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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	)	
Broome-Tioga BOCES Consortium Binghamton, New York	)	File No. SLD-112132
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

ORDER

Adopted: October 29, 1999 **Released: October 29, 1999**

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Letter of Appeal, filed June 2, 1999, by Thomas Communications & Technologies (Thomas), seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator). Thomas seeks review of the SLD's denial of the application it filed on behalf of Broome-Tioga BOCES Consortium (Broome-Tioga) for discounts for Internet access under the schools and libraries universal service support mechanism.[1] For the reasons set forth below, we deny the Letter of Appeal and affirm the SLD's denial of Broome-Tioga's application for certain discounts for Internet access.

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.[2]

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[1] 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).

[2] 47 C.F.R. §§ 54.402, 54.503.

In order to receive discounts on eligible services, schools must file certain information with the Administrator. Specifically, the Commission's rules require that an applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth the school's technological needs and the services for which it seeks discounts.[3] The applicant must generally use the FCC Form 470 application as the basis for seeking competitive bids on the services for which discounts are sought.[4] Once the school has signed a contract for the eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the school has signed the contract, and an estimate of funds needed to cover the discounts to be given for eligible services.[5] This information is generally provided in Block 5 of FCC Form 471. The Administrator then determines the amount of discounts for which the school is eligible. Approval of the application is contingent upon the filing of FCC Form 471. If the Administrator has established a filing window, all FCC Form 471s submitted during the filing window will be treated as if they were simultaneously received.[6] For the first funding period, the filing window opened on January 30, 1998 and closed on April 15, 1998.

3. By letter dated February 24, 1999, the SLD approved Thomas' request for discounts for services listed in two pages of the Block 5 entries that Thomas filed in its initial FCC Form 471. In its March 17, 1999 Letter of Appeal to SLD, Thomas claims, among other things, that it submitted a third page of Block 5 entries to its FCC Form 471 that listed three additional Funding Request Numbers (FRNs) that did not appear to have been reviewed since they did not appear on the funding commitment letter. On May 7, 1999, the SLD affirmed its initial funding decision and denied Thomas' appeal with respect to the missing page at issue. Specifically, the Administrator's Decision on Appeal explained that, with respect to the "3 missing Funding Requests," additional funding requests not included on the original FCC Form 471 could only be considered if a new FCC Form 471 were filed, but that such a new FCC Form 471 would have had to have been filed prior to the close of the filing window due to the limit on available funding. Because the three missing FRNs were submitted on May 5, 1998 -- after the close of the April 15, 1998 filing window, they were not eligible to be considered with the original application.

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[3] 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.

[4] 47 C.F.R. §§ 54.504 and 54.511. Pre-existing contracts, as defined by our rules, are exempt from the competitive bidding requirements. 47 C.F.R. § 54.511(c).

[5] 47 C.F.R. § 54.504(c).

[6] 47 C.F.R. § 54.507(c).

4. In its May 27, 1999 Letter of Appeal to the Commission, Thomas claims that its initial FCC Form 471 application, dated April 14, 1998,[7] included three pages of Block 5 items as well as attached supporting information. The funding commitment letter addressed only two of the three pages allegedly filed; it did not address the third page that Thomas alleges was also included in its original FCC Form 471 application. Thomas explains that while it "had omitted the signature date on the initial April 14, 1999 [sic], 471 application," on May 5, 1998, it submitted a copy of the original FCC Form 471 application, which included three pages of Block 5 entries, correcting the signature omission and "received approval from the SLD for consideration for full funding."[8]

5. We have reviewed the application Thomas filed on behalf of Broome-Tioga as well as all of SLD's records relating to this application, and we conclude that SLD properly determined that the three missing FRNs at issue in this appeal were not submitted as part of the FCC Form 471 filed on April 14, 1998 and were not filed prior to the close of the filing window on April 15, 1998. Specifically, SLD's records reveal that the FCC Form 471 date-stamped April 14, 1998 includes two, not three, Block 5 FCC Form 471 pages. Moreover, Thomas has failed to provide evidence demonstrating that it filed the third page with its April 14, 1998 FCC Form 471 or that it was otherwise received prior to the close of the filing window on April 15, 1998. In this regard, the May 5, 1998 submission has no evidentiary significance because it clearly was not received by SLD until after the filing window had closed. Finally, while it is unclear what "supporting information" Thomas is referring to in its letter of appeal, the April 14, 1998 FCC Form 471 does not include any supporting information that sets forth the FRNs in question, and indeed any such information, if it were provided in an attachment, would not have been an adequate substitute for the entries required by Block 5 of FCC Form 471. In light of these findings, we conclude that SLD correctly denied funding for the three missing FRNs on the grounds that they were not included with Broome-Tioga's FCC Form 471 filed on April 14, 1998.

[7] Review of the FCC Form 471 submitted by Thomas reveals that it is actually dated April 13, 1998.

[8] June 2, 1998 Appeal Letter at 1.

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 appeal filed by Thomas Communications & Technologies on behalf of Broome-Tioga BOCES Consortium, dated May 27, 1999, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Yog R. Varma
Deputy Chief, Common Carrier Bureau