

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
Request for Review of the )
Decision of the )
Universal Service Administrator by )
St. Landry Parish School District ) File No. SLD-119687
Opelousas, Louisiana )
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 28, 2001 Released: March 29, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by the St. Landry Parish School District (St. Landry), Opelousas, Louisiana. St. Landry seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) denying St. Landry's request to change a service provider for one of its funding requests in Funding Year 2 of the schools and libraries universal service support mechanism. This process is referred to as a Service Provider Identification Number (SPIN) change request. For the reasons discussed below, we deny St. Landry's appeal. In addition, based on statements made in St. Landry's Request for Review and in compliance with our own regulations and orders, we direct SLD to issue a revised Funding Commitment Decision Letter which

1 Letter from A. Gerard Caswell, Esq., on behalf of St. Landry Parish School Board, to Federal Communications Commission, filed March 24, 2000 (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). The Commission's rules provide that requests for review of decisions issued by the Administrator shall be considered and acted upon by the Common Carrier Bureau, except that requests which raise novel questions of fact, law or policy shall be considered by the full Commission. 47 C.F.R. § 54.722(a).

3 Request for Review by Copan 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-26231, CC Dockets No. 96-45 and 97-21, 15 FCC Rcd 5498, ¶ 1 (rel. 2000) (Copan Order).

denies the relevant funding request and to pursue the appropriate funding adjustment procedures.

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.<sup>4</sup> The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470, which is posted to the Administrator's website for all potential competing service providers to review.<sup>5</sup> After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.<sup>6</sup> SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.<sup>7</sup>

3. St. Landry filed its FCC Form 471 application for year two funding on March 26, 1999.<sup>8</sup> In Funding Request Number (FRN) 171411 of that application, St. Landry requested funding for certain internal connections with a pre-discount one-time cost of \$200,000.00, to be provided by Com-Net Services, Inc. On September 28, 1999, SLD issued a Funding Commitment Decision Letter which granted the request, approving funding in the amount of \$166,000.00.<sup>9</sup>

4. On February 28, 2000, St. Landry submitted a SPIN-change request to SLD, stating that St. Landry had had to re-bid the internal connections contract due to "specification problems" and that the low-bidder, Integrated Communications, was

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<sup>4</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>5</sup> Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470); 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (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 First Report and 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).

<sup>6</sup> 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471).

<sup>7</sup> *Request for Review by Metropolitan School District of Pike Township, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-120821, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 13891, para. 2 (rel. 2000).

<sup>8</sup> FCC Form 471, St. Landry Parish School District, filed March 26, 1999 (FCC Form 471).

<sup>9</sup> Letter from Kate L. Moore, Schools and Libraries Division, to John Ardoin, St. Landry Parish School District, dated September 28, 1999 (Funding Commitment Decision Letter).

awarded the project at an August 19, 1999 School Board meeting.<sup>10</sup> St. Landry asked for a change from the SPIN number for Com-Net Services, Inc. to Integrated Communications.

5. By decision dated March 1, 2000, SLD denied the request.<sup>11</sup> It stated that it would allow SPIN changes in only three situations:

- (1) Service provider refuses to participate in the E-rate program.
- (2) Service provider has gone out of business.
- (3) Service provider has breached its contract with the applicant.<sup>12</sup>

SLD concluded that St. Landry's situation did not fall into any of these categories. On March 24, 2000, St. Landry filed a Request for Review of this decision with the Commission.

