

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
Kimball School District 7-2
Kimball, South Dakota
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.
File No. SLD-236447
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: May 10, 2002

Released: May 13, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this Order, the Telecommunications Access Policy Division (Division) dismisses the Request for Review of Kimball School District 7-2 of Kimball, South Dakota (Kimball). Kimball seeks review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). Specifically, Kimball seeks review of SLD's determination that its FCC Form 471 application for support for telecommunications services in Funding Year 4 of the schools and libraries support contained an impermissible amount of ineligible services, and thus could not be funded. For the reasons set forth below, we deny Kimball's Request for Review and affirm the Administrator's determination that Kimball's FCC Form 471 application for Funding Year 4 requested support for an impermissible amount of ineligible services, and could not be granted.

1 Letter from Patricia Booth, Dakota State University Business and Education Institute, on behalf of Kimball School District 7-2 to Federal Communications Commission, filed November 2, 2001 (Request for Review).

2 Letter from Schools and Libraries Division, Universal Service Administrative Company, to Patricia Booth, Business and Education Institute, Dakota State University, regarding Kimball School District 7-2, dated October 1, 2001 (Administrator's Decision on Appeal). 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).

## I. BACKGROUND

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> In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth the school's technological needs and the services for which it seeks discounts.<sup>4</sup> Once the school has complied with the Commission's competitive bidding requirements and signed a contract 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 school has signed the contract, and an estimate of funds needed to cover the discounts to be given for eligible services.<sup>5</sup> This information is generally provided in Block 5 of FCC Form 471. Among other information, Block 5 requires the applicant to indicate services requested, the name of the service provider, the type of service or product for which support is sought, and the estimated total annual pre-discount cost. Using information provided by the applicant in its FCC Form 471, the Administrator determines the amount of discounts for which the school is eligible.

3. The instant Request for Review arises from Kimball's application for funding for telecommunications services for Funding Year 4 of the universal service support program for eligible schools and libraries.<sup>6</sup> Among other things, Kimball sought support for telecommunications services to be provided by Midstate Telephone Company (Midstate) for a pre-discount amount of \$4,500 per year.<sup>7</sup> SLD denied Kimball's request on the grounds that 30 percent or more of Kimball's funding request was for lease costs for telephone sets and for an intercom system, both of which are ineligible products or services under program rules.<sup>8</sup>

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

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

<sup>5</sup> 47 C.F.R. § 54.504(c).

<sup>6</sup> See FCC Form 471, Kimball School District 7-2, Funding Year 07/01/2001 to 06/30/2002, Application No. 236447, filed 1/12/2001 (Kimball FCC Form 471).

<sup>7</sup> See *id.*, Funding Request No. 559143.

<sup>8</sup> See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kimball School District 7-2, dated July 23, 2001, at 6 (Funding Commitment Decision Letter). 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

4. Kimball filed an appeal with SLD on August 14, 2001, claiming that the ineligible products and services included in the funding request were “done so accidentally and by [sic] oversight.”<sup>9</sup> As part of this SLD appeal, Kimball also submitted billing statements to support a claim that, despite the figures on its FCC Form 471, the actual pre-discount amount for which it sought funding was \$3,357.96 per year, or \$279.83 per month.<sup>10</sup> Kimball thus asserted that only 25 percent of its funding request contained ineligible services, and not the greater than 30 percent that SLD cited.<sup>11</sup>

5. SLD denied Kimball’s appeal, stating that, on appeal, SLD cannot accept revised support documentation that asks that the ineligible products or services be removed from the original funding request.<sup>12</sup> SLD found that, according to documentation provided by Kimball in its original FCC Form 471 application, 47 percent of the total monthly pre-discount cost of funding request number 559143 sought support for ineligible services.<sup>13</sup> SLD also stated that “the accuracy of the information submitted on the original Form 471 and during the course of the review is the responsibility of the applicant.”<sup>14</sup>

6. Kimball filed the instant Request for Review with the Commission on November 2, 2001.<sup>15</sup> As in its SLD appeal, Kimball again asserts that its inclusion of the ineligible services in its original funding request was accidental, and claims that, based on its revised cost figures, the amount of ineligible services in its funding request is only 25 percent of the total request.<sup>16</sup>

## II. DISCUSSION

7. We have reviewed Kimball’s appeal and conclude that Kimball has failed to demonstrate that its request for discounts on telecommunications was improperly denied. The

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

<sup>9</sup> Letter of Patricia Booth, Dakota State University Business and Education Institute, on behalf of Kimball School District 7-2, to Schools and Libraries Division, Universal Service Administrative Company, filed August 14, 2001 (Letter of Appeal to SLD).

<sup>10</sup> *Id.* attachments.

<sup>11</sup> *Id.*

<sup>12</sup> Administrator’s Decision on Appeal at 2.

<sup>13</sup> *Id.* See Kimball FCC Form 471, Attachment 1A. The \$375 per month sought by Kimball for funding request number 559143 included \$95 per month for an intercom system and \$80 per month for the lease of 16 key phones, both of which are ineligible services. Thus, based on the figures provided in Kimball’s FCC Form 471, the monthly cost for ineligible services amounted to almost 47% of the total funding request (\$175 / \$375). SLD also noted that Kimball did not list these charges for intercoms and key phones as ineligible charges in its FCC Form 471. *Id.*

<sup>14</sup> *Id.*, Administrator’s Decision on Appeal at 2.

<sup>15</sup> See Request for Review.

<sup>16</sup> *Id.*

program's rules state that universal service funds support only eligible services.<sup>17</sup> Kimball now seeks to amend its original FCC Form 471 through the appeal process so that it conforms with the Commission's eligible service rules. This action contravenes Commission rules that applicants shall not be permitted to amend completed Forms 471 to remove ineligible service requests after the closure of the filing window.<sup>18</sup> If applicants were permitted to correct their applications after SLD has denied them, it would eliminate any incentive to avoid including ineligible expenses in their funding requests. This would significantly increase the administrative burden SLD would face while carrying out its obligation to guard against the occurrence of waste, fraud, and abuse. Therefore, we cannot permit Kimball to amend its FCC Form 471 through the appeal process.

8. 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.<sup>19</sup> We therefore affirm SLD's decision and deny Kimball's Request for Review.

### III. ORDERING CLAUSE

9. 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 on November 2, 2001 by the Kimball School District 7-2, Kimball, South Dakota, IS DENIED.

## FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau

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<sup>17</sup> 47 C.F.R. § 54.504 *et seq.*

<sup>18</sup> The Commission's rules require that applicants file a completed Form 471 by the filing window deadline to be considered pursuant to the funding priorities for "in-window" applicants. 47 C.F.R. §§ 54.504(c), 54.507(c).

<sup>19</sup> *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, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. 2000).