

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Merced Union High School District	)	File Nos. SLD-8404; SLD-9605
Merced, California	)	
	)	
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: August 17, 2000**

**Released: August 18, 2000**

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Letter of Appeal filed by Merced Union School District, Merced, California on April 6, 1999, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator).<sup>1</sup> Merced Union seeks review of SLD’s denial of its application for support for internal connections under the schools and libraries universal service support mechanism. For the reasons set forth below, we deny the Letter of Appeal and affirm SLD’s denial of Merced Union’s application.

2. Under the schools and libraries universal service 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>2</sup> In the *Fifth Reconsideration Order*, the Commission established new rules to govern how discounts will be allocated when available funding is less than total demand.<sup>3</sup> These rules provide that requests for telecommunications and Internet access services shall receive first priority for available funds

<sup>1</sup> Letter from Terry Silva, Merced Union High School, to Federal Communications Commission, filed April 6, 1999 (Letter of Appeal).

<sup>2</sup> 47 U.S.C. 254(h)(1)(B); 47 C.F.R. §§54.502, 54.503.

<sup>3</sup> See *Federal-State Joint Board on Universal Service*, Fifth Reconsideration Order, 13 FCC Rcd 14915, 14934 at para. 31 (1998) (*Fifth Reconsideration Order*).

and that requests for internal connections shall receive secondary priority. The rules further provide that, when sufficient funds are not available to fund all requests for discounts on internal connections, the Administrator shall allocate funds for discounts beginning with those applicants eligible for a ninety percent discount level and, to the extent funds remain, continue to allocate funds for discounts to applicants at each descending single discount percentage, *e.g.*, eighty-nine percent, eighty-eight percent, and so on.

3. In accordance with the Commission's rules, the discount available to a particular school is determined by indicators of poverty and high cost.<sup>4</sup> The level of poverty for schools and school districts is measured by the percentage of student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism.<sup>5</sup> A school's high cost status is derived from rules that classify it as urban or rural.<sup>6</sup> The rules provide a matrix reflecting both a school's urban or rural status and the percentage of its students eligible for the school lunch program to establish a school's discount rate, ranging from 20 percent to 90 percent, to be applied to eligible services.<sup>7</sup>

4. In applying for funding for the first funding year, Merced Union indicated that its discount eligibility was 90 percent. In its Funding Commitment Decision Letters dated January 26, 1999, SLD denied Merced Union's request for funding for internal connection services, finding that the "funding cap will not provide for internal connections less than 62% discount to be funded."<sup>8</sup> SLD found that Merced Union incorrectly calculated its discount. Rather than a 90% discount, Merced Union is only entitled to a 60% discount based on the supporting documents it submitted to SLD. Because funding for internal connections was only available down to the 62% level, SLD denied Merced's funding request for internal connections. Merced Union appealed, stating that SLD's database is in error and that the 90 percent discount is correct.

5. On March 19, 1999, SLD affirmed its initial decisions and denied Merced Union's appeals. It explained that Merced Union's requested discount was not supported by appropriate documentation and that SLD reduced the discount accordingly. On April 6, 1999, Merced Union filed the instant appeal of SLD's decision.

6. We have carefully reviewed Merced Union's appeal as well as SLD's records relating to this application, and conclude that Merced Union has not shown that its request for funding at a 90 percent discount was improperly denied. According to Merced Union's Letter of Appeal, Merced Union calculated its discount by deriving its number of eligible students using the "feeder pattern concept," rather than one of the acceptable methods set out in the Commission's rules and orders for calculating the discount. Schools that do not use an actual count of students

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<sup>4</sup> 47 C.F.R. §505(b)

<sup>5</sup> 47 C.F.R. §505(b)(1).

<sup>6</sup> 47 C.F.R. §54.505(b)(3)(i), (ii).

<sup>7</sup> 47 C.F.R. §54.505(c).

<sup>8</sup> Letters from the Schools and Libraries Division, Universal Service Administrative Company to Terry Silva, Merced Union High School District, dated January 26, 1999 at 3 (Funding Commitment Decision Letters).

eligible for the national school lunch program may use only the federally-approved alternative mechanisms contained in Title I of the Improving America's Schools Act, which does not include the feeder method.<sup>9</sup> In fact, the Commission specifically rejected commenters' suggestions that would have permitted showings, such as the feeder method, that would merely approximate the percentage of low-income students in a particular area.<sup>10</sup> The burden of supporting the requested discount level falls on the applicant and Merced Union has failed to meet that burden.

7. In addition, according to Merced Union, SLD informed Dr. Jackie Lamb, Assistant Superintendent of Educational Technology and Information Management for the California Department of Education, that there were three acceptable methods for calculating eligibility, one of which was the feeder school concept. We find that such statements are insufficient to exempt Merced Union from having to comply with our policies regarding the permissible methods of calculating its discount. We note that rules and policies are enforced, even where a party has received erroneous advice from a government employee, and the Commission is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when the relief requested would be contrary to an applicable statute or rule.<sup>11</sup> 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. Merced Union's unfamiliarity or misunderstanding of Commission policies provides no basis for deviating from the Commission's policy of placing on the applicant the responsibility for understanding program rules and procedures.<sup>12</sup>

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<sup>9</sup> *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9044-46, 9524-25 (1997), as corrected by *Federal-State Joint Board on Universal Service*, Errata, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), affirmed in part, reversed in part and remanded in part sub nom. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *motion for stay granted in part* (Sept. 28, 1999), *petitions for rehearing and rehearing en banc denied* (Sept. 28, 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied in Celpage, Inc. v. FCC*, 120 S.Ct. 2212 (May 30, 2000), *cert. granted in GTE Service Corp. v. FCC*, 120 S.Ct. 2214 (June 5, 2000), *cert. denied in AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S.Ct. 2237 (June 5, 2000); 47 C.F.R. §54.505(b)(1).

<sup>10</sup> *Id.* at 9525, where one commenter noted that expanding permissible proxies could “unnecessarily entangle the FCC in endless review and approval processes of many less appropriate schemes.” Merced Union cites to other Department of Education regulations as permitting the use of the feeder method, thus allowing the school to project the number of low-income students in a middle or high school based on the average poverty rate of the elementary school attendance areas that feed into that school. As indicated above, the Commission considered such proxy methodologies proposed by commenters and rejected them.

<sup>11</sup> *In re Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4707-08, para. 22 (1991) (citing *Office of Personnel Management v. Richmond*, 497 U.S. 1046 (1990) (Erroneous advice from a government employee has never been found to create estoppel against the Federal Government, particularly when the relief requested would be contrary to an applicable statute or rule.). A person relying on informal advice given by staff does so at his own risk. *Id.*, citing *Texas Media Group, Inc.*, 5 FCC Rcd 2851, 2852, para. 8 (1990); *aff'd sub nom. Malkan FM Associates v. FCC*, No. 90-1281, slip op. at 12 (D.C.Cir. June 14, 1991).

<sup>12</sup> See e.g. *Arizona Call-A-Teen Center*, CC Dockets No. 96-45 and 97-21, Order, DA 00-1058, para. 6 (rel. May 15, 2000).

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.201, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the appeal filed by Merced Union High School District, Merced, California on April 6, 1999 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey  
Chief, Common Carrier Bureau