

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

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Office of Superintendent of Public Instruction)	File No. SLD-146789
Olympia, Washington)	
)	
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 Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division (Division) has under consideration a Request for Review filed by Office of Superintendent of Public Instruction (OSPI), Olympia, Washington, on June 2, 2000.¹ OSPI requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company to deny OSPI's application for discounted services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny the Request for Review and affirm SLD's denial of OSPI's application.

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.³ The Commission's rules provide that, with one limited exception for existing, binding contracts, an

¹ Letter from Clare Donahue, Office of Superintendent of Public Instruction, to Federal Communications Commission, filed June 2, 2000 (Request for Review).

² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Dennis Small, Office of Superintendent of Public Instruction, dated October 5, 1999 (Funding Commitment Decision Letter); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Dennis Small, Office of Superintendent of Public Instruction, dated May 4, 2000 (Administrator's Decision on Appeal).

³ 47 C.F.R. §§ 54.502, 54.503.

eligible school, library or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.⁴ In accordance with the Commission's rules, an applicant must file with SLD, for posting to its website, a FCC Form 470 requesting services.⁵ 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.⁶ A signature date on an FCC Form 471 or on a service provider agreement that predates the expiration of the 28-day posting period indicates that the applicant failed to wait 28 days before entering into an agreement with a service provider and therefore violated the Commission's competitive bidding rules.⁷ A contract award date on FCC Form 471 that predates the expiration of the 28-day posting period, similarly violates the Commission's competitive bidding rules.

3. In this case, SLD's posting of OSPI's FCC Form 471, which contained FRN 284064, created an allowable contract date of April 6, 1999.⁸ By letter dated October 5, 1999, SLD denied FRN 284064 because it concluded that the applicant had violated the Commission's competitive bidding rule by signing a contract for services before the expiration of the 28-day waiting period.⁹ OSPI sought review of this SLD decision from the Administrator on November 2, 1999.¹⁰ SLD responded on May 4, 2000.¹¹ This response explained that OSPI's funding request was denied for two reasons. First SLD stated that the April 2, 1999 signature date on the applicant's FCC Form 471 demonstrated that the document was prepared and submitted before the expiration of the 28-day waiting period.¹² SLD also stated that OSPI had violated the Commission's competitive bidding rules by entering into a contract with vendor University of Washington on March 9, 1999, nearly a month before the allowable contract date of April 6, 1999.¹³

⁴ 47 C.F.R. §§ 54.504, 54.511(c).

⁵ See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470).

⁶ 47 C.F.R. § 54.504(c); see Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471).

⁷ See *Request for Review by Minor High School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 13790, 13792, para. 5. (Com. Car. Bur. 2000).

⁸ See FCC Form 471, Office of Superintendent of Public Instruction, filed April 6, 1999.

⁹ Funding Commitment Decision Letter.

¹⁰ Letter from Dennis Small, Office of Superintendent of Public Instruction, to Universal Service Administrative Company, Schools and Libraries Division, dated November 2, 1999. (SLD Appeal)

¹¹ Administrator's Decision on Appeal

¹² *Id.*

¹³ *Id.*

4. In the instant Request for Review, OSPI challenges SLD's May 4, 2000 decision with two arguments.¹⁴ First OSPI argues that the signature date on the their FCC Form 471 was not April 2, 1999 but April 6, 1999. We agree. SLD incorrectly assigned the April 2, 1999 date to OSPI's FCC Form 471. The original document in the record clearly shows the document was dated on April 6, 1999. Therefore, we reverse SLD on this point.

5. OSPI also argues that the March 9, 1999 contract award date provided on its FCC Form 471 for FRN 284064 does not reflect a violation of the 28-day waiting period. OSPI asserts that the March 9, 1999 date is when administration of a state master contract changed from the Washington State Department of Information Services to the University of Washington.¹⁵ OSPI further asserts that "the underlying contract was signed on [December 5, 1994], well before the July, 10 1997 cut-off date for pre-existing contracts. This master contract with Sprint Business Services [SPIN # 143005695] was established by the Washington State Department of Information Services . . ."¹⁶ Upon review of the record we reject this OSPI argument because SLD's decision to reject FRN 284065 for violation of the Commission's 28-day rule is supported by the record.

6. OSPI listed March 9, 1999 as the contract award date for FRN 284064 for Internet services from provider University of Washington. In the attachment to Item 17 of its FCC Form 471, OSPI described this FRN entry as an "OSPI contract for Internet Services provided up to 90 Mega bits of bandwidth through Contract 20001 with the University of Washington (SPIN #143018279) for up to \$900,000 annually. OSPI is billed on behalf of public K-12 schools in the State of Washington . . ."¹⁷ This description was consistent with the information OSPI provided on its FCC Form 471. Consequently, nothing in OSPI's original application communicated to SLD that there was an underlying contract that was exempted from the competitive bidding 28-day waiting period. Therefore SLD appropriately denied OSPI's appeal as a violation of the 28-day waiting requirement.

7. The applicant has admitted its error in failing to reference the underlying contract at the time of its initial application.¹⁸ In doing so, OSPI recognizes that fundamentally it is the applicant's responsibility to provide accurate information to SLD. It is not the duty of SLD to bring errors to the attention of applicants. Moreover, because OSPI did not attach or reference the underlying contract, the error in OSPI's answer to Item 17 would not have been reasonably apparent to SLD. In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding and complying with all the relevant programs and procedures.¹⁹

¹⁴ Request for Review.

¹⁵ Request for Review.

¹⁶ *Id.*

¹⁷ See Attachment 17 to FCC Form 471, Office of Superintendent of Public Instruction, filed April 6, 1999

¹⁸ Request for Review.

¹⁹ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association*, File No. SLD-13364, CC Dockets No. 96-45

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 Request for Review filed by Office of the Superintendent of Public Instruction, Olympia, Washington, on June 2, 2000, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

and 97-21, Order, DA 00-2630 (Com. Car. Bur. rel. Nov. 24, 2000), at para. 8 (“In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures”).