

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

In the Matter of	)	
	)	
Petition for Reconsideration of the	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Most Holy Trinity	)	File No. SLD-238165
Brooklyn, 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 ON RECONSIDERATION**

**Adopted: March 22, 2002**

**Released: March 27, 2002**

By the Common Carrier Bureau:

1. Before the Common Carrier Bureau (Bureau) is a Petition for Reconsideration filed by Most Holy Trinity (MHT), Brooklyn, New York.<sup>1</sup> MHT seeks reconsideration of our denial of its request for review of the decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).<sup>2</sup> For the reasons set forth below, the petition is denied.

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.<sup>3</sup>

<sup>1</sup> *Petition for Reconsideration of Request for Review of the Decision of the Universal Service Administrator by Most Holy Trinity School*, File No. SLD-238165, CC Dockets No. 96-45 and 97-21, Petition for Reconsideration, filed November 5, 2001 (Petition for Reconsideration).

<sup>2</sup> *Request for Review by Most Holy Trinity School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-161422, CC Dockets No. 96-45 and 97-21, Order, DA 01-2456 (Com. Car. Bur. rel. October 23, 2001) (*Request for Review by Most Holy Trinity*). Parties may seek reconsideration from a final action of the Commission or its designated authority pursuant to 47 C.F.R. § 1.106.

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

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

3. In the *Fifth Reconsideration Order*, the Commission established rules to govern how discounts would be allocated when total demand exceeds the amount of funds available and a filing window is in effect.<sup>7</sup> These rules provide that requests for telecommunications and Internet access service for all discount categories shall receive first priority for available funds (Priority One services), and requests for internal connections shall receive second priority (Priority Two services).<sup>8</sup> Thus, when total demand exceeds the total support available, SLD is directed to give first priority for available funding to telecommunications service and Internet access.<sup>9</sup> Any funding remaining is allocated to requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.<sup>10</sup> Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their request for internal connections. To the extent that funds remain, the Administrator would continue to allocate funds for discounts to eligible applicants at each descending single discount percentage, e.g., eighty-nine percent, eighty-eight percent, and so on until there are no funds remaining.<sup>11</sup> In

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<sup>4</sup> Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470); 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 (Nov. 2, 2000); *see also* SLD Website, <<http://www.sl.universalservice.org>>.

<sup>5</sup> 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

<sup>6</sup> *Request for Review by Metropolitan School District of Pike Township, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-120821, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 13891, para. 2 (Com. Car. Bur. 2000).

<sup>7</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915 (1998) (*Fifth Order on Reconsideration*).

<sup>8</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>9</sup> The annual cap on federal universal service support for schools and libraries is \$2.25 billion per funding year. *See* 47 C.F.R. § 54.507(a).

<sup>10</sup> *Fifth Order on Reconsideration*, 13 FCC Rcd at 14938, para. 36.

<sup>11</sup> 47 C.F.R. § 54.507(g)(1)(iii).

Funding Year 3, funding of discounted internal connections was available only for schools with discount rates of 82% or higher.<sup>12</sup>

4. In our previous decision, we upheld SLD's Funding Year 3 procedure of classifying requests that included any amount of Priority Two services as Priority Two requests.<sup>13</sup> Finding that MHT's funding request, Funding Request Number (FRN) 313503, included some internal connections services, we affirmed SLD's decision to classify FRN 313503 as internal connections and deny it on the grounds that MHT did not have a sufficiently high discount rate to be eligible for internal connections discounts in Funding Year 3.<sup>14</sup>

5. In its Petition for Reconsideration, MHT does not take issue with our determination that a portion of FRN 313503 consisted of internal connections. However, it argues that we should reverse our prior decision for two reasons.<sup>15</sup> First, MHT asserts that mixed priority requests, *i.e.*, requests that contain both Priority One and Priority Two services, should be reviewed under a rule comparable to the "30 percent policy" applied to mixed eligibility requests, requests with both eligible and ineligible services.<sup>16</sup> MHT argues that an error in determining the proper classification should be considered less "grievous" than an error in determining basic eligibility, and yet, under SLD's approach, the former error results in harsher consequences.<sup>17</sup>

6. The Commission's regulations authorize SLD to establish procedures for the administration of the schools and libraries support application process in an efficient and effective manner, including procedures for the review of applications and the implementation of the Commission's rules of priority.<sup>18</sup> As we noted in our previous decision, in Funding Year 3,

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<sup>12</sup> SLD web site, What's New (November 2000), <http://www.sl.universalservice.org/whatsnew/112000.asp#112200>.

