

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
Fairfax County Public Schools
Fairfax, Virginia
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-266045
CC Docket No. 02-6

ORDER

Adopted: May 14, 2004

Released: May 18, 2004

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Funds for Learning on behalf of Fairfax County Public Schools (Fairfax), Fairfax, Virginia. Fairfax seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) relating to Fairfax's application for discounts in Funding Year 2001 under the schools and libraries universal service support mechanism. For the reasons set forth below, we grant in part, remand in part, and deny in part Fairfax's Request for Review.

2. At issue in the instant Request for Review are two funding requests from Fairfax's Funding Year 2001 application. The first issue arises from SLD's decision to reduce the estimated monthly charge in light of documentation provided by the applicant for Funding Request Number (FRN) 673756. The record indicates that the pre-discount total for FRN 673756 for 847 cellular phones was reduced from \$420,000.00 (or \$35,000 per month) to \$365,062.56 (or \$30,421.88 per month). Fairfax states that it did not provide SLD with any

1 Letter from Orin Heend, Funds For Learning on behalf of Fairfax County Public Schools, to Federal Communications Commission, filed September 6, 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 FCC Form 471, Fairfax County Public Schools, filed January 19, 2001 (Fairfax Form 471).

4 Letter from Schools and Libraries Division, Universal Service Administrative Company to Deborah Sansone, Fairfax County Public Schools, issued August 7, 2001 (Funding Commitment Decision Letter) at 7.

5 See Fairfax Form 471; Funding Commitment Decision Letter at 7.

documentation that would warrant any reduction in the amount for funding from the original amount requested on the FCC Form 471.⁶ Fairfax requests the Commission to remand FRN 673756 to SLD with instruction to provide it with an explanation regarding its decision.⁷

3. After review of the record, we conclude that it was appropriate for SLD to reduce the amount of funding committed for FRN 673756 from the original amount requested by Fairfax. As an Item 21 “Description of Services” attachment to its FCC Form 471, Fairfax provided SLD with a monthly bill documenting the amount of funding for the requested services.⁸ That bill documented the monthly cost of cellular services for 807 phones, not 847 phones as specified in the funding request.

4. We find that Fairfax did not provide an explanation or documentation supporting the pre-discount total of \$420,000.00 requested for FRN 673756.⁹ The instructions for FCC Form 471 state that “[i]f you are estimating that your costs will exceed the amounts shown on the bill, you should include as part of the Item (21) attachment an explanation for an increase in costs.”¹⁰ The monthly bill submitted by Fairfax did not support the original amount of E-rate support requested by Fairfax, nor did the attachments include an explanation for an increase in costs.¹¹ Therefore, we find no merit in Fairfax’s argument that the documentation it provided supported its request for discounts. Instead, we conclude that it was appropriate for SLD to adjust the funding commitment in a manner that is consistent with the supporting documentation that Fairfax provided to SLD in its original application.¹²

5. The second issue arises from SLD’s denial of FRN 673750, on the grounds that more than 30 percent of the funding request was for cellular phone service for school-based technology specialists (SBTS).¹³ FRN 673750 requested support for approximately 250 cellular

⁶ Request for Review at 5.

⁷ Request for Review at 6.

⁸ See Fairfax Form 471 at attachment 3. In its calculations, however, SLD mistakenly determined that the bill totaled \$28,985.48. This amount averaged \$35.91 per cellular phone ($\$28,985.48 \div 807$). Fairfax requested funding for an additional 40 cellular phones. SLD estimated that based on the average cost per phone derived from the monthly bill, the additional cellular phones would have added \$1,436.40 ($\35.91×40) per month to the funding request. Thus, according to SLD’s calculations, the bill supported a monthly funding request of \$30,421.88 ($\$28,985.48 + \$1,436.40$), or a total of \$365,062.56 ($\$30,421.88 \times 12$ months). See also Funding Commitment Decision Letter at 7. We note this is not material to our decision because Fairfax in any event failed to justify the full funding request.

⁹ *Id.* Fairfax submitted a monthly bill for 807 cellular phones, which totaled \$28,905.48. Based on the monthly bill of \$28,905.48, the estimated average monthly cost per phone was \$35.82 ($\$28,905.48 \div 807$). If, in fact, Fairfax actually did purchase service for 847 cellular phones, rather than the 807 cellular phones indicated on the bill, the monthly bill substantiated that the additional 40 phones would have cost an estimated \$1,432.80 per month ($\35.82×40). As a result, the documentation, or monthly bill, provided by Fairfax would not support a monthly funding request of \$35,000 or \$420,000 annually.

¹⁰ See Instructions for Completing the Schools and Libraries Universal Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2000) (Form 471 Instructions) at 20.

¹¹ See Fairfax Form 471.

¹² We deny Fairfax’s request that the Commission remand FRN 673756 to SLD with instruction to provide it with an explanation regarding its decision. See Request for Review at 6. We do not believe such action is necessary, as this Order sets forth an explanation for the reduction in funding.

¹³ See Funding Commitment Decision Letter at 7.

phones. In a subsequent facsimile describing the funding request, Fairfax indicated that 150 of the cellular phones were to be used by SBTS, 80 cellular phones were to be used by technology support staff, and 25 cellular phones were to be used by other school-based staff.¹⁴ After review of the application, SLD concluded that the SBTS are ineligible users based on program rules.¹⁵ Fairfax claims that documentation provided to SLD during application review supports its contention that SBTS are eligible cellular users.¹⁶

6. Applicants may seek support for eligible services only.¹⁷ The instructions for the FCC Form 471 clearly state: “You may not seek support for ineligible services, entities, and uses.”¹⁸ The instructions further clarify that “[i]f ineligible services are also being provided under this contract or service agreement, and if they are featured on this list, the applicant should clearly identify them as ineligible...”¹⁹ Although SLD reduces a funding request to exclude the cost of ineligible services in circumstances where the ineligible services represent less than 30 percent of the total funding request, SLD will deny a funding request in its entirety if ineligible services constitute more than 30 percent of the total.²⁰ An applicant can avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services.

