

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
Oklahoma City Public Schools
Oklahoma City, Oklahoma
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.
File No. SLD-262187
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: November 15, 2002 Released: November 18, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division (Division) is a Request for Review filed by Oklahoma City Public Schools (OCPS), Oklahoma City, Oklahoma. OCPS seeks review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). OCPS asserts that SLD awarded an incorrect amount on one of OCPS's Funding Year 2001 requests for discounts under the schools and libraries universal service mechanism. For the reasons set forth below, we deny the Request for Review.

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 Request for Review of the Decision of the Universal Service Administrator by Oklahoma City Public Schools, CC Docket Nos. 96-45 and 97-21, Request for Review, filed September 5, 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 See Request for Review at 1-2. Previously, 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.

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

3. Upon receipt and successful data entry of an FCC Form 471, SLD issues a Receipt Acknowledgement Letter (RAL), which summarizes the applicant's funding requests.<sup>7</sup> The applicant may make certain types of data corrections to its request during the two-week period after SLD issues the RAL.<sup>8</sup> Corrections that are permitted at this time include changing contact information, reducing the amount of requests included in an application, changing the service provider identification number if the original service provider has merged with or been acquired by the new service provider, and "unbundling" or "splitting" a funding request that incorrectly combined two requests.<sup>9</sup> Conversely, SLD does not permit changes that increase the amount of support requested, or that request services not initially requested.<sup>10</sup>

4. At issue is Funding Request Number (FRN) 663320, which requested discounted telecommunications services.<sup>11</sup> On Block 5 of OCPS's FCC Form 471 for FRN 663320, OCPS specified an eligible monthly pre-discount charge of \$7,056.42, a total pre-discount amount (for

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<sup>4</sup> 47 C.F.R. §§ 54.502, 54.503.

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

<sup>6</sup> 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).

<sup>7</sup> See Form 471 Receipt Acknowledgement Letter, Schools and Libraries Division, Universal Service Administrative Company, Funding Year 4: 07/01/2001-06/30/2002 (Receipt Acknowledgement Letter or RAL).

<sup>8</sup> RAL at 3 (corrections must be submitted "within 2 weeks of the date of this letter.").

<sup>9</sup> *Id.* at 2; see also SLD website, <[www.sl.universalservice.org](http://www.sl.universalservice.org)>.

<sup>10</sup> RAL at 2; see also *Request for Review by SouthWest Ohio Computer Association, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-230441, CC Dockets No. 96-45 and 97-21, Order, DA 02-1976, para. 3 (Wireline Comp. Bur. rel. August 27, 2002) (*SouthWest Ohio Computer Association Order*).

<sup>11</sup> Request for Review at 1; FCC Form 471, Oklahoma City Public Schools, filed January 11, 2001 (OCPS Form 471), at 11-12.

twelve months of service) of \$84,677.04, a discount rate of 84%, and a resulting funding request of \$71,128.71.<sup>12</sup> OCPS asserts that the actual monthly rate is \$84,677.04, and that the total amount of support should therefore be \$853,544.49.<sup>13</sup> OCPS asserts that the figures on its Block 5 were the result of its staff mistakenly entering the monthly pre-discount cost of \$84,677.04 as the total pre-discount cost, and calculating all the other Block 5 figures based on this initial clerical error.<sup>14</sup>

5. OCPS's FCC Form 471 was submitted on January 11, 2001, and SLD began the data entry of the FCC Form 471 on January 24, 2001.<sup>15</sup> On March 7, 2001, before SLD had completed data entry and issued an RAL, OCPS contacted SLD personnel and informed them of the error in the requested amount.<sup>16</sup> To support its contention that the amount was a clerical error, OCPS pointed to a service description attached to the FCC Form 471 that stated that the total monthly recurring cost for the service was \$84,677.<sup>17</sup> It requested that SLD adjust the amount of funding requested in FRN 663320 accordingly.<sup>18</sup>

6. OCPS asserts that subsequent contacts with SLD led OCPS to believe that the requested correction would be made, but when OCPS received the RAL, it discovered that the listed total pre-discount amount of FRN 663320 was still the uncorrected amount of \$84,677.04.<sup>19</sup> OCPS then made further post-RAL attempts to have the amount of FRN 663320 increased, but these attempts were also unsuccessful.<sup>20</sup> On August 7, 2001, SLD issued a Funding Commitment Decision Letter granting FRN 663320 in the amount of \$71,128.71.<sup>21</sup> On September 5, 2001, OCPS then filed the pending Request for Review.<sup>22</sup>

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<sup>12</sup> OCPS Form 471 at 11-12.

<sup>13</sup> Request for Review at 2.

<sup>14</sup> *Id.*

<sup>15</sup> See OCPS Form 471 (specifying application "Create Date" of January 24, 2001).

<sup>16</sup> Letter from Orin Heend, Funds for Learning, to Schools and Libraries Division, Universal Service Administrative Company, filed March 7, 2001.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*; Request for Review at 3-4.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> *Id.* At 4-5.

<sup>21</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Steve Washam, Oklahoma City Public Schools, dated August 7, 2001 (Funding Commitment Decision Letter), at 6.

<sup>22</sup> OCPS also filed a Supplemental Filing raising additional arguments for overturning SLD's decision. See *Request for Review of the Decision of the Universal Service Administrator by Oklahoma City Public Schools*, CC Docket Nos. 96-45 and 97-21, Supplemental Filing, filed December 5, 2001 (Supplemental Filing). However, because the Supplemental Filing was submitted after the expiration of the 30-day period established by the Commission's rules for requests for review, we do not further consider it. See 47 C.F.R. § 54.720.

