

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Chickasaw Regional Library System)	File No. SLD-142924
Ardmore, Oklahoma)	
)	
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: January 11, 2002

Released: January 14, 2002

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by Chickasaw Regional Library System (Chickasaw), Ardmore, Oklahoma.¹ Chickasaw seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying a Funding Year 2 funding request under the schools and libraries program.² For the reasons set forth below, we grant the Request for Review and remand for further action on the request.

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.³ 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.⁴ In accordance with the Commission's

¹ Letter from Lynn A. McIntosh, Chickasaw Regional Library System, to Federal Communications Commission, filed July 18, 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).

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, an FCC Form 470 requesting services.⁵ 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.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. On November 9, 1999, SLD issued a Funding Commitment Decision Letter that granted most of Chickasaw's Funding Year 2 requests but denied Funding Request Number (FRN) 227825, which sought "Dedicated Services," *i.e.*, Internet access, from a Service Provider named OneNet.⁷ SLD denied funding for FRN 227825 because of a "contract violation."⁸ It explained that "[t]he Contract Award Date is prior to 12/1/98, (the opening of the website for Year 2), and no Form 470 was posted for these services in Year 1."⁹

4. On November 23, 1999, Chickasaw appealed to SLD.¹⁰ It asserted that "someone may have confused our Form 470 for the 1998 funding year with our Form 470 for the 1999 funding year" and noted that SLD's decision made no reference to the Year 2 FCC Form 470 that FRN 227825 actually cited as support.¹¹ Chickasaw objected to the assertion that there was a "contract violation," stating that although it had received the service from OneNet pursuant to a contract in Funding Year 1, the contract had expired prior to Funding Year 2 and OneNet thereafter provided service on a month-to-month basis, without a contract.¹² Thus, Chickasaw argued, the service was supported by the cited Funding Year 2 FCC Form 470, which had indicated that it was seeking new bids for Internet access service, not discounts for service based on a preexisting contract.¹³ On June 29, 2000, SLD denied the appeal, repeating its earlier reasoning.¹⁴ Chickasaw then filed the pending Request for Review.

⁵ See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (December 1998) (FCC Form 470).

⁶ 47 C.F.R. § 54.504(c); see Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1998) (FCC Form 471).

⁷ See FCC Form 471, Chickasaw Library System, filed June 3, 1999 (Year 2 Form 471); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lynn A. McIntosh, Chickasaw Library System, dated November 9, 1999 (Funding Commitment Decision Letter or FCDL), at 5.

⁸ FCDL at 5.

⁹ *Id.*

¹⁰ Letter from Lynn A. McIntosh, Chickasaw Regional Library System, to from Schools and Libraries Division, Universal Service Administrative Company, filed November 23, 1999 (Appeal to SLD), at 1.

¹¹ *Id.*

¹² *Id.* at 1-2.

¹³ *Id.* at 2.

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lynn A. McIntosh, Chickasaw Library System, dated June 29, 1999 (Administrator's Decision on Appeal), at 1.

5. In its Request for Review, Chickasaw argues that SLD's denial of FRN 227825 based on a Funding Year 1 FCC Form 470 is illogical given that the request was made in Funding Year 2.¹⁵ Chickasaw again directs our attention to its Funding Year 2 FCC Form 470 as supporting its request.¹⁶

6. After reviewing the record, we find that SLD incorrectly determined that the service Chickasaw sought support for on its Funding Year 2 FCC Form 471 was not supported by an FCC Form 470. SLD concluded that the Funding Year 2 FCC Form 470 that FRN 227825 cited could not support the request because, in completing FRN 227825, Chickasaw also entered a contract award date of July 1, 1998, which SLD apparently took to mean that Chickasaw was seeking funding of service provided pursuant to a binding contract entered into on July 1, 1998.¹⁷ Where an applicant seeks support for service provided pursuant to a binding contract, they must demonstrate that they subjected the contract to competitive bidding by posting an FCC Form 470 at least 28 days prior to awarding the contract.¹⁸ Because the contract award date on FRN 227825 was prior to the date on which any Funding Year 2 FCC Form 470 posting was allowed, SLD concluded that the July 1, 1998 contract service could be funded only if it had first been properly bid in Funding Year 1.¹⁹ SLD found no Funding Year 1 FCC Form 470 that could support the request, and therefore denied funding.²⁰

