

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Requests for Review of the)
Decision of the)
Universal Service Administrator by)
)
Berkeley County School District) File No SLD-338662
Martinsburg, West Virginia)
)
Braxton County School District) File No. SLD-341055
Sutton, West Virginia)
)
Brooke County School District) File No. SLD-338654
Wellsburg, West Virginia)
)
Cambria Heights School District) File No. SLD-340796
Patton, Pennsylvania)
)
Gasconade County R-1 School District) File No. SLD-343258
Hermann, Missouri)
)
Highlands School District) File Nos. SLD-338443, 357842
Natrona Heights, Pennsylvania)
)
Kanawha County School District) File No. SLD-343261
Charleston, West Virginia)
)
Marshall County School District) File No. SLD-336561
Moundsville, West Virginia)
)
Monroe County School District) File No. SLD-339584
Union, West Virginia)
)
Nicholas County School District) File No. SLD-341461
Summersville, West Virginia)
)
Penn Cambria School District) File No. SLD-340427
Cresson, Pennsylvania)
)
Upshur County School District) File No. SLD-337497
Buckhannon, West Virginia)
)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)
)

ORDER

Adopted: February 7, 2005

Released: February 7, 2005

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration Requests for Review filed by Berkeley County School District, Martinsburg, West Virginia; Braxton County School District, Sutton, West Virginia; Brooke County School District, Wellsburg, West Virginia; Cambria Heights School District, Patton, Pennsylvania; Gasconade County R-1 School District, Hermann, Missouri; Highlands School District, Natrona Heights, Pennsylvania; Kanawha County School District, Charleston, West Virginia; Marshall County School District, Moundsville, West Virginia; Monroe County School District, Union, West Virginia; Nicholas County School District, Summersville, West Virginia; Penn Cambria School District, Cresson, Pennsylvania; and Upshur County School District, Buckhannon, West Virginia.¹ The Requests for Review seek review of decisions by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). Consistent with precedent, we grant the Requests for Review to the extent described herein and remand them to SLD to take appropriate action consistent with this decision.

2. Each of SLD's decisions at issue in the Requests for Review involves a denial of funding on the ground that the applicant violated the Commission's "thirty percent" policy. As described in the Requests for Review, SLD determined that the funding requests included thirty percent or more of unsubstantiated amounts of eligible services and concluded that the inclusion of such requests violated the thirty percent policy, resulting in denial of the funding requests.² As we recently held in the *Iroquois Order*, the 30 percent policy applies to requests for ineligible services, not for unsubstantiated amounts of eligible services.³ SLD's application of the thirty percent policy to unsubstantiated funding requests goes

¹ Letter from Nathaniel Hawthorne, Berkeley County School District, to Federal Communications Commission, filed February 23, 2004; Letter from Nathaniel Hawthorne, Braxton County School District, to Federal Communications Commission, filed August 7, 2003; Letter from Nathaniel Hawthorne, Brooke County School District, to Federal Communications Commission, filed January 12, 2004; Letter from Nathaniel Hawthorne, Cambria Heights School District, to Federal Communications Commission, filed November 10, 2003; Letter from Mark D. Leech, Gasconade County R-1 School District, to Federal Communications Commission, filed August 5, 2003; Letter from Nathaniel Hawthorne, Highlands School District, to Federal Communications Commission, filed February 23, 2004; Letter from Nathaniel Hawthorne, Kanawha County School District, to Federal Communications Commission, filed November 10, 2003; Letter from Nathaniel Hawthorne, Marshall County School District, to Federal Communications Commission, filed October 20, 2003; Letter from Nathaniel Hawthorne, Monroe County School District, to Federal Communications Commission, filed October 24, 2003; Letter from Nathaniel Hawthorne, Nicholas County School District, to Federal Communications Commission, filed September 29, 2003; Letter from Nathaniel Hawthorne, Penn Cambria School District, to Federal Communications Commission, filed June 4, 2003; Letter from Nathaniel Hawthorne, Upshur County School District, to Federal Communications Commission, filed May 14, 2004 (collectively, Requests for Review).

² *Id.* USAC utilizes a 30 percent processing benchmark when reviewing funding requests that include both eligible and ineligible services. This 30 percent benchmark was codified by the Commission in 2003. See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9215-9216, paras. 38-41 (2003); 47 C.F.R. §54.504(d). Under this benchmark, if 30 percent or more of the request seeks funding for ineligible services, the Administrator will deny the funding request in its entirety. 47 C.F.R. § 54.504(d).

³ *Request for Review by Iroquois West School District 10, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-343292, CC Docket No. 02-6, DA 05-54, para. 5, released January 11, 2005.

beyond the scope of the 30 percent policy as drafted. Applicants must be aware, however, that if funding requests are submitted in amounts that go beyond what they can substantiate, their funding requests will be reduced to the amount that is substantiated. Accordingly, we remand these Requests for Review and direct SLD to grant the commitment requests in accordance with this order, unless SLD identifies other grounds for denial.

3. 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 Requests for Review filed by Berkeley County School District, Martinsburg, West Virginia, on February 23, 2004; Braxton County School District, Sutton, West Virginia, on August 7, 2003; Brooke County School District, Wellsburg, West Virginia, on January 12, 2004; Cambria Heights School District, Patton, Pennsylvania, on November 10, 2003; Gasconade County R-1 School District, Hermann, Missouri, on August 5, 2003; Highlands School District, Natrona Heights, Pennsylvania, on February 23, 2004; Kanawha County School District, Charleston, West Virginia, on November 10, 2003; Marshall County School District, Moundsville, West Virginia, on October 20, 2003; Monroe County School District, Union, West Virginia, on October 24, 2003; Nicholas County School District, Summersville, West Virginia, on September 29, 2003; Penn Cambria School District, Cresson, Pennsylvania, on June 4, 2003; Upshur County School District, Buckhannon, West Virginia, on May 14, 2004 ARE GRANTED to the extent described herein and REMANDED to SLD for further action consistent with this decision.

FEDERAL COMMUNICATIONS COMMISSION

Vickie S. Robinson
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau