

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

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Roosevelt Elementary School District No. 66)	File No. SLD-245714
Phoenix, Arizona)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: July 26, 2005

Released: July 27, 2005

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. NextiraOne, LLC (NextiraOne), on behalf of Roosevelt Elementary School District No. 66, Phoenix, Arizona (Roosevelt), filed a Request for Review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ The SLD decision denied funding for discounted services for Funding Year 2001 under the schools and libraries universal service mechanism. For the reasons set forth below, we grant NextiraOne's Request for Review and remand it to SLD for appropriate action 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, Internet access, and internal connections services.² Two schools and libraries program rules are relevant to this inquiry. First, section 54.507(d) of the Commission's rules requires applicants to implement non-recurring services by September 30 following the close of the applicable funding year.³ If a service provider is unable to complete implementation for reasons beyond the service provider's control, an applicant may request an extension of the implementation deadline for non-recurring services.⁴ Secondly, applicants must submit an FCC Form 486 indicating that services have

¹NextiraOne, LLC Request for Review, filed April 21, 2005 (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 may seek review from the Commission. 47 C.F.R. § 54.719(c). NextiraOne was Roosevelt's selected service provider and seeks review on behalf of Roosevelt.

²47 C.F.R. §§ 54.502, 54.503.

³47 C.F.R. § 54.507(d). Under the rule, schools and libraries receiving funding commitments for non-recurring services in Funding Year 2001 had until September 30, 2002 to implement these services.

⁴47 C.F.R. § 54.507(d)(3). Extensions of the implementation deadline for non-recurring services may also be granted for: (1) applicants whose funding commitment decision letters are issued by the Administrator on or after March 1 of the funding year for which discounts are authorized; (2) applicants who received service provider change authorizations or service substitution authorizations from the Administrator on or after March 1 of the funding year

begun and specifying the start date before SLD will accept invoices from the service provider and issue disbursements for discounts on eligible services.⁵ In Funding Year 2001, the due date for these forms was October 28, 2001, unless either service began or a funding commitment decision letter was issued after that date, in which case the FCC Form 486s were required to be postmarked no later than 120 days after the service start date or the date of the funding commitment decision letter, whichever was later.⁶ If an applicant failed to meet this requirement, SLD adjusted the start date for discounted services to either the date that the FCC Form 486 was postmarked or, in cases where the funding commitment decision letter came after the October 28, 2001 deadline, to 120 days before the date that the FCC Form 486 was postmarked.⁷

3. On February 8, 2002, SLD issued a funding commitment decision letter to Roosevelt containing Funding Request Number (FRN) 606794 for internal connections.⁸ On June 24, 2002, Roosevelt requested a service implementation deadline extension for the installation of internal connections, including the installation of FRN 606794.⁹ Roosevelt stated in its request that, for reasons beyond the service provider's control, the service provider was unable to complete delivery and installation.¹⁰ On September 30, 2002, SLD granted Roosevelt's extension request for FRN 606794, allowing these non-recurring services to be delivered and installed up to September 30, 2003, and permitting invoices to be postmarked up to December 29, 2003.¹¹ On August 25, 2003, pursuant to Commission rules, Roosevelt filed its FCC Form 486, indicating a service start date for FRN 606794 of June 9, 2003.¹² On February 4, 2004, Roosevelt signed a service certification form erroneously listing December 19, 2002 as the delivery and installation date for services approved in FRN 606794.¹³ In fact,

for which discounts are authorized; or (3) applicants whose service providers are unwilling to complete installation because funding disbursements are delayed while the Administrator investigates the application for program compliance. *See* 47 C.F.R. § 54.507(d)(1)-(2), (4).

⁵Schools and Libraries Universal Service, Receipt of Service Confirmation Form, OMB 3060-0853 (July 2001) (FCC Form 486); Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 (July 2001) (Form 486 Instructions). *See also Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Order, 17 FCC Rcd 12443, 12444, para. 4 (2002); 47 C.F.R. § 54.520.

⁶*See Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182, 8188-89, 8191, paras. 10, 18 (2001); 47 C.F.R. § 54.520(g); Form 486 Instructions at 8-10.

⁷Form 486 Instructions at 9-10. *See, e.g., Request for Review by East Carroll Parish School Board, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-232946, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 24591, 24594, para. 7 (Wireline Comp. Bur. 2002) (providing funding only for services provided on or after the FCC Form 486 filing date of October 30, 2001, instead of the funding year start date of July 1, 2001).

⁸Letter from Schools and Libraries Division, Universal Service Administrative Company, to Rene Castaneda, Roosevelt Elementary School District No. 66, dated February 8, 2002 (Funding Commitment Decision Letter).

⁹Letter from Rene Castaneda, Roosevelt Elementary School District No. 66, to Schools and Libraries Division, Universal Service Administrative Company, dated June 24, 2002.

