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 Before the
 Federal Communications Commission
 Washington, DC 20554

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Copan Public Schools)	File No. SLD-26231
Copan, Oklahoma)	
)	
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: March 14, 2000

Released: March 16, 2000

By the Commission:

1. This Order grants the Letter of Appeal of Copan Public Schools, Copan, Oklahoma (Copan), that was received by the Commission on September 17, 1999.¹ Copan's Letter of Appeal seeks review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator),² pursuant to which SLD denied Copan's request to change a service provider for the 1998 funding year. This process is referred to as a Service Provider Identification Number (SPIN) change request. For the reasons discussed below, we modify the current categories of permissible SPIN changes and permit a SPIN change whenever an applicant certifies that (1) the SPIN change is allowed under its state and local procurement rules and under the terms of the contract between the applicant and its original service provider, and (2) the applicant has notified its original service provider of its intent to change service providers.

¹ Letter from Delbert W. Moreland, Jr. Superintendent, Copan Public Schools, to Federal Communications Commission (filed Sept. 17, 1999) (Letter of Appeal).

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).

the applicant, SLD announced, after consultation with Commission staff, that SPIN changes would be allowed when a service provider: (1) refuses to participate in the schools and libraries support mechanism; (2) has gone out of business; or (3) has breached its contract with the applicant.¹¹ The SLD guidelines require an applicant to submit specific documentation to establish the applicant's entitlement to each of these exceptions.¹² The guidelines also require that the substitute service provider selected have participated in the applicant's competitive bidding process.¹³

II. COPAN'S APPEAL

4. On April 5, 1999, Copan submitted a letter to SLD informing SLD of its intent to change service providers.¹⁴ Copan explained that the SPIN change was necessitated by the fact that United Systems, the service provider originally listed on its FCC Form 471 as its provider of internal connections, had relocated to another city and, therefore, was unable to provide Copan with "continuous service."¹⁵ On August 18, 1999, SLD denied the request.¹⁶ In its letter, SLD stated that it could grant SPIN change requests only if the applicant's service provider: (1) refuses to participate in the schools and libraries program; (2) has gone out of business; or (3) has breached its contract with the applicant. The Administrator determined that Copan's submission did not satisfy any of these criteria for granting a SPIN change and, therefore, denied Copan's request.¹⁷

5. In the Letter of Appeal that is before us, Copan asks us to reverse the determination of the Administrator and find that Copan did satisfy the appropriate criteria for granting a SPIN change.¹⁸ Copan states that, in connection with United Systems' decision to relocate to a larger market, United Systems had informed Copan that provision of service to Copan was not a priority and that it presently was not adequately staffed to fulfill its obligations

¹¹ Universal Service Administrative Company, Schools and Libraries Division, "SPIN Correction and Change Procedures," SLD web site, /<http://www.sl.universalservice.org/Reference/spin.asp>.

¹² For example, an applicant alleging that its originally chosen service provider refuses to participate in the schools and libraries support mechanism must provide documentation of the provider's refusal to participate and the applicant's notification to the provider that the applicant is terminating the contract or relationship. Universal Service Administrative Company, Schools and Libraries Division, "SPIN Correction and Change Procedures," SLD web site, /<http://www.sl.universalservice.org/Reference/spin.asp>.

¹³ Universal Service Administrative Company, Schools and Libraries Division, "SPIN Correction and Change Procedures," SLD web site, /<http://www.sl.universalservice.org/Reference/spin.asp>.

¹⁴ Letter from Delbert Moreland, Superintendent, Copan Public Schools, to the Schools and Libraries Corporation, undated (filed April 5, 1999) (April 5, 1999 Letter).

¹⁵ April 5, 1999 Letter.

¹⁶ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Delbert Moreland, Copan Public Schools (dated Aug. 18, 1999) (August 18, 1999 Letter).

¹⁷ August 18, 1999 Letter.

¹⁸ Letter of Appeal at 1.

encourage service provider substitutions,²² we recognize that circumstances for applicants and providers may change over the course of a relationship, as appears to have been the case in Copan. Accordingly, where an applicant determines that a SPIN change is allowed under its state and local procurement rules and under the contract between the applicant and its original provider, we will not limit the applicant's ability to substitute providers or otherwise deny the applicant the benefits of universal service support.²³ This policy is consistent with the Commission's express goal of affording schools and libraries maximum flexibility to choose the offering that meets their needs most effectively and efficiently.²⁴

B. Funding Level Not to Exceed Level Requested on FCC Form 471

8. In allowing service provider substitutions, we will not permit a substitute service provider to receive funding for a service in an amount exceeding the amount requested on the applicant's FCC Form 471 for that service. Rather, a funding request in such a situation may be funded only up to the amount originally requested by the applicant on its FCC Form 471. Adopting this limitation on the amount of funds requested is consistent with the position that has been taken in other schools and libraries appeals.²⁵ In addition, such a limitation is critical to enabling the Administrator to project the level of demand for the schools and libraries support mechanism and to implement the Commission's rules of priority, as necessary.²⁶

²² Such changes can be disruptive to the Administrator and the parties and the processing of such requests is likely to entail additional burdens on the Administrator.

²³ We do not anticipate that a school would terminate a contract with a service provider without legal justification, since to do so could place the school in jeopardy of suit in state court. If an applicant's original service provider disputes the applicant's legal justification for terminating a contract with that provider, we note that our determination to permit a SPIN change in that instance should not prejudice the parties' rights under that contract. Rather, in light of the Commission's longstanding policy of refusing to adjudicate private contract law questions for which a forum exists in the state courts, a state court and not the Commission is the appropriate forum for rendering such a determination. See *Listeners' Guild v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987) (noting with approval Commission's "longstanding policy of refusing to adjudicate private contract law questions for which a forum exists in the state courts.").

²⁴ *Universal Service Order*, 12 FCC Rcd at 9029, para. 481. We note, however, that, although we are providing applicants greater latitude to substitute service providers, we continue to require applicants to report and seek approval for SPIN changes from the Administrator. Reporting such changes helps to ensure that applicants and the service providers with whom they contract are in compliance with the Commission's universal service program rules. It continues to be necessary for applicants to apprise the Administrator of SPIN changes in order to allow the Administrator to determine, for example, whether service providers are eligible to furnish the specified services. Moreover, the reporting of SPIN changes is necessary so that the Administrator can correctly process the payment of discounts to service providers.

²⁵ *Request for Review of the Scranton School District, Scranton, Pennsylvania*, CC Docket Nos. 96-45, 97-21, DA 00-20 (Com. Car. Bur. 2000) (notwithstanding applicant's error on its FCC Form 471, applicant was limited to amount of funding requested on the FCC Form 471).

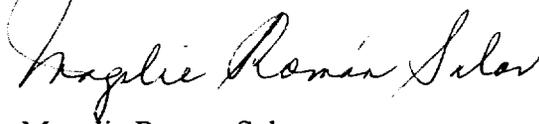
²⁶ The rules of priority, established in the Commission's *Fifth Order on Reconsideration*, govern the manner in which discounts are allocated when available funding is less than total demand and a filing window is in effect. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration, 13 FCC Rcd 14915, 14934, para. 31 (1998).

Order. We direct SLD to consider the submitted documentation and act in accordance with this Order.

IV. ORDERING CLAUSE

12. Accordingly, IT IS ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 54.719 and 54.722 of the Commission's rules, 47 C.F.R. §§ 54.719 and 54.722, that the Letter of Appeal filed on September 17, 1999, by Copan Public Schools of Copan, Oklahoma IS GRANTED to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary