

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
Washington Local Schools) File No. SLD-203649
Toledo, Ohio)
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: September 21, 2001

Released: September 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 Washington Local Schools, Toledo, Ohio (Washington).1 Washington requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company to deny Washington's Funding Year 3 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 Washington'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 eligible school, library, or consortium that includes eligible schools or libraries must seek

1 Letter from David L. Bringman, Washington Local Schools, Toledo, Ohio, to the Federal Communications Commission, filed April 6, 2001 (Request for Review).

2 Letter from Schools and Libraries Division, Universal Service Administrative Company, to Dave Bringman, dated October 20, 2000 (Funding Commitment Decision Letter); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Dave Bringman, dated March 23, 2001 (Administrator's Decision on Appeal).

3 47 C.F.R. §§ 54.502, 54.503.

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, an 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 Further, the instructions for the FCC Form 471 state that the 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."⁷

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.⁸ 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.⁹ In order to permit all interested parties sufficient time to respond to requests for services posted on the SLD web page, the Commission requires all schools and libraries, and consortia including such entities, to wait the requisite 28-day waiting period prior to signing a contract for discounted services.¹⁰

4. Washington filed its FCC Form 470 with SLD on December 17, 1999.¹¹ The allowable contract date for contracts signed pursuant to Washington's FCC Form 470 was January 14, 2000.¹² Washington filed a FCC Form 471 with SLD on January 17, 2000.¹³ The

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 (September 1999) (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 (September 1999) (FCC Form 471).

⁷ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (December 1998), at 24 (FCC Form 471 Instructions).

⁸ See *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10098, para. 9 (1997).

⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 480 (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 (November 2, 2000).

¹⁰ *Universal Service Order*, 12 FCC Rcd at 9080, para. 579.

¹¹ FCC Form 470, Washington Local Schools, filed December 17, 1999 (Washington Form 470).

¹² *Id.*

¹³ FCC Form 471, Washington Local Schools, filed January 19, 2000 (Washington Form 471).

record shows that Washington signed its application on January 12, 2000.¹⁴ On October 20, 2000, SLD rejected Washington's FCC Form 471 because Washington failed to satisfy the Commission's competitive bidding requirements.¹⁵

5. Upon review of the record, the Division finds that SLD correctly denied Washington's request for support. Despite the clear requirements of our rules that applicants may not sign the FCC Form 471 before the allowable contract date, Washington signed and dated the form on January 12, 2000, two days prior to the allowable contract date of January 14, 2000.¹⁶ In its Request for Review, Washington argues that it signed the contract after the allowable contract date, but mistakenly wrote the wrong date.¹⁷ As evidence that it signed the FCC Form 471 after the allowable contract date, Washington encloses a copy of the postmark on its Receipt for Certified Mail for the FCC Form 471, which indicates that its FCC Form 471 was mailed on January 14, 2000.

6. We find that the January 14, 2000, postmark on the FCC Form 471 is insufficient evidence that Washington complied with the Commission's competitive bidding requirements. In this instance, the critical date is the date on which the applicant entered into its service agreements, not the date that the applicant forwarded this information to SLD. 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.¹⁸ The Common Carrier Bureau has consistently denied requests for review by applicants that have violated the Commission's competitive bidding rules by signing the FCC Form 471 before the allowable contract date.¹⁹ We conclude that, under these circumstances, Washington's argument is unpersuasive.

7. The burden of carefully following program rules properly rests with applicants themselves. If we were to grant relief for writing the wrong signature date, we would then have

¹⁴ *Id.*

¹⁵ See Funding Commitment Decision Letter.

¹⁶ See Washington Form 471; Washington Form 470.

¹⁷ See Request for Review.

¹⁸ 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.*, File No. SLD-139210, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 13790, 13792, para. 5 (Com. Car. Bur. 2000).

¹⁹ See, e.g., *Request for Review by Cathedral Grade School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-87608, CC Docket Nos. 96-45 and 97-21, Order, DA 99-2953 (Com. Car. Bur. rel. December 21, 1999); *Request for Review by Currituck County Schools Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-111040, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 5564 (Com. Car. Bur. 2000); *Request for Review by Gustine Independent School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-108651, CC Docket Nos. 96-45 and 97-21, Order, DA 99-2534 (Com. Car. Bur. rel. November 16, 1999).

to grant similar relief to other entities that made similar mistakes, which would in turn increase administrative burdens for SLD. For Funding Year 3, SLD received over 36,000 applications. It is impractical, if not impossible, for SLD to review each application and notify applicants of errors prior to the close of the filing window. The Division, therefore, finds that the applicant violated the 28-day waiting period and denies Washington's Request for Review.

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 Washington Local Schools, Toledo, Ohio, on April 20, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
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Common Carrier Bureau