

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
A. R. Carethers SDA School) File No. SLD-190535
Houston, Texas)
)
Applegate Adventist Academy) File No. SLD-190372
Round Rock, Texas)
)
Berean SDA School) File No. SLD-188641
Baton Rouge, Louisiana)
)
Bethel SDA School) File No. SLD-190669
Texarkana, Texas)
)
Broward Seventh-Day Adventist Bilingual School) File No. SLD-190798
Plantation, Florida)
)
Emanuel Seventh-Day School) File No. SLD-190992
Hammond, Louisiana)
)
Ephesus Adventist Jr. Academy) File No. SLD-191177
New Orleans, Louisiana)
)
Ephesus Jr. Academy) File No. SLD-191083
West Palm Beach, Florida)
)
Excel Adventist Academy) File No. SLD-191384
Missouri City, Texas)
)
Ft. Lauderdale SDA Constituency School) File No. SLD-191497
Ft. Lauderdale, Florida)
)
Marnatha Junior Academy) File No. SLD-191708
New Orleans, Florida)
)
Mt. Calvary SDA Jr. Academy) File No. SLD-191895
Tampa, Florida)
)

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|---|---|---------------------|
| Northside SDA Church School |) | File No. SLD-192081 |
| Pine Bluff, Arizona |) | |
| |) | |
| Palm Beach SDA Bilingual School |) | File No. SLD-192373 |
| Riviera Beach, Florida |) | |
| |) | |
| Ramah Junior Academy |) | File No. SLD-192645 |
| Savannah, Georgia |) | |
| |) | |
| Shiloh School |) | File No. SLD-192971 |
| Ocala, Florida |) | |
| |) | |
| Shiloh SDA School |) | File No. SLD-192825 |
| Little Rock, Arkansas |) | |
| |) | |
| Smyrna Jr. Academy |) | File No. SLD-193160 |
| Alexandria, Louisiana |) | |
| |) | |
| South West Adventist Jr. Academy |) | File No. SLD-193317 |
| Dallas, Texas |) | |
| |) | |
| 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: March 23, 2001

Released: March 26, 2001

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration the above-captioned Requests for Review of decisions issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Each one of these schools

¹ Letter from Principal Brown, A.R. Carethers SDA School, to Federal Communications Commission, filed August 25, 2000; Letter from Principal Fernandez-Herra, Applegate Adventist Academy, to Federal Communications Commission, filed August 25, 2000; Letter from Principal Green, Berean SDA School, to Federal Communications Commission, filed August 25, 2000; Letter from Principal Hansen, Bethel SDA, to Federal Communications Commission, filed August 25, 2000; Letter from Principal Aristide, Broward Seventh-Day Adventist Bilingual School, to Federal Communications Commission, filed August 25, 2000; Letter from Principal Bonner, Emanuel Seventh-Day School, to Federal Communications Commission, filed August 25, 2000; Letter from Principal Cox, Ephesus Adventist Jr. Academy, to Federal Communications Commission, filed August 25, 2000; Letter from Principal Norris, Ephesus Jr. Academy, to Federal Communications Commission, filed August 25, 2000; Letter from Principal Cox, Excel Adventist Academy, to Federal Communications Commission, filed August 25, 2000; Letter from Principal Smith, Ft. Lauderdale SDA Constituency School, to Federal Communications Commission, filed

(collectively “the Applicants”) seeks review of SLD’s denial of its application for funding under the schools and libraries universal service support mechanism.² As each case raises the same issue based on largely identical facts, they are addressed together in this Order. For the reasons set forth below, we deny each request for review and affirm each of SLD’s decisions.

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 applying for funding must, in most cases, seek competitive bids for the products and services to be funded.⁴ To comply with this competitive bid requirement, the Commission’s rules require that an applicant submit to the Administrator a completed FCC Form 470 (Form 470), in which the applicant lists the services for which it seeks discounts.⁵ The Administrator then posts the Form 470 on its web site for all potential competing service providers to review.⁶

3. The Form 470 describes the applicant’s planned service requirements, as well as other information regarding the applicant and its competitive bidding process that may be relevant to the preparation of bids.⁷ The Form 470 must be completed by the entity that will negotiate with prospective service providers and must be signed by the person authorized to order the requested

