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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Cynthiana-Harrison County Public Library)
Cynthiana, Kentucky)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

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File No. SLD-155991

CC Docket No. 96-45✓

CC Docket No. 97-21

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 Cynthiana-Harrison County Public Library (Cynthiana-Harrison), Cynthiana, Kentucky.¹ Cynthiana-Harrison seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) denying Cynthiana-Harrison's Funding Year 2 application for discounted services under the schools and libraries universal service support mechanism. For the reasons set forth below, we deny the Request for Review and affirm SLD's decision.

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.² The Commission's rules provide that an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.³ Commission rules exempt contracts entered into on or prior to July 10, 1997 from competitive

¹ Letter from E. Susan Ellis, Cynthiana-Harrison County Public Library, to Federal Communications Commission, filed July 25, 2000 (Request for Review).

² 47 C.F.R. §§ 54.502, 54.503.

³ 47 C.F.R. §§ 54.504.

bidding requirements for the duration of the contract.⁴ These rules also provide that contracts signed after July 10, 1997 and before January 30, 1998 (the date on which the Schools and Libraries website was fully operational) are exempt from the competitive bidding requirement for services provided through December 31, 1998.⁵ 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 universal service competitive bidding system became fully operational.⁶

3. Unless the competitive bidding exemption applies, the Commission's rules require that an applicant file an FCC Form 470 requesting services with SLD, for posting to the SLD website.⁷ The applicant must wait 28 days before entering into a contract with a service provider for the requested services and submitting an FCC Form 471 requesting support for the services ordered by the applicant.⁸ Further, the instructions for the FCC Form 471 state that the date of signature for the FCC Form 471 "CANNOT be earlier than the 29th day following the posting of the associated FCC Form 470 to the [SLD] Web Site."⁹

4. In this case, Cynthiana-Harrison's Funding Year 2 FCC Form 470 was posted on April 8, 1999.¹⁰ As a result, the earliest allowable contract date (and thus, the earliest date for

⁴ 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 (1998) (*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.

⁵ *Id.*

⁶ See *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); *July 10 Order*, 12 FCC Rcd at 10098, para. 9.

⁷ See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470).

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

⁹ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (December 1998) at 24 (FCC Form 471 Instructions).

¹⁰ FCC Form 470, Cynthiana-Harrison County Public Library, filed April 8, 1999.

signing and submitting Cynthiana-Harrison's FCC Form 471) was May 6, 1999.¹¹ Notwithstanding this date, Cynthiana-Harrison submitted its FCC Form 471 on April 26, 1999, with a signature date of April 15, 1999.¹²

5. On July 14, 2000, SLD rejected certain Cynthiana-Harrison's Funding Year 2 Form 471 for failure to comply with SLD's minimum processing standards.¹³ Specifically, SLD stated that the application was rejected because it had a signature date before the allowable contract date.¹⁴ In response, Cynthiana-Harrison filed the pending Request for Review on July 26, 2000, asserting that the signature date was an error and that the correct signature date is subsequent to the allowable contract date.¹⁵

6. In its Request for Review, Cynthiana-Harrison asserts that the application signature date of April 15, 1999 was an erroneous date.¹⁶ It asserts that this error occurred when it was "reapplying" and photocopied the signature page from its prior application but didn't change the signature date.¹⁷ With the instant Request for Review, it has submitted a signature page with what it asserts is the correct date, June 8, 1999.¹⁸

7. Upon review of the record, we conclude that SLD correctly rejected the application. Cynthiana-Harrison's argument that the June 8, 1999 date is the correct one fails because the date on which Cynthiana-Harrison submitted corrections to its application is not the relevant date for purposes of determining whether it complied with competitive-bidding requirements. Fundamentally, we are concerned, as noted above, with the date on which the applicant entered into its service agreements, and as evidence of this, we look to the date the FCC Form 471 was signed or the date it was submitted.¹⁹ Even ignoring the date on the original signature page of Cynthiana-Harrison's application, the fact that it submitted its FCC Form 471 on April 26, 1999, only 18 days after posting its FCC Form 470, demonstrates conclusively that it did not wait at least 28 days from the date of posting its service needs before entering into a service agreement and thus violated the competitive bidding requirements.

¹¹ *Id.*

¹² FCC Form 471, Cynthiana-Harrison County Public Library, filed April 26, 1999.

¹³ Letter from School and Libraries Division, Universal Service Administrative Company, to E. Susan Ellis, Cynthiana-Harrison County Public Library, dated July 14, 2000 (Rejection Letter).

¹⁴ Rejection Letter at 1.

¹⁵ Request for Review at 1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Request for Review, attachment.

¹⁹ 47 C.F.R. § 54.504(c).

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 July 25, 2000 Request for Review filed by Cynthiana-Harrison County Public Library, Cynthiana, Kentucky, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau