

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Application for Review by)
Lunenburg County Public Schools) File No. SLD-209013
Victoria, Virginia)
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: November 7, 2002 Released: November 20, 2002

By the Commission:

1. Before the Commission is an Application for Review filed by Lunenburg County Schools (Lunenburg), Victoria, Virginia, seeking review of an Order issued by the Accounting Policy Division of the Common Carrier Bureau (Bureau) on delegated authority. In the Order, the Bureau upheld the decision of the Schools and Libraries Division (Division) of the Universal Service Administrative Company, which denied one of Lunenburg's Funding Year 1999 application for discounts under the schools and libraries universal service mechanism. For the reasons set forth below, we grant the Application for Review and remand to SLD to fund the request as set forth in this Order.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for

1 Application for Review of the Decision of the Accounting Policy Division By Lunenburg County Public Schools, CC Docket Nos. 96-45 and 97-21, Application for Review, filed April 3, 2002 (Application for Review). Pursuant to the Agency's recent reorganization, the Accounting Policy Division is now know as the Telecommunications Access Policy Division and the Common Carrier Bureau is now known as the Wireline Competition Bureau.

2 Request for Review by Lunenburg County Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-209013, CC Dockets No. 96-45 and 97-21, Order, DA 02-438 (Com. Car. Bur. 2002) (Lunenburg County Order). In prior years, Funding Year 1999 was referred to as Funding Year 2. 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.

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 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 into 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. Applicants may only seek support for eligible services.⁷ The instructions for the FCC Form 471 clearly state: "YOU MAY NOT SEEK SUPPORT ON THIS FORM FOR INELIGIBLE SERVICES."⁸ The instructions further clarify that "[w]hile you may contract with the same service provider for both eligible and ineligible services, your contract or purchase agreement must clearly break out costs for eligible services from those for ineligible services."⁹ 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 30 percent or more of the total.¹⁰ An applicant can avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services.

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 (December 1998) (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 (December 1998) (FCC Form 471).

⁷ 47 C.F.R. § 54.504 *et seq.*

⁸ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471) OMB 3060-0806 (December 1998), at 15 (Form 471 Instructions).

⁹ Form 471 Instructions, at 16.

¹⁰ *See Request for Review of the Decision of the Universal Service Administrative Company by Ubyly Community Schools*, *Federal-State Joint Board on Universal Service*, *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, DA 00-1517 (Com. Car. Bur. rel. July 10, 2000); *Request for Review of the Decision of the Universal Service Administrator by Anderson School*, *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, DA 00-2630, para. 8 (Com. Car. Bur. rel. November 24, 2000). 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*

4. At issue is Funding Request Number (FRN) 481380, which sought discounted internal connections at a pre-discount cost of \$62,850.00.¹¹ Documentation provided with the application indicated that this cost included \$14,750 for 11 PC Cards, \$29,900 for a wireless LAN, and \$18,200 for installation.¹² During its review process, SLD contacted Lunenburg for more information on the PC Cards, and based on this information, determined that they were ineligible for discounts.¹³ On April 27, 2001, SLD issued a Funding Commitment Decision Letter denying FRN 481380 on the grounds that “30% or more of this FRN includes a request for Aironet 4800 pc cards which is an ineligible product based on program rules.”¹⁴ Lunenburg then filed a Request for Review with the Commission.

5. In its Request for Review, Lunenburg argued that the purchase cost of the PC Cards was \$14,750.00 of the total funding request amount of \$62,850.00, and thus only 23.47%.¹⁵ However, the Bureau noted that, in addition to the purchase of equipment, the funding request also sought discounts on installation costs.¹⁶ The Bureau found that, in the absence of evidence in the record indicating to the contrary, the cost of the ineligible components included a proportional amount of the overall installation costs associated with the funding request.¹⁷ With a proportional amount of the installation costs included, the Bureau found that the cost of ineligible services was 33% of the total.¹⁸ Thus, the Bureau held that the funding request was properly denied in its entirety under SLD’s 30% policy.¹⁹

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 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 application in its entirety. The 30 percent policy allows SLD to efficiently process requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants that, for the most part, are requesting funding of ineligible services.

¹¹ FCC Form 471, Lunenburg County School District, filed March 29, 2000 (Lunenburg Form 471), at 3.

¹² *Id.*, attachment.

¹³ PIA Review Contact Report, Lunenburg County School District, App. No. 209013.

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Marie Gee, Lunenburg County School District, dated April 27, 2001, at 8.

¹⁵ Request for Review, at 1.

¹⁶ *Lunenburg County Order*, para. 5.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

6. To support its Application for Review before the Commission, Lunenburg offers three arguments. First, it asserts that wireless antennas that are a small component of the PC Cards (which Lunenburg now refers to as Network Interface Cards (NI Cards)) are in fact eligible for discounts.²⁰ Lunenburg asserts that when the cost for the antenna on each NI Card is subtracted from the overall NI Card cost, the total ineligible cost is less than 30% of the funding request.²¹ Second, Lunenburg asserts that there was no installation cost associated with the NI Card, because these components would be installed and configured by school staff.²² Third, it asserts that it has a high poverty rate and that funding is critical in order for it to bring telecommunications and Internet access to its students.²³

7. Lunenburg did not present any of these arguments to the Bureau in its Request for Review.²⁴ Section 1.115(c) of the Commission's rules provides that "[n]o application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass."²⁵ The note to section 1.115(c) states that "new questions of fact or law may be presented to the designated authority in a petition for reconsideration."²⁶

8. In other circumstances, we have held that consideration of newly raised arguments in conjunction with an application for review is precluded by section 1.115(c) of our rules.²⁷ We recognize, however, that Lunenburg could not reasonably have known, when it submitted its Request for Review, that it needed to address the installation costs, because the Funding Commitment Decision Letter did not indicate that a portion of the installation costs were being found ineligible. Lunenburg was not apprised of the presumed ineligibility of a portion of the installation costs until the release of the Bureau Order. We therefore find that there is good cause to waive section 1.115(c) of our rules given these circumstances and that the facts are not in dispute. In the future, however, we urge applicants to present these types of arguments to the Bureau in a petition for reconsideration in the first instance. We caution that similar situations may not rise to the level of good cause justifying waiver of our rules.²⁸

9. In light of Lunenburg's explanation that the installation costs are entirely attributable to the wireless LAN, which is eligible for discounts under the program, we find that

²⁰ Application for Review at 3-4.

²¹ *Id.* at 4.

²² *Id.*

²³ *Id.*

²⁴ *See* Request for Review.

²⁵ 47 C.F.R. § 1.115(c).

²⁶ *Id.*, Note.

²⁷ *See, e.g., In re Crawford*, 17 FCC Rcd 2014, para. 10 (2002) (directing parties to comply with Commission procedural processes).

²⁸ *Id.*

the ineligible portion of the request consisting of the \$14,750 cost of the NI Cards is less than 30% of the \$62,850 cost of the request.²⁹ Because the ineligible portion is less than 30% of the request, under SLD's procedure, the eligible portion should be funded. Therefore, we grant the Application for Review and remand this application to SLD to fund the eligible portion of the request.

10. ACCORDINGLY, IT IS ORDERED, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), that the Application for Review filed by Lunenburg County Public Schools, Victoria, Virginia, on April 3, 2002 IS GRANTED, and this application is REMANDED to SLD for further action consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁹ Lunenburg 471, Attachment.