

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
Redondo Beach Unified School District
Redondo Beach, California
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.
File No. SLD-129811
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: June 7, 2001

Released: June 8, 2001

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Request for Review filed by Redondo Beach Unified School District (Redondo Beach), Redondo Beach, California, on September 7, 2000. Redondo Beach requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company to deny Redondo Beach's application for discounted services under the schools and libraries universal service support mechanism. For the reasons set forth below, we deny the Request for Review and affirm SLD's denial of Redondo Beach'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. The Commission's rules provide that an eligible school, library, or consortium that includes eligible

1 Letter from Patricia Hosken, Redondo Beach Unified School District, to Federal Communications Commission, filed September 7, 2000 (Request for Review).

2 Letter from Schools and Libraries Division, Universal Service Administrative Company, to Tim Baumgartner, Redondo Beach Unified School District, dated September 17, 1999 (Notice of Failure to Meet Minimum Processing Standards); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Patricia Hosken, Redondo Beach Unified School District, August 8, 2000 (Administrator's Decision on Appeal).

3 47 C.F.R. §§ 54.502, 54.503.

schools or libraries must seek competitive bids for all services eligible for support.⁴ Commission rules exempt contracts entered into on or prior to July 10, 1997 from competitive bidding requirements for the duration of the contract.⁵ These rules also provide that contracts signed after July 10, 1997 and before January 30, 1998 (the date on which the Schools and Libraries website was fully operational) are exempt from the competitive bidding requirement for services provided through December 31, 1998.⁶ This exemption applies only to services provided through December 31, 1998, regardless of whether the contract as a whole extends beyond that date.⁷ 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 operational.⁸

3. Unless the competitive bidding exemption applies, the Commission's rules require that an applicant file an FCC Form 470 requesting services with SLD, for posting to the SLD website.⁹ 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.¹⁰ Further, the instructions for the FCC Form 471 state that the

⁴ 47 C.F.R. §§ 54.504.

⁵ 47 C.F.R. § 54.511(c)(1). 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*). Previously, in an order released on July 10, 1997, the Commission found that only contracts signed after November 8, 1996 and prior to January 30, 1998 were exempt from the competitive bidding requirement for services provided through December 31, 1998. *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order on Reconsideration, 12 FCC Rcd 10095 (1997) (*July 10 Order*). Upon reconsideration, however, the Commission subsequently amended section 54.511(c) in order to avoid penalizing those that were uncertain of their rights prior to the release of the *July 10 Order*. *Fourth Reconsideration Order*, 13 FCC Rcd at 5445, para. 217.

⁶ *Id.*

⁷ *Id.*

⁸ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S.Ct. 423 (Nov. 2, 2000); *July 10 Order*, 12 FCC Rcd at 10098, para. 9.

⁹ See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470).

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

date of signature for the FCC Form 471 “CANNOT be earlier than the 29th day following the posting of the associated FCC Form 470 to the [SLD] Web Site.”¹¹

4. In this case, Redondo Beach’s Funding Year 2 FCC Form 470 was posted on January 22, 1999 creating an allowable contract date of February 19, 1999.¹² The applicant signed its FCC Form 471 on February 5, 1999 referencing October 22, 1997 as the contract award date to vendor NETSCHOOLS.¹³

5. By letter dated September 17, 1999, SLD rejected this Redondo Beach funding request for failure to meet SLD’s minimum processing standards.¹⁴ SLD stated that the funding request was rejected because contracts awarded between July 11, 1997 and February 28, 1998 were required to be rebid.¹⁵ On October 15, 1999, Redondo Beach sought review of this decision from SLD.¹⁶ SLD’s August 8, 2000 reply restated that Redondo Beach’s funding request for its contract with vendor NETSCHOOLS violated the Commission’s competitive bidding rules.¹⁷

6. Upon review of the record, the Bureau concludes that SLD correctly denied Redondo Beach’s request for support because the applicant violated the Commission’s competitive bidding rules. The contract for which the applicant seeks support was entered into on October 22, 1997 for services to be delivered beginning July 1, 1999. Because the contract award date falls between July 10, 1997 and January 30, 1998, the contract was exempt from competitive bidding for Funding Year 1 but not for Funding Year 2.¹⁸ As was the case with all schools and libraries entering into contracts between July 10, 1997 and January 30, 1998, Redondo Beach was required to seek competitive bids for all services eligible for support for Funding Year 2.¹⁹

7. The October 22, 1997 contract award date indicated by the applicant on its Funding Year 2 FCC Form 471 demonstrates that no rebidding for Funding Year 2 occurred. In addition, Redondo Beach signed and submitted its FCC Form 471 on February 5, 1999, fourteen days

¹¹ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (December 1998) at 24 (FCC Form 471 Instructions).

