicated that none of its students participated in the NSLP, but that the school was eligible for a 60 percent discount.¹⁸ During its review of School for Language's application, SLD requested documentation supporting the eligible discount rate for the school.¹⁹ School for Language informed SLD that it based the discount percentage for its school on the published percentage of students eligible for NSLP of the public school district within which it is located.²⁰ Subsequently, SLD adjusted School for Language's discount rate to 20 percent and issued a funding commitment decision letter on July 23, 2001.²¹

¹¹ 47 C.F.R. § 54.505(c).

¹² Form 471.

¹³ *Id.* See also *Universal Service Order*, 12 FCC Rcd at 9044-9046.

¹⁴ 47 C.F.R. §505(b)(1). See also *Universal Service Order*, 12 FCC Rcd at 9045 (“These alternative mechanisms permit schools to choose from among existing sources of poverty data a surrogate for determining the number of students who would be eligible for the national school lunch program. A school relying upon one of these alternative mechanisms could, for example, conduct a survey of the income levels of its students’ families.”).

¹⁵ See Form 471 Instructions at 12. See also *Universal Service Order*, 12 FCC Rcd at 9049-9050.

¹⁶ See Form 471.

¹⁷ FCC Form 471, School for Language and Communication Development, filed January 19, 2001 (School for Language Form 471).

¹⁸ *Id.*

¹⁹ See Problem Resolution Form Detail Log, Schools and Libraries Division, Universal Service Administrative Company, dated May 23, 2001.

²⁰ See Facsimile from Susanne Lonigro, School for Language and Communication Development to Robert Vaughn, Schools and Libraries Division, Universal Service Administrative Company, dated May 23, 2001. The statistics used by School for Language were published in April 1999, and were based on a statistical profile from the fall of 1997, more than three years before School for Language filed its application.

²¹ Letter from Schools and Libraries Division, Universal Service Administrative Company to Susanne Lonigro, School for Language and Communication Development, dated July 23, 2001. According to the discount matrix, if less than 1 percent of students qualify for the NSLP and the school is located in an urban area, the school qualifies for a 20 percent discount. See FCC Form 471 Instructions at 12.

6. On July 30, 2001, School for Language appealed to SLD the funding commitment decisions for Funding Request Number (FRN) 595288 and FRN 595325.²² In its appeal, School for Language asserted for the first time that the school was located in a school district where the percentage of children eligible for the National School Lunch Program is 38.4 percent.²³ School for Language asserted that according to the discount matrix, the school should be eligible for a 60 percent discount for each of the funding requests.²⁴ On October 1, 2001, SLD affirmed its initial decision and denied School for Language's appeal.²⁵ SLD explained that the 60 percent discount rate could not be supported by appropriate documentation.²⁶

7. On October 18, 2001, School for Language filed the instant Request for Review with the Commission.²⁷ School for Language asserts that the school is a publicly funded special education school and that because the school does not participate in the NSLP, it has never collected income data from the families whose children attend the school.²⁸ In addition, School for Language states that in previous funding years they used a discount percentage based upon the national school lunch eligibility of the district where the school is located.²⁹ School for Language claims that the school should have been notified in advance of whether an alternative method of determining the eligible discount rate for the school was necessary.³⁰

8. After a review of the record and the relevant rules and procedures, we deny School for Language's Request for Review because it was erroneous for School for Language to rely upon the overall percentage of children eligible for the NSLP in the school district to determine the eligible discount rate for the school. The Commission's rules, along with the instructions for the FCC Form 471, clearly state that a school may use either an actual count of students eligible for the NSLP or a federally-approved alternative mechanism to determine the level of poverty for purposes of the schools and libraries universal service discount mechanism.³¹ We note that in limited circumstances an applicant is permitted to rely upon the *weighted average* discount for the school district in determining the eligible discount rate, but only if the applicant is an "Administrative Entity" or "New School Construction."³² School for Language by its own description is neither.³³ Therefore, by basing the discount rate for School for

²² Letter from Susanne Lonigro, School for Language and Communication Development to Schools and Libraries Division, Universal Service Administrative Company, dated July 26, 2001.

²³ *Id.*

²⁴ *Id.*

²⁵ Letter from Schools and Libraries Division, Universal Service Administrative Company to Susanne Lonigro, School for Language and Communication Development, dated October 1, 2001.

