

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
Henryetta Public Schools) File No. SLD-268075
Henryetta, 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: September 19, 2002 Released: September 20, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division is a Request for Review filed by Henryetta Public Schools (Henryetta), Henryetta, Oklahoma.1 Henryetta requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to deny certain Funding Year 2001 requests for discounts under the schools and libraries universal service support mechanism.2 For the reasons set forth below, we deny the Request for Review and affirm the decision of SLD.

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

1 Letter from Dan Edwards, Henryetta Public Schools, to Federal Communications Commission, filed February 25, 2002 (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). In prior years, Funding Year 2001 was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 1999 and ended on June 30, 2000, previously known as Funding Year 2, is now called Funding Year 1999. The funding period that began on July 1, 2000 and ended on June 30, 2001 is now known as Funding Year 2000, and so on.

3 47 C.F.R. §§ 54.502, 54.503.

with the Administrator an FCC Form 470,⁴ which is posted to the Administrator's website for all 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. Given the enormous volume of applications and other submissions that SLD processes and reviews each year, it is necessary for SLD to put in place measures to ensure prompt resolution of applications. One such measure in place in Funding Year 2001 was an administrative rule that applicants from whom SLD solicits additional information necessary to complete their application respond with that information within seven days of being contacted.⁷ The processing standard has been necessary in order to prevent applicants from unduly delaying the application process.⁸

4. In the instant case, Henryetta appeals the denial of five of its Funding Year 2001 funding requests, Funding Request Numbers (FRNs) 667429, 667386, 667413, 667422, and 690011.⁹ Except for FRN 667429, these requests were denied on the grounds that the applicant had not demonstrated that it had the resources necessary to pay for the non-discount charges at the time it submitted its application.¹⁰

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

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 (October 2000) (FCC Form 471).

⁷ See *Request for Review by Nefesh Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-27881, CC Dockets No. 96-45 and 97-21, Order, DA 99-2284 (Com. Car. Bur. rel. October 22, 1999) (citing seven-day rule).

⁸ *Request for Review by Seventh Day Adventist School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-193882, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd 658, para. 8 (Com. Car. Bur. 2002).

⁹ See *Request for Review*, at 1; FCC Form 471, Henryetta Public Schools, filed January 16, 2001 (Henryetta Form 471).

¹⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kaye Goodner, Henryetta Public Schools, dated January 25, 2002 (Funding Commitment Decision Letter), at 6-7. FRN 667429 was denied on the grounds that it sought internal connections and Henryetta did not have a sufficient discount rate to be eligible for internal connections discounts. *Id.* at 7.

5. Specifically, during application review, SLD had sent Henryetta a letter indicating that, after looking at both of Henryetta's Funding Year 2001 applications (including one not before us on appeal), SLD had determined that Henryetta's share amounted to \$50,160.07.¹¹ SLD requested that Henryetta provide documentation of its ability to pay this amount.¹² In its response, Henryetta stated that the second application had been submitted with one request (for internal connections) that was really a duplicate of one of the requests in Henryetta's first application, and that the second had been submitted simply to correct a service provider error in the first.¹³ Henryetta stated that, if both were approved, the school would accept only one of the relevant requests, and that its share therefore amounted to only \$29,724.62.¹⁴ Henryetta therefore provided documentation demonstrating its ability to pay this lesser amount.¹⁵ Specifically, Henryetta indicated that it would draw \$3,450 from the \$348,170.21 budgetary line item for "Instruction – other," and \$26,274.62 from the \$404,539.79 line item, "Op of Building Svc – Other."¹⁶ SLD subsequently denied most of Henryetta's funding requests on the grounds that Henryetta "did not demonstrate that [it] had secured access to the funds necessary to pay the non-discount charges at the time [it] submitted [its] application."¹⁷

6. Following the denial of funding, Henryetta filed the pending Request for Review. In its Request for Review, Henryetta now asserts that it has the ability to pay for the entire \$50,160.07.¹⁸ It notes that the two line items cited by Henryetta in its response sum to a total of \$752,710, and that this is more than sufficient to pay the amount noted by SLD.¹⁹

7. We find that the funding requests at issue were properly denied. Even looking solely to the funding requests in the instant application, the applicant's share amounted to \$35,669.54, more than the \$29,724.62 that the applicant indicated it would be able to pay.²⁰

¹¹ Facsimile from Schools and Libraries Division, Universal Service Administrative Company, to Kaye Goodner, Henryetta Public Schools, dated June 12, 2001 (Documentation Request), at 1.

¹² *Id.* at 2.

¹³ Letter from Kaye Goodner, Henryetta Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed June 26, 2001 (Response to Documentation Request), at 1.

¹⁴ *Id.*

¹⁵ *Id.*, Attachment (Preliminary Budget).

¹⁶ *Id.*, Attachment (Verification Letter).

¹⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kaye Goodner, Henryetta Public Schools, dated January 25, 2002, at 6-7. Funding requests for basic voice telecommunications were funded pursuant to the Commission's holding in *Request for Review by United Talmudical Academy, Federal-State Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-105791, CC Dockets No. 96-45 and 97-21, 15 FCC Rcd 423 (2000).

¹⁸ Request for Review.

¹⁹ *Id.*

²⁰ See Henryetta Form 471.

Further, we find that Henryetta's assertion now that it could draw on the entire amounts of the two cited line items to support its requests must be rejected as an invalid attempt to introduce new evidence. We do not permit new evidence on an issue where SLD has already provided an applicant with opportunity to present such evidence.²¹ Here, in SLD's documentation request, it specifically indicated that Henryetta indicate "the specific amount that will come from each . . . budget line."²² Henryetta indicated that a total of \$29,724.62 would come from these items.²³ Looking solely to this record, we find that Henryetta did not demonstrate that it had sufficient resources to pay for its share of service costs.

8. Because our affirmation of SLD's decision supports the denial of the internal connections request as well as the other requests, we need not discuss that request any further. In addition, we note that, although we have not relied on the service cost at issue in the second application, we find that Henryetta would be responsible for demonstrating an ability to pay its share of this cost, notwithstanding its assertion that it would not attempt to collect on the service request. If SLD were to ignore the resources necessary for a pending request simply because of an assurance from an applicant that the request, if granted, would not be utilized, the risk of fraud, waste and abuse would be tremendously increased. Further, the filing of a second full application would clearly be an improper method of seeking a change of service provider, because it is contrary to the express instructions of SLD on how to make such changes, and because it needlessly places on SLD the full burden and administrative expense of processing and reviewing an entire application.²⁴

²¹ *Request for Review by Southwest Virginia Education and Training Network, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-200540, CC Dockets No. 96-45 and 97-21, Order, DA 02-1207, n.19 (Wireline Comp. Bur. May 21, 2002).

²² Documentation Request.

²³ Verification Letter.

²⁴ See SLD website, <<http://www.sl.universalservice.org/reference/SpinChangeYr4.asp>> (providing directions for obtaining service provider changes, referred to as SPIN changes).

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 by Henryetta Public Schools, Henryetta, Oklahoma, on February 25, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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