August 25, 2000; Letter from Principal Moore, Marnatha Junior Academy, to Federal Communications Commission, filed August 25, 2000; Letter from Principal Jarvis, Mt. Calvary SDA Jr. Academy, to Federal Communications Commission, filed August 25, 2000; Letter from Principal Wilkins, Northside SDA Church School, to Federal Communications Commission, filed August 25, 2000; Letter from Principal Brise, Palm Beach SDA Bilingual School, to Federal Communications Commission, filed August 25, 2000; Letter from Principal Greenidge, Ramah Junior Academy, to Federal Communications Commission, filed August 25, 2000; Letter from Principal McCoy, Shiloh SDA School, to Federal Communications Commission, filed August 25, 2000; Letter from Principal Ramnarine, Shiloh School, to Federal Communications Commission, filed August 25, 2000; Letter from Principal Rhodes, Smyrna Jr. Academy, to Federal Communications Commission, filed August 25, 2000; Letter from Principal Maxwell, South West Adventist Jr. Academy, to Federal Communications Commission, filed August 25, 2000 (collectively, Requests 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.

⁴ 47 C.F.R. § 54.504(a).

⁵ 47 C.F.R. §§ 504(b)(1), (b)(2); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (Form 470).

⁶ 47 C.F.R. § 54.504(b).

⁷ 47 C.F.R. § 54.504(b). In addition to a description of the services that the applicant plans to receive, the Form 470 requests that the applicant provide information about the number of students that attend the schools that will receive support, the number of buildings for which the applicant seeks services eligible for support, and other information relevant to a service provider’s determination of services appropriate to include in its bid proposal. *See* Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470) (September 1999) (FCC Form 470 Instructions).

services on behalf of the applicant.⁸ The signatory must make several certifications, under oath, relating to the eligibility of the applicant and the applicant's ability to make use of the services requested.⁹ The Form 470 also requires that the applicant name a person whom prospective service providers may contact for additional information (contact person).¹⁰ The contact person should be able to answer questions regarding the information included on the Form 470 and the services requested by the applicant, including how to obtain a copy of the applicant's request for proposal (RFP), if the applicant has prepared one.¹¹

4. After the Form 470 is posted on the Administrator's website, the applicant must wait at least 28 days before entering into an agreement for services and submitting an FCC Form 471, which requests support for eligible services.¹² After receiving a Form 471, SLD issues a Funding Commitment Decision Letter granting or denying the applicant's requests.

5. In *Mastermind Internet Services, Inc.*, the Commission held that, where a Form 470 lists a contact person who is an employee or representative of a service provider, the Form 470 is defective.¹³ The Commission observed that the "contact person exerts great influence over an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested."¹⁴ On this basis, the Commission found that "when an applicant delegates that power to an entity that also will participate in the bidding process as a prospective service provider, the applicant irreparably impairs its ability to hold a fair and open competitive bidding process."¹⁵ It concluded that "a violation of the Commission's competitive bidding requirements has occurred where a service provider that is listed as the contact person on the Form 470 also participates in the competitive bidding process as a bidder."¹⁶ In such cases, SLD must deny any Form 471 application based on that Form 470.¹⁷

6. In each of the above-captioned applications, the applicants received a Funding Commitment Decision Letter from SLD stating that SLD had removed the applicant's Form 470

⁸ FCC Form 470 Instructions at 2-3, 16.

⁹ 47 C.F.R. § 54.504(b)(2).

¹⁰ FCC Form 470 Instructions at 7.

¹¹ FCC Form 470 Instructions at 7.

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

¹³ *Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, SPIN-143006149, CC Docket No. 96-45, FCC 00-167, para. 9 (rel. May 23, 2000), 2000 WL 664884 (F.C.C.) (*Mastermind*).

¹⁴ *Id.* at para. 10.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

from its website because “the facts surrounding the filing of this FCC Form 470 strongly suggest that the competitive posting and bidding requirements established by FCC regulations and orders has [sic] been violated due to the fact that the contact person listed on this FCC Form 470 appears to represent a service provider.”¹⁸ SLD further informed the applicants that “[i]n the absence of valid Forms 470, funding requests for support on the associated Forms 471 are denied.”¹⁹

7. On August 25, 2000, each school filed the instant Request for Review. The language of the requests is in every case identical. In relevant part, the applicants assert that their contact person was not a representative of a service provider and they request documentation from the Commission supporting SLD’s contrary position.

