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Federal Communications Commission

DA 99-2408

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

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| In the Matter of |) | |
| |) | |
| Request for Review |) | |
| of the Decision of |) | |
| the Universal Service Administrator by |) | |
| |) | |
| Objective Communications, Inc. |) | File No. SLD-1143454 |
| |) | |
| Williams Communications Solutions |) | File No. SLD-1143454 |
| |) | |
| Federal-State Joint Board on Universal Service |) | CC Docket No. 96-45 ✓ |
| |) | |
| Changes to the Board of Directors of the |) | CC Docket No. 97-21 |
| National Exchange Carrier Association, Inc. |) | |

ORDER

Adopted: November 2, 1999

Released: November 2, 1999

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Letter of Appeal filed by Objective Communications, Inc. (Objective), dated June 1, 1999, and a Letter of Appeal filed by Williams Communications Solutions (Williams), dated June 3, 1999 (the Letters of Appeal). These letters contest the funding request made by the Los Angeles Unified School District (Los Angeles) in an FCC Form 470, Universal Service Control Number 930890000208654, dated February 25, 1999, and filed with the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator).¹ The Letters of Appeal take issue with the fact that "there was never a bid via a public RFP"

¹ Because Objective and Williams raise the same issue -- indeed, in identical letters of appeal concerning the same applicant -- we are issuing a single order responding to both letters of appeal.

for the services listed on the FCC Form 470 at issue.² As discussed below, because a publicly posted Request for Proposal (RFP) is not required under the Commission's rules, and because Objective and Williams fail to argue that they were denied an RFP upon request, we deny the Letters of Appeal.

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.³ The Commission's rules provide that, with one limited exception, an eligible school, library, or consortium must seek competitive bids for all services eligible for support.⁴

3. To comply with this competitive bid requirement, the Commission's rules require that an applicant submit to the Administrator a completed FCC Form 470, in which the applicant lists the eligible services for which it seeks discounts.⁵ The Administrator must post the FCC Form 470 on its website and the applicant is required to wait 28 days before making a commitment with a selected service provider.⁶ The rules also require that the Administrator send confirmation to each applicant that its FCC Form 470 has been received and posted (Receipt Acknowledgment Letter). After the FCC Form 470 has been posted for 28 days, and the applicant has selected a service provider, the applicant must submit to the Administrator an FCC Form 471, which lists the services that have been ordered.⁷ Approval of the application is contingent upon the filing of an FCC Form 471.

4. The Commission's rules provide a limited exemption from the 28-day competitive bid requirement for applicants that have "pre-existing contracts," as defined by the Commission's rules.⁸ Block 3, Item 10 of the FCC Form 470 directs the applicant to check

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504.

⁵ 47 C.F.R. § 54.504(b)(1), (b)(3). In submitting FCC Form 470, an applicant is required to provide only general information about the services for which it seeks discounts, *e.g.*, number of phones that require service, number of dial-up connections necessary, as well as an assessment of the applicant's existing technology that may be necessary for the effective use of eligible services.

⁶ 47 C.F.R. § 54.504(b)(3) and (b)(4); 47 C.F.R. § 54.511.

⁷ 47 C.F.R. § 54.504(c).

⁸ *See* 47 C.F.R. § 54.511(c)(1)(i) and (ii); 47 C.F.R. § 54.511(d).

the box "if applicant seeks discounts only for eligible services based on one or more existing, binding contract(s)." Item 11 directs the applicant to check the box "if you have a Request for Proposal (RFP) available" and that if the "RFP is posted on a website, provide the website address." Instructions for Item 11 further state that "[i]f the RFP is not posted, your contact person (Item (6)) must be able to provide it to service providers."

5. In the Letters of Appeal, Objective and Williams assert that the FCC Form 470 referred to above must be denied funding because "[b]lock #3, item #10 was not checked," "therefore there are no existing, binding contracts in place," and "there was never a bid via a public RFP."⁹

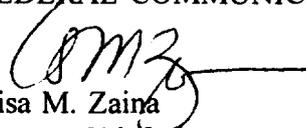
6. As described above, the Commission has established specific rules and procedures related to fulfilling its competitive bid requirement. Under these rules, and pursuant to the FCC Form 470, if an applicant seeks discounts for eligible services based on an existing, binding contract, that applicant should check Item 10 and wait 28 days before entering into a contract with a service provider; if not, the applicant should not check the box, the Administrator is required to post the FCC Form 470 on its website, and the applicant must wait 28 days before making a commitment with a selected service provider. Although Item 11 provides an opportunity for an applicant to indicate that an RFP is available on a website, nowhere in the Commission's rules or in the FCC Form 470 or accompanying instructions is an applicant required to make available an RFP, except upon the specific request of service providers.

7. Review of the FCC Form 470 referred to in the Letters of Appeal, as well as SLD's records, reveals that Los Angeles did not check Item 10, and therefore the Administrator was required to post the Form 470 on its website, which it did. This is the only "posting" necessary to fulfill the Commission's competitive bidding requirement. Under the Commission's rules, neither Los Angeles nor the Administrator was required to publish or post an RFP on a website. The only requirement set forth in the instructions with respect to the RFP is that it be available upon request from the contact person listed in Item 6. Neither Objective nor Williams argue that they requested an RFP from the contact person Los Angeles listed in Item 6 of its FCC Form 471 and that they were refused the RFP. While Objective and Williams contend that their corporations have been denied "rights to due process to bid on this equipment as stated by the regulations that guide the E-Rate application process," they fail to cite to any Commission rules or regulations that would support their argument that the application is invalid because no RFP was posted to the public, or that otherwise support their position that Los Angeles violated Commission rules with respect to the RFP. We are unaware of any such regulations. In light of these findings, we find no basis for invalidating Los Angeles' application and denying funding for otherwise eligible services.

⁹ Letters of Appeal at 1.

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 Letters of Appeal filed by Objective Communications, Inc. and Williams Communications Solutions IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION


Lisa M. Zaina
Deputy Chief, Common Carrier Bureau