7. In its Request for Review, OCPS argues that, under SLD's procedures and the Commission's prior orders, SLD may not refuse to correct a Block 5 funding request where the applicant has made a timely effort to correct the mistake and the correct information appeared elsewhere in the application.<sup>23</sup> However, we find that SLD's procedures and the Commission precedents support SLD's refusal to grant the correction in this case. As noted above, SLD's established practice is that applicants may not obtain corrections to a submitted application that increase the amount of funding requested.<sup>24</sup> The Wireline Competition Bureau (Bureau) has repeatedly reviewed and upheld SLD's disallowance of such corrections, even when the correction was requested prior to the issuance of the funding commitment decision letter or the RAL.<sup>25</sup> The Bureau has found that this practice "enables SLD to apply our funding priority rules properly in situations where demand exceeds the annual funding cap."<sup>26</sup> Here, OCPS's requested change to its FRN undeniably increased the amount of funding, and so was properly disallowed.

8. OCPS argues that, under the *Visitation Academy Order*, corrections made within the two-week period following the issuance of the RAL must be accepted.<sup>27</sup> OCPS also argues that its request should have been granted under the *Marion County Public Schools Order*, which granted a correction request that increased an amount that had been specified in Block 5.<sup>28</sup> OCPS also argues that the correction should be granted because the correct amounts were specified in the description of service attachments.<sup>29</sup>

9. The Bureau rejected identical arguments in the *SouthWest Ohio Computing Association Order*.<sup>30</sup> The Bureau noted that, in decisions such as the *Visitation Academy Order*, funding correction requests have been denied where no correction had been made prior to the

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<sup>23</sup> Request for Review.

<sup>24</sup> See, *supra*, para. 3.

<sup>25</sup> See *SouthWest Ohio Computer Association Order*, para. 10; *Request for Review by Genesee Intermediate School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-151960, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 11820, paras. 8-9 (Com. Car. Bur. 2001) (*Genesee Order*).

<sup>26</sup> *SouthWest Ohio Computer Association Order*, para. 12 (citing the *Genesee Order*).

<sup>27</sup> Request for Review at 6 (citing *Request for Review by Visitation Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-147758, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 5469 (Com. Car. Bur. 2001) (*Visitation Academy Order*)).

<sup>28</sup> Request for Review at 7 (citing *Request for Review by Marion 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-138811, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 8761 (Com. Car. Bur. 2001) (*Marion County Public Schools Order*)).

<sup>29</sup> Request for Review at 6, 10-11.

<sup>30</sup> *SouthWest Ohio Computer Association*, para. 12.

issuance of a funding commitment decision letter.<sup>31</sup> However, the Bureau found that these decisions did not conversely establish that a request to correct an amount of funding upward, if made prior to the funding commitment decision, *would* be granted, and that, to the contrary, the Bureau had expressly upheld SLD's policy of not permitting changes to an application that increase the amount of support requested.<sup>32</sup>

10. The Bureau also stated that, in the *Marion County Public Schools Order*, a correction that increased the amount of funding was allowed only because the actual Block 5 submitted by the applicant included cost information that supported the increased amount requested.<sup>33</sup> Specifically, the total annual costs on the Block 5 reflected the higher amount, while the monthly amount requested the lower figure that was originally entered by SLD.<sup>34</sup> In this case, however, although there may be information reflecting the higher amount in the attachments, none of the information in the Block 5 reflects this higher amount. SLD therefore correctly followed its general policy of disallowing correction requests that increase the amount of funding requested.

11. Finally, the Bureau rejected the argument that an increase to an erroneously low Block 5 amount should be granted where the correct amount was specified in the description of service attachments.<sup>35</sup> The Bureau concluded that, in order for the program to run efficiently, it was administratively necessary for SLD to rely solely on the cost and funding amounts that applicants entered in Block 5.<sup>36</sup>

12. OCPS argues that, in the *Naperville Order*, the Commission applied a "totality of the circumstances" test to determine whether the application rejection in that case was proper, and that we should apply a similar test to the denial of the correction request here.<sup>37</sup> However, the *Naperville Order* addressed only the appropriate standard for reviewing whether an application is properly rejected for failure to satisfy SLD's minimum processing standards.<sup>38</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*; see also *Marion County Public Schools Order*, para. 7.

<sup>34</sup> *SouthWest Ohio Computer Association*, para. 12 (citing *Marion County Public Schools Order*, para. 3).

<sup>35</sup> *Id.* at para. 9.

<sup>36</sup> *Id.* at para. 8.

<sup>37</sup> See Request for Review at 8-12 (citing *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, paras. 16-17 (2001) (*Naperville Order*)).

<sup>38</sup> *Id.*

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Because the instant case does not involve a minimum processing standards rejection, the *Naperville Order* is inapplicable.<sup>39</sup>

13. OCPS also argues that, under SLD's appeal review procedures, it may grant an appeal when the applicant includes erroneous information in the application but has correctly listed the proper information on another part of the FCC Form 471.<sup>40</sup> OCPS argues that this standard of review directly supports granting relief here.<sup>41</sup>

14. Even assuming that this SLD procedure is applicable to the general case, it is not the standard of review that SLD applies to the specific context of requests for corrections that increase funding. Rather, SLD flatly prohibits such corrections, and as noted, the Bureau has repeatedly upheld this prohibition.

15. 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 Oklahoma City Public Schools, Oklahoma City, Oklahoma, on September 5, 2001 IS DENIED.

16. IT IS FURTHER ORDERED that the Request for Review filed by Oklahoma City Public Schools, Oklahoma City, Oklahoma, on December 5, 2001 IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>39</sup> Because the "totality of the circumstance" test is inapplicable, we do not discuss whether the many circumstances to which OCPS refers would support relief under such a test. *See* Request for Review at 11-12.

<sup>40</sup> Request for Review at 9-10.

<sup>41</sup> *Id.*