

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
Cochrane-Fountain City School District) File No. SLD-140683
Fountain City, Wisconsin)
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: May 16, 2000

Released: May 17, 2000

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration an appeal by Cochrane-Fountain City School District (Cochrane), Fountain City, Wisconsin, filed on October 12, 1999, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator).1 Cochrane seeks review of the SLD's denial of its application for discounts for Internet access under the schools and libraries universal service support mechanism.2 For the reasons set forth below, we grant Cochrane's appeal and remand Cochrane's funding application to the SLD for further determination in accordance with this Order.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia, which include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.3 The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library or consortium must seek competitive bids for all services eligible for

1 Letter from Steve Mieden, Cochrane-Fountain City School District, to Federal Communications Commission, filed October 12, 1999.

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.

support.⁴ An applicant fulfills the competitive bidding requirement by filing with the Administrator a completed FCC Form 470, setting forth the applicant's technological needs and the services for which it seeks discounts.⁵ The SLD posts an applicant's FCC Form 470 specifying requested services on its web page for 28 days.⁶ The applicant must wait until the close of the 28-day period and "carefully consider all bids submitted" prior to signing a contract for eligible services.⁷ Once the school or library has contracted for eligible services, it is required to file an FCC Form 471 application to apprise the Administrator of the services that have been ordered, the service provider with whom the school has signed the contract, and an estimate of the funds necessary to cover the discounts to be given for eligible services.⁸ Using information provided by the applicant in its FCC Form 471, the Administrator determines the amount of discounts for which the school is eligible.

3. The Commission has repeatedly emphasized the importance of the competitive bidding requirement, stating that it helps to ensure that schools and libraries will receive the lowest possible pre-discount price.⁹ The Commission concluded that competitive bidding is the most efficient means for ensuring both that eligible schools and libraries are informed about the choices available to them and that prices are not unnecessarily high, thereby minimizing the amount of support needed.¹⁰ In adopting this requirement, the Commission established a minimally burdensome means for schools and libraries to inform the public of services they seek and for providers to review and submit bids in response to requests for services.¹¹ The Commission, however, was also aware that some schools and libraries were bound by existing contracts that could not be breached without such schools or libraries incurring a penalty. The Commission did not want applicants with existing contracts to be precluded from benefiting from universal service support until after their contracts expired,¹² nor did it wish to penalize providers with whom the contracts were signed.¹³ At the same time, however, the Commission

⁴ 47 C.F.R. §§ 54.504, 54.511(c).

⁵ 47 C.F.R. §§ 54.504(b)(1), (b)(3).

⁶ 47 C.F.R. § 54.504(c).

⁷ 47 C.F.R. §§ 54.504(b), 54.511(a).

⁸ 47 C.F.R. § 54.504(c).

⁹ See *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10098, para. 9 (1997), as corrected by *Federal-State Joint Board on Universal Service*, Erratum, CC Docket No. 96-45, FCC 97-246 (rel. July 15, 1997).

¹⁰ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 480 (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).

¹¹ *Id.* at 9078, para 575.

¹² *Id.* at 9063-9064, para. 547.

¹³ *Id.*

sought to prevent incumbent carriers from using long-term contracts as a means to prevent potential competitors from offering alternative service packages to schools and libraries.¹⁴

4. In light of these considerations, the Commission's rules provide that eligible schools and libraries with existing contracts are exempt from the competitive bidding requirement under certain circumstances. Section 54.511(c)(1) provides that contracts signed after July 10, 1997 and before January 30, 1998 (the date on which the Schools and Libraries website was fully operational) would be exempt from the competitive bidding requirement for services provided through December 31, 1998.¹⁵ However, in order to ensure that schools and libraries contracting for services between July 10, 1997 and January 30, 1998 did not negotiate long-term contracts and thereby avoid the competitive bidding requirement altogether, the Commission limited the exemption of the competitive bidding requirement for contracts signed between July 10, 1997 and January 30, 1998 to services provided through December 31, 1998, regardless of the duration of the contract as a whole.¹⁶ Once an applicant submits an FCC Form 470 and complies with the 28-day posting period, the applicant is permitted to sign a long-term contract at that time and, having complied with the competitive bidding requirement prior to signing the contract, the applicant need not submit any additional FCC Form 470s for the duration of that contract.¹⁷ Further, where an applicant seeks to renew an existing contract that was not previously posted, the applicant satisfies the competitive bidding requirement by posting the request on the SLD

¹⁴ See *July 10 Order*, 12 FCC Rcd at 10098, para. 9; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5442, para. 213 (1998) (*Fourth Reconsideration Order*).