<sup>13</sup> *Request for Review by Most Holy Trinity*, para. 8.

<sup>14</sup> *Id.*, paras. 9-10.

<sup>15</sup> Petition for Reconsideration, at 3-4.

<sup>16</sup> *Id.* at 3. 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 consider the application and 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 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.

<sup>17</sup> Petition for Reconsideration, at 3.

<sup>18</sup> See 47 C.F.R. §§ 54.701(a), 54.702, 54.705(a)(iii), 54.705(a)(vii).

to ensure that the priority rules were not violated, SLD followed the review procedure of reclassifying a Priority One request as one seeking Priority Two services if any portion of the services requested were found to be Priority Two.<sup>19</sup> In contrast, with respect to mixed eligibility requests, SLD reduces a funding request to exclude the cost of the ineligible services in circumstances where the ineligible services represented less than 30 percent of the total funding request, and treats a funding request as entirely ineligible only if ineligible services constitute 30 percent or more of the total.<sup>20</sup>

7. MHT asserts that SLD should have applied the 30 percent policy to mixed priority requests. However, we have previously addressed this very argument where we held specifically that SLD's decision to use this procedure rather than the 30 percent policy applicable to mixed eligibility requests was reasonable.<sup>21</sup> We therefore reject MHT's argument that SLD should have applied a 30 percent policy to FRN 313503.

8. MHT next argues that SLD's decision should be reversed because SLD has adopted a new approach to mixed priority requests in Funding Year 4 that does not automatically convert the entire request to Priority Two based on the presence of any amount of Priority Two services.<sup>22</sup> However, the fact that SLD has adopted a new approach in Funding Year 4 does not undermine our determination that the policy adopted in Funding Year 3 was reasonable. Further, because MHT filed the pending application in Funding Year 3, it is properly subject to the procedures in place for Funding Year 3. We therefore find that MHT's second argument also provides no basis for reconsideration.

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<sup>19</sup> *Request for Review by Most Holy Trinity*, at para. 4; *see also* SLD Web Site, <[http://www.sl.universalservice.org/reference/471\\_App\\_Guid\\_Docs/471\\_dozen.asp](http://www.sl.universalservice.org/reference/471_App_Guid_Docs/471_dozen.asp)> (last updated April 15, 1999) ("To correctly apply the Rules of Priority (fund Telecommunications and Internet Access first, then Internal Connections beginning with neediest), SLD must 'scrub' telecommunications and Internet Access requests to assure no Internal Connections are included. A piece of equipment at the user's location listed in one of these categories risks having the entire service redefined as Internal Connections."); *see also* SLD Web Site, <<http://www.sl.universalservice.org/reference/ServCategories.asp>> (describing review procedure used in Funding Year 3).

<sup>20</sup> *See supra*, n.19.

<sup>21</sup> *Request for Review by Boone County School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-199596, CC Dockets No. 96-45 and 97-21, Order, DA 01-2770, para. 7 (Com. Car. Bur. rel. November 29, 2001).

<sup>22</sup> *Petition for Reconsideration*, at 3-4; *see also* SLD Web Site, <<http://www.sl.universalservice.org/reference/ServCategories.asp>>.

9. ACCORDINGLY, IT IS ORDERED, pursuant to section 1.106(j) of the Commission's rules, 47 C.F.R. § 1.106(j), that the Petition for Reconsideration filed by Most Holy Trinity, Brooklyn, New York, on November 5, 2001 is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey  
Deputy Chief, Common Carrier Bureau