

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
Kenedy Public Library
Kenedy, Texas
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.
File No. SLD-263244
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. Before the Telecommunications Access Policy Division is a Request for Review filed by Kenedy Public Library (Kenedy), Kenedy, Texas. Kenedy seeks review of a funding decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying one of Kenedy's Funding Year 2001 requests for discounts under the schools and libraries universal service mechanism. For the reasons set forth below, we affirm SLD and deny the 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 require that the applicant make a bona fide request for services by filing

1 Letter from Sylvia Peña, Kenedy Public Library, to Federal Communications Commission, filed February 28, 2002 (Request for Review).

2 See Request for Review. 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). In prior funding years, this funding period was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period which begins on July 1, 2001 and ends on June 30, 2002, previously known as Funding Year 4, is now called Funding Year 2001.

3 47 C.F.R. §§ 54.502, 54.503.

with the Administrator an FCC Form 470, together with signed certifications,⁴ which is posted to the Administrator's website for all potential competing service providers to review.⁵ 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.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. At issue is Funding Request Number (FRN) 692387, which requested discounts on a contract for Internet access.⁷ FRN 692387 cited Form 470 App. No. 841140000327110 (Kenedy Form 470) in support.⁸ Kenedy confirmed in a fax sent to SLD on July 25, 2001 that the Kenedy Form 470 was the supporting FCC Form 470 for FRN 692387.⁹ On August 7, 2001, SLD denied the request, stating that "[t]he FRN references a Form 470 which has not been certified."¹⁰ Kenedy appealed to SLD, submitting evidence that the Kenedy Form 470 had been properly submitted with a signed certification page.¹¹

4. On January 21, 2002, SLD issued a decision on the appeal.¹² SLD found that the proffered evidence did demonstrate that the Kenedy Form 470 had been properly certified.¹³

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

⁵ 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 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).

⁶ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

⁷ See Request for Review at 1; Letter from Sylvia Peña, Kenedy Public Library, to Schools and Libraries Division, Universal Service Administrative Company, filed August 15, 2001 (SLD Appeal Letter); FCC Form 471, Kenedy Public Library, filed January 16, 2001 (Kenedy Form 471), at 3.

⁸ Kenedy Form 471 at 3; FCC Form 470, Kenedy Public Library, App. No. 841140000327110, filed December 11, 2000 (Kenedy Form 470).

⁹ Letter from Sylvia Peña, Kenedy Public Library, to Schools and Libraries Division, Universal Service Administrative Company, dated July 25, 2001 (July 25, 2001 Fax) (stating that "establishing Form 470 is 841140000327110).

¹⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sylvia Peña, Kenedy Public Library, dated August 7, 2001 (Funding Commitment Decision Letter).

¹¹ SLD Appeal.

¹² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sylvia Peña, Kenedy Public Library, dated January 21, 2002 (Administrator's Decision on Appeal).

¹³ *Id.* at 1.

However, SLD nevertheless denied funding because it found that Kenedy had violated competitive bidding requirements.¹⁴ SLD noted that, under the Kenedy Form 470, the earliest date on which Kenedy could enter into an award was January 8, 2001.¹⁵ SLD concluded that the awarding of the contract for FRN 692387 did not satisfy this requirement.¹⁶ SLD did not state the actual contract award date on which it was basing its decision. Kenedy then filed the pending Request for Review.

5. After reviewing the record, we affirm SLD. The record confirms that the Kenedy Form 470 had an earliest allowable contract date of January 8, 2001.¹⁷ The contract award date on the Kenedy Form 471, February 24, 1999, is well before that date.¹⁸

6. The record reflects that, during SLD's application review, Kenedy faxed to SLD an actual copy of the contract.¹⁹ The copy has a signature date of August 25, 1999, which is also prior to the allowable contract date of the Kenedy Form 470.²⁰

7. In its Request for Review, Kenedy argues that the Kenedy Form 470 does support its funding request.²¹ Kenedy notes that the Kenedy Form 470 has an earliest allowable contract date of January 8, 2001, and asserts that it signed the service contract underlying FRN 692387 on January 16, 2001.²² Kenedy argues that it therefore complied with the 28-day waiting period.²³

8. Although Kenedy is correct that a contract awarded on January 16, 2001 would not have violated the 28-day waiting period, Kenedy provides no evidence of such a contract, nor have we found any such evidence in the record. As noted above, the two award dates that are supported by the record are both prior to the Kenedy Form 470's allowable contract date. Therefore, we find that SLD correctly concluded that Kenedy did not satisfy the Commission's competitive bidding rules.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 1-2.

¹⁷ Kenedy Form 470.

¹⁸ Kenedy Form 471 at 3.

¹⁹ *See* July 25, 2001 Fax, Attachment.

²⁰ *Id.*

²¹ Request for Review at 1.

²² *Id.*

²³ *Id.*

9. 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 Kenedy Public Library, Kenedy, Texas, on February 28, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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