

MAIL ROOM

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

2000 DEC 28 P 12:00

In the Matter of)
)
 Request for Review of the)
 Decision of the)
 Universal Service Administrator by)
)
 Sackets Harbor Central School District) File No. SLD-134383
 Sackets Harbor, New York)
)
 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.)

FILED

ORDER

Adopted: December 19, 2000

Released: December 20, 2000

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Letter of Appeal filed by the Sackets Harbor Central School District (Sackets Harbor), Sackets Harbor, New York on May 5, 2000, pursuant to section 54.719(c) of the Commission's rules.¹ Sackets Harbor seeks review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company, denying its requests for funding because of violation of the 28-day posting requirement for signing contracts for eligible services. For the reasons discussed below, we deny the appeal.

2. The Commission's rules provide that eligible schools, libraries and consortia must seek competitive bids for all services for which they seek support under the schools and libraries universal service support mechanism.² To fulfill this requirement, an applicant must file an FCC Form 470 with the Administrator, setting forth its technological needs and the services for which it seeks discounts.³ SLD posts the Form 470 on its Web page for a period of 28 days.⁴ The

¹ Letter from Anne B. Spaziani, Sackets Harbor Central School District 56, to Office of the Secretary, FCC, filed May 5, 2000 (Letter of Appeal). Section 54.719(c) 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. § 54.504. The Commission's rules provide one exception to this requirement for existing contracts as defined in section 54.511(c). 47 C.F.R. § 54.511(c).

³ 47 C.F.R. §§ 54.504(b)(1), (b)(3).

applicant must wait at least 28 days after the posting of the Form 470 prior to signing a contract for eligible services and completing an FCC Form 471 application.⁵ We have strictly enforced the 28-day posting requirement.⁶

3. By letter dated October 12, 1999, SLD denied Sackets Harbor's requests for funding of telecommunications and Internet access services, Funding Request Numbers 204218 and 204219, because "[t]he Form 471 application was signed and/or submitted prior to the expiration of the 28-day waiting period from the day of the posting of the Form 470 to the SLD Web Site."⁷ Sackets Harbor appealed, arguing that its FCC Forms 470 and 471 were sent more than 28 days apart, on December 17, 1998 and January 28, 1999, respectively.⁸ SLD denied the appeal, stating that the Form 471 was signed on January 28, 1999 and received by SLD on February 1, 1999, "prior to the Allowable Contract Date of 3/26/99 (the 28th day after posting the Form 470 on the SLD Web Site)[.]"⁹ In the instant Letter of Appeal, Sackets Harbor again argues that its Form 471 was filed more than 28 days after its Form 470, and states that it already had filed the Form 471 when it received SLD's Form 470 receipt notification letter, dated March 1, 1999. Sackets Harbor asks why it took so long for SLD to post the Form 470, and why SLD did not ask Sackets Harbor to resubmit the premature Form 471 after the 28-day posting period.

4. We affirm SLD's decision to deny Sackets Harbor's funding requests for violation of the 28-day posting requirement. Consistent with the Commission's rules, the Form 470 and Form 471 instructions clearly state that applicants may not sign contracts or complete Form 471 for 28 days after the posting of Form 470 on the SLD Web site, and that SLD will notify applicants by letter of the posting date and the 28-day waiting period expiration date.¹⁰ The Form

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⁴ 47 C.F.R. § 54.504(c).

⁵ 47 C.F.R. §§ 54.504(b)(4), 54.504(c).

⁶ See *Minor High School*, CC Docket Nos. 96-45 and 97-21, DA 00-1612 (released July 20, 2000) (affirming denial of request for funding based on violation of the 28-day posting requirement where applicant signed Form 471 one day before expiration of 28-day waiting period); *Currituck County Schools*, CC Docket Nos. 96-45 and 97-21, DA 00-625 (released March 23, 2000) (denying waiver of 28-day posting requirement where applicant signed contracts one day before expiration of 28-day waiting period).

⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Anne Spaziani, Sackets Harbor School District, dated October 12, 1999.

⁸ Letter from Anne B. Spaziani, Sackets Harbor Central School District, to Schools and Libraries Division, filed October 28, 1999.

⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Anne B. Spaziani, Sackets Harbor Central School District, dated April 24, 2000.

