

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

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Valliant Independent School District 11)	File No. SLD-172607
Ada, Oklahoma)	
)	
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 Valliant Independent School District 11 (Valliant), Ada, Oklahoma, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Valliant seeks review of SLD's denial of one of its Funding Year 3 requests for discounts under the schools and libraries universal service mechanism.² For the reasons discussed 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, which is posted to the Administrator's website for all

¹ Letter from Debi Sovereign, Kellogg Consulting, L.L.C., on behalf of Valliant Independent School District 11, to Federal Communications Commission, filed April 20, 2001 (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. §§ 54.502, 54.503.

potential competing service providers to review.⁴ 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.⁵ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

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.⁶ 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).⁷ 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.⁸ 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.⁹ 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.¹⁰ In Funding Year 3, funding of discounted internal connections was available only for schools with discount rates of 82% or higher.¹¹

⁴ 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 (November 2, 2000).

⁵ 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).

⁶ *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*).

⁷ 47 C.F.R. §§ 54.502, 54.503.

⁸ 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).

⁹ *Fifth Order on Reconsideration*, 13 FCC Rcd at 14938, para. 36.

¹⁰ 47 C.F.R. § 54.507(g)(1)(iii).

¹¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rule Making and Order, FCC 01-143, n. 13 (rel. April 30, 2001) (*Further Notice of Proposed Rulemaking*).

4. Valliant appeals the denial of Funding Request Number (FRN) 406118, which Valliant classified as telecommunications services.¹² During SLD's application review of FRN 406118, however, SLD reclassified the request from telecommunications services to internal connections and, on June 23, 2000, SLD denied the request on the grounds that the "[f]unding cap will not provide [for internal connections less than] 81% discount to be funded."¹³ Valliant appealed to SLD, requesting that the internal connections amount be excluded and that the remainder of the funding request be changed back to telecommunications services and funded.¹⁴ SLD denied the appeal, stating that FRN 406118 included some internal connections, specifically, a "keysystem," and that because of this service, the entire request was reclassified as internal connections.¹⁵ SLD further stated that there were insufficient funds in Funding Year 3 to provide discounted internal connections to applicants with Valliant's discount rate.¹⁶ As to Valliant's request that the internal connections portion be excluded, SLD stated that "[w]e cannot remove items from a funding request once the application has been completed."¹⁷ Valliant then filed the pending Request for Review.

5. In its Request for Review, Valliant does not dispute that a portion of its request constitutes internal connections. However, it argues again that the internal connections portion should be taken out of FRN 406118 and the remainder funded as a Priority One telecommunications service request.¹⁸ Valliant notes that a similar approach is applied to requests that include both eligible and ineligible services under the 30% policy.¹⁹

¹² FCC Form 471, Valliant Independent School District 11, filed January 19, 2000 (Valliant Form 471), at 3.

¹³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jane Kellogg, Valliant Independent School District 11, dated June 23, 2000, at 5.

¹⁴ Letter from Debi Sovereign, Kellogg Consulting, L.L.C., on behalf of Valliant Independent School District 11, to Schools and Libraries Division, Universal Service Administrative Company, filed July 13, 2000, at 1.

¹⁵ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Debi Sovereign, Valliant Independent School District 11, dated March 30, 2001 (Administrator's Decision on Appeal), at 1. A "keysystem" is a phone-switching system similar to a Private Branch Exchange. See Letter from Debi Sovereign to Mohamed Alghali, dated March 9, 2001, at 1.

¹⁶ *Id.* at 1-2.

¹⁷ *Id.* at 1.

¹⁸ Request for Review, at 1.

¹⁹ *Id.* 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

6. We have reviewed the record before us and conclude that SLD correctly followed Commission priority rules and its own application review procedures. 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.²⁰ In Funding Year 3, 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.²¹ 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% or more of the total.²²

7. Valliant asserts that SLD should have applied the latter procedure to mixed priority requests. However, the Common Carrier Bureau (Bureau) has previously found that SLD's Funding Year 3 operating procedure for evaluating mixed priority requests was a reasonable exercise of its authority to establish procedures for the administration of the schools and libraries support application process.²³ The Bureau has further specifically held that SLD's decision to use this procedure rather than the 30 percent policy applicable to mixed eligibility requests was also reasonable.²⁴ We therefore reject Valliant's argument that SLD should have applied a 30% policy to FRN 406118.

8. In its Request for Review, Valliant also 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

amount of ineligible services without expending significant fund resources working with applicants that are requesting funding of ineligible services.

²⁰ See 47 C.F.R. §§ 54.701(a), 54.702, 54.705(a)(iii), 54.705(a)(vii).

²¹ See SLD Web Site, <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).

²² See *supra*, n.19.

²³ *Request for Review by Most Holy Trinity, 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 22, 2001). We note that, while the application of this procedure leads to a denial of funding in this instance, that result could have been avoided by submitting two separate funding requests, one for the Priority One services, and the second for the Priority Two services.

²⁴ *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).

any amount of Priority Two services.²⁵ However, the fact that SLD has adopted a new approach in Funding Year 4 does not undermine the Bureau's determination that the policy adopted in Funding Year 3 was reasonable. Further, because Valliant filed the pending application in Funding Year 3, it is properly subject to the procedures in place for Funding Year 3. We therefore decline to reverse SLD based on its adoption of a new procedure in Funding Year 4.

9. Applying the Funding Year 3 mixed-priority review procedure, we find that FRN 406118 included the costs for an internal connections service, and that SLD therefore correctly reclassified FRN 406118 from telecommunications services to internal connections.²⁶ In Funding Year 3, only applicants with an 82% discount or higher received internal connections.²⁷ The recipient of FRN 406118 Valliant had only an 80% discount.²⁸ We therefore conclude that FRN 349687 was correctly denied.

10. Finally, we affirm SLD's rejection of Valliant's request to modify FRN 406118 to exclude the Priority Two service. Valliant's request contravenes the Commission's policy that applicants should not be permitted to amend completed FCC Forms 471 in order to change service categories after closure of the filing window deadline.²⁹ If applicants were permitted to amend a request by removing Priority Two services after SLD has denied the request, it would eliminate any incentive to separate out the Priority Two service before hand.³⁰ This would significantly increase the difficulty SLD would face in detecting Priority Two services.³¹ Furthermore, if applicants were permitted to amend their requests after the filing window closed, it could jeopardize SLD's ability to accurately predict the total amount of priority one services requested in a year as required to apply the rules of priority in years where requests for funding exceed the annual funding cap.³² Therefore, we conclude that SLD properly denied Valliant's request for funding.

²⁵ Request for Review, Addendum, at 1; *see also* SLD Web Site, <http://www.sl.universalservice.org/reference/ServCategories.asp>.

²⁶ Administrator's Decision on Appeal, at 1.

²⁷ *See supra*, para. 3.

²⁸ *See* Valliant Form 471, at 3.

²⁹ *See Request for Review by Free Library of Philadelphia, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-112605, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 23820 (Com. Car. Bur. 2000).

³⁰ *See Request for Review by Cheney 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-142969, CC Dockets No. 96-45 and 97-21, Order, DA 01-351 (Com. Car. Bur. rel. Feb. 13, 2001), at para. 6.

³¹ *Id.*

³² *Id.*

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 Valliant Independent School District 11, Ada, Oklahoma, on April 20, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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