²⁶ *Id.*

²⁷ Request for Review.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *See supra* note 7.

³² *See* FCC Form 471 Instructions at 12.

³³ School for Language Form 471.

Language on a school district's overall eligibility for NSLP, School for Language did not utilize one of the permissible methods of determining the eligible discount rate for the school.³⁴

9. Further, we also reject School for Language's argument that the school used a similar method of determining its eligible discount rate in previous funding years and that SLD should have notified the school in advance so it could prepared an alternative method.³⁵ First, failure to detect violations in prior funding years does not preclude SLD or the Commission from requiring compliance with the Commission's rules in later year.³⁶ Otherwise, applicants would have no incentive to comply with program rules once they discovered a prior violation was erroneously undetected. Thus, School for Language bore the risk that its application would be denied in Funding Year 4 despite the failure of SLD to detect a similar violation in prior funding years. Indeed, where a commitment of funds has been made for an application that violated our regulations, the commitment will ordinarily be cancelled or adjusted and efforts will be made to recoup any funds improperly disbursed.³⁷ Therefore, to the extent that SLD may have improperly awarded discounts in prior funding years, we direct SLD to adjust these funding commitments in accordance with Commission rules and its established funding commitment adjustment procedures.

10. Moreover, 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.³⁸ School for

³⁴ In fact, the Commission specifically rejected using generalized methods of estimating the number of eligible children in a particular area. See *Universal Service Order*, 12 FCC Rcd at 9045 ("We conclude that only federally-approved alternative mechanisms, which rely upon actual counts of low-income children, provide more accurate measures of poverty and less risk of overcounting, than other methods suggested by some commenters that merely approximate the percentage of low-income children in a particular area.").

³⁵ Request for Review.

³⁶ See generally *In re Applications of Roy E. Henderson d/b/a Pueblo Radio Broadcasting Service Sanchez Communications, Inc., Hal S. Widsten Classic Media, Inc., Buena Suerte Broadcasting Corp., O-V Communications for Construction Permit for a New FM Station in Oro Valley, Arizona*, 5 FCC Rcd 6278, para. 6 (1990) (failure of FCC staff to detect errors in an application does not excuse applicant from compliance with the Commission's rules). See *Request for Review of the Decision of the Universal Service Administrator by Ruidoso Municipal School District Ruidoso, New Mexico, 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, 15 FCC Rcd. 15547, n.10 (2000) (citing *In Re Applications of Mary Ann Salvatoriello*, 6 FCC Rcd 4705 (1991), citing *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990) (Erroneous advice from a government employee has never been found to create estoppel against the Federal Government, particularly when the relief requested would be contrary to an applicable statute or rule. Persons relying on informal advice given by Commission staff do so at their own risk.)).

³⁷ See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 7197, para. 8 (rel. October 8, 1999) (*Commitment Adjustment Waiver Order*); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Dockets No. 96-45 and 97-21, Order, FCC 99-291, (rel. October 8, 1999); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 22975 (rel. October 26, 2000) (*Commitment Adjustment Order*) (adopting adjustment procedures).

³⁸ See *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*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. rel. Nov. 24, 2000), at para. 8 ("In light of the thousands

(continued...)

Language's misunderstanding or unfamiliarity of Commission policies in prior funding years provides no basis for deviating from the Commission's policy of placing on the applicant the responsibility for understanding program rules and procedures.³⁹ Accordingly, the burden of supporting the requested discount level falls on the applicant, School for Language has failed to meet that burden for the funding requests at issue in the instant appeal. Thus, we deny School for Language's Request for Review.

11. 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 the School for Language and Communication Development on October 18, 2001 IS DENIED.

12. ACCORDINGLY, IT IS FURTHER ORDERED that the Schools and Libraries Division review the School for Language and Communication Development's funding commitments for prior funding years and, if warranted, pursue funding commitment adjustment in accordance with the terms of this Order, Commission rules, and the established commitment adjustment procedures.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
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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.").

³⁹ See, e.g., *Request for Review of Decision Universal Service Administrative Company by Arizona Call-A-Teen Center, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket No. 96-45, Order, 15 FCC Rcd 18634, 18637 (Com. Car. Bur. rel. May 15, 2000), at para. 6.