

Before the
Federal Communications Commission
Washington, DC 20554

FCC MAIL ROOM

In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Thomas Crane Public Library)
Quincy, Massachusetts)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

2001 FEB 13 A 11: 06

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File No. SLD-135569

CC Docket No. 96-45

CC Docket No. 97-211 ✓

ORDER

Adopted: February 8, 2001

Released: February 9, 2001

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Request for Review submitted by Thomas Crane Public Library (Thomas Crane), Quincy, Massachusetts, filed April 17, 2000, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator)¹. Thomas Crane seeks review of SLD's March 21, 2000 decision to deny Thomas Crane's request for discounts under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny the Request for Review and affirm SLD's denial of Thomas Crane's request for discounts.

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.³ The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470,⁴ which is posted to the Administrator's website for all

¹ Letter from Jody Parsley, Thomas Crane Public Library, to the Federal Communications Commission, filed April 17, 2000 (Request for Review).

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).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ Schools and Libraries Universal Service. Description of Services Requested and Certification Form. OMB 3060-0806 (FCC Form 470).

potential competing service providers to review.⁵ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. The Commission's rules provide that eligible schools and libraries with existing contracts are exempt from the competitive bidding requirement under certain circumstances. Section 54.511(c)(1) exempts contracts entered into on or prior to July 10, 1997 from competitive bidding requirements for the duration of the contract. Section 54.511(c)(1) also provides that contracts signed after July 10, 1997 and before January 30, 1998 (the date on which the Schools and Libraries website was fully operational)⁷ would be exempt from the competitive bidding requirement for services provided through December 31, 1998.⁸ The Commission set out these exemptions because it did not wish to penalize schools and libraries that had to negotiate contracts prior to the date that the SLD website became fully operational.⁹ In addition, once an applicant submits an FCC Form 470 and complies with the 28-day posting period, the applicant is permitted to sign a long-term contract at that time and, having complied with the competitive bidding requirement prior to signing the contract, the applicant need not submit any additional FCC Form 470s for the duration of that contract.¹⁰

⁵ 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (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, 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), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S.Ct. 423 (Nov. 2, 2000).

⁶ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471).

⁷ The February 27, 1998 date referenced by SLD in its September 17, 1998 letter incorporates the 28-day competitive bid waiting period beginning from January 30, 1998 (the date that the Schools and Libraries website became fully operational).

⁸ 47 C.F.R. § 54.511(c)(1). See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5441, para. 217 (1997) (*Fourth Reconsideration Order*). Previously, in an order released on July 10, 1997, the Commission found that only contracts signed after November 8, 1996 and prior to January 30, 1998 were exempt from the competitive bidding requirement for services provided through December 31, 1998. *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order on Reconsideration, 12 FCC Rcd 10095 (1997) (*July 10 Order*). Upon reconsideration, however, the Commission subsequently amended section 54.511(c) in order to avoid penalizing those that were uncertain of their rights prior to the release of the *July 10 Order*. *Fourth Reconsideration Order*, 13 FCC Rcd at 5445, para. 217.

⁹ See *Universal Service Order; July 10 Order*, 12 FCC Rcd at 10098, para. 9.

¹⁰ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 15 FCC Rcd 6732 (1999), para. 10 ("We conclude that permitting a school or library to commit to a long-term contract after participating in the competitive

4. The Commission has repeatedly emphasized the importance of the competitive bidding requirement, stating that it helps to ensure that schools and libraries will receive the lowest possible pre-discount price.¹¹ The Commission has concluded that competitive bidding is the most efficient means for ensuring both that eligible schools and libraries are informed about the choices available to them and that prices are not unnecessarily high.¹² In order to ensure that schools and libraries contracting for services between July 10, 1997 and January 30, 1998 did not negotiate long-term contracts and thereby avoid the competitive bidding requirement altogether, the Commission limited the exemption of the competitive bidding requirement for contracts signed between July 10, 1997 and January 30, 1998 to services provided through December 31, 1998, regardless of the duration of the contract as a whole.¹³ Services ordered pursuant to tariffs or on a month-to-month basis do not fall under the category of pre-existing contracts and are subject to the competitive bidding requirement.