¹⁰*Id.* at 1.

¹¹Letter from Schools and Libraries Division, Universal Service Administrative Company, to Rene Castaneda, Roosevelt Elementary School District No. 66, dated September 30, 2002 (Administrator's Decision on Implementation Extension Request).

¹²FCC Form 486, Roosevelt Elementary School District No. 66, dated August 25, 2003 (Roosevelt FCC Form 486).

Roosevelt received the services in June 2003, as Roosevelt stated in its FCC Form 486.¹⁴ One month later, on March 3, 2004, SLD notified Roosevelt that, because it had filed its FCC Form 486 more than 120 days after the date on the funding commitment decision letter, the service start date for FRN 606794 had been adjusted under program rules to April 28, 2003, 120 days before Roosevelt's FCC Form 486 postmark date.¹⁵ On November 5, 2004, SLD denied the invoice for FRN 606794, noting that the December 19, 2002 delivery and installation date listed on the service certification form was before the FCC Form 486 adjusted start date.¹⁶

4. On January 4, 2005, NextiraOne, on behalf of Roosevelt, appealed SLD's denial of FRN 606794.¹⁷ In support of its claim, NextiraOne attached to its appeal signed certificates of delivery and acceptance demonstrating that all installation occurred in June 2003, after the FCC Form 486 adjusted start date.¹⁸ On February 10, 2005, SLD denied NextiraOne's appeal on different grounds, stating that Roosevelt's services were delivered outside the dates for which discounts applied.¹⁹ SLD cited to section 54.507(d) of the Commission's rules, requiring that the implementation of non-recurring services be completed by September 30 following the close of the funding year.²⁰

5. Upon review of the record, we grant NextiraOne's Request for Review. We conclude that Roosevelt's services were delivered in June 2003, within the timeframe of the services implementation extension granted by SLD and, therefore, Roosevelt was in compliance with section 54.507(d) of the Commission's rules.²¹ In reaching this conclusion, we find persuasive the certificates of delivery and acceptance submitted by NextiraOne showing that services for FRN 606794 were delivered in June 2003.²² Generally, new information may not be admitted on appeal to contradict earlier information, but can be admitted to clarify an ambiguity in earlier information.²³ In the instant case, there

¹³See Request for Review at Attachment 5.

¹⁴See Roosevelt FCC Form 486.

¹⁵Letter from Schools and Libraries Division, Universal Service Administrative Company, to Rene Castaneda, Roosevelt Elementary School District No. 66, dated March 3, 2004 (Form 486 Notification Letter).

¹⁶See Request for Review at 3, Attachment 6.

¹⁷Letter from Thomas F. O'Neil III, counsel for NextiraOne, to Schools and Libraries Division, Universal Service Administrative Company, dated January 4, 2005 (Request for Appeal).

¹⁸*Id.*

¹⁹Letter from Schools and Libraries Division, Universal Service Administrative Company, to E. Ashton Johnston, DLA Piper Rudnick Gray Cary US LLP, dated February 10, 2005 (Administrator's Decision on Invoice Appeal).

²⁰*Id.*

²¹We also find that Roosevelt's FCC Form 486 was in compliance with the Commission's procedures. While Roosevelt's FCC Form 486 was postmarked more than 120 days after the funding commitment decision letter date, it was postmarked no later than 120 days after the service start date. See Form 486 Instructions at 9-10.

²²Request for Review at Attachment 2.

²³See *Request for Review by the Shawano-Gresham School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-292913, CC Docket Nos. 95-46 and 97-21, Order, 19 FCC Rcd 2180, 2181, para. 5 (Wireline Comp. Bur. 2004); *Request for Review by Pope Branch Elementary School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-200168, CC Docket Nos. 95-46 and 97-

was an ambiguity regarding the date that services were received: the February 4, 2004 service certification form listed December 19, 2002 as the delivery and installation date, while Roosevelt's FCC Form 486 reported June 9, 2003 as the start date for the services at issue.²⁴ The new information provided by NextiraOne resolves this ambiguity by clarifying that the services for FRN 606794 were installed in June 2003, after the FCC Form 486 adjusted service start date of April 23, 2003. Accordingly, we grant NextiraOne's Request for Review.

6. 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 NextiraOne, LLC, on behalf of Roosevelt Elementary School District No. 66, Phoenix, Arizona, on April 8, 2005, IS GRANTED, and the application is REMANDED to SLD for further consideration consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Vickie S. Robinson
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

21, Order, 16 FCC Rcd 20205, 20207, para. 5 (Com. Car. Bur. 2001). *See also* <http://www.sl.universalservice.org/reference/AppealsSLDGuidelines.asp>.

²⁴Request for Review at Attachment 5; Roosevelt FCC Form 486.