

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Our Lady of Refuge School	)	File No. SLD-181587
Bronx, New York	)	
	)	
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 22, 2002**

**Released: March 27, 2002**

By the Common Carrier Bureau:

1. Before the Common Carrier Bureau is a Request for Review by Our Lady of Refuge School (Our Lady), Bronx, New York.<sup>1</sup> Our Lady seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying in part one of Our Lady’s Funding Year 3 requests for discounts under the schools and libraries universal service mechanism.<sup>2</sup> For the reasons set forth below, we deny the Request for Review and direct SLD to pursue commitment adjustment procedures with regard to certain funds already awarded.

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>3</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,<sup>4</sup> which is posted to the Administrator’s website for all

<sup>1</sup> Letter from John J. Jenik, Our Lady of Refuge School, to Federal Communications Commission, filed February 14, 2001 (Request for Review).

<sup>2</sup> 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).

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

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

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.

3. 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>7</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>8</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>9</sup>

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<sup>5</sup> 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 (November 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 (September 1999) (FCC Form 471).

<sup>7</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>8</sup> See *Universal Service Order*, 12 FCC Rcd at 9062-64, paras. 545-49; *July 10 Order*, 12 FCC Rcd at 10098, para. 9.

<sup>9</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 participating in the competitive bidding process does not compromise the benefits derived from competition. As

4. At issue is Funding Request Number (FRN) 371468, which sought discounts in Funding Year 3 on Internet access to be provided by IDT Corp. (IDT).<sup>10</sup> On April 14, 2000, SLD denied funding.<sup>11</sup> It stated that “[t]he FRN references services that require a posting of a 470 for each Funding Year.”<sup>12</sup> The FCC Form 470 that Our Lady cited was an FCC Form 470 posted in Funding Year 2, not Funding Year 3.<sup>13</sup>

5. Our Lady filed an appeal with SLD, admitting that Our Lady had incorrectly cited a Funding Year 2 FCC Form 470 and referenced instead a Funding Year 1 FCC Form 470.<sup>14</sup> However, in subsequent conversations between Our Lady personnel and SLD, Our Lady asserted that the Funding Year 2 FCC Form 470 was correctly cited because Our Lady was seeking discounts on service pursuant to a pre-existing contract bid in Funding Year 2.<sup>15</sup> As a result of these conversations between Our Lady and SLD, SLD determined that, during the data entry of FRN 371468, SLD had erroneously entered the code indicating that the service was pursuant to a month-to-month arrangement, and had based its determination that the service had to be re-bid in Funding Year 3 on this error.<sup>16</sup> On February 2, 2001, it issued an Administrator’s Decision on Appeal, reversing its previous funding decision, but only in part.<sup>17</sup> SLD found that FRN 371468 was seeking service pursuant to a pre-existing contract bid in Funding Year 2.<sup>18</sup> However, it further found that the contract had an initial term of only two years, expiring on February 23, 2001, and that after the initial term, the contract would renew for one-year terms unless terminated in writing by either party.<sup>19</sup> SLD concluded that the original Funding Year 2 Form 470 supported discounts on the initial two-year service term, but that Our Lady was not entitled to discounts on the voluntary renewal of service unless these renewal terms were subjected to a

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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>10</sup> FCC Form 471, Our Lady of Refuge School, filed January 10, 2000 (Our Lady Form 471), at 2; Request for Review, at 1-2.

<sup>11</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to John J. Jenik, Our Lady of Refuge School, dated April 14, 2000, at 6.

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

<sup>13</sup> Our Lady Form 471, at 4 (citing FCC Form 470, Our Lady of Refuge School, Universal Service Control Number (USCN) 760350000154419, filed January 26, 1999 (Our Lady Form 470)).

<sup>14</sup> Letter from John J. Lenik, Our Lady of Refuge School, to Schools and Libraries Division, Universal Service Administrative Company, filed April 20, 2000.

<sup>15</sup> *See* Request for Review, at 1-2.

<sup>16</sup> *Id.*

<sup>17</sup> *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to John J. Jenik, Our Lady of Refuge School, dated February 2, 2001 (Administrator’s Decision on Appeal).

<sup>18</sup> *Id.* at 1-2.

<sup>19</sup> *Id.*

new bidding process.<sup>20</sup> Because Our Lady had not rebid the renewal terms, SLD found that only the initial term could be funded.<sup>21</sup> Thus, it concluded that FRN 371468 could be funded up to the end of the two-year term on February 23, 2001, and that the remainder of the request was properly denied.<sup>22</sup> Our Lady then filed the pending Request for Review.

6. In its Request for Review, Our Lady argues that SLD erred again in concluding that the underlying contract was only a two-year contract.<sup>23</sup> Our Lady asserts again that the contract was for seven years, and has attached a copy of the contract as evidence.<sup>24</sup>

7. After reviewing the record, we find that, regardless of whether the initial service term of the contract is two years or seven years, Our Lady's Request for Review must be denied. We find that Our Lady may not receive discounts for service on any year of the contract because the contract was not properly bid in Funding Year 2. The record demonstrates that the contract was signed on February 22, 1999, not February 23, 1999 as SLD concluded in the Administrator's Decision on Appeal.<sup>25</sup> This error, although small, is critical for purposes of determining whether the contract was properly bid. The FCC Form 470 that bid the service (and on which Our Lady relies in its Request for Review) was posted on January 26, 1999.<sup>26</sup> Thus, the day after the end of the 28-day bidding period, which is the earliest date on which contracts could be signed, was February 23, 1999.<sup>27</sup> Because the contract was signed on February 22, 1999, it was signed prior to the end of the 28-day bidding period, in violation of the competitive bidding regulations, and Our Lady may therefore not receive discounts for services pursuant to the contract in Funding Year 2 or Funding Year 3.

8. Therefore, Our Lady's Request for Review, seeking full funding of FRN 371468, must be denied. Further, because SLD has already improperly awarded discounts on this contract for both Funding Year 2 and Funding Year 3, we direct SLD to adjust these funding commitments in accordance with its established funding commitment adjustment procedures.

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<sup>20</sup> *Id.* at 2.

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

<sup>22</sup> *Id.* Funding Year 3 extended from July 1, 2000 to June 30, 2001. *See Request for Review by Newton Community 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-165225, CC Dockets No. 96-45 and 97-21, Order, DA 01-2960, para. 4 (Com. Car. Bur. rel. December 20, 2001). Thus, Our Lady was denied discounts on FRN 371468 for the period from February 23, 2001 to June 30, 2001.

<sup>23</sup> Request for Review, at 2.

<sup>24</sup> *Id.*; *see also* Request for Review, Attachment D.

<sup>25</sup> *See* Service Agreement, at 1 ("This Agreement, made as of the 22 day of February . . ."), 2 (containing the signature of John J. Jenik, above the date of February 22, 1999). This is the date reflected on both the copy of the contract that was in the record before SLD and the copy of the contract that Our Lady attached to its Request for Review. *See* Request for Review, Attachment D.

<sup>26</sup> *See* Our Lady Form 470; Request for Review, at 1.

<sup>27</sup> *See* Our Lady Form 470, at 1 (indicating Allowable Contract Date of February 23, 1999).

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 Our Lady of Refuge School, Bronx, New York, on February 14, 2001, IS DENIED.

10. IT IS FURTHER ORDERED that SLD pursue funding commitment adjustment in accordance with the terms of this Order and the established commitment adjustment procedures.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey  
Deputy Chief  
Common Carrier Bureau