6. In its Request for Review, St. Landry more extensively described the events leading up to its SPIN change request. It related that as the "deadline" for filing its Funding Year 2 FCC Form 471 (presumably meaning the end of the priority funding filing window, April 6, 1999) approached, it had not yet completed a state law mandated bidding process on the internal connections contract.<sup>13</sup> St. Landry thus decided to list Com-Net Services, Inc. as the service provider for FRN 171411 because the application "required a Service Provider to be identified" and because Com-Net Services, Inc. "had performed such work for the School Board in the past."<sup>14</sup> Accordingly, St. Landry filed its FCC Form 471 on March 26, 1999, listing Com-Net Services, Inc. as the service provider on FRN 171411 with a September 1, 1999 contract award date and service start date.<sup>15</sup> On August 19, 1999, the State bidding process was completed and Integrated Communications proved to be the winning bidder.<sup>16</sup> St. Landry submitted its SPIN change request on February 28, 2000 "so that the actual Service Provider would be listed in the School Board's application."<sup>17</sup>

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<sup>10</sup> Letter from John Ardoin, St. Landry Parish School Board, to George Yurecsko, Schools and Libraries Division, filed Jan. 25, 2001.

<sup>11</sup> Letter from Schools and Libraries Division, Universal Service Administrative Co., to John Ardoin, St. Landry Parish School Board, filed March 1, 2000, at 1 (Administrator's Decision on SPIN Change).

<sup>12</sup> *Id.*

<sup>13</sup> Request for Review at 2. FCC Forms 471 received during the filing window receive priority for support as compared to applicants that file their applications after the window has closed. 47 C.F.R. § 54.507(g).

<sup>14</sup> Request for Review at 2.

<sup>15</sup> FCC Form 471, St. Landry Parish School District, filed March 26, 1999, at 2.

<sup>16</sup> Request for Review at 2.

<sup>17</sup> Request for Review at 2.

7. Recently, in the *Copan Order*, we expanded the situations where a SPIN change request should be granted beyond the three categories noted above.<sup>18</sup> However, we find that St. Landry is nevertheless not entitled to a SPIN-change on its funding request because of a more serious underlying problem. In brief, the funding request should never have been granted in the first place, because the application request was made in a manner which violated Commission regulations. Specifically, our regulations require applicants to enter into an agreement with the chosen service provider prior to submitting the FCC Form 471 application for funding.<sup>19</sup> SLD's instructions to filling out FCC Form 471 also expressly inform applicants: "You MUST have a signed contract (or a legally binding agreement between you and your service provider preparatory to a formal signed contract) for all services you order on your Form 471 except [tariffed services and month-to-month services]."<sup>20</sup> As noted above, St. Landry conceded in its Request for Review that when it identified Com-Net Services, Inc. as its service provider, it did not have an agreement from Com-Net Services, Inc. to perform the work.<sup>21</sup> Indeed, it is not clear from the record that Com-Net Services even submitted a bid to perform the work. It is therefore apparent that St. Landry violated the regulation requiring a signed contract prior to the filing of a funding request.

8. Where a commitment of funds has been made for an application which violated our regulations, the commitment will ordinarily be cancelled and efforts made to recoup any funds already disbursed.<sup>22</sup> The Commission previously found that commitment adjustments should be waived for regulatory violations in Funding Year 1 requests.<sup>23</sup> However, the Commission did not consider at that time whether a similar waiver would apply to Funding Year 2 requests.

9. In the circumstances of this particular Funding Year 2 application, we find that a waiver is not warranted. In the *Commitment Adjustment Order I*, the Commission found that good cause existed to grant a waiver of the Commission's rules for affected year 1 applicants because, the Commission concluded, the affected applicants and providers had reasonably relied upon their receipt of a funding commitment. Here, St.

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<sup>18</sup> *Copan Order*, 15 FCC Rcd 5498, ¶ 6.

<sup>19</sup> 47 C.F.R. § 54.504(c).

<sup>20</sup> Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806, at 17 (Oct. 2000) (Form 471 Instructions).

<sup>21</sup> Request for Review at 2.

<sup>22</sup> *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Dockets No. 96-45 and 97-21., Order, FCC 99-292, ¶ 3 (rel. October 8, 1999) (*Commitment Adjustment Order I*) (regulatory violations warranting adjustment included "fail[ure] to secure a signed contract prior to filing the FCC Form 471"); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Dockets No. 96-45 and 97-21., Order, FCC 00-350 (rel. October 26, 2000) (*Commitment Adjustment Order II*) (adopting adjustment procedures).