¹² See SLD web site, <<http://www.sl.universal.org/form/ReviewAll.asp>>.

¹³ FCC Form 471, Redondo Beach Unified School District, filed, February 5, 1999.

¹⁴ Notice of Failure to Meet Minimum Processing Standards.

¹⁵ *Id.* The Schools and Libraries Division website became fully operational on January 30, 1998; February 28, 1998 marks the first date, 28 days later, that applicants for discounts under the universal service mechanism for schools and libraries were able to post their FCC Forms 471.

¹⁶ Letter from Patricia Hosken, Redondo Beach Unified School District, dated October 15, 1999 (Letter of Appeal)

¹⁷ Administrator’s Decision on Appeal.

¹⁸ FCC Form 471, Redondo Beach Unified School District, filed, February 5, 1999.

¹⁹ See footnote 5. As of July 10, 1997, all applicants were put on notice that applicants entering into multi-year contracts between July 10, 1997 and January 30, 1998 would be required to comply with the Commission’s competitive bidding rules after the first funding year.

before the expiration of the 28-day waiting period. To satisfy the Commission's competitive bidding requirements, the contract award date to this vendor needed to be on or after February 19, 2000 and the applicant's FCC Form 471 should have been signed and submitted after February 19, 2000. Because Redondo Beach did not seek competitive bids for Funding Year 2, we find that SLD correctly denied Redondo Beach's request for discounts.

8. 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.²⁰ 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.²¹

9. Redondo Beach argues that it is unreasonable for the Commission to require it to post its FCC Form 470 to the Internet for 28 days when the services it was seeking funding for were available from a "sole source vendor" as a renewal of an earlier agreement.²² We find Redondo Beach's sole source vendor argument unpersuasive. The competitive bidding process is designed, in part, to help expose applicants to other vendors who may offer the same or similar services at a lower pre-discount price. We reiterate the Commission's finding that "[c]ompetitive bidding is the most efficient means for ensuring that schools and libraries are informed about all of the choices available to them."²³

10. Redondo Beach also asserts that when it contacted SLD prior to filing its FCC Form 471, SLD representatives led it to believe that Redondo Beach's application did not present any issues that would proscribe funding approval. We note that rules and policies are enforced, even where a party has received incorrect advice from an SLD employee.²⁴ Here, the Commission is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when the relief requested would be contrary to an applicable statute or

²⁰ See *July 10 Order*, 12 FCC Rcd at 10098, para. 9.

²¹ *Fourth Reconsideration Order*, 13 FCC Rcd at 5445, para. 217.

²² Request for Review.

²³ *Universal Service Order*, 12 FCC Rcd at 9029, para. 480. During the competitive bidding process, applicants may consider the current contract as one of the bids. Applicants must weigh for themselves the most cost-efficient bid. See *Universal Service Order*, 12 FCC Rcd at 9029, para. 481. The costs associated with terminating a contract are part of the cost-effectiveness analysis for applicants in these cases. In situations where the applicant determines, after complying with the 28-day competitive bidding period and carefully considering all bona fide bids submitted, that its current contract is the most cost-effective option, it must inform SLD that it is continuing with the current contract in an attachment to its application. Redondo Beach failed to take these steps with regard to its contract with NETSCHOOLS.

²⁴ *In re Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4707-08, 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).

rule.²⁵ Redondo Beach's misunderstanding of program rules provides no basis for deviating from the Commission's policy of placing on the applicant the responsibility for understanding program rules and procedures.²⁶ Here, we find no grounds for relieving Redondo Beach from having to comply with our policies regarding competitive bidding.

11. 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 Redondo Beach Unified School District, Redondo Beach, California, on September 7, 2000, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau

²⁵ *Id.*

²⁶ See e.g. *Request for Review of Decision Universal Service Administrative Company by Arizona Call-A-Teen Center, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 96-45, Order, 15 FCC Rcd 18634, 18637, para. 6 (Common Carrier, Bur. 2000).