

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Tomahawk School District	)	File No. SLD-183249
Tomahawk, 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:** April 23, 2001

**Released:** April 24, 2001

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Request for Review filed by the Tomahawk School District (Tomahawk), Tomahawk, Wisconsin on June 26, 2000, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).<sup>1</sup> Tomahawk seeks review of SLD's denial of its application for discounts under the schools and libraries universal service support mechanism.<sup>2</sup> For the reasons set forth below, we grant Tomahawk's Request for Review and remand the application to SLD.

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.<sup>3</sup> The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library or consortium that includes eligible schools or libraries must seek

<sup>1</sup> Letter from Lin Kautza, Tomahawk School District, Tomahawk, Wisconsin, to Federal Communications Commission, filed June 26, 2000 (Request for Review).

<sup>2</sup> 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).

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

competitive bids for all services eligible for support.<sup>4</sup> In accordance with the Commission's rules, an applicant must file with SLD, for posting to its website, a FCC Form 470 requesting services.<sup>5</sup> The applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471 requesting support for the services ordered by the applicant.<sup>6</sup> The Commission's rules provide a limited exemption from the 28-day competitive bid requirement when applicants have "existing contracts," as defined by the Commission's rules.<sup>7</sup>

3. In Funding Year 3, Tomahawk did not file a FCC Form 470, but relied on the exemption from the competitive bidding requirement for applicants with "existing contracts." Tomahawk referenced its FCC Form 470 from Funding Year 2 (470 Application Number: 295250000187247, filed with SLD on February 15, 1999). Tomahawk filed its FCC Form 471 with SLD on January 17, 2000, requesting discounts for long distance services, to be provided by OneStar Long Distance, Inc. (OneStar).<sup>8</sup> In Block 5, Item 15 of its FCC Form 471, Tomahawk indicated that its requested service was governed by a month-to-month arrangement.<sup>9</sup> Tomahawk also attached a copy of its signed contract with OneStar Long Distance, Inc.<sup>10</sup>

4. Upon reviewing Tomahawk's FCC Form 471, SLD determined that the requested discounts related to tariff and/or month-to-month services, and as such, the filing date of Tomahawk's FCC Form 470 violated the Commission's rules.<sup>11</sup> Accordingly, by letter dated May 26, 2000, SLD denied Tomahawk's request for discounts for telecommunications services because of "Tariff/Month-to-Month [FCC Form] 470 Timing."<sup>12</sup> In response, Tomahawk filed the instant Request for Review with the Commission.<sup>13</sup>

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

<sup>5</sup> See Instructions for Completing the Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB Approval No. 3060-0806 (FCC Form 470 Instructions) (September 1999) at p. 2-3.

<sup>6</sup> 47 C.F.R. § 54.504(c); see Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB Approval No. 3060-0806 (FCC Form 471 Instructions) (September 1999) at p. 4; see also SLD website, <<http://www.sl.universalservice.org>>.

<sup>7</sup> 47 C.F.R. § 54.511(c).

<sup>8</sup> FCC Form 471, Tomahawk School District, filed January 17, 2000.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See FCC Form 471 Instructions at p. 4 (concerning the precise date for filing a FCC Form 470). The instructions provide that for tariff telecommunication services or month-to-month services, FCC Form 470 can be filed no earlier than July 1 of the year preceding the funding year for which the applicant is applying.

<sup>12</sup> Letter from Schools and Libraries Division, Universal Service Corporation to Lin Kautza, Tomahawk School District, dated May 26, 2000 (Funding Commitment Decision Letter); see also FCC Form 471 Instructions at p. 4.

<sup>13</sup> See Request for Review.

5. We have reviewed Tomahawk's FCC Form 471 and related materials. In its Request for Review, Tomahawk argues that it did not file a FCC Form 470 in Funding Year 3, because it had an existing, signed contract.<sup>14</sup> The issue is whether the filing of Tomahawk's FCC Form 470 is governed by the filing rules for existing contracts or the rules for tariff and/or month-to-month services. Services that are covered by a qualified existing contract for all or part of the funding year do not require the filing of a FCC Form 470; a qualified existing contract is a signed contract executed pursuant to the posting of a FCC Form 470 in a previous year.<sup>15</sup> Tariff services are telecommunication services purchased at regulated rates for which the applicant does not have a signed, written contract.<sup>16</sup> A FCC Form 471 must be filed each year for discounts for month-to-month and tariff services.<sup>17</sup> We conclude that Tomahawk had a qualifying, existing contract with OneStar.

6. In its FCC Form 471 application, Tomahawk attached a copy of its signed contract with OneStar; the attachment demonstrated that the contract period for long distance services to be provided by OneStar was August 23, 1999 - June 30, 2001.<sup>18</sup> Thus, Tomahawk had a signed contract with One Star executed pursuant to the posting of a FCC Form 470 in Funding Year 2, and the timing of Tomahawk's FCC Form 470 was in compliance with the program's rule as established for existing contracts. While the information in Block 5, Item 15 of its FCC Form 471 is inconsistent with Tomahawk's contention that it had a qualified existing contract, using other information provided, SLD could have reasonably determined the exact nature of the telecommunication services requested. We, therefore, remand Tomahawk's application and direct SLD to issue a new funding commitment decision letter based on the originally submitted FCC Form 471 and its attachments.

7. 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 Tomahawk School District, Tomahawk, Wisconsin filed on June 26, 2000, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey  
Deputy Chief, Common Carrier Bureau

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

<sup>15</sup> See FCC Form 470 Instructions at p. 4.

<sup>16</sup> See FCC Form 470 Instructions at p. 4.

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

<sup>18</sup> FCC Form 471, Tomahawk School District, filed January 17, 2000.