

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

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
New York Military Academy)	File No. SLD-191951
Hudson, New York)	
)	
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: October 3, 2001**Released: October 4, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division (Division) has under consideration a Request for Review filed by New York Military Academy, Hudson, New York (NYMA).¹ NYMA requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company relating to NYMA's application for discounted services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny NYMA'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, with one limited exception for existing, binding contracts, an 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

¹ Letter from Donald J. Schwegler, New York Military Academy, Hudson, New York, to Federal Communications Commission, filed April 28, 2001 (Request for Review).

² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Don Schwegler, dated September 15, 2000 (Funding Commitment Decision Letter); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Don Schwegler, dated March 30, 2001 (Administrator's Decision on Appeal).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. §§ 54.504, 54.511(c).

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 A signature date on an FCC Form 471 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

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. As a reference tool, we set forth a chronology of the relevant events in Appendix A.¹¹ Of primary importance to this Request for Review is the fact that NYMA filed three applications for support in Funding Year 3. NYMA filed its first FCC Form 471 (Application One) with SLD on January 18, 2000.¹² On January 19, 2000, NYMA filed a second FCC Form 471 (Application Two) with SLD.¹³ On January 26, 2000, NYMA submitted an FCC Form 470 to be posted on

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 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 (2000).

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 See Appendix A.

¹² FCC Form 471, New York Military Academy, filed January 18, 2000 (Application One).

¹³ FCC Form 471, New York Military Academy, filed January 19, 2000 (Application Two).

SLD's website.¹⁴ The allowable signature date for contracts pursuant to the Form 470 was February 28, 2000.¹⁵ NYMA subsequently filed another FCC Form 471 with SLD (Application Three) on February 28, 2000, which was signed on the same date.¹⁶

5. On September 15, 2000, SLD determined that the funding requests in Application Two did not satisfy the Commission's competitive bidding requirements and denied funding.¹⁷ NYMA appealed SLD's decision relating to Application Two, and SLD denied the appeal on March 30, 2001.¹⁸ NYMA requests review of SLD's decision, asserting that it satisfied the Commission's competitive bidding requirements.¹⁹

6. As noted above, NYMA filed three applications for support in Funding Year 3. NYMA attaches Application Three to their Request for Review as evidence that it satisfied the Commission's competitive bidding requirements.²⁰ We conclude, however, that even if Application Three satisfied the Commission's competitive bidding requirement, it was not eligible for in-window funding priority. NYMA filed Application Three on February 28, 2000.²¹ In Funding Year 3, the filing window for applications closed on January 19, 2000.²² Since Application Three was filed after this filing window deadline, the application was subject to separate funding priorities under Commission rules. Section 54.507(c) of the Commission's rules states that fund discounts will be available for out-of-window applications on a first-come-first-served basis.²³ In Funding Year 3, because demand for discounted services exceeded the available funding, no applications for discounted services filed outside the filing window received funding. Accordingly, we conclude that it was appropriate for SLD to determine that the funding requests in Application Three were ineligible for support, because the application was received after the close of the filing window.

7. We conclude that NYMA is ineligible for support pursuant to Application Two, as well.²⁴ We note that each of the funding requests in Application Two initially referenced a Form

¹⁴ FCC Form 470, New York Military Academy, filed January 26, 2000 (NYMA Form 470).

¹⁵ *Id.*

¹⁶ FCC Form 471, New York Military Academy, filed February 28, 2000 (Application Three)

¹⁷ See Funding Commitment Decision Letter.

¹⁸ Letter from Donald J. Schwegler, New York Military Academy, to Schools and Libraries Division, Universal Service Administrative Company, filed October 2, 2000; Administrator's Decision on Appeal.

¹⁹ See Request for Review.

²⁰ *Id.*

²¹ See Application Three.

²² See SLD's website, <http://www.sl.universalservice.org>.

²³ 47 C.F.R. § 54.507(c).

