

end of Funding Year 1999. Similarly, the factual bases for the current argument, including the limited circumstances just mentioned, and the assertion that these circumstances made posting a Funding Year 1999 request "impossible," were also not presented below. Accordingly, because Henrico did not raise these factual and legal questions in its request for review before the Bureau, consideration of these arguments by the Commission is precluded by § 1.115(c).

7. Further, even if we were to consider the merits of this argument, we would still deny the application for review. First, the record demonstrates that Henrico's Funding Year 2000 FCC form 470 was clearly intended to support its Funding Year 2000 applications for funding. Henrico submitted two Funding Year 2000 FCC forms 471 applications seeking Funding Year 2000 discounts. Each application referenced FCC form 470 App. No. 952970000283996 as the supporting form 470. On September 29, 2000, SLD approved Henrico's Funding Year 2000 App. No. 188486. SLD denied Henrico's Funding Year 2000 App. No. 165166 because this application sought support for internal connections and the funding cap could not accommodate applicants, such as Henrico, that were entitled to less than an 81 percent discount in Funding Year 2000.

8. Further, it would appear that Henrico's requested relief would work at cross purposes to its already secured funding for Funding Year 2000. Were we to construe the FCC form 470 App. No. 952970000283996 as a Funding Year 1999 FCC form 470, thus supporting funding of Henrico's Funding Year 1999 FCC form 471, it would also establish that Henrico's successful Funding Year 2000 application violated our competitive bidding regulations. This application sought new services in Funding Year 2000, which needed to be posted for bidding by a Funding Year 2000 FCC form 470 to comply with our competitive bidding rules.

9. Moreover, it is true that, after October 25, 1999, because SLD switched its on-line application system from one designed to process Funding Year 1999 applications to one designed for Funding Year 2000, applicants seeking to file FCC form 470 posting requests for services in Funding Year 1999 were forced to use the on-line system for Funding Year 2000 to do so. However, at the same time that USAC gave applicants official notice of the availability of additional funds on March 1, 2000, it also instructed applicants how to apply for Funding

Year 1999 funds with the Funding Year 2000 form 470s. Specifically USAC directed applicants to indicate on their Year 2000 forms 470 that they were seeking services for Funding Year 1999. Forms 470 so designated were included in a list posted on the website separate from the Funding Year 2000 FCC forms 470, and SLD took special steps to ensure that providers were made aware that there were FCC form 470s seeking Funding Year 1999 services that were not included among the FCC form 470s posted in the on-line Funding Year 1999 location.

10. Thus, contrary to Henrico's assertion, it was not "impossible" to post a request for services in Funding Year 1999. Henrico, having already posted a Funding Year 2000 FCC form 470 on December 19, 1999, that did not specify its intention to seek Funding Year 1999 funds, had ample opportunity, after March 1, 2000, to resubmit its Year 2000 form 470 with a notation that the form was seeking Funding Year 1999 funds as USAC instructed. In fact, numerous applicants successfully posted their Funding Year 1999 requests for services using the Funding Year 2000 on-line application system. Therefore, while the absence of a Funding Year 1999 on-line system certainly justified applicants using the Funding Year 2000 system to post their Funding Year 1999 requests for bidding, it does not excuse applicants who made no attempt to post Funding Year 1999 requests at all. Here, Henrico made no such attempt to post Funding Year 1999 services. Henrico seeks to rely on an FCC form 470 that it concedes actually requested services in Funding Year 2000 and on which Henrico in fact relied on to support its subsequent successful Funding Year 2000 FCC form 471 application. Consequently, we conclude that the circumstances to which Henrico refers would not support relief in this case.

11. It is ordered, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, and § 1.115 of the Commission's rules, that the application for review filed by Henrico County Public Schools, Richmond, Virginia, on March 5, 2002 is denied.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 96-45, 97-21; FCC 02-306]

Application for Review by Lunenburg County Public Schools, Victoria, Virginia; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission grants the application for review 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 of the Universal Service Administrative Company, which denied Lunenburg County Public Schools' Funding Year 1999 application for discounts under the schools and libraries universal service mechanism. This document also remands to SLD to fund the request as set forth.

DATES: Effective November 20, 2002.

FOR FURTHER INFORMATION CONTACT: Narda Jones, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418-7400, TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket Nos. 96-45 and 97-21 released on November 20, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC 20554.

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 discounts for eligible telecommunications services, Internet access, and internal connections. The Commission's rules require that the applicant make a *bona fide* request for services by filing with the Administration an FCC form 470, which is posted to the Administrator's website for all potential competing service providers to review. 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. 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. The instructions for the FCC form 471 clearly state: "You may not seek support on this form for ineligible services." 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." 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. An applicant can avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services.

4. At issue is Funding Request Number (FRN) 481380, which sought discounted internal connections at a pre-discount cost of \$62,850.00. 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. 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. 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." 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%. However, the Bureau noted that, in addition to the purchase of equipment, the funding request also sought discounts on installation costs. 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. With a proportional amount of the installation costs included, the Bureau found that the cost of ineligible services was 33% of the total. Thus, the Bureau held that the funding request was properly denied in its entirety under SLD's 30% policy.

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. 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. 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. 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.

7. Lunenburg did not present any of these arguments to the Bureau in its request for review. 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." The note to § 1.115(c) states that "new questions of fact or law may be presented to the designated authority in a petition for reconsideration."

8. In other circumstances, we have held that consideration of newly raised arguments in conjunction with an application for review is precluded by § 1.115(c) of our rules. 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 § 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.

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 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. 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. It is ordered, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 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.

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FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting Wednesday, January 15, 2003

January 8, 2003.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on, which is scheduled to commence at in Room TW-C305, at 445 12th Street, SW., Washington, DC. The Meeting will focus on presentations by senior agency officials regarding implementations of the agency's strategic plan and a comprehensive review of FCC policies and procedures.

Presentations will be made in four panels:

Panel One consisting of the Managing Director.

Panel Two consisting of the Chiefs of the Enforcement Bureau and the Consumer and Governmental Affairs Bureau.