

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

In the Matter of	)	
	)	
Request for Review	)	
	)	
Middle Peninsula Juvenile Detention Commission	)	File No. SLD-292735
Merrimac Center	)	
Williamsburg, Virginia	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: March 3, 2004**

**Released: March 4, 2004**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Middle Peninsula Juvenile Detention Commission, Merrimac Center, Williamsburg, Virginia (Merrimac).<sup>1</sup> Merrimac seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying Merrimac's Funding Year 2002 application for discounted services under the schools and libraries universal service mechanism on the grounds that Merrimac violated the Commission's competitive bidding requirements.<sup>2</sup> After review of the record, we grant Merrimac's Request for Review and remand its application to SLD for further review consistent with this Order.

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 provide that an eligible school, library, or consortium that includes

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<sup>1</sup> Letter from Thomas A. Snyder, Middle Peninsula Juvenile Detention Commission, Merrimac Center, to Federal Communications Commission, filed December 16, 2002 (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 Universal Service Administrative Company (Administrator) may seek review from the Commission. 47 C.F.R. 54.719(c).

<sup>2</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Thomas A. Snyder, Middle Peninsula Juvenile Detention Commission, Merrimac Center, dated October 17, 2002 (Administrative Decision on Appeal).

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

eligible schools or libraries must seek competitive bids for all services eligible for support.<sup>4</sup> In accordance with the Commission rules, an applicant must file with SLD, for posting to its website, an 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>

3. The Commission's rules also provide that eligible schools and libraries with existing contracts are exempt from the competitive bidding requirement under certain circumstances. Specifically, under section 54.511(c)(1), contracts signed on or prior to July 10, 1997 are exempt from competitive bidding requirements for the duration of the contract.<sup>7</sup> Contracts signed after July 10, 1997 and before January 30, 1998 (the date on which the Schools and Libraries website was fully operational) are exempt from competitive bidding requirements for services provided through June 30, 1999, the end of Funding Year 1998, regardless of the duration of the contract as a whole.<sup>8</sup> Once an applicant submits an FCC Form 470 and complies with the 28-day posting period, the applicant may enter into a long-term agreement at that time and, having complied with the competitive bidding requirement prior to entering into the service contract, need not submit any additional FCC Form 470s for the duration of that contract.<sup>9</sup>

4. In the instant case, Merrimac signed a five-year contract for telecommunications service on August 18, 1997.<sup>10</sup> As a result, Merrimac's contract for service was exempt from competitive bidding requirements for Funding Year 1998, but not thereafter.<sup>11</sup> In Funding Year 2000, Merrimac posted this service for bidding, and after the 28-day period had passed, signed

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<sup>4</sup> 47 C.F.R. §§ 54.504, 54.511(c).

<sup>5</sup> See Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470), OMB 3060-0806 (September 1999) (Form 470 Instructions), 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 (FCC Form 471), OMB 3060-0806 (September 1999) (Form 471 Instructions), at 4; see also SLD website, <<http://www.sl.universalservice.org>>.

<sup>7</sup> 47 C.F.R. § 54.511(c)(1).

<sup>8</sup> 47 C.F.R. §§ 54.511(c)(1), 54.511(d). See *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 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, 91-213, 95-72, 13 FCC Rcd 2372 \(1997\)](#); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14 915 (1998); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration, [14 FCC Rcd 5983 \(1999\)](#).

<sup>9</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 6732 (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 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> See Request for Review.

<sup>11</sup> See para. 3, *supra*.

and submitted an FCC Form 471 requesting discounts on the original contract.<sup>12</sup> SLD approved the request for funding, but the request was subsequently withdrawn.<sup>13</sup> When Merrimac requested discounts on the same contract in Funding Year 2002, it again cited the Funding Year 2000 Form 470 as support. SLD denied the request, finding that the competitive bidding rules had been violated.<sup>14</sup> In response, Merrimac filed the instant Request for Review, arguing that a pre-existing contract may be used as a bid.<sup>15</sup>

5. In the *Kalamazoo Order*, the Bureau determined that the applicant violated the competitive bidding requirements because it sought discounts on a contract that it had signed prior to the end of the bidding process.<sup>16</sup> On reconsideration, however, the Bureau concluded that Kalamazoo's decision to request discounts on service pursuant to its existing contract did not necessarily violate the competitive bidding rules.<sup>17</sup> Rather, the Bureau determined that the relevant question was whether, after Kalamazoo posted its service for bidding with a Funding Year 1999 FCC Form 470 and waited the 28-day competitive bidding period, it carefully considered all bids before choosing to continue service under its existing contract.<sup>18</sup> Because the record did not resolve this question, the Bureau remanded the application to SLD for further review.<sup>19</sup> The Bureau further clarified that in order to facilitate the application review process, applicants that choose to renew a pre-existing service after a bidding process should memorialize that decision after the bidding process is complete and record the date of this memorialization as the relevant contract award date in their submitted application for discounts.<sup>20</sup>

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<sup>12</sup> See FCC Form 470, Middle Peninsula Juvenile Detention Commission, Merrimac Center, posted December 8, 1999 (Merrimac Form 470). The allowable contract date was January 5, 2000. See also FCC Form 471, Middle Peninsula Juvenile Detention Commission, Merrimac Center, signed January 9, 2002. But see, Service Agreement between Central Telephone Company of Virginia Service Agreement and Middle Peninsula Juvenile Detention Commission, dated August 18, 1997.

<sup>13</sup> See Administrative Decision on Appeal.

<sup>14</sup> *Id.*

<sup>15</sup> See Request for Review.

<sup>16</sup> See Request for Review, citing *Request for Review by Kalamazoo Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-164612, CC Dockets No. 96-45 and 97-21, Order, DA 02-2348, 17 FCC Rcd 18958 (Wireline Comp. Bur. rel. October 3, 2002) (*Kalamazoo Order*).

<sup>17</sup> *Request for Review by Kalamazoo Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-164612, CC Dockets No. 96-45 and 97-21, Order on Reconsideration, DA 02-2975, 17 FCC Rcd 22154 (Wireline Comp. Bur. rel. November 4, 2002) (*Kalamazoo Reconsideration Order*).

<sup>18</sup> *Id.*, citing *Request for Review by Cochrane-Fountain City 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-140683, CC Dockets No. 96-45 and 97-21, Order, [15 FCC Rcd 16628 \(Com. Car. Bur. 2000\)](#) (Cochrane).

<sup>19</sup> *Kalamazoo Reconsideration Order*, 17 FCC Rcd 22154 (2002).

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

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6. Consistent with the Bureau's decision in the *Kalamazoo Reconsideration Order*, we find that Merrimac was not required to sign a new contract to satisfy the competitive bidding rules.<sup>21</sup> Instead, the relevant question is whether, after Merrimac posted its service for bidding with a Funding Year 2000 FCC Form 470 and waited the 28-day competitive bidding period, it carefully considered all bids before choosing to continue service under its existing contract. Because the record does not address or resolve this question, we remand Merrimac's application to SLD to consider this issue and for all necessary further 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 Middle Peninsula Juvenile Detention Commission, Merrimac Center, on December 6, 2002, IS GRANTED, and this application is REMANDED to SLD for further review consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Narda M. Jones  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau

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<sup>21</sup> See n. 17, 18, *supra*.