8. After reviewing the record in each case, the Bureau finds that SLD’s conclusion that the contact person listed on the FCC Form 470 appeared to represent a service provider was reasonable under the circumstances presented. Each applicant identified a contact person named Charles Scorpio and chose D&H IT Group, Inc. as a service provider to provide telecommunication services.²⁰ The record amply demonstrates that Charles Scorpio is associated

¹⁸ Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, A. R. Carethers SDA School, filed July 28, 2000; Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, Applegate Adventist Academy, filed July 28, 2000; Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, Berean SDA School, filed July 28, 2000; Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, Bethel SDA School, filed July 28, 2000; Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, Broward Seventh-Day Adventist Bilingual School, filed July 28, 2000; Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, Emanuel Seventh-Day School, filed July 28, 2000; Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, Ephesus Adventist Jr. Academy, filed July 28, 2000; Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, Ephesus Junior Academy, filed July 28, 2000; Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, Excel Adventist Academy, filed July 28, 2000; Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, Ft. Lauderdale SDA Constituency School, filed July 28, 2000; Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, Marnatha Junior Academy, filed July 28, 2000; Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, Mt. Calvary SDA Jr. Academy, filed July 28, 2000; Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, Northside SDA Church School, filed July 28, 2000; Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, Palm Beach SDA Bilingual School, filed July 28, 2000; Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, Ramah Junior Academy, filed July 28, 2000; Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, Shiloh School, filed July 28, 2000; Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, Shiloh SDA School, filed July 28, 2000; Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, Smyrna Jr. Academy, filed July 28, 2000; and Letter from Kate L. Moore, Schools and Libraries Division, to Charles Scorpio, South West Adventist Jr. Academy, filed July 28, 2000.

¹⁹ *Id.*

²⁰ FCC Form 470, A. R. Carethers SDA School, dated December 10, 1999; Applegate Adventist Academy, dated December 10, 1999; FCC Form 470, Berean SDA School, dated December 10, 1999; Bethel SDA School, dated December 10, 1999; Broward Seventh-Day Adventist Jr. Academy, dated December 10, 1999; FCC Form 470, Emanuel Seventh-Day School, dated December 10, 1999; FCC Form 470, Ephesus Adventist Jr. Academy, dated December 10, 1999; FCC Form 470, Ephesus Jr. Academy, dated December 10, 1999; FCC Form 470, Excel Adventist Academy, dated December 10, 1999; FCC Form 470, Ft. Lauderdale SDA Constituency School, dated December 10, 1999; FCC Form 470, Marnatha Junior Academy, dated December 10, 1999; FCC Form 470, Mt. Calvary SDA Jr. Academy, dated December 10, 1999; FCC Form 470, Northside SDA Church School, dated December 10, 1999; FCC Form 470, Palm Beach SDA Bilingual School, dated December 10, 1999; FCC Form 470,

with D&H IT Group, Inc. in some fashion. First, in each of the nineteen Form 471s, where the form asked for information on the applicant's contact person, the applicant listed Charles Scorpio's e-mail address as cscorpio@dhitgroup.com.²¹ In addition, each applicant listed a contact address, 5641 Orange Drive, Ft. Lauderdale, Florida, which is identical to the contact address provided by D&H IT Group, Inc. for the SLD's Service Provider Information Number (SPIN) and Billed Entity Applicant Reimbursement (BEAR) Contact Search database.²² This database also indicates that D&H IT Group, Inc.'s contact person is Donna Scorpio. Although the fact that the applicants' contact person and D&H IT Group, Inc.'s contact person have the same last name might be coincidental, the more likely inference is that there is a familial relationship between the two individuals, which tends to further establish the association of D&H IT Group, Inc. with Charles Scorpio.²³ Further, the fact that the nineteen schools at issue operate in several different states including Texas, Louisiana, Florida, Arkansas, Arizona, and New Mexico, and the absence of any evident connection between them supports the conclusion that Charles Scorpio is not an employee of these institutions. Finally, none of the schools has submitted any evidence in support of their claim that Charles Scorpio is not a representative of a service provider.²⁴ In sum, the circumstantial evidence is strong that Charles Scorpio was indeed affiliated with the service provider D&H IT Group, Inc., and the record is devoid of any evidence indicating the contrary. Accordingly, we find that SLD had a reasonable basis for concluding that Charles Scorpio should be deemed a representative of D&H IT Group, Inc.

9. We conclude that, because each applicant in the above-captioned cases listed a contact person in its Form 470 who was a representative of a service provider taking part in the

Ramah Junior Academy, dated December 10, 1999; FCC Form 470, Shiloh School, dated December 10, 1999; FCC Form 470, Shiloh SDA School, dated December 10, 1999; FCC Form 470, Smyrna Junior Academy, dated December 10, 1999; FCC Form 470, South West Adventist Jr. Academy, dated December 10, 1999.

