

FCC MAIL SECTION

Federal Communications Commission

DA 00-1046

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

In the Matter of	)	
Methacton School District	)	
Norristown, Pennsylvania	)	Application No. 120123
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45 ✓
	)	
Changes to the Board of Directors	)	
Of the National Exchange Carrier	)	CC Docket No. 97-21
Association, Inc.	)	

**ORDER**

**Adopted: May 16, 2000**

**Released: May 17, 2000**

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Letter of Appeal filed on October 22, 1999 by Methacton School District, Norristown, Pennsylvania (Methacton), seeking review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator).<sup>1</sup> Methacton seeks review of SLD's denial of its application for discounts for telecommunications services under the schools and libraries universal service support mechanism.<sup>2</sup> For the reasons set forth below, we remand Methacton's appeal to SLD for further review.

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.<sup>3</sup> 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.<sup>4</sup> The Commission reasoned that competitive bidding would ensure fiscal responsibility and would be the best means for ensuring that eligible schools and libraries are able to receive services at the most

<sup>1</sup> Letter from Robert F. Holly, Methacton School District, to Secretary, FCC, dated October 22, 1999 (Letter of Appeal).

<sup>2</sup> 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).

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>4</sup> 47 C.F.R. § 54.504(a).

competitive rates.<sup>5</sup>

3. The Commission's competitive bidding rules require that an applicant submit to the Administrator a completed FCC Form 470, in which the applicant lists the services for which it seeks discounts.<sup>6</sup> The Administrator must post the FCC Form 470 on its website and the applicant is required to wait 28 days before making a commitment to a selected service provider. The Commission's rules provide a limited exemption from the 28-day competitive bidding requirement for applicants that have pre-existing contracts as defined by the Commission's rules.<sup>7</sup> 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.<sup>8</sup>

4. Item 10 in Block 3 of the FCC Form 470 directs the applicant to check the box if it has a pre-existing contract. If an applicant checks Item 10, SLD will not post its FCC Form 470. If an applicant does not check the box, SLD will post the applicant's Form 470. Here, Methacton filed two separate Forms 470.<sup>9</sup> In its first Form 470, Methacton checked Item 10 in Block 3, indicating that it had a pre-existing, binding contract for telecommunications services, and therefore SLD did not post Methacton's first Form 470. In its second Form 470, in which Methacton sought support for telecommunications services, Internet access, and internal connections, Methacton did not check Item 10 in Block 3, thereby indicating to SLD that it did not have an existing, binding contract. Accordingly, SLD posted Methacton's second Form 470.

5. Methacton subsequently filed a single Form 471 in which it referenced only the first, non-posted Form 470, and indicated, by listing a "C" in the appropriate box, that all of the services listed in the Form 471 would be received pursuant to a new contract.<sup>10</sup> As noted above, under the Commission's rules, an applicant must have had a Form 470 posted for 28 days prior

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<sup>5</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No.96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 480 (1997) (*Universal Service Order*), as corrected by *Federal State Joint Board on Universal Service*, CC Docket 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, reversed in part and remanded in part*, *Texas Office of Public Utility Council v. FCC*, 183 F.3d 393 (5<sup>th</sup> Cir. 1999) *affirming Universal Service Order in part and reversing and remanding on unrelated grounds*, petitions for cert. pending.

<sup>6</sup> 47 C.F.R. §§ 54.504(b)(1), (b)(3).

<sup>7</sup> 47 C.F.R. § 54.511(c). Under SLD's procedures, even applicants that have pre-existing contracts are required to wait 28 days before filing their Form 471.

<sup>8</sup> 47 C.F.R. § 54.504(c).

<sup>9</sup> Respectively, USCN 742430000155751 and USCN 586470000159312.

<sup>10</sup> The SLD subsequently discovered that Methacton would be receiving its telecommunications services pursuant to a tariff, not a contract, and therefore Methacton should have indicated a "T" instead of a "C" in its Form 471. The 28-day posting requirement applies to requests for service pursuant to a contract or a tariff, and therefore SLD would have denied Methacton's application even if Methacton had correctly indicated that it was ordering telecommunications services pursuant to a tariff. See 47 C.F.R. § 54.504(b)(3).

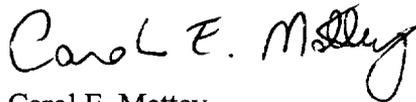
to entering into a new contract with a service provider. Because Methacton referenced only the first, non-posted Form 470, SLD denied Methacton's application for failure to comply with the Commission's 28-day posting requirement.

6. At the Bureau's request, SLD has reviewed this case further, and has discovered that SLD may be able to grant Methacton relief.<sup>11</sup> Along with its Form 471 application, Methacton submitted Optional Pre-Discount Cost Calculation grids for each of the services that it requested in support of its discount cost calculations.<sup>12</sup> The telecommunications services grids correctly reference the second, posted Form 470, indicating that Methacton intended to reference the second Form 470, not the first Form 470, in its Form 471.<sup>13</sup>

7. Under SLD's procedures SLD may grant appeals when the applicant has correctly listed the proper item on another part of the Form 471.<sup>14</sup> SLD states that, if this case were remanded, it "would treat this as a data entry error made by the applicant and, since there is evidence in the original file to support the correct item, [it] would grant the appeal."<sup>15</sup> Accordingly, based on SLD's discovery of the reference to the second, posted Form 470 in Methacton's Form 471, we conclude that it is appropriate to remand this matter to SLD for further review.<sup>16</sup>

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, 54.722(a), that the appeal filed by Methacton School District, Norristown, Pennsylvania, on October 22, 1999 IS REMANDED to SLD for further consideration in light of this decision.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey  
Deputy Chief, Common Carrier Bureau

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<sup>11</sup> Letter from Ellen Wolfhagen, SLD, to Magalie Roman Salas, FCC, filed March 30, 2000, at 1-2 (SLD Letter).

<sup>12</sup> *See id.*

<sup>13</sup> *See id.*

<sup>14</sup> SLD Letter at 2.

<sup>15</sup> *Id.*

<sup>16</sup> We note that it is unclear from the record why Methacton filed two Forms 470. In any event, because SLD has discovered, with respect to all funding requests at issue here, references in Methacton's Form 471 to the posted, second Form 470, we believe that it is appropriate to remand this matter to SLD for further review.