7. We conclude that SLD's determination that the OneNet Internet service was pursuant to a contract is incorrect. In its appeal to SLD, Chickasaw clarified that its service from OneNet in Funding Year 2 was month-to-month service, not service provided pursuant to a binding contract.²¹ Chickasaw stated that its Internet access service had begun with OneNet under a binding contract that lasted through Funding Year 1 and became a month-to-month arrangement thereafter.²² An applicant seeking funding for month-to-month services from a provider must submit the service for competitive bidding even if it is a continuation of a service that was bid in the previous year.²³ Thus, because Chickasaw's service from OneNet was month-to-month in Funding Year 2, Chickasaw was required to re-bid the service in Funding Year 2. Accordingly, Chickasaw properly submitted a Funding Year 2 FCC Form 470 seeking

¹⁵ Request for Review at 1.

¹⁶ *Id.* at 1-2; FCC Form 470, Chickasaw Library System, filed February 15, 1999.

¹⁷ Administrator's Decision on Appeal at 1; FCC Form 471, Chickasaw Library System, filed June 3, 1999 (Chickasaw Form 471).

¹⁸ 47 C.F.R. § 54.504(b).

¹⁹ Administrator's Decision on Appeal at 1.

²⁰ *Id.*

²¹ Appeal to SLD at 1-2.

²² *Id.*

²³ *Request for Review by Tomahawk, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-183249, CC Dockets No. 96-45 and 97-21, Order, DA 01-1036, para. 5 (Com. Car. Bur. rel. April 24, 2001) (*Tomahawk*).

discounts for Internet access service and then waited 28 days after the posting of that form on SLD's web site before submitting an FCC Form 471 showing that it had selected OneNet as its Internet Service vendor.²⁴ As a result, we find that Chickasaw's request was supported by a Funding Year 2 FCC Form 470.

8. Normally, we would view the entry of a contract award date as unambiguously indicating reliance on a contract for service, and would not consider contrary information presented on appeal.²⁵ We find, however, that this case presents an unusual and narrow exception. The Funding Year 2 FCC Form 471 instructions did not describe how to enter a request for month-to-month service.²⁶ As a result, the information provided in FRN 227825 did not unambiguously indicate whether the service was currently pursuant to contract or a month-to-month arrangement. We therefore find that Chickasaw was entitled to provide information on appeal that was not contrary to the information entered on its application and that clarified that its request was for month-to-month service. Our finding is consistent with SLD's own policy that, if, on appeal, an applicant points out an incorrect assumption in SLD's funding decision and provides documentation about the issue that is consistent with information originally provided and that successfully resolves the ambiguity in the applicant's favor, SLD will grant the appeal unless SLD had requested the clarifying information during review and failed to receive it.²⁷ These conditions are satisfied and, therefore, we vacate the denial of funding and remand to SLD for further consideration, consistent with this decision, of whether funding of FRN 227825 is appropriate.

²⁴ FCC Form 470, Chickasaw Library System, USCN 820150000195682, filed February 15, 1999; FCC Form 471, Chickasaw Library System, filed April 5, 1999.

²⁵ See *Request for Review by Wetzel County 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-161553, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 9359, para. 5 (Com. Car. Bur. 2001).

²⁶ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form, OMB 3060-0806 (Form 471) (December 1998) (Funding Year 2 Form 471 Instructions), at 18. Subsequent Funding Year instructions clarified how parties seeking month-to-month services should indicate the nature of the service on their FCC Form 471. See, e.g., Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form, OMB 3060-0806 (Form 471) (September 1999) (Funding Year 3 Form 471 Instructions), at 21 (instructing that parties seeking tariffed or month-to-month services should leave the contract award date blank).

²⁷ See SLD web site, <<http://www.sl.universalservice.org/reference/AppealsSLDGuidelines.asp>>.

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 Chickasaw Regional Library System, Ardmore, Oklahoma, on July 18, 2000 is GRANTED, and this application is REMANDED to SLD for further consideration.

FEDERAL COMMUNICATIONS COMMISSION

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