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DISPATCHED BY
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Request for Review)	
of the Decision of)	
the Universal Service Administrator by)	
)	
St. Gabriel School)	File No. SLD-14634
Milford, Connecticut)	
)	
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 St. Gabriel School, Milford, Connecticut on May 19, 1999, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator). St. Gabriel 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 St. Gabriel'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.¹ 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.² 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 471.³

3. Based on St. Gabriel's FCC Form 471, the SLD determined that St. Gabriel 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 November 20, 1998, the SLD denied St. Gabriel's request for discounts for tariffed telecommunications services on the ground that St. Gabriel's FCC Form 470 was not posted on SLD's website for 28 days, in violation of the Commission's competitive bid requirement. St. Gabriel appealed the SLD's decision, claiming that its services were existing services that were not subject to competitive bidding and that SLD advised it to fill out its application as it did.⁴

4. On April 21, 1999, the SLD affirmed its initial funding decision and denied St. Gabriel's appeal.⁵ The SLD explained that St. Gabriel's request for tariffed telecommunications services was not posted on the web site for 28 days because St. Gabriel 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.⁶ The SLD further explained that tariffed telecommunications services are required to be posted to the SLD website for 28 days (per 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, 1998.⁷

¹ 47 C.F.R. §§ 54.502, 54.503.

² 47 C.F.R. §§ 54.504, 54.511(c).

³ 47 C.F.R. §54.504(c).

⁴ Letters from John R. Alfone, Ed.D., Principal, St. Gabriel School, to Debra Kriete, Schools and Library Corporation (November 23, 1998) and to Schools and Library Corporation (December 13, 1998).

⁵ Letter from the Schools and Libraries Division, Universal Service Administrative Company to Dr. John R. Alfone, St. Gabriel School, dated April 21, 1999 (Administrator's Decision on Appeal).

⁶ Administrator's Decision on Appeal at 1.

⁷ Administrator's Decision on Appeal at 1.

5. In St. Gabriel's request for review of the SLD decision that is now before us, St. Gabriel claims that its funding requests were for services that "existed" at the time, and that the written instructions for completion of the forms were in conflict with the actual requirements. It claims that it received instructions and assurances from the SLD staff that its forms were correctly completed.⁸ For the reasons set forth below, we conclude that the SLD properly denied St. Gabriel's application for discounts for tariffed telecommunications services.

6. Having reviewed St. Gabriel's FCC Form 470 and FCC Form 471, we have confirmed that St. Gabriel's FCC Form 471 indicates in Item 16 that it would receive the telecommunications services for which it sought universal service support pursuant to a tariff, not an existing contract. We also have confirmed that St. Gabriel nevertheless 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 St. Gabriel's FCC Form 470 on its website. Because St. Gabriel indicated that service would be received pursuant to "pre-existing contracts" by checking Item 10 in Block 3, the lack of posting and competitive bidding was due to St. Gabriel's own error and thus disqualified it from receiving approval.

7. While it is unfortunate that St. Gabriel understood the SLD staff to provide verbal assurances that its FCC Form 470 was "correct for its services,"⁹ this is not a basis for us to grant relief that would be contrary to our rules.¹⁰ Both the separate written instructions for Item (10)¹¹ and bold face words of instruction on Item (10) of the FCC Form 470 itself

⁸ Letter to the Federal Communications Commission from John R. Alfone, Ed.D., St. Gabriel School, dated May 19, 1999 (St. Gabriel Letter of Appeal).

⁹ St. Gabriel Letter of Appeal to FCC, May 19, 1999, para. 2.

¹⁰ See *Applications of Mary Ann Salvatoriello*, 6 FCC Rcd 4705 (1991), citing *Office of Personnel Management v. Richmond*, 496 U.S. 414 (Erroneous advice from a government employee has never been found to create estoppel against the Federal Government, particularly when the relief requested would be contrary to an applicable statute or rule. Persons relying on informal advice given by Commission staff do so at their own risk.)

¹¹ The instructions for Item 10 of FCC Form 470 state:

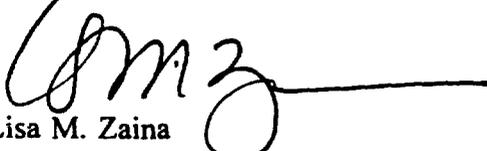
Check this box if you are only seeking discounts for eligible services that are the subject of an existing, binding contract, and fill in the date that the contract was signed and its termination date. If you are purchasing telephone service at tariffed rates and have not signed a binding contract, you 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

clearly state that the box should be checked only if the applicant seeks discounts for eligible services based on one or more "**existing, binding contract(s)**."¹²

7. Only applicants with existing contracts, as defined in section 54.511(c) of the Commission's rules,¹³ are exempt from the Commission's competitive bid requirement. Because tariffs do not constitute "pre-existing contracts," and St. Gabriel has provided no evidence of any pre-existing contract, we find that the SLD properly denied St. Gabriel's funding request for failure to comply with the 28-day competitive bid requirement.

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 St. Gabriel School, Milford, Connecticut on May 19, 1999 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION


Lisa M. Zaina
Deputy Chief, Common Carrier Bureau

services under contract. (emphasis in original)

¹² FCC Form 470, Block 3, Item 10 (emphasis in original).

¹³ 47 C.F.R. § 54.511(c)(1).