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Before the  
Federal Communications Commission

DISPATCHED BY Washington, D.C. 20554

In the Matter of	)	
	)	
Request for Review	)	
of the Decision of the	)	
Universal Service Administrator by	)	
	)	
Ethical Culture Fieldston School	)	File No. SLD-108771
New York, 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: October 15, 1999**

**Released: October 15, 1999**

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Letter of Appeal filed by Ethical Culture Fieldston School (Ethical Culture), New York, New York, on May 20, 1999, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator). Ethical Culture seeks review of the SLD's denial of its application for discounted services under the schools and libraries universal service support mechanism. For the reasons set forth below, we deny the Letter of Appeal and affirm the SLD's denial of Ethical Culture's application.

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>1</sup>

<sup>1</sup> 47 C.F.R. §§ 54.502, 54.503.

The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium must seek competitive bids for all services eligible for support.<sup>2</sup> In accordance with the Commission's rules, the SLD posts an applicant's FCC Form 470 specifying requested services on its web page for 28 days prior to the applicant's signing a contract for eligible services and submitting FCC Form 471.<sup>3</sup>

3. Based on Ethical Culture's FCC Form 471, the SLD determined that Ethical Culture did not have pre-existing contracts that would have exempted it from the competitive bid requirement, but rather had ordered services pursuant to tariffs. Accordingly, by letter dated January 31, 1999, the SLD denied Ethical Culture's request for discounts for tariffed telecommunications services on the ground that Ethical Culture's FCC Form 470 was not posted on the SLD's website for 28 days, in violation of the Commission's competitive bid requirement.<sup>4</sup>

4. On April 23, 1999, the SLD affirmed its initial funding decision and denied Ethical Culture's appeal.<sup>5</sup> The SLD explained that Ethical Culture's request for tariffed telecommunications services was not posted on the website for 28 days because Ethical Culture had checked Item 10 in Block 3 on FCC Form 470, which directs the applicant to check the box if the applicant has an existing, binding contract.<sup>6</sup> The SLD further explained that tariffed telecommunications services are required to be posted to the SLD website for 28 days, pursuant to FCC Form 470 Instructions, in order for there to be an opportunity for service providers to bid on these services, and that the only exemption from the Commission's competitive bid requirement is for services that were the subject of an existing contract prior to January 30, 1998. In addition, it explained that an existing contract is a legal, binding contract for these services, which was signed and dated by both the service provider and the applicant prior to January 30, 1998.<sup>7</sup> With regard to the specific funding requests, the SLD indicated that there was no documentation to support a pre-existing contract with Frontier Communications of Montana, and that the contract with Bell Atlantic was signed on

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<sup>2</sup> 47 C.F.R. §§ 54.504, 54.511(c).

<sup>3</sup> 47 C.F.R. § 54.504(c).

<sup>4</sup> Letter from Bruce Posner, Director of Technology, Ethical Culture Fieldston School, to Schools and Library Corporation (February 20, 1999).

<sup>5</sup> Letter from the Schools and Libraries Division, Universal Service Administrative Company to Bruce Posner, Ethical Culture Fieldston School, dated April 23, 1999 (Administrator's Decision on Appeal).

<sup>6</sup> Administrator's Decision on Appeal at 1.

<sup>7</sup> Administrator's Decision on Appeal at 1.

February 22, 1998.<sup>8</sup> Ethical Culture appealed the SLD's decision.<sup>9</sup>

5. In Ethical Culture's request for review of the SLD decision that is now before us, Ethical Culture claims that its appeal was denied "prematurely," that it was not informed of any deadline for submission of documentation, and that it received the decision on appeal on the day it was faxing documentation to SLD. For the reasons set forth below, we conclude that the SLD properly denied Ethical Culture's application for discounts for (a) tariffed telecommunications services, and (b) services received pursuant to a particular contract, insofar as neither request complied with the Commission's competitive bid requirement.

6. Having reviewed Ethical Culture's FCC Form 470 and FCC Form 471 and the complete record, we have confirmed that Ethical Culture did check Item 10 in Block 3 of FCC Form 470 indicating that it had "pre-existing contracts," and therefore, consistent with the Commission's rules, the SLD did not post Ethical Culture's FCC Form 470 on its website. On the Form 471, however, Ethical Culture indicated that its service from Frontier and Bell Atlantic was pursuant to tariff. SLD requested documentation from Ethical Culture to establish that contracts existed to support funding requests for services provided by Bell Atlantic and Frontier Communications. In response, Ethical Culture provided only a contract with Bell Atlantic signed February 24, 1998.

7. Both the separate written instructions for Item (10)<sup>10</sup> and bold face words of instruction on Item (10) of the FCC Form 470 itself clearly state that the box should be checked only if the applicant seeks discounts for eligible services based on one or more

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<sup>8</sup> Administrator's Decision on Appeal at 1-2.

<sup>9</sup> Letter to the Federal Communications Commission from Bruce Posner, Ethical Culture Fieldston School, filed May 20, 1999.

<sup>10</sup> The instructions for Item 10 of FCC Form 470 state:

Check this box if you are only seeking discounts for eligible services that are the subject of an **existing, binding contract**, and fill in the date that the contract was signed and its termination date. If you are purchasing telephone service at tariffed rates and have not signed a binding contract, you cannot treat this arrangement as an existing contract. While all forms of telecommunications services, including local and long distance services, are eligible for universal service discounts, you **MUST** seek competitive bids from providers. That is, if you do not have an existing, binding contract for telephone services, you must include a description of the services you seek in Item 12 to give every service provider the opportunity to offer you services under contract. (Emphasis in original)

"existing, binding contract(s)."<sup>11</sup> Only applicants with existing contracts, as defined in section 54.511(c)(1) of the Commission's rules, are exempt from the Commission's competitive bid requirement.<sup>12</sup> That rule defines pre-existing contracts that do not have to be posted on the website for competitive bidding as those signed after July 10, 1997, but prior to January 30, 1998, the date upon which the SLD website became operational.<sup>13</sup> Based on the information then before the SLD, neither the services procured from Frontier under tariffs nor the contract with Bell Atlantic signed after January 30, 1998 constitute "pre-existing contracts." Thus, the SLD properly denied Ethical Culture's funding requests for failure to comply with the 28-day competitive bid requirement. Ethical Culture, on appeal to the Commission, provided additional documentation to support its assertion that it did have existing contracts with Frontier and Bell Atlantic.<sup>14</sup> Based on the information that was before it, however, we find that the SLD properly denied both the initial funding requests and Ethical Culture's first appeal. Thus, we do not consider this newly presented information that was not provided to the SLD.

8. 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 appeal filed by Ethical Culture School, New York, New York on May 20, 1999 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Lisa M. Zaina  
Deputy Chief, Common Carrier Bureau

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<sup>11</sup> FCC Form 470, Block 3, Item 10 (emphasis in original).

<sup>12</sup> 47 C.F.R. § 54.511(c)(1).

<sup>13</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourth Reconsideration Order, 13 FCC Rcd 5318, 5445, para. 217 (1997) (*Fourth Reconsideration Order*); see also Universal Service Program, "Program Description," issued December 1997, revised January 1998.

<sup>14</sup> We note that SLD's "Procedures for Post Commitment Appeals" indicates that any appeal to SLD should include supporting documentation. See <http://www.sl.universalservice.org/reference/appeals.asp>.