

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

In the Matter of)	
)	
Request for Review of a Decision of the)	
Universal Service Administrative Company)	
By)	
)	
Marmot Library Network, Inc.)	File No. SLD-164263
Grand Junction, Colorado)	
)	
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 5, 2002

Released: August 6, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has before it a Request for Review filed by Marmot Library Network, Inc. (Marmot), Grand Junction, Colorado, seeking review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ SLD returned without consideration two funding requests included in Marmot's Funding Year 2000 application for discounted services under the schools and libraries universal service support mechanism because it omitted certain information required under SLD's minimum processing standards.² Specifically, Marmot omitted information in Item 22 of Block 5, the Entity or Entities Receiving Service, for both of the funding requests.³ For the reasons discussed below, we grant in part and deny in part the Request for Review and we remand this matter to the Administrator for further action consistent with this Order.

¹ Letter from Donald G. Money, Marmot Library Network, Inc., to Federal Communications Commission, filed July 23, 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). In prior years, this funding period was referred to as Funding Year 3. Funding periods are now described by the year in which the funding period starts. Thus, the funding period which began on July 1, 2000 and ended on June 30, 2001, previously known as Funding Year 3, is now called Funding Year 2000. The funding period which began on July 1, 2001 and ended on June 30, 2002 is now known as Funding Year 2001, and so on.

³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Mary Ann Grant, Marmot Library Network, Inc., dated September 14, 2000 (Rejection Letter); FCC Form 471, Marmot Library Network, Inc., filed January 17, 2000 (Marmot Form 471), at Block 5.

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.⁴ The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470,⁵ which is posted to the Administrator's website for all potential competing service providers to review.⁶ 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.⁷ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. Every funding year, SLD establishes and notifies applicants of a "minimum processing standard" to facilitate the efficient review of the thousands of applications requesting funding.⁸ When an applicant submits an FCC Form 471 that omits an item subject to the minimum processing standards, SLD automatically returns the application to the applicant without considering the application for discounts under the program.⁹ In Funding Year 2000, SLD added to the minimum processing standards the requirement that applicants identify, in Item 22 of each Block 5 funding request, the specific entity receiving a service or, if that service is shared by more than one entity, the applicant list the Block 4 worksheet number that identifies the entities sharing the service.¹⁰

4. On January 17, 2000, Marmot filed an FCC Form 471 with SLD.¹¹ The application included 6 funding requests, two of which did not specify the entity or entities receiving service in Block 5, Item 22.¹² These funding requests were located on pages 45 and 47 of the application and both requested discounts for services provided by Century Tel.¹³ During application review, SLD contacted Marmot and instructed Marmot to complete Item 22 for the

⁴ 47 C.F.R. §§ 54.502, 54.503.

⁵ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

⁶ 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).

⁷ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

⁸ See, e.g., SLD web site, Form 471 Minimum Processing Standards and Filing Requirements for FY 2000, <<http://www.sl.universalservice.org/reference/471mps.asp>> (FY 2000 Minimum Processing Standards).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Marmot Form 471.

¹² *Id.*

¹³ The page numbers were hand-written on each page of the application. *Id.*

Block 5 worksheets on pages 45 and 47 of its application.¹⁴ Marmot faxed the Funding Year 2000 revised Block 5 worksheets to SLD on April 4, 2000.¹⁵ It was not, however, SLD's standard procedure to request missing information from Block 5, Item 22.¹⁶ As an item subject to minimum processing standards, SLD generally returned to an applicant any funding request that did not complete Block 5, Item 22 in Funding Year 2000.¹⁷ SLD also worked with Marmot during application review in order to clarify additional portions of Marmot's application. At SLD's direction, Marmot made certain revisions to its Block 4 worksheets, and also made corresponding adjustments to the Block 5 worksheets.¹⁸ During this review period, on both June 13 and 14, 2000, Marmot faxed SLD revised Block 5 worksheets requesting support for Century Tel.¹⁹ Marmot completed Item 22 on each of the worksheets.²⁰ On September 14, 2000, SLD rejected the two funding requests because the omission of information in Block 5, Item 22 from the originally-submitted application resulted in the funding requests failing minimum processing standards.²¹ Subsequently, Marmot appealed this determination to SLD.²²

5. On February 27, 2001, while Marmot's appeal was pending with SLD, the Commission released the *Naperville Order*, in which it concluded that, under the totality of the circumstances, SLD should not have rejected an application for failure to satisfy SLD's minimum processing standards because Item 22 of Block 5 was omitted.²³ Each funding request is presented on a separate Block 5 of the FCC Form 471.²⁴ For each Block 5, an applicant specifies in Item 22 which entity or group of entities listed in the applicant's Block 4 worksheets will receive the service.²⁵ In Block 4, an entity is listed together with its associated discount rate.

¹⁴ See Problem Resolution Detail Log, Marmot Library Network, Inc., Application Number 164263 (Problem Resolution Detail Log).

¹⁵ See *id.* See also Facsimile from Marmot Library Network, Inc., to Schools and Libraries Division, Universal Service Administrative Company, dated April 4, 2000 (10:16 a.m.).

¹⁶ FY 2000 Minimum Processing Standards ("If a Block 5 funding request fails to meet the requirements listed below, it will be automatically deleted from the Form 471 application."). It is the Commission's policy that applicants should not be permitted to amend completed FCC Forms 471 after closure of the filing window deadline. See *Request for Review by Free Library of Philadelphia, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-112605, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 23820 (Com. Car. Bur. 2000).

