

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
McAllen Independent School District
McAllen, Texas
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.
File No. SLD-137424
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: February 7, 2000

Released: February 8, 2000

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Letter of Appeal filed by McAllen Independent School District (McAllen), McAllen, Texas, 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). McAllen seeks review of the SLD's denial of a funding request for discounted services under the schools and libraries universal service support mechanism. For the reasons set forth below, we deny the Letter of Appeal and affirm the SLD's denial of McAllen's request for discounts.

2. By letter dated September 16, 1999, the SLD rejected a funding request made by McAllen for Funding Year 2 for failure to meet the SLD's minimum processing standards. The SLD stated that the funding request was being rejected because contracts awarded between July 11, 1997 and February 27, 1998 were required to be rebid for Funding Year 2. In response, McAllen filed the instant Letter of Appeal, arguing that its contract with Southwestern Bell Telephone Company qualifies as an existing contract for tariffed services and could not be rebid. Moreover, McAllen asserts that it consulted the SLD Help Desk for assistance in filing its FCC Forms 470 and 471, and that SLD staff indicated that McAllen's contract qualified as an

1 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).

2 Letter from Universal Service Administrative Co., Schools and Libraries Division, to Carole Bell, McAllen Independent School District, dated September 16, 1999.

existing, binding contract. Because of the assurances made by SLD staff, McAllen argues, its application for discounts should be reconsidered.

3. 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.<sup>3</sup> 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 support.<sup>4</sup> In accordance with the Commission's rules, the SLD posts an applicant's FCC Form 470 specifying requested services on its web page for 28 days prior to the applicant's signing a contract for eligible services and submitting FCC Form 471.<sup>5</sup>

4. As noted, 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) exempts contracts entered into on, or prior to, July 10, 1997 from competitive bidding requirements for the duration of the contract and also 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)<sup>6</sup> would be exempt from the competitive bidding requirement for services provided through December 31, 1998.<sup>7</sup> The Commission set out these exemptions because it did not wish to penalize schools and libraries that had to negotiate contracts prior to the date that the universal service competitive bidding system became fully

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<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>4</sup> 47 C.F.R. §§ 54.504, 54.511(c).

<sup>5</sup> 47 C.F.R. § 54.504(c).

<sup>6</sup> The February 27, 1998 date referenced by SLD in its September 16, 1999 letter incorporates the 28-day competitive bid waiting period beginning from January 30, 1998 (the date that the Schools and Libraries website became fully operational).

<sup>7</sup> 47 C.F.R. § 54.511(c), 47 C.F.R. § 54.511(d). See *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, 5441, para. 217 (1998) (*Fourth Reconsideration Order*). 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 period for Funding Year One 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. *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).

operational.<sup>8</sup> In addition, 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.<sup>9</sup>

5. 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.<sup>10</sup> The Commission has 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.<sup>11</sup> 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.<sup>12</sup>

6. A review of the record reflects that, on September 3, 1997, McAllen signed a five-year contract for the period beginning November 13, 1997 through November 12, 2002. Pursuant to section 54.511(c)(1)(ii), McAllen was exempt from the competitive bidding requirement for Funding Year 1. However, as was the case with all schools and libraries entering into contracts between July 10, 1997 and January 30, 1998, McAllen was required to seek competitive bids for all services eligible for support for Funding Year 2. Because McAllen did not seek competitive bids for Funding Year 2, we find that the SLD correctly denied McAllen's request for discounts.<sup>13</sup>

7. Moreover, we are not persuaded by McAllen's argument that SLD staff statements that its agreement with Southwestern Bell constituted an existing, binding contract is sufficient to warrant reconsideration of SLD's denial of McAllen's application. As noted, contracts signed between July 10, 1997 and January 30, 1998 are considered pre-existing contracts but such contracts were exempt from the competitive bidding requirement only through December 31,

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<sup>8</sup> See *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service Order*); *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10098, para. 9 (1997) (*July 10 Order*).

<sup>9</sup> *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.").

<sup>10</sup> See *July 10 Order*, 12 FCC Rcd at 10098, para. 9.

<sup>11</sup> *Universal Service Order*, 12 FCC Rcd at 9029, para. 480.

<sup>12</sup> *Fourth Reconsideration Order*, 13 FCC Rcd at 5445, para. 217.

<sup>13</sup> We note that in its Letter of Appeal, McAllen argues that, because the telephone service it ordered is tariffed service, its application should not have been denied. Telecommunications services ordered pursuant to tariffs do not fall under the category of pre-existing contracts and are subject to the competitive bidding requirement.

1998. While it is unfortunate that McAllen may have understood the SLD staff statements to mean that it would be exempt from the competitive bidding requirement for the duration of its contract, this is not a basis to grant relief that would be contrary to our rules.<sup>14</sup> Applicants themselves have the burden of complying with applicable statutes and rules. Here, it was incumbent upon McAllen to be aware of and comply with the Commission's rules regarding the competitive bidding requirement.

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 Letter of Appeal filed by McAllen Independent School District, McAllen, Texas on October 12, 1999, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey  
Deputy Chief, Common Carrier Bureau

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<sup>14</sup> Even in the event that SLD staff did mistakenly tell McAllen that the contract was exempt from competitive bidding for the duration of its contract, erroneous advice received from a government employee is insufficient to create estoppel against the Federal Government, particularly when the relief requested would be contrary to an applicable statute or rule. See *Applications of Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd. 4705, 4707-4708, para. 22 (1991), citing *Office of Personnel Management v. Richmond*, 497 U.S. 1046 (1990). A person relying on informal advice given by staff does so at his own risk. *Id.*, citing *Texas Media Group, Inc.*, 5 FCC Rcd 2851, 2852, para. 8 (1990); *aff'd sub nom. Malkan FM Associates v. FCC*, No. 90-1281, slip op. at 12 (D.C.Cir. June 14, 1991).