²⁴ As indicated above, the NYMA's SLD Appeal Letter and the Administrator's Decision on Appeal related to Application Two. In fact, NYMA references the application number of Application Two in their Request for

470 filed in Funding Year 2.²⁵ During the SLD application review process, at NYMA's request, SLD modified Application Two so that the funding requests referenced the Form 470 NYMA filed in Funding Year 3.²⁶ As a result of this change, Application Two was filed at approximately the same time as the corresponding FCC Form 470. Because there was no opportunity for competitive bidding, we find that NYMA failed to wait 28 days before entering into an agreement with a service provider and therefore violated the Commission's competitive bidding rules.²⁷ 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.²⁸

8. We further note that even if Application Two had not been modified, the funding requests would not have been eligible for support. In Application Two, NYMA requested support for tariffed telecommunications services and month-to-month Internet access services.²⁹ Each funding request originally referenced an FCC Form 470 posted in Funding Year 2.³⁰ Under program rules, however, a new FCC Form 470 must be filed in each funding year for tariffed telecommunications services and month-to-month Internet access services that do not have a signed, written contract.³¹ Consequently, NYMA was required to file an FCC Form 470 in

Review. *See Request for Review.* Therefore, NYMA ultimately requests the Commission to review SLD's decision relating to Application Two.

²⁵ FCC Form 470, New York Military Academy, filed January 7, 1999 (NYMA Year 2 Form 470).

²⁶ *See* Memo from Donald Schwegler, New York Military Academy to Ed Gabriel, Schools and Libraries Division, Universal Service Administrative Company, filed August 15, 2000 (August Memo).

²⁷ *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 (2000).

²⁸ *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 (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).

²⁹ We note that FRN 409317 was a request for support for internal connections. *See Application Two.* In Funding Year 3, funding of discounted internal connections was available only for schools with discount rates of 82 percent or higher. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking and Order, FCC 01-143, n. 13 (rel. April 30, 2001). Because NYMA was entitled to discounts of only 40 percent, it was not eligible for discounted internal connections in Funding Year 3. *See Application Two.*

³⁰ *See Application Two.* When NYMA originally filed Application Two, NYMA stated that they believed that they were not required to post a new FCC Form 470 in Funding Year 3, because their service providers were identified after posting an FCC Form 470 in Funding Year 2. *See Letter from James M. Lyle to Universal Service Administrative Company, Schools and Libraries Division*, filed January 26, 2000. *See also NYMA Year 2 Form 470.*

Funding Year 3, and it was necessary for each of the funding requests to be posted for competitive bidding. Because NYMA incorrectly relied on an FCC Form 470 filed in a previous funding year, NYMA would have violated the Commission's competitive bidding requirement. We also note that Application One was a duplicate of Application Two.³² Therefore, even if NYMA had not withdrawn Application One, the relevant funding requests would have been ineligible for the same reason as the funding requests in Application Two. As a result, NYMA was ineligible for support pursuant to all three applications it filed in Funding Year 3.

9. The applicant ultimately bears the responsibility of completing the relevant forms and submitting them to SLD within the established deadlines if the applicant wishes to be considered with other in-window applicants. The instructions to the FCC Form 470 and 471, as well as SLD's website, outline the filing requirements, including the 28-day competitive bidding requirements.³³ In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.³⁴ The Division, therefore, denies NYMA's Request for Review.

10. 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 New York Military Academy, Hudson, New York, on April 30, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

³¹ See 47 C.F.R. § 54.504(b), (c); Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB No. 3060-0806 (FCC Form 471 Instructions)(September 1999), at p. 3-4; *see also* SLD website, <<http://www.sl.universalservice.org>>.

³² See August Memo.

³³ Instructions for Completing the Schools and Libraries Universal Service, Description of Services Requested and Certification Form (FCC Form 470), OMB No. 3060-0806 (September 1999) (FCC Form 470 Instructions); *see also* SLD website, <http://www.sl.universalservice.org>.

³⁴ *Request for Review by Anderson School Stratsburg, 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. 95-45 and 97-21, Order, 15 FCC Rcd 26610, para. 8 (2000).

APPENDIX A**FUNDING YEAR 2**

DATE	EVENT
January 7, 1999	File FCC Form 470

FUNDING YEAR 3

DATE	EVENT
January 18, 2000	File FCC Form 471 (Application One)
January 19, 2000	File FCC Form 471 (Application Two)
January 26, 2000	File FCC Form 470
February 28, 2000	File FCC Form 471 (Application Three)
August 15, 2000	Modify Application Two – Revise to Reference FCC Form 470 filed in Funding Year 3
August 15, 2000	Withdraw Application One