

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
Colonial Beach School District
Colonial Beach, Virginia
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.
File No. SLD-176456
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: June 20, 2002

Released: June 21, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division is a Request for Review filed by the Colonial Beach School District (Colonial Beach), Colonial Beach, Virginia. Colonial Beach seeks review of the funding decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), granting Colonial Beach’s Funding Year 3 requests for discounts under the schools and libraries program but at an allegedly erroneous discount rate. For the reasons set forth 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. 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 Kathleen F. Beane, to Federal Communications Commission, filed February 22, 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.

4 Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470).

potential competing service providers to review.⁵ 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.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. Under the Commission's rules, the discount available to a particular school or library is determined by indicators of poverty and high relative cost of service.⁷ The level of poverty for schools and school districts is measured by the percentage of their 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.⁸ A school's high-cost status is derived from rules that classify it as urban or rural.⁹ The Commission's rules provide a matrix reflecting both the school's urban or rural status and the percentage of its students who are eligible for the school lunch program to establish its discount rate, ranging from 20 percent to 90 percent.¹⁰ Applicants report this information on the FCC Form 471.¹¹ When a school district seeks discounts for services shared by two or more member schools, the applicable discount rate is equal to a weighted average of the rates of the schools receiving service.¹²

4. Colonial Beach filed an FCC Form 471, requesting shared services for four member schools at a shared discount rate of 66%.¹³ SLD issued a Funding Commitment Decision Letter, granting requests at the 66% rate.¹⁴

⁵ 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).

⁶ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471).

⁷ 47 C.F.R. § 54.505(b).

⁸ 47 C.F.R. § 54.505(b)(1).

⁹ 47 C.F.R. §§ 54.505(b)(3)(i), (ii).

¹⁰ 47 C.F.R. § 54.505(c).

¹¹ FCC Form 471, Block 4.

¹² 47 C.F.R. § 54.505(e)(4).

¹³ FCC Form 471, Colonial Beach School District, filed January 19, 2000.

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kathleen F. Beane, Colonial Beach School District, dated June 2, 2000 (Funding Commitment Decision Letter).

5. Colonial Beach then appealed to SLD, asserting in relevant part that, in prior years, it had filed its application treating all of its buildings as part of a single school with a discount rate of 70%.¹⁵ It asserted that the person responsible for completing the application did not have prior experience with the process, and relied on SLD's advice in treating each building as a separate school in Funding Year 3, with the result that the shared discount rate of Colonial Beach's school buildings was only 66%.¹⁶ Colonial Beach argued that, as a result of the allegedly erroneous advice from SLD, it lost a 4% discount in Funding Year 3 to which it was entitled.¹⁷

6. SLD denied the appeal, stating that discounts cannot be increased after the application is submitted unless a new application is submitted.¹⁸ Colonial Beach then filed the pending Request for Review.

7. In its Request for Review, Colonial Beach again argues that it is really one school entitled to a 70% rate, and that it only filed as four separate schools with a 66% shared rate as a result of SLD's advice.¹⁹ It requests that the discount rate in Funding Year 3 for services shared by the schools should be increased to 70%.²⁰

8. After reviewing the record, we affirm SLD and deny the Request for Review. We find no error in SLD's refusal to consider new evidence submitted on appeal to correct the allegedly erroneous discount rate. Were we to allow such new evidence, this would significantly increase the administrative burden SLD would face while carrying out its obligation to guard against the occurrence of errors and fraud.²¹ In light of the thousands of applications that SLD must review and process each year, we find that it is administratively necessary to require an applicant to be responsible for providing complete and accurate information to SLD in its FCC Form 471.²² Moreover, the Common Carrier Bureau has held that applicants are not permitted to amend their applications after the close of the filing window to correct errors.²³

¹⁵ Letter from Kathleen F. Beane, Colonial Beach Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed June 13, 2000 (Appeal to SLD).

¹⁶ Appeal to SLD at 1.

¹⁷ *Id.*

¹⁸ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kathleen F. Beane, Colonial Beach Schools, dated February 15, 2001, at 2.

¹⁹ Request for Review at 1.

²⁰ *Id.*

²¹ See, e.g., *Request for Review by Granger School District No. 204, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-254491, CC Dockets No. 96-45 and 97-21, Order, DA 02-1107, para. 5 (Wireless Comp. Bur. rel. May 13, 2002).

²² *Id.*

²³ *Request for Review by South Barber Unified School District 255, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-158897, CC

9. Colonial Beach's allegation that it calculated the erroneous 66% rate based on misinformation from SLD does not provide grounds to depart from this rule. An applicant is ultimately responsible for the accuracy of its application, even where the applicant has relied on the advice of SLD personnel in completing it.²⁴ Colonial Beach is therefore entitled to no greater discount than what it requested in its FCC Form 471. We therefore need not determine whether the entry of the school buildings as separate schools was accurate or not. Colonial Beach's assertion that it is listed by the state as a "school district" is not persuasive evidence on this point.²⁵ Under the Commission's rules, school districts are not necessarily equivalent to a single school for purposes of discount rate calculation.²⁶

10. 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 Colonial Beach Schools, Colonial Beach, Virginia, on February 22, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 18435, para. 8 (Com. Car. Bur. 2001); 47 C.F.R. §§ 54.504(c), 54.507(c). The Common Carrier Bureau was recently reorganized and renamed the Wireline Competition Bureau.

²⁴ See, e.g., *Request for Review by Merced Union High School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-8404 and 9605, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 18803, para. 7 (Com. Car. Bur. 2000).

²⁵ SLD Appeal at 1.

²⁶ 47 C.F.R. § 54.505(e)(4).