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Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of	)	
	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Ruidoso Municipal School District Ruidoso, New Mexico	)	File No. SLD-29924
	)	
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: January 20, 2000 **Released: January 21, 2000**

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Letter of Appeal filed by Ruidoso Municipal School District (Ruidoso) of Ruidoso, New Mexico on May 6, 1999, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator).[1] Ruidoso seeks review of SLD's denial of its application for discounted telecommunications services under the schools and libraries universal service support mechanism. For the reasons set forth below, we deny the Letter of Appeal and affirm SLD's denial of Ruidoso's application for discounted services.

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] 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.[3] In accordance with the Commission's rules, SLD posts an applicant's FCC Form 470

[1] Letter to the Office of the Secretary, Federal Communications Commission, from Paul Wirth, Director of Instructional Support, Ruidoso Municipal School District, filed May 6, 1999 (Letter of Appeal).

[2] 47 C.F.R. §§ 54.502, 54.503.

[3] 47 C.F.R. §54.504(c).

specifying requested services on its web site for 28 days prior to the applicant's signing a contract for eligible services and submitting its FCC Form 471.[4]

3. Based on Ruidoso's FCC Form 471, SLD determined that, although Ruidoso had pre-existing contracts for some requested services that exempted it from the competitive bidding requirement, it also had ordered other telecommunications services pursuant to tariffs. Accordingly, by letter dated February 18, 1999, SLD granted discounts for those requests that were based on pre-existing contracts, but denied the request for discounts for tariffed telecommunications services on the ground that the request for these services was not posted on SLD's web site for 28 days, in violation of the Commission's competitive bidding requirement.[5]

4. On April 9, 1999, SLD affirmed its initial funding decision and denied Ruidoso's appeal.[6] SLD explained that Ruidoso's request for tariffed telecommunications services was not posted on the web site for 28 days because Ruidoso had checked Item 10 in Block 3 on FCC Form 470, which directs the applicant to check the box if the applicant seeks discounts only for eligible services based on an existing, binding contract. SLD further explained that tariffed telecommunications services are required to be posted to the SLD web site for 28 days (pursuant to the FCC Form 470 Instructions) in order to give service providers an opportunity to bid on these services.[7] As stated by SLD, the only exemption from the Commission's competitive bidding requirement is for services that were the subject of a legal, binding contract that was signed and dated by both parties prior to January 30, 1998.

5. In Ruidoso's Letter of Appeal that is now before us, Ruidoso asserts that SLD has admitted to poor quality of technical assistance; that, in fact, Ruidoso received incorrect technical assistance; and that it should not suffer loss of funding as a result.[8]

6. Having reviewed the record before us, we have confirmed that Ruidoso's FCC Form 471 indicates in Item 15 that it would receive the telecommunications services in question pursuant to tariff, not a pre-existing contract. We also have confirmed that Ruidoso checked Item 10 in Block 3 of its FCC Form 470 indicating that it had only "pre-existing contracts," even though its request included tariffed services as well. Therefore, consistent with the Commission's rules, SLD did not post Ruidoso's FCC Form 470 on its web site. Although it is unfortunate that Ruidoso understood SLD staff to provide verbal assurances that its FCC Form 470 was "correct for its situation,"[9] this is not a basis for us to grant relief that would be contrary

[4] 47 C.F.R. § 54.504(c).

[5] Letter from Schools and Libraries Division, Universal Administrative Company, to Paul Wirth, Ruidoso Municipal School District, dated February 18, 1999.

[6] Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Paul Wirth, Ruidoso Municipal School District, dated April 9, 1999 (Administrator's Decision on Appeal).

[7] Administrator's Decision on Appeal at 1.

[8] Letter to the Office of the Secretary, Federal Communications Commission, from Paul Wirth, Director of Instructional Support, Ruidoso Municipal School District, filed May 6, 1999.

[9] Letter from Paul Wirth, Ruidoso Municipal School District, to Schools and Libraries Corporation, dated February 5, 1999 (Appeal to SLD).

to the Commission's 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 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] 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 bidding requirement.[13] That rule defines pre-existing contracts that do not have to be posted on the web site for competitive bidding as those signed after July 10, 1997 but prior to January 30, 1998, the date upon which the SLD web site became operational.[14] Thus, the tariffed services in question were not subject to "pre-existing contracts," and SLD properly denied Ruidoso's funding requests for those tariffed services for failure to comply with the 28-day competitive bidding requirement.

7. 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 Ruidoso Municipal School District, Ruidoso, New Mexico on May 6, 1999 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Lawrence E. Strickling

Lawrence E. Strickling
Chief, Common Carrier Bureau

[10] *See In Re Applications of Mary Ann Salvatoriello*, 6 FCC Rcd 4705 (1991), *citing Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990) (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 service under contract.

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

[13] 47 C.F.R. § 54.511(c)(1).

[14] *See Federal-State Joint Board on Universal Service,* Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5445, at para. 217 (1977) (*Fourth Reconsideration Order*); *see also* Universal Service Program, "Program Description," issued December 1997, revised January 1998.