7. In Funding Year 2001, cellular telephone service was a service conditionally eligible for discount funding if 1) provided for use at a place of instruction, and 2) used for an educational purpose.²¹ Cellular service for personnel not involved with instruction was not

¹⁴ See Facsimile from Robin Ray, Funds for Learning on behalf of Fairfax County Public Schools to Mark Palmer, Schools and Libraries Division, Universal Service Administrative Company, dated June 29, 2001 (5:44 p.m.) (June 29 Facsimile). We note that this totaled 255 cellular phones, 5 more than were originally requested.

¹⁵ See Funding Commitment Decision Letter at 7 (“30% or more of this FRN includes a request for cellular service for Technology Specialists which are ineligible to receive service(s) based on program rules.”).

¹⁶ See Request for Review at 2-5.

¹⁷ 47 C.F.R. § 54.504 *et seq.*

¹⁸ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471) (October 2000) at 17 (Form 471 Instructions).

¹⁹ Form 471 Instructions at 20.

²⁰ See 47 C.F.R. §54.504(c)(1); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 03-101 (rel. April 30, 2003) (*Schools Second Order*), paras. 40-41; *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).

²¹ See SLD website, Eligible Services List (December 29, 2000) <<http://www.sl.universalservice.org/reference/eligible.asp>> (Funding Year 2001 Eligible Services List) at 3. The Eligible Services List provides guidance from SLD on the eligibility of products and services for which applicants may be seeking funding. The Commission recently clarified the scope of the requirement that services be used for an educational purpose and determined that, in the case of schools, activities that are integral, immediate, and proximate to the education of students qualify as educational purposes under this program. See *Schools Second Order* at paras. 17-21. The Commission further stated that “reasonable requests for any supported service – over any technology platform – to be used by any school or library staff while in a library, classroom, or on school or library property, shall be eligible for discounts” and that services would become available under this clarification beginning in Funding Year 2004. *Id.* at paras. 19-20. Therefore, this broadened standard does not apply to funding in Funding Year 2001.

eligible unless those individuals also provided instruction.²² In addition, SLD's Funding Year 2001 Eligible Services List provided that use of the phones must "support instruction or support curriculum or instruction management."²³

8. Cellular service used by teachers is an eligible use.²⁴ Fairfax sought funding for monthly cellular service to be used by school-based teachers who provide instruction to students on how to use various types of software.²⁵ We find that the record establishes that the SBTS were engaged in the development of curriculum for students and instruction of that curriculum.²⁶ We also find that the cellular service to be used by SBTS was for instructional purposes at places of instruction.²⁷ Thus, we conclude that the portion of Fairfax's funding request for cellular service for school-based technology specialists is for an eligible service.

9. Upon further review of the record, however, we are unable to determine whether the "technology support staff" and "other school-based staff" described in the June 29 Facsimile should be deemed eligible users.²⁸ As a result, we believe that it is appropriate to remand this matter to SLD for further inquiry into whether such users were eligible under program rules in effect for Funding Year 2001. We emphasize that the ultimate burden of proving eligibility remains with the applicant. Accordingly, we grant in part Fairfax's Request for Review of FRN 673750 and remand in part to SLD for action consistent with this Order.

10. ACCORDINGLY, IT IS FURTHER 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 of Funding Request Number 673756 filed by Funds for Learning on behalf of Fairfax County Public Schools, Fairfax, Virginia on September 6, 2001, IS DENIED.

11. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under

²² See Funding Year 2001 Eligible Services List at 3. The Funding Year 2001 Eligible Services List provided that cellular phone service for teachers, teacher aides and curriculum coordinators was eligible for discounts, while cellular service for maintenance personnel, cafeteria directors, or facility directors was not eligible unless they also provide instruction.

²³ *Id.*

²⁴ See June 25 Facsimile. See also Facsimile from Orin Heend, Funds for Learning on behalf of Fairfax County Public Schools, to Mark Palmer, Schools and Libraries Division, Universal Service Administrative Company, dated July 6, 2001 (July 6 Facsimile) ("The SBTS is in effect a teacher, a teacher who works directly with other teachers and students to bring electronic, curriculum-related resources into the classroom...SBTS also provides instruction.").

²⁵ *Id.*

²⁶ See July 6 Facsimile at attachments. Fairfax provides several examples of lesson plans and curriculum developed by SBTS. For example, Fairfax includes a "Students as Resources for Technology" project overview, "Paperless Writing – Technology and the Writing Process" training materials (which specifies the curriculum connection to Virginia's Standards of Learning), "Social Studies – Using Outlining as a Strategy for Organizing Information" training materials (which specifies the curriculum connection to Virginia's Standards of Learning), and a "Basic Map Skills" project.

²⁷ See Request for Review. See, e.g., Facsimile from Robin Ray, Funds for Learning on behalf of Fairfax County Public Schools to Mark Palmer, Schools and Libraries Division, Universal Service Administrative Company, dated June 25, 2001 (1:04 p.m.) (June 25 Facsimile).

²⁸ See June 29 Facsimile.

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 of Funding Request Number 673750 filed by Funds for Learning on behalf of Fairfax County Public Schools, Fairfax, Virginia on September 6, 2001, IS REMANDED in part and GRANTED in part.

FEDERAL COMMUNICATIONS COMMISSION

Narda Jones, Deputy Chief
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