¹⁰ Specifically, the Form 470 instructions state that "schools and libraries may sign contracts for services eligible for discounts 28 days after the descriptions set forth in Form 470 are posted on the [SLD] Web Site . . . The [A]dministrator will notify the applicant of the date that the applicant's request is posted and the date on which the 28 day waiting period ends." FCC Form 470 Instructions—December 1998, Page 2. The Form 471 manual filing instructions state that the date of signature for the Form 471 "**CANNOT be earlier than the 29th day following the posting of the associated FCC Form 470 to the [SLD] Web Site. To determine the 29th**" (continued....)

470 instructions also state that “[t]hose with questions about this application may call toll-free 1-888-203-8100.”¹¹

5. Our examination of the record indicates that SLD received Sackets Harbor’s Form 470 on December 21, 1998, but did not post it until February 26, 1999. Consistent with our rules and the Form 470 instructions, Sackets Harbor was not permitted to sign a contract with a service provider until March 26, 1999. Given the instructions in the Form 470, Sackets Harbor should have been aware that it could not enter into an agreement or sign its Form 471 until after the Form 470 was posted on the SLD website for the entire 28-day waiting period.¹² In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding and complying with all relevant program rules and procedures. By entering into an agreement prior to the allowable contract date established by SLD, Sackets Harbor failed to comply with the Commission’s competitive bidding requirement.

6. We conclude, moreover, that Sackets Harbor has not presented adequate grounds for grant of a waiver of the 28-day posting requirement. We granted waivers of the 28-day posting requirement and/or the section 54.507(g) filing window deadline¹³ in two cases where posting delays caused the waiting period to extend past the filing window deadline, and the applicants, upon discovering the delays, contacted SLD to determine how to proceed.¹⁴ In contrast, SLD’s posting delay in this case did not cause Sackets Harbor’s waiting period to extend past the filing window deadline of April 6, 1999. More importantly, rather than waiting for a Form 470 receipt notification letter or, consistent with the Form 470 instructions, contacting SLD to determine how to proceed, Sackets Harbor simply completed its Form 471. By doing so, Sackets Harbor effectively indicated that it had ceased consideration of competitive bids, thereby undermining the 28-day waiting period requirement purpose of ensuring that “prospective service providers have sufficient time to prepare and submit competitive bids for the services requested in

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day following the posting of the associated FCC Form 470 applications, please consult the SLD notification that you received for each FCC Form 470 application.” FCC Form 471 Instructions—December 1998, Page 24 (original in bold). We note that Sackets Harbor’s application was filed manually.

¹¹ FCC Form 470 Instructions—December 1998, Page 2.

¹² See *Anderson School Staatsburg, New York*, CC Docket Nos. 96-45 and 97-21, DA 00-2630 (released November 24, 2000), at para. 8 (“In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures”).

¹³ Section 54.507(g) provides, among other things, that applicants filing Form 471 applications during a filing window receive priority for support over applicants that file after the window has closed. 47 C.F.R. § 54.507(g).

¹⁴ See *Council Bluffs Community Schools*, CC Docket Nos. 96-45 and 97-21, DA 00-1909 (released August 22, 2000) (waiving filing window deadline); *Runnemedede Public Schools*, CC Docket Nos. 96-45 and 97-21, DA 99-2957 (released December 21, 1999) (waiving 28-day posting requirement and filing window deadline).

the Form 470.”¹⁵ Under these circumstances, we cannot conclude that waiver of the 28-day posting requirement is warranted.

7. Finally, contrary to Sackets Harbor’s suggestion, resubmission of its Form 471 after the 28-day waiting period expiration date would not have cured its violation of the 28-day posting requirement.¹⁶ The critical issue is when Sackets Harbor signed a contract with the service provider, not when it mailed the Form 471. Based on the record before us, Sackets Harbor signed a contract before anyone ever had an opportunity to submit a competitive bid for the project.

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, and 54.722(a), that the appeal filed by Sackets Harbor Central School District, Sackets Harbor, New York on May 5, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau

¹⁵ *Bancroft Rosalie Community Schools*, CC Docket Nos. 96-45 and 97-21, DA 00-2403 (released October 26, 2000).

¹⁶ *See Minor High School*, DA 00-1612 at 3 (“the purpose of the 28-day waiting period is to ensure that prospective service providers have sufficient time to prepare and submit competitive bids for the services requested in the FCC Form 470. By completing and signing the FCC Form 471 before the waiting period expired, Minor indicated that it had ceased consideration of competitive bids, thereby undermining the Commission’s competitive bidding requirements.”).