¹⁵ 47 C.F.R. § 54.511(c)(1). See *Fourth Reconsideration Order*, 13 FCC Rcd at 5441, para. 217 (1998). In June 1998, the Commission changed the funding year for the schools and libraries universal service support mechanism from a calendar year cycle (January 1 – December 31) to a fiscal year cycle (July 1 – June 30). *Federal-State Joint Board on Universal Service*, Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14 915, 14920, para. 8 (1998) (*Fifth Order on Reconsideration*). The year 1 period was extended to cover the 18-month period from January 1, 1998 to June 30, 1999. *Id.* Although the Commission's rules generally do not exempt voluntary extensions of contracts from the competitive bidding requirement, the *Fifth Order on Reconsideration* provided that existing contracts with termination dates between December 31, 1998 and June 30, 1999 could be voluntarily extended to a date no later than June 30, 1999 in order to account for the change in the funding year cycle, and to avoid the undue hardship that would result from requiring schools and libraries to participate in competitive bidding for the six-month period between January 1, 1999 through June 30, 1999. *Id.* at 14923, para. 14. The Commission subsequently amended this exemption from the competitive bidding requirement to include applicants with existing contracts that expired between the closing dates of the 1998 filing window and June 30, 1999, but only for services received between January 1, 1999 and June 30, 1999. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration, 14 FCC Rcd 5983, 5989-5991, para. 12-15 (1999); 47 C.F.R. § 54.511(d)(1).

¹⁶ *Fourth Reconsideration Order*, 13 FCC Rcd at 5445, para. 217.

¹⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, DA 99-1773, 1999 WL 680424 (Com. Car. Bur. 1999), para. 10 (“We conclude that permitting a school or library to commit to a long-term contract after participating in the competitive bidding process does not compromise the benefits derived from competition. As long as all providers have had the opportunity to compete for the same contract, schools or libraries can enter into renewable contracts of any length or form, as permitted by state law.”).

website and carefully considering all bids submitted before renewing the existing contract after the 28-day posting period has terminated.¹⁸

5. By letter dated September 16, 1999, the SLD rejected a funding request made by Cochrane for year 2 of the schools and libraries program for failure to meet the SLD's minimum processing standards.¹⁹ The SLD stated that the funding request was being rejected because contracts signed after July 10, 1997 were required to be rebid in the second year of the program. In response, Cochrane filed the instant Letter of Appeal, requesting a review of the SLD's decision.

6. A review of Cochrane's applications and SLD records reveals that on October 22, 1997, Cochrane entered into a contract for Internet service for the period beginning January 10, 1998 through June 30, 2000. Because it had signed a contract in October 1997, Cochrane was required, as was the case with all schools and libraries entering into contracts between July 10, 1997 and January 30, 1998, to seek competitive bids for all services eligible for support for year 2 of the schools and libraries program. Consistent with sections 54.504 and 54.511(c)(1)(ii) of the Commission's rules,²⁰ Cochrane filed its FCC Form 470 and left Block 3, Item 10 of the application unchecked, thereby indicating to SLD that its application should be posted on the SLD website.²¹ The SLD posted Cochrane's FCC Form 470 on March 1, 1999 and set Cochrane's allowable contract date as March 29, 1999. Cochrane's FCC Form 471 was signed on March 31, 1999 and filed with the SLD on April 2, 1999.

7. Although SLD indicated in its September 16, 1999 letter that Cochrane's request for discounts for Internet access was defective because Cochrane's contract must be re-bid, the record reflects that Cochrane fully complied with the Commission's competitive bidding requirement for year two. As noted, an applicant with an existing contract that was not previously posted is obligated only to post its requests, carefully consider all bona fide bids submitted, and wait the requisite 28-day time period prior to renewing an existing contract for the funding year for which it is requesting discounts.²² Although Cochrane was operating under an existing agreement for Internet services, Cochrane correctly submitted its FCC Form 470 for posting on the SLD website and did not check Block 3, Item 10. As noted, the SLD posted Cochrane's FCC Form on March 1, 1999, as required by section 54.504(b)(3) of the

¹⁸ *Id.* at para. 11.

¹⁹ Letter from Universal Service Administrative Co., Schools and Libraries Division, to Steve Mieden, Cochrane-Fountain City School District, dated September 16, 1999.

²⁰ 47 C.F.R. §§ 54.504, 54.511(c)(1)(ii).

²¹ The FCC Form 470 instructions direct applicants to check Block 3, Item 10 only if applicants are seeking discounts exclusively for eligible services that are the subject of an existing written contract signed on or before July 10, 1997 or an existing written contract that was signed as a result of the filing of a previous FCC Form 470 and compliance with the competitive bidding requirement. Such applications need not be posted. Thus, by not checking Block 3, Item 10, an applicant indicates to SLD that it is seeking bids and that its application should be posted on the website.

²² State procurement laws may impose additional requirements.

Commission's rules.²³ The posting of Cochrane's application on the SLD website gave all potential providers an opportunity to review and submit competing bids in response to Cochrane's request for Internet service, thereby meeting the objective behind the competitive bid requirement. Further, Cochrane's FCC Form 471 was not signed until March 31, 1999, two days after Cochrane's allowable contract date. In submitting its FCC Form 470 for posting on the SLD website, as well as complying with the 28-day waiting period, Cochrane adhered to all applicable requirements with respect to the Commission's competitive bidding policy.²⁴

8. 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 appeal filed by Cochrane-Fountain City School District, Fountain City, Wisconsin on October 12, 1999 IS GRANTED and that Cochrane's application IS REMANDED to SLD for further consideration in light of this decision.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau

²³ 47 C.F.R. § 54.504(b)(3).

²⁴ In the absence of evidence to the contrary, we find it reasonable to conclude that Cochrane did carefully consider any other proposals submitted given the incentive for Cochrane to secure the most cost effective service possible.