

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

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| In the Matter of |) | |
| |) | |
| Request for Review of the |) | |
| Decision of the |) | |
| Universal Service Administrator by |) | |
| |) | |
| Haslett Public Schools |) | File No. SLD-195505 |
| Haslett, Michigan |) | |
| |) | |
| 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 27, 2001

Released: September 28, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by Haslett Public Schools (Haslett), Haslett, Michigan, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Haslett seeks review of SLD’s denial of its application for discounts under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny Haslett’s Request for Review.

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 an eligible school, library, or consortium that includes

¹ Letter from David Martell, Haslett Public Schools, Haslett, Michigan, to Federal Communications Commission, filed February 28, 2001 (Request for Review).

² 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).

³ 47 C.F.R. §§ 54.502, 54.503.

eligible schools or libraries must seek competitive bids for all services eligible for support.⁴ In accordance with the Commission 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 The Commission's rules provide a limited exemption from the 28-day competitive bid requirement when applicants have "existing contracts."⁷

3. Specifically, 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. Section 54.511(c)(1) 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) would be exempt from the competitive bidding requirement for services provided through December 31, 1998.⁸ The Commission established these exemptions because it did not wish to penalize schools and libraries that had to negotiate contracts prior to the date that the SLD website became fully operational.⁹ 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. 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.¹⁰ Applicants

⁴ 47 C.F.R. §§ 54.504, 54.511(c).

⁵ 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.

⁶ 47 C.F.R. § 54.504(b), (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>>.

⁷ 47 C.F.R. § 54.511(c).

⁸ 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 (1997) (*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.

⁹ See *Universal Service Order; July 10 Order*, 12 FCC Rcd at 10098, para. 9.

¹⁰ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 15 FCC Rcd 6732 (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.").

with contracts signed during the period between July 10, 1997 and January 30, 1998, therefore, must under program rules re-bid contracts for periods subsequent to December 31, 1998.

4. Haslett filed its FCC Form 470 for Funding Year 3 on December 20, 1999.¹¹ In Block 2, Item 7 of the FCC Form 470, Haslett indicated that it had a multi-year contract signed on or before July 10, 1997, but for which no FCC Form 470 had been filed in a previous funding program year.¹² Haslett then filed its FCC Form 471 on January 19, 2000, seeking discounts for Internet access to be provided by TCI Network Solutions (TCI).¹³ Haslett provided a copy of its service agreement with TCI which indicated that the agreement had been entered into on September 23, 1998, with service starting on October 23, 1998.

5. By letter dated August 25, 2000, SLD denied Haslett's funding request.¹⁴ SLD explained that Haslett's FCC Form 471 was signed or submitted prior to the expiration of the 28-day waiting period from the day of the posting of the FCC Form 470 to SLD's website.¹⁵ Haslett then filed an appeal with SLD.¹⁶ By letter dated January 29, 2001, SLD upheld its original funding decision.¹⁷ SLD stated that Haslett's FCC Form 470 was not posted to SLD's website because Haslett indicated that it was not necessary for SLD to do so by checking Block 2, Item 7d on its FCC Form 470.¹⁸ SLD explained that except under limited circumstances, all FCC Form 470's must be posted to SLD's website for 28 days to comply with the competitive bidding requirements.¹⁹ SLD further explained that Haslett did not meet the exception for contracts signed before July 10, 1997, because its service agreement with TCI was made on September 23, 1998.²⁰

6. In response, Haslett filed the instant Request for Review with the Commission.²¹ In its Request for Review, Haslett maintains that it entered a binding contract with TCI which

¹¹ FCC Form 470, Haslett Public Schools, filed December 20, 1999.

¹² *Id.*

¹³ FCC Form 471, Haslett Public Schools, filed January 19, 2000.

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Merry Achors, Haslett Public Schools, dated August 25, 2000 (Funding Commitment Decision Letter).

¹⁵ *Id.*

¹⁶ Letter from Merry Anchors, Haslett Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed September 11, 2000 (SLD Appeal).

¹⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Merry Achors, Haslett Public Schools, dated January 29, 2001 (Administrator's Decision on Appeal).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Request for Review.

began in February 1996 and was extended through 2002 when additional services were added.²² Haslett admits that when it filed its SLD Appeal, it did not include a complete contract, thus SLD was only able to view the second portion of the agreement.²³

7. On its FCC Form 471, Haslett listed October 23, 1998 as the contract award date for service to be provided by TCI. The terms of the contract provided to SLD also indicated that agreement was entered into on September 23, 1998, with service beginning October 23, 1998. Because Haslett did not attach or reference the underlying contract during the initial review or in its appeal to SLD, Haslett's error would not have been apparent to SLD. Based on the information provided, SLD properly concluded that Haslett's FCC Form 470 should have been posted to SLD's website to satisfy the Commission's competitive bidding requirements. Therefore, SLD properly denied Haslett's funding request as a violation of the 28-day waiting requirement.

8. Haslett admits its error in failing to reference the underlying contract at the time of its application.²⁴ To the extent that Haslett requests that the Commission review its application using data provided in its Request for Review, this is impermissible. If applicants were permitted to correct their applications after SLD has denied them, it would eliminate any incentive to avoid making unauthorized service requests or to comply with the SLD's document demands in a timely fashion.²⁵ This would significantly increase the administrative burden SLD would face while carrying out its obligation to guard against the occurrence of errors and fraud.²⁶ Furthermore, if applicants were permitted to amend their requests after the filing window closed, it could jeopardize SLD's ability to accurately apply the rules of priority in years where requests for funding exceed the annual funding cap.²⁷ Therefore, we conclude that SLD properly denied Haslett's request for funding and we therefore deny Haslett's Request for Review.

²² *Id.*

²³ *Id.*

²⁴ SLD Appeal.

²⁵ See *Request for Review by Cheney Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-142969, CC Dockets No. 96-45 and 97-21, Order, DA 01-351 (Com. Car. Bur. rel. Feb. 13, 2001), at para. 6.

²⁶ *Id.*

²⁷ *Id.*

9. 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 Waiver Request filed by Haslett Public Schools, Haslett, Michigan, on February 28, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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