

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

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In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Wetzel County School District)
New Martinsville, West Virginia)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-161553

CC Docket No. 96-45 ✓

CC Docket No. 97-21

IVED

ORDER

Adopted: May 1, 2001

Released: May 2, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by Wetzel County School District (Wetzel), New Martinsville, West Virginia.¹ Wetzel seeks review of a funding commitment decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) pursuant to a funding request for telecommunications services.² For the reasons set forth below, we grant Wetzel's Request for Review and remand Wetzel's funding application to SLD for further determination in accordance with this Order.

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 In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth the

¹Letter of Appeal from Nathaniel Hawthorne, Attorney for Wetzel County School District, to the Federal Communications Commission, filed May 15, 2000 (Request for Review).

²See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Paul Karas, Wetzel County School District, issued May 5, 2000 (Funding Commitment Decision Letter).

³47 C.F.R. §§ 54.502, 45.503.

school's technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ This information is generally provided in Block 5 of Form 471. Among other information, Block 5 requires the applicant to indicate services requested, the name of the service provider, the type of service or product for which support is sought, and the estimated total annual pre-discount cost. Using information provided by the applicant in its Form 471, the Administrator determines the amount of discounts for which the applicant is eligible. Approval of the application is contingent upon the filing of Form 471, and funding commitment decisions are based on information provided by the school or library in this form. If applicants previously received discounts on services covered by a qualified Form 470 and those services are part of an existing multi-year contract for all or part of the new funding year, applicants need not file a new Form 470 to receive subsequent funding for those services. A new Form 470, however, must be submitted each year for tariffed services.⁶

3. The instant Request for Review arises from Wetzel's application for discounted telecommunications services for Funding Year 3. In its Funding Year 3 Form 471, Wetzel sought support in Funding Request Number (FRN) 368803 for telecommunications services from OneStar Long Distance, Inc. valued at \$18,000.⁷ Wetzel cited to a Funding Year 2 Form 470 as the Form 470 that supported its request.⁸ In its Funding Commitment Decision Letter, dated May 5, 2000, SLD denied Wetzel's request stating that the services it sought were not requested on a Form 470 and posted to the SLD website as required.⁹

4. In this appeal, Wetzel claims that the services requested in FRN 368803 are based on a multi-year contract, not a tariff, and that the service request was properly posted for bidding on the SLD web site.¹⁰ With its Request for Review, Wetzel has submitted as evidence a copy of a Form 470, Universal Service Control Number (USCN) 732160000114283 (hereinafter "Year 2 Form 470"), that was posted on the SLD web site on December 8, 1998 and requested telecommunications services which it described as "[t]oll charges, additional to POTS or basic service, including intrastate, interstate and international."¹¹

⁴ 47 C.F.R. § 54.504 (b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ See Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form, OMB 3060-0806 (September 1998) (Form 470 Instructions).

⁷ FCC Form 471, Wetzel County Public School District, filed January 18, 2000 (Wetzel Form 471), at 3.

⁸ *Id.*

⁹ See Funding Commitment Decision Letter at 6.

¹⁰ See Request for Review at 2.

¹¹ FCC Form 470, West Virginia Dept. of Education, USC No. 732160000114283, filed December 8, 1998 (Year 2 Form 470), at 2; see Request for Review, attachment. The Form 470 indicates that West Virginia DOE (continued....)

5. On review, we find that there was no basis in the record for construing the telecommunications request as a tariff request. The Form 471 request specified that it was a contract request, by indicating a contract award date of March 25, 1999, and a contract expiration date of March 25, 2001.¹² Further, the Year 2 Form 470, which Wetzel cited as supporting its request, is at least consistent with a request for contract services, because it indicated a request for telecommunications services without specifying whether the services should be under contract or tariff rates.¹³

6. The record also supports the conclusion that Wetzel's contract was properly bid pursuant to the posting of the Year 2 Form 470. FRN 368803 lists a contract award date, March 25, 1999, that was shortly after the Year 2 Form 470's allowable contract date of January 9, 1999.¹⁴ Further, FRN 368803 seeks funding of telecommunications services (specifically, long distance), and the Year 2 Form 470 posts a request for telecommunications services including POTS or basic service.¹⁵ It is true that there is no excerpt of the contract in the record or other evidence confirming its existence. However, SLD never asked Wetzel to supply such confirmation. Had SLD requested actual evidence of the contract and Wetzel failed to supply it, our view of the merits of Wetzel's Request for Review might be different. Instead, SLD re-construed the request without giving Wetzel notice and opportunity to support its claim. This was an error which warrants granting Wetzel's Request for Review and remanding this matter to SLD for further consideration.

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requested these services as a consortium on behalf of billed entities including "All Public School Districts" in West Virginia. *Id.* It is clear, therefore, that the Form 470 request encompassed contract telecommunications services for Wetzel.

¹² Wetzel Form 471 at 3.

¹³ Year 2 Form 470 at 2.

¹⁴ Wetzel Form 471 at 3; Year 2 Form 470 at 1.

¹⁵ Wetzel Form 471 at 3; Year 2 Form 470 at 2.

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 Request for Review filed May 15, 2000, by Wetzel County School District, New Martinsville, West Virginia, IS GRANTED to the extent provided herein and that Wetzel's application IS REMANDED to SLD for further consideration in light of this decision.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division