

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
Beulah Public Schools
Beulah, North Dakota
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.
File No. SLD-128716
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: August 14, 2002

Released: August 15, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Beulah Public Schools (Beulah), Beulah, North Dakota, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). Beulah seeks review of SLD's denial of its application for discounts under the schools and libraries universal service support mechanism. For the reasons set forth below, we deny Beulah'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. The Commission's rules provide that an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support. In

1 Letter from Wilfred Volesky, Beulah Public Schools, to Federal Communications Commission, filed October 9, 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.

4 47 C.F.R. §§ 54.504, 54.511(c).

accordance with Commission 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. Beulah’s Funding Year 1999 FCC Form 470 was posted to SLD’s website on February 4, 1999 with an allowable contract date of March 4, 1999. Beulah filed its FCC Form 471 on April 13, 1999, seeking discounts for internal connections and telecommunication services.<sup>8</sup> Beulah attached to its FCC Form 471 a document entitled “West River Telecommunications Cooperative July 1, 1999 thru June 30, 2000 E-Rate Bid Sheet.”<sup>9</sup> The top left hand corner of the document was label Contract No. BPS 101.<sup>10</sup> The document was signed by Wilfred Volesky, Superintendent of Beulah Public Schools.<sup>11</sup> The document was dated February 23, 1999.<sup>12</sup> However, the facsimile banners at the top and bottom of the paged contained the date February 26, 1999.<sup>13</sup>

4. By letter dated April 27, 2001, SLD denied Beulah’s funding request.<sup>14</sup> SLD explained that a contract for new service was signed prior to the expiration of the 28-day waiting period computed from the date of the posting of the FCC Form 471 to SLD’s website.<sup>15</sup>

5. Beulah then filed an appeal with SLD.<sup>16</sup> In its appeal, Beulah again attached a copy of West River Telecommunications Cooperative July 1, 1999 thru June 30, 2000 E-Rate

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<sup>5</sup> 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 2-3.

<sup>6</sup> 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 4; see also SLD website, <<http://www.sl.universalservice.org>>.

<sup>7</sup> FCC Form 471 Instructions, at 24.

<sup>8</sup> FCC Form 471, Beulah Public Schools, filed April 13, 1999 (Beulah FCC Form 471).

<sup>9</sup> Beulah FCC Form 471 Attachment.

<sup>10</sup> *Id.*

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

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

<sup>13</sup> *Id.*

<sup>14</sup> Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Wilfred Volesky, Beulah Public Schools, dated April 27, 2001.

<sup>15</sup> *Id.*

<sup>16</sup> Letter from Wilfred Volesky, Beulah Public Schools, to the Schools and Libraries Division, Universal Service Administrative Company, filed May 11, 2001.

Bid Sheet. Beulah explained that the date listed at the top of the contract (February 23, 1999), was the date that West River provided the bid for services, not the date that Beulah signed the contract.<sup>17</sup> Beulah maintained that SLD received its FCC Form 471 electronically on April 6, 1999 and it did not sign the agreement with West River until that date.<sup>18</sup>

6. SLD affirmed its original funding decision on September 10, 2001.<sup>19</sup> SLD stated that the documentation provided did not substantiate Beulah's claim that it signed the contract after the allowable contract date. SLD concluded that Beulah had failed to comply with the competitive bidding requirement that the FCC Form 471 be posted on SLD's website for 28 days prior to signing a contract for services.

7. In response, Beulah filed the instant Request for Review.<sup>20</sup> Beulah maintains that it signed its service agreement with West River after the allowable contract date.<sup>21</sup> We note that Beulah never submitted a copy of the document that it claims is its contract to SLD.

8. Upon review of the record, we conclude that SLD correctly denied Beulah's request for support. We conclude that SLD reasonably determined that the document Beulah attached to its FCC Form 471 was a contract for services signed prior to the expiration of the 28-day waiting period. The only dates listed on the document were February 23, 1999 and February 26, 1999. Both dates are before the expiration of the 28-day waiting period required by our rules. SLD made the reasonable conclusion that the document attached to the FCC Form 471 was a contract and that the signature date was February 26, 1999 at the latest. In addition, Beulah has failed to provide any information that substantiates its claim that the contract was signed on a date other than February 23, 1999.

9. The purpose of the 28-day waiting period is to ensure that prospective service providers have sufficient time to prepare and submit competitive bids for the services requested in the FCC Form 470. 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>22</sup> The Wireline Competition Bureau (previously the Common Carrier Bureau) has consistently denied requests for review by

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Wilfred Volesky, Beulah Public Schools, dated September 10, 2001 (Administrator's Decision on Appeal).

<sup>20</sup> Request for Review.

<sup>21</sup> *Id.*

<sup>22</sup> See *Request for Review of the Decision of the Universal Service Administrator by Minor High School, Federal-State Joint Board On Universal Service Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 13790 (Com. Car. Bur. rel. 2000), para. 5.

applicants that had similarly violated the Commission's competitive bidding rules.<sup>23</sup> We, therefore, deny Beulah'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 Beulah Public Schools, Beulah, North Dakota, on October 9, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau

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<sup>23</sup> See *Request for Review of the Decision of the Universal Service Administrator 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 of the Decision of the Universal Service Administrator by Currituck County Schools, Federal-State Joint Board On Universal Service Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 5564 (Com. Car. Bur. 2000); *Request for Review of the Decision of the Universal Service Administrator 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).