

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

In the Matter of)	
)	
Application for Review of a)	
Decision of the)	
Universal Service Administrator by)	
)	
Challis Joint School District #181)	File No. SLD-340757
Challis, Idaho)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: March 16, 2011

Released: March 16, 2011

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny the request for review by Challis Joint School District #181 (Challis) of a decision of the Universal Service Administrative Company (USAC) concerning applications for discounted services under the E-rate program (more formally known as the schools and libraries universal service program).¹ We uphold the decision of USAC to rescind its initial funding commitment to Challis because Challis failed to comply with the Commission's competitive bidding rules.²

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible services.³ The Commission's rules require that applicants seek competitive bids for all services eligible for support by filing an FCC Form 470 for posting on USAC's website that identifies the discounted services it is requesting.⁴ Applicants must then wait 28 days after that posting before entering into an agreement with a service provider for the requested

¹ Letter from Julie Oerke, Challis Joint School District #181, to Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed July 19, 2006) (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 USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

² See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Julie Oerke, Challis Joint School District #181 (dated May 19, 2006) (USAC Appeal Decision).

³ 47 C.F.R. §§ 54.501-54.503.

⁴ 47 C.F.R. § 54.504(b); see also Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (Apr. 2002).

services.⁵ An applicant can enter into multiyear contracts or contracts with voluntary extensions that relieve it of the obligation to post a new FCC Form 470 application and the 28-day rule each year as long as the applicant indicated such intent in its FCC Form 470.⁶ The Commission's rules also provide a limited exemption from the 28-day competitive bidding requirement for existing contracts signed before January 30, 1998.⁷ That exemption, however, does not apply to "voluntary extensions or renewals of existing contracts" that extended beyond 1999.⁸

3. Challis first entered into a contract for the telecommunications services at issue on March 4, 1999 and, in an addendum to that contract dated September 23, 2002, agreed to the funding year 2003 services at the heart of this appeal. Shortly after agreeing to the addendum, on November 8, 2002, Challis submitted an FCC Form 470 to initiate its request for E-rate discounts for funding year 2003.⁹ On that FCC Form 470, Challis incorrectly indicated that the form described a "multiyear contract signed on or before 7/10/97 but for which no Form 470 had been filed in a previous program year."¹⁰ As a result, USAC treated the funding request as exempt from the posting requirement and did not post Challis's FCC Form 470 to seek competitive bids for the telecommunications service.¹¹ In March 2004, USAC approved three funding requests for Challis.¹² Following a subsequent quality assurance review, however, USAC rescinded one of those funding approvals.¹³ USAC explained to Challis that the contract on which Challis had based its purchase of services was signed March 4, 1999, not on or before July 10, 1997, and therefore Challis should have sought competitive bids by submitting its FCC Form 470 for posting.¹⁴ Furthermore, noting that Challis posted its FCC Form 470 on November 8, 2002, USAC calculated that had Challis complied with the 28-day competitive bidding requirement set forth in our rules, the earliest it would have been permitted to sign a contract for funding year 2003 services would have been December 6, 2002, more than two months after it actually signed the relevant contract.¹⁵

4. In its request for review, Challis contends that it is a small, rural and poor school that was confused about the competitive bidding rules.¹⁶ It states that it had its FCC Form 470 posted on the

⁵ 47 C.F.R. § 54.504(b)(4); *see* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (Oct. 2003) (Funding Year 2004 FCC Form 471).

⁶ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 6732, 6736, para. 10-12 (1999); *see* USAC website, Contract guidance, at <http://www.universalservice.org/sl/applicants/step04/contract-guidance.aspx> (last viewed Mar. 3, 2010). A contract including voluntary extensions means that the contract expires at the end of its original term and may be voluntarily extended for one or more years pursuant to the provisions in the contract. *Id.*

⁷ *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration, 14 FCC Rcd 5983, 5986, para. 6 (1999); *see also* 47 C.F.R. § 54.511(c)(1).

⁸ *See* 47 C.F.R. § 54.511(d).

⁹ FCC Form 470, Challis Joint School District #181 (filed Nov. 8, 2002).

¹⁰ *See* USAC Appeal Decision at 2.

¹¹ *Id.*

¹² *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Julie Oerke, Challis Joint School District #181 at 5 (dated Mar. 3, 2004).

¹³ *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Julie Oerke, Challis Joint School District #181 at 5 (dated Feb. 15, 2006).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Request for Review at 1.

Internet for more than 28 days, sought competitive bids, and received proposals from vendors.¹⁷ It states that its community has only one service provider and that conversations with USAC have left it confused as to whether it should view its service contract as month-to-month or year-to-year. It states that different people at USAC have given it different answers at different times and that it followed the last advice USAC gave it before it filed the form at issue.¹⁸ It asks that the Commission not penalize it because USAC gave it inaccurate and conflicting information about how to view its contract for telecommunications.¹⁹

III. DISCUSSION

5. We deny Challis's request for review. We find that Challis violated the E-rate program competitive bidding requirement by signing the contract at issue on September 23, 2002, more than a month *before* its November 8, 2002 submission of its FCC Form 470 for posting, when the rule requires it to wait at least 28-days *after* such posting.²⁰ While Challis claims that it had its FCC Form 470 posted on the Internet for more than 28 days and that it was confused by conversations it had with USAC regarding whether it should characterize its service as month-to-month or as an annual contract, neither argument warrants reversal of USAC's decision. USAC denied Challis's funding request because Challis signed its contract before the 28-day waiting period and not due to how it characterized its service period. We have consistently held that where a party receives erroneous advice, the government is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when relief is contrary to a rule.²¹ In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the ultimate responsibility of complying with all relevant rules and procedures.²² While Challis is free to supplement the 470-posting process with additional efforts to seek bids, it is not free to ignore the E-rate competitive bidding rules. Therefore, we deny Challis's appeal.

IV. ORDERING CLAUSE

6. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and 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 Challis Joint School District #181, Challis, Idaho, IS DENIED.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 2.

²⁰ Because it does not affect the outcome of our decision, we need not discuss Challis's subsequent error in mischaracterizing its contract as having been signed on or before July 10, 1997.

²¹ See *Request for Waiver by Lombard School District 44, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-109411, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13166 (Com. Car. Bur. 1999).

²² See *Request for Review by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-13364, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. 2000).

7. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

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