¹⁷ FY 2000 Minimum Processing Standards.

¹⁸ See Problem Resolution Detail Log.

¹⁹ Facsimile from Mary Ann Grant, Marmot Library Network, Inc., to Kim and Richard, Schools and Libraries Division, Universal Service Administrative Company, dated June 13, 2000 (11:07 a.m.); Facsimile from Mary Ann Grant, Marmot Library Network, Inc., to Kim S., Schools and Libraries Division, Universal Service Administrative Company, dated June 14, 2000 (7:51 a.m.).

²⁰ *Id.*

²¹ See Rejection Letter.

²² Letter from Mary Ann Grant, Marmot Library Network, Inc., to Schools and Libraries Division, Universal Service Administrative Company, filed September 26, 2000 (SLD Appeal Letter).

²³ Request for Review by Naperville Community Unit School District 203, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-203343, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 5032, para. 12 (2001) (*Naperville Order*).

²⁴ FCC Form 471, Block 5.

²⁵ *Id.* See *supra* para. 3.

Groups of entities that will be receiving shared services are listed with their average rate.²⁶ In the *Naperville Order*, the Commission found that, although the Block 5 funding request at issue did not specify the entities that would receive service, the discount rate requested in the funding request was uniquely attributable to the average discount rate of all of the schools, as calculated on an accompanying Block 4 worksheet.²⁷ Thus, it was clear that the funding request sought shared services for the district schools. The Commission specifically found that “(1) the request for information was a first-time information requirement on a revised form, thereby possibly leading to confusion on the part of the applicants; (2) the omitted information could be easily discerned by SLD through examination of other information included in the application; and (3) the application is otherwise substantially complete.”²⁸

6. On June 22, 2001, SLD denied Marmot’s appeal.²⁹ It is generally SLD’s practice to apply current rules to pending appeals. Accordingly, SLD appropriately considered the totality of the circumstances, as set forth in the *Naperville Order* to the facts in Marmot’s appeal.³⁰ In so doing, SLD found that for each funding request at issue, two prongs of the *Naperville Order* standard were satisfied because Item 22, Block 5 was a new item on a revised form and that aside from Marmot’s omission of that item, its application was substantially complete.³¹ SLD also concluded that it was unable to easily discern the missing information, namely which entities or group of entities listed in Block 4 were to receive the requested services.³² Thus, SLD found that the funding requests failed minimum processing standards based on the totality of the circumstances outlined in the *Naperville Order*.³³ Marmot then filed the pending Request for Review seeking further review.³⁴

7. Upon review of the record, we agree with SLD that, under the totality of the circumstances, the funding request on page 45 was appropriately returned for failure to satisfy minimum processing standards. With respect to the funding request on page 47, we conclude

²⁶ The Block 4 worksheet generally requires the applicant to list all the entities receiving a service for which discounts are sought. See FCC Form 471, Block 4 and FCC Form 471 Instructions. In those situations where an applicant is seeking discounts for a service to be shared by a group of schools within the district, the worksheet calculates the weighted average discount of those schools which is then applied to the shared service. Where a school district is seeking multiple shared services for different groups of schools within its district, the applicant must complete a different Block 4 worksheet for each group, labeling the worksheets "A-1", "A-2", and so forth. In this situation, separate Block 4 worksheets are required because the weighted average discount will vary from group to group. The FCC Form 471 requests that the applicant identify the Block 4 worksheet for a particular group at Item 22 of the Block 5 worksheet used to request the discounted services to be received by that group.

²⁷ *Naperville Order*, para. 13.

²⁸ *Id.*, para. 16.

²⁹ See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Mary Ann Grant, Marmot Library Network, Inc., dated June 22, 2001 (Administrator’s Decision on Appeal).

³⁰ *Naperville Order*.

³¹ Administrator’s Decision on Appeal. Compare FY 2000 Minimum Processing Standards with SLD web site, Form 471 Minimum Processing Standards and Filing Requirements for FY 1999, <<http://www.sl.universalservice.org/reference/471mps.asp>>.

³² Administrator’s Decision on Appeal.

³³ *Id.*

³⁴ Request for Review.

that under the totality of the circumstances test articulated in the *Naperville Order*, SLD should not have rejected this funding request because the information omitted in Block 5, Item 22 of the form was easily discernible from other parts of the application.

8. Turning first to the page 45 funding request, we find that the information to be provided in Item 22, the entity or entities receiving service, was not easily discernible from other information in the application for the funding request. The discount rate sought for the request, 60%, is both the discount rate for the library network and one of the shared sites.³⁵ Because the requested discount rate was not uniquely associated with a particular site or group of sites presented in the Block 4 worksheets, SLD could not determine, based on the discount rate, what entity or entities would be receiving the requested services. Therefore, we affirm SLD's rejection of the funding request on page 45 of the application.

9. In contrast, we conclude that the information missing from Item 22 on page 47 of the application was easily discernible from the other information in the application. Here, the funding request sought a 65% discount, a rate equal to the average discount rate for only one of the groups of entities listed in Block 4 of the application.³⁶ Therefore, SLD could easily determine from the application what entity or entities would be receiving the requested services. Accordingly, we find that the totality of the circumstances warrant relief and grant in part Marmot's Request for Review.

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 Marmot Library Network, Inc., Grand Junction, Colorado, on July 23, 2001 is GRANTED in part and DENIED in part and we REMAND this matter to the Administrator for further action consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
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Wireline Competition Bureau

³⁵ Marmot Form 471.

³⁶ *Id.*