

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
Mobile County Public School System
Mobile, Alabama
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.
File No. SLD-141099
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: April 4, 2001

Released: April 5, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division (Division) has under consideration a Request for Review filed by Mobile County Public School System (Mobile), Mobile, Alabama, on August 3, 2000. Mobile requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company to deny Mobile's application for discounted services under the schools and libraries universal service support mechanism. For the reasons set forth below, we deny the Request for Review and affirm SLD's denial of Mobile'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. 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. In accordance with the Commission's

1 Letter from Margaret Blake, Mobile County Public School System, to the Federal Communications Commission, filed August 3, 2000 (Request for Review).

2 Letter from Schools and Libraries Division, Universal Service Administrative Company, to Margaret Blake, Mobile County Public School System, dated July 6, 2000 (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, a FCC Form 470 requesting services.<sup>5</sup> 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.<sup>6</sup> 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.”<sup>7</sup>

3. As noted, the Commission’s rules provide that eligible schools and libraries with existing contracts are exempt from the competitive bidding requirement under certain circumstances. 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 and 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.<sup>8</sup> The Commission set out these exemptions because it did not wish to penalize schools and libraries that had to negotiate contracts prior to the date that the universal service competitive bidding system became fully operational.<sup>9</sup> 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 and, 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.<sup>10</sup>

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<sup>5</sup> See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470).

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

<sup>7</sup> Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (December 1998) at 24 (FCC Form 471 Instructions).

<sup>8</sup> 47 CFR § 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, 910213, 95-72, 13 FCC Rcd 5318, 5441, para. 217 (1998) (*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.

<sup>9</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (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 (Nov. 2, 2000); *July 10 Order*, 12 FCC Rcd at 10098, para. 9.

<sup>10</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 6732, 6736, para. 10 (Com. Car. Bur. 1999) (“We conclude that permitting a school or library to commit to a long-term contract after

Further, where an applicant seeks to renew an existing contract that was not previously posted, the applicant satisfies the competitive bidding requirement by posting the request on the SLD website and carefully considering all bids submitted before renewing the existing contract after the 28-day posting period has terminated.<sup>11</sup>

4. 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.<sup>12</sup> The Commission has 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.<sup>13</sup>

5. Upon review of the record, the Division concludes that SLD correctly denied Mobile's request for support. Mobile signed its FCC Form 471 on April 3, 1999, prior to its allowable contract date of April 7, 1999. 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.<sup>14</sup> The Common Carrier Bureau has consistently denied requests for review by applicants that had similarly violated the Commission's competitive bidding rules.<sup>15</sup>

6. In addition, the service agreements for which Mobile seeks support do not meet the limited exceptions from the Commission's competitive bidding rules for existing, binding contracts. Mobile applied for one tariff service and two contract services. As described in the instructions for completing FCC Form 470, services ordered pursuant to a tariff do not constitute a pre-existing contract. With respect to the two contracts Mobile sought to award, Mobile's applications indicate that they were to be renewed as of April 1999. Because Mobile intended to renew existing contracts and the requests had not been previously posted on the SLD website,

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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.”).

<sup>11</sup> *Id.* at para. 11.

<sup>12</sup> See *July 10 Order*, 12 FCC Rcd at 10098, para. 9.

<sup>13</sup> *Universal Service Order*, 12 FCC Rcd at 9029, para. 480.

<sup>14</sup> 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).

<sup>15</sup> See *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).

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Mobile was required to post its requests, carefully consider all bona fide bids submitted, and wait the requisite 28-day time period prior to continuing a contract for the funding year for which it is requesting discounts.<sup>16</sup> Furthermore, Mobile indicated on its FCC Form 470 at Item 10, Block 3 that it did not seek support for services provided pursuant to existing, binding contracts. Accordingly, SLD posted those services on its website for competitive bidding. Mobile did not wait 28 days before renewing an agreement with a service provider, and did not satisfy the Commission's competitive bidding requirements. The Division, therefore, denies Mobile's Request for Review.

7. 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 Mobile County Public School System, Mobile, Alabama, on August 3, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>16</sup> State procurement laws may impose additional requirements.