5. By letter dated September 17, 1999, SLD rejected a funding request made by Thomas Crane for Funding Year 2 (July 1, 1999 to June 30, 2000) for failure to meet SLD's minimum processing standards.¹⁴ SLD stated that the funding request was rejected because contracts, such as Thomas Crane's contract with Bell Atlantic for telecommunications services, that were awarded between July 11, 1997 and February 27, 1998 were required to be re-bid for Funding Year 2.¹⁵ On October 18, 1999, Thomas Crane appealed the decision by letter to SLD, and SLD denied the appeal on March 21, 2000.¹⁶ In response, Thomas Crane filed the instant Request for Review, stating that, in October 1997, it entered into a seven-year contract for tariffed services with Bell Atlantic. Thomas Crane explained that as of October 1997, there was limited knowledge available regarding which services were eligible for discounts under the program, and only subsequently did the SLD website become operational and eligibility lists become available.¹⁷

bidding process does not compromise the benefits derived from competition. As long as all providers have had the opportunity to compete for the same contract, schools or libraries can enter into renewable contracts of any length or form, as permitted by state law.”).

¹¹ See *July 10 Order*, 12 FCC Rcd at 10098, para. 9.

¹² *Universal Service Order*, 12 FCC Rcd at 9029, para. 480.

¹³ *Fourth Reconsideration Order*, 13 FCC Rcd at 5445, para. 217.

¹⁴ Every funding year, SLD establishes and notifies applicants of a “minimum processing standard” to facilitate the efficient review of the thousands of applications requesting funding. See, e.g., SLD website, Form 471 Minimum Processing Standards and Filing Requirements for FY 3, <<http://www.sl.universalservice.org/reference/471mps.asp>>. When an applicant submits an FCC Form 471 that omits an item subject to the minimum processing standard, SLD automatically rejects the application and returns it to the applicant.

¹⁵ Letter from Universal Service Administrative Co., Schools and Libraries Division, Jody Parsley, Thomas Crane Public Library, dated September 17, 1999.

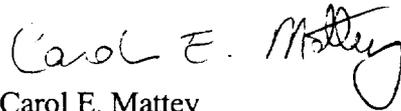
¹⁶ Letter from Universal Service Administrative Co., Schools and Libraries Division, Jody Parsley, Thomas Crane Public Library, dated March 21, 2000 (Administrator's Decision on Appeal).

¹⁷ See Request for Review.

6. The record reflects that Thomas Crane signed a seven-year contract for telecommunications services in October or November of 1997.¹⁸ Pursuant to section 54.511(c)(1)(ii), Thomas Crane was exempt from the competitive bidding requirement for Funding Year 1 (i.e., January 1, 1998—June 30, 1999). As was the case with all schools and libraries entering into contracts between July 10, 1997 and January 30, 1998, however, Thomas Crane was required to seek competitive bids for all services eligible for support for Funding Year 2. Moreover, to the extent that Thomas Crane now contends that its agreement with Bell Atlantic was for tariffed services, such services must be re-bid every year because they do not fall under the limited exemptions from competitive bidding. Therefore, because Thomas Crane did not seek competitive bids for Funding Year 2, we find that SLD correctly denied Thomas Crane's request for discounts.

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 April 10, 2000 Request for Review filed by Thomas Crane Public Library, Quincy, Massachusetts, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief, Common Carrier Bureau

¹⁸ Thomas Crane listed the Bell Atlantic contract as having been awarded on November 5, 1997. See FCC Form 471, Thomas Crane Public Library, filed March 29, 1999. In its appeal to SLD, however, Thomas Crane stated that the contract had been signed in October of 1997. See Letter from Jody Parsley, Thomas Crane Public Library, to Universal Service Administrative Co., Schools and Libraries Division, filed October 18, 1999. For the purposes of the instant appeal, in accordance with Thomas Crane's latest contention, the contract date is assumed to be October of 1997. Regardless of whether the contract was signed in October or November of 1997, the contract date falls between July 10, 1997 and February 28, 1998, and thus under Commission rules the contract had to be re-bid. See 47 C.F.R. §§ 54.504, 54.511(c).