

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
Hacienda La Puente Unified School District
City of Industry, California
Federal-State Joint Board on Universal Service
Changes to the Board of Directors
of the National Exchange Carrier
Association, Inc.
File No. SLD 64020
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: October 5, 1999 Released: October 5, 1999

By the Deputy Chief, Common Carrier Bureau:

1. The Bureau has under consideration a Request for Review filed by Hacienda La Puente Unified School District (Hacienda) on July 8, 1999, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). Hacienda seeks review of the SLD's denial of its application for discounts under the schools and libraries universal service support mechanism. For the reasons set forth below, we grant 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 discounts for eligible telecommunications services, Internet access, and internal connections. Pursuant to that mechanism, Hacienda applied for discounts on Asynchronous Transfer Mode (ATM) network telecommunications services. By letter dated February 25, 1999, the SLD denied Hacienda's request for discounts. Hacienda appealed the SLD's decision by letter dated

1 The document filed by Hacienda on July 8, 1999 was styled as a "Request for Extension of Time" (Request for Extension) of the deadline for the submission of a request for review. On July 21, 1999, Hacienda filed a document styled as a "Request for Review." Because the Request for Extension was filed within the time period established for filing appeals of the decision of the Administrator and because it adequately indicated the basis for the appeal, we will consider the Request for Extension as a timely filed appeal and the Request for Review as a supplement thereto.

2 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 47 C.F.R. §§ 54.502, 54.503.

March 22, 1999. On June 8, 1999, the SLD affirmed its initial funding decision. The Administrator's Decision on Appeal indicated that telecommunications services requested by Hacienda and listed as "fiber deployment" were not commercially available and thus were ineligible for discounts. In its request for review of the SLD's decision now before us, Hacienda argues that the Administrator's decision was improper because the requested telecommunications services are in fact "commercially" available and thus, should be eligible for universal service discounts.

3. The issue in this case is whether the ATM network telecommunications services provided by GTE California (GTEC) for which Hacienda seeks universal service support discounts are eligible services. We believe that they are eligible. The Commission, in the *First Report and Order*, stated that schools and libraries should have maximum flexibility to purchase from telecommunications carriers whatever package of commercially available telecommunications services they believe will meet their telecommunications service needs most effectively and efficiently.⁴ The Commission, in its universal service orders, has not specifically defined the term "commercially available." Applying the plain meaning of the term, however, we conclude that the service at issue here is commercially available. The ATM network services provided by GTEC are available to all customers under similar contract terms. Moreover, GTEC's web pages advertise the availability of these services generally and also market them specifically to customers eligible to participate in the schools and libraries mechanism.

4. The Administrator appears to have based its decision on the fact that the services are "subject to the availability of service facilities."⁵ The Administrator concluded that, because the facilities had not been constructed, they were not "commercially available." This reasoning is erroneous. It is not uncommon for service providers to construct or install facilities to provide specific services to individual customers. For example, service providers regularly install new T-1 lines used to provide high speed telecommunications services. Indeed, the Administrator has recognized this practice in other cases and approved universal service discounts for services provided over such newly constructed T-1 facilities. We recognize that this situation, entailing approximately \$3 million dollars in requested discounts and requiring the construction of essentially all of the facilities necessary to provide the ATM service, may have presented an unusual circumstance for the Administrator. Nevertheless, the scope and magnitude of the request at issue here do not provide a basis for determining that the service is not commercially available.

5. 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 Letter of Appeal filed by Hacienda La Puente Unified School District on July

⁴ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9006 (1997) (*Universal Service Order*), para. 431, as corrected by *Errata*, CC Docket No. 96-45 (rel. June 4, 1997), *affirmed in pertinent part*, *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (*First Report and Order*).

⁵ The Administrator's letter explained that the contract includes the construction, trenching, conduit and subconduit deemed to be necessary to bring the fiber optic facilities required to support the OC-3 and OC-12 services to the customer sites.

8, 1999 IS GRANTED.

6. IT IS FURTHER ORDERED, that the Administrator IS DIRECTED to implement the decision herein.

FEDERAL COMMUNICATIONS COMMISSION

Lisa M. Zaina
Deputy Chief
Common Carrier Bureau