²¹ FCC Form 471, A. R. Carethers SDA School, filed January 28, 2000; FCC Form 471, Applegate Adventist Academy, filed January 18, 2000; FCC Form 471, Berean SDA School, filed January 18, 2000; FCC Form 471, Bethel SDA School, filed January 18, 2000; FCC Form 471, Broward Seventh-Day Adventist Jr. Academy, filed January 18, 2000; FCC Form 471, Emanuel Seventh-Day School, filed January 18, 2000; FCC Form 471, Ephesus Adventist Jr. Academy, filed January 19, 2000; FCC Form 471, Ephesus Jr. Academy, filed January 18, 2000; FCC Form 471, Excel Adventist Academy, filed January 19, 2000; FCC Form 471, Ft. Lauderdale SDA Constituency School, filed January 19, 2000; FCC Form 471, Marnatha Junior Academy, filed January 19, 2000; FCC Form 471, Mt. Calvary SDA Jr. Academy, filed January 19, 2000; FCC Form 471, Northside SDA Church School, filed January 19, 2000; FCC Form 471, Palm Beach SDA Bilingual School, filed January 19, 2000; FCC Form 471, Ramah Junior Academy, filed January 19, 2000; FCC Form 471, Shiloh School, filed January 19, 2000; FCC Form 471, Shiloh SDA School, filed January 19, 2000; FCC Form 471, Smyrna Junior Academy, filed January 19, 2000; FCC Form 471, South West Adventist Jr. Academy, filed January 19, 2000.

²² See SLD web site, Reference Area, "SPIN and BEAR Contact Search," <http://www.sl.universalservice.org/Forms/SPIN_Contact_Search.asp>. This database is provided to enable applicants to identify the correct person to contact at each service provider to obtain that provider's SPIN and to sign BEAR forms on behalf of that provider. The information in the database is drawn from the Service Provider Information Form (FCC Form 498) which that service provider has submitted to the Administrator.

²³ *Id.*

²⁴ Such evidence could include, for instance, a sworn affidavit from the service provider that it has no affiliation with Charles Scorpio, or, alternatively, a sworn affidavit from the school indicating that Charles Scorpio is an employee of the school.

bidding process, SLD reasonably determined that the Commission's competitive bidding rules were violated under the precedent established in *Mastermind*.²⁵ Therefore, SLD properly removed the relevant Forms 470 off its web-site and denied the funding requests in the associated Form 471 applications.

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 A. R. Carethers SDA School on August 25, 2000 IS DENIED, the Request for Review filed by Applegate Adventist Academy on August 25, 2000 IS DENIED, the Request for Review filed by Berean SDA School on August 25, 2000 IS DENIED, the Request for Review filed by Bethel SDA School on August 25, 2000 IS DENIED, the Request for Review filed by Broward Seventh-Day Adventist Bilingual School on August 25, 2000 IS DENIED, the Request for Review filed by Emanuel Seventh-Day School on August 25, 2000 IS DENIED, the Request for Review filed by Ephesus Adventist Jr. Academy on August 25, 2000 IS DENIED, the Request for Review filed by Ephesus Jr. Academy on August 25, 2000 IS DENIED, the Request for Review filed by Excel Adventist Academy on August 25, 2000 IS DENIED, the Request for Review filed by Ft. Lauderdale SDA Constituency School on August 25, 2000 IS DENIED, the Request for Review filed by Marnatha Junior Academy on August 25, 2000 IS DENIED, the Request for Review filed by Mt. Calvary SDA Jr. Academy on August 25, 2000 IS DENIED, the Request for Review filed by Northside SDA Church School on August 25, 2000 IS DENIED, the Request for Review filed by Palm Beach SDA Bilingual School on August 25, 2000 IS DENIED, the Request for Review filed by Ramah Junior Academy on August 25, 2000 IS DENIED, the Request for Review filed by Shiloh School on August 25, 2000 IS DENIED, the Request for Review filed by Shiloh SDA School on August 25, 2000 IS DENIED, the Request for Review filed by Smyrna Jr. Academy on August 25, 2000 IS DENIED, and the Request for Review filed by South Western Adventist Jr. Academy on August 25, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau

²⁵ *Mastermind*, at para. 10.