<sup>23</sup> See *Commitment Adjustment Order I*.

Landry's reliance on its funding commitment was not reasonable. That commitment was based on the listing of Com-Net Services, Inc. as a service provider for FRN 171411. St. Landry either knew or should have known that listing Com-Net Services, Inc. in its funding request falsely communicated that it had a contract with that provider. It could not have reasonably relied on a decision which it should have known was based on false information. In addition, prior to contract performance with Integrated Communication, St. Landry had actual notice of a critical problem with its funding when it attempted to obtain a SPIN change and was denied.<sup>24</sup> This denial was itself effectively a revocation of funding since St. Landry could not proceed with the original service provider, with whom it had no service contract. Given its awareness of this fatal problem with its funding award, its decision to proceed with the contract with Integrated Communications could not have been made with reasonable reliance on the original funding decision.<sup>25</sup>

10. Moreover, circumstances which the Commission found to support reasonable reliance in the *Commitment Adjustment Order I* are not present in the instant case. One such circumstance was the fact that because Funding Year 1 applications were involved, applicants did not have experience in the process.<sup>26</sup> This inexperience made it more reasonable that they would rely on a favorable funding decision as confirmation that they had complied with Commission rules.<sup>27</sup> Here, however, we address a year two applicant who has experience in the process from the first funding year and thus this circumstance further argues against a waiver.

11. In addition, the Commission also noted that a waiver of the rules would protect the service providers who relied upon the funding decision in performing their contracts and who were unlikely to have had any notice of an applicant's compliance with regulations.<sup>28</sup> That is not a concern here, as St. Landry has stated in its Request for Review that the service provider did not rely on the funding decision in performing and completing its contract, but rather obtained full payment from the school district up-front.<sup>29</sup> Accordingly, we find that the application of the *Commitment Adjustment Order I* does not argue for a waiver in this case.

12. Furthermore, St. Landry's need to comply with state bidding laws provides no basis for a waiver of the requirement of an existing agreement at the time of filing. At most, such an excuse might have justified seeking a waiver of the filing window

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<sup>24</sup> Request for Review at 2.

<sup>25</sup> Cf. *Commitment Adjustment Order I*, para. 11 n.22 (noting that first year funding in violation of statute would not receive waiver in part because "providers . . . know, or should have known" of the violations).

<sup>26</sup> *Commitment Adjustment Order I*, para. 10.

<sup>27</sup> *Id.*

<sup>28</sup> *Commitment Adjustment Order I*, para. 11.

<sup>29</sup> Request for Review at 2.

requirement.<sup>30</sup> It does not justify the filing of an FCC Form 471 application in violation of regulations or the filing of funding requests with false information. Indeed, even putting aside the regulatory violation and the unjustified filing of a false FCC Form 471, St. Landry has not explained why it waited until February of 2000 to apprise SLD of its actual service provider when it was aware of this information in August 1999. We conclude that St. Landry is not entitled to a waiver of regulations in this case, and that Funding Request Number, 171411, which was made in violation of the Commission's regulations, must be cancelled. Further, we affirm that as a general matter, an applicant who submits an FCC Form 471 funding request prior to entering into a legally binding agreement with a service provider will be denied funding on that request.<sup>31</sup>

13. Accordingly, IT IS ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that the Request for Review filed on March 24, 2000 is DENIED.

14. It is FURTHER ORDERED that SLD adjust its funding commitment in accordance with this order and the procedures established in the *Commitment Adjustment Order II*.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>30</sup> St. Landry did not request a waiver of the filing window, therefore we need not decide whether such a waiver would have been granted.

<sup>31</sup> See *Request for Review by Bancroft Rosalie Community Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-130114, CC Dockets No. 96-45 and 97-21, Order, DA 00-2403, para. 7 (Com. Car. Bur. rel. October 26, 2000) (affirming denial of funding where applicant submitted request prior to entering into contract and noting that "for the program to run efficiently, it is critical that applicants follow the Commission's rules.").