

FCC MAIL ROOM

**Before the
Federal Communications Commission
Washington, DC 20554**

2000 NOV 28 P 3: 54

In the Matter of)
)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)
)
Service Provider Identification Number)
(SPIN) Change Appeals Submitted by)
Eligible Schools and Libraries)
)

CC Docket No. 96-45
RECEIVED
CC Docket No. 97-21 ✓

ORDER

Adopted: November 21, 2000

Released: November 22, 2000

By the Deputy Chief, Common Carrier Bureau:

1. This Order remands to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator)¹ Letters of Appeal filed by certain parties in regards to service provider changes under the federal universal service programs for eligible schools and libraries.² This process of changing service providers is referred to as a Service Provider Identification Number (SPIN) change request. For the reasons discussed below, further review and reconsideration of these Letters of Appeal by SLD is warranted in light of the Commission's decision to modify the current categories of permissible SPIN changes.³

I. BACKGROUND

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 on

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 See Appendix A, *infra*, for a list of specific appeals remanded to SLD pursuant to this Order.

³ See *Request for Review of Decision of the Universal Service Administrator by Copan Public Schools, Copan, Oklahoma*, Order, File No. SLD-26231, CC Dockets No. 96-45, 97-21, FCC 00-100, 15 FCC Rcd 5498 (rel. March 16, 2000) (*Copan Order*).

eligible telecommunications services, Internet access, and internal connections.⁴ In the *Universal Service Order*, the Commission determined that competitive bidding is the most efficient means for ensuring that eligible schools and libraries are informed of the choices available to them and receive the lowest prices.⁵ Thus, the Commission's rules require eligible schools and libraries to seek competitive bids for all services eligible for discounts.⁶ In adopting rules governing the application and competitive bidding processes, the Commission did not address the situation in which a school or library could change service providers after the school or library has submitted an FCC Form 471 application designating a particular service provider. Indeed, section 54.504(c), which makes commitments of support contingent upon the applicant's filing of an FCC Form 471 identifying the service provider with which the applicant has signed a contract, makes no provision for a change of providers once a commitment of support has been made.⁷

3. To avoid penalizing an applicant that discovers only after filing its FCC Form 471 that its service provider is unwilling or unable to provide service to the applicant, SLD originally 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. The original guidelines also required that the substitute service provider selected must have participated in the applicant's competitive bidding process.

4. In the *Copan Order*, released on March 16, 2000, the Commission modified the current categories of permissible SPIN changes and provided further guidance on when SPIN changes may be allowable. Specifically, the Commission stated that SPIN changes shall be permitted 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.⁸ The Commission stated that it would no longer restrict SPIN changes to those categories currently enumerated in the SLD guidelines (*i.e.*, service provider refuses to participate, has gone out of business, or has breached its contract), in order to avoid penalizing an applicant that either would be entitled to a SPIN change under the current guidelines but for a

⁴ 47 C.F.R. §§ 54.502, 54.503.

⁵ *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 No. 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 Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (*affirming Universal Service Order in part and reversing and remanding on unrelated grounds*), petitions for cert. pending.

⁶ 47 C.F.R. § 54.504.

⁷ 47 C.F.R. § 54.504(c).

⁸ *Copan Order*, 15 FCC Rcd at 5501, para. 6.

lack of particular documentation, or whose justification for a SPIN change, however reasonable, did not fit squarely within the three pre-*Copan* exceptions.⁹

II. DISCUSSION

5. The parties listed in Appendix A of this Order have all filed Letters of Appeal with the Commission, protesting SLD's denial of their SPIN change requests.¹⁰ All of these SPIN change requests were acted upon by SLD prior to the Commission's decision in the *Copan Order*. In each of these Letters of Appeal, SLD denied the applicant's request for the SPIN change because the request did not fall squarely within one of the original three pre-*Copan* categories. In light of the Commission's revisions to the standards for permissible SPIN changes in the *Copan Order*, we remand these Letters of Appeal to the Administrator for reconsideration pursuant to the Commission's revised SPIN change policy.

III. ORDERING CLAUSE

6. 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 Letters of Appeal filed by the named parties to this Order ARE REMANDED to the Schools and Libraries Division for further consideration as provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau

⁹ *Copan Order*, 15 FCC Rcd at 5501, para. 6.

¹⁰ Section 54.719(c) of the Commission's rules provides that any party aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. §54.719(c).

**APPENDIX A
LIST OF APPEALS REMANDED**

<u>Application Number</u>	<u>Applicant</u>
127441	Baldwin County School System
134465	Beck Area Career Center
140404	Bethlehem Lutheran School
82409	Big Springs Union Elementary School District
115328	Borger Independent School District
42242	Bowlegs Independent School District 3
150889	Campbell County Public Schools
151145	Chehalis School District
108063	Chinle Unified School District #24
423324	Cloudcroft Municipal Schools
47392	East Boston Central Catholic School
33518	Four County Library System
10860	Grants/Cibola County Schools
64568	Henryetta Public Schools
114343	Hillsboro School District 1J
152241	Kelso School District
154065	Kyle Community Library
122114	Minneapolis Public Library
66154	North Country Union High School
16647	Paris Independent School District
81607	Santa Cruz Valley Union High School District 840
102180	Sasakwa Independent School District 10
79678	School District of Baraboo
55717	Sisseton School District 54-9
127948	South Boston Harbor Academy Charter School
108260	Southeast Area Cooperative
37391	St. Mary's School - Rosebank
82430	St. Peter's Elementary School
144087	Stephenson Area Public Schools
115936	Westwind Academy Charter High School
35321	Whiteville City School System