

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

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In the Matter of)	
Altoona Area School District)	
Altoona, Pennsylvania)	Application Nos. E009360/E009361
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Changes to the Board of Directors)	
Of the National Exchange Carrier)	CC Docket No. 97-21 ✓
Association, Inc.)	
)	

ORDER

Adopted: June 26, 2001

Released: June 27, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review by Altoona Area School District (Altoona), Altoona, Pennsylvania, seeking review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Altoona seeks review of SLD's denial of its application for Funding Year 1 discounts for Internet access, internal connections, and telecommunications services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny Altoona's Request for Review.

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 provide that, with one limited exception, an eligible school, library, or consortium must seek competitive bids for all services eligible for support.⁴ The Commission reasoned that competitive bidding would ensure fiscal responsibility and would be the best means for ensuring that eligible schools and libraries are able to receive services at the most competitive

¹ Letter from Dean G. Wilt, Altoona Area School District, to Federal Communications Commission, filed February 7, 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 47 C.F.R § 54.504(a).

rates.⁵

3. To comply with this competitive bidding requirement, the Commission's rules require that an applicant submit to the Administrator a completed FCC Form 470, in which the applicant lists the services for which it seeks discounts.⁶ The Administrator must post the FCC Form 470 on its website and the applicant is required to wait 28 days before making a commitment to a selected service provider.⁷ The rules also require that the Administrator send confirmation to each applicant that its FCC Form 470 has been received and posted.⁸ After the FCC Form 470 has been posted for 28 days, and the applicant has selected a service provider, the applicant must submit to the Administrator an FCC Form 471, which lists the services that have been ordered.⁹

4. The Commission's rules provide a limited exemption from the competitive bidding requirement for applicants that have pre-existing contracts as defined by the Commission's rules.¹⁰ Specifically, the Commission's rules exempt contracts signed on or before July 10, 1997 from the competitive bidding requirements.¹¹

5. In Funding Year 1, Altoona filed two separate FCC Forms 470 seeking support for Internet access, ISDN service, and a Centrex system.¹² According to the applicant's own submissions to the Commission, it filed these FCC Forms 470 on April 14, 1998, one day before the closure of the Funding Year 1 application window.¹³ In both of these FCC Forms 470, Altoona indicated that it had pre-existing, binding contracts for these services, which had been signed before July 10, 1997 and was not seeking support for tariffed services. Therefore, SLD did not post

⁵ 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 (November 2, 2000).

⁶ 47 C.F.R. §§ 54.504(b)(1), (b)(3).

⁷ 47 C.F.R. § 54.504(b)(3).

⁸ 47 C.F.R. § 54.504(b)(4).

⁹ 47 C.F.R. § 54.504(b)(4).

¹⁰ 47 C.F.R. § 54.511(c).

¹¹ 47 C.F.R. § 54.511(c)(i).

¹² Respectively, FCC Form 470, Altoona Area School District, USCN 924720000103034, filed April 14, 1998, and FCC Form 470, Altoona Area School District, USCN 798540000102256, filed April 14, 1998.

¹³ *Id.* Since SLD is unable to locate the original forms filed by Altoona, we must rely on the copies of the Form 470s and Form 471s that Altoona submitted to the Commission.

Altoona's FCC Forms 470 for competitive bidding. Altoona filed its Funding Year 1 FCC Forms 471 with SLD on June 2, 1998. At some time thereafter, SLD denied both applications, and Altoona filed the pending appeal with the Commission.¹⁴

6. In its Request for Review, Altoona states that it learned that its Funding Year 1 applications were rejected by SLD for failing to comply with the competitive bidding requirement.¹⁵ Altoona argues that SLD should not have denied its applications for failing to post its FCC Form 470s because the service contracts at issue were pre-existing and, therefore, exempt from the competitive bidding rules.¹⁶

7. We agree with Altoona that it is exempt from the competitive bidding rules. All three service agreements that Altoona entered into with Bell Atlantic were signed by the parties prior to July 10, 1997, thereby exempting Altoona from posting these services for competitive bidding.¹⁷ However, we find that we must nevertheless deny Altoona's Request for Review because it failed to file its FCC Form 471 applications by the close of the Funding Year 1 filing window. To receive funding in Funding Year 1, applicants were required to complete the filing of both the FCC Form 470 and the FCC Form 471 by the close of the April 15, 1998 application filing window.¹⁸ Altoona claims in its Request for Review that it filed both its FCC Forms 470 and 471 by April 15, 1998. However, a review of SLD's records as well as documents submitted by Altoona reveal that Altoona filed its Forms 471 with SLD on June 2, 1998, nearly seven weeks after the application window closed.¹⁹

¹⁴ We have been unable to obtain a copy of SLD's decision, and accordingly rely on Altoona's description of its content.

¹⁵ Request for Review at 1.

¹⁶ See *id.* All three service agreements that Altoona entered into were signed by the parties prior to July 10, 1997, thereby exempting Altoona from the requirement that Forms 470 must be posted for 28 days. The agreement between Altoona and Bell Atlantic for Internet access was signed on June 18, 1997. The agreement between Altoona and Bell Atlantic for ISDN service was signed on July 1, 1997. The agreement between Altoona and Bell Atlantic for a Centrex system was signed on April 25, 1997.

¹⁷ The agreement between Altoona and Bell Atlantic for Internet access was signed on June 18, 1997. The agreement between Altoona and Bell Atlantic for ISDN service was signed on July 1, 1997. The agreement between Altoona and Bell Atlantic for a Centrex system was signed on April 25, 1997. These dates are established by copies of the three service agreements between Bell Atlantic and Altoona included in the record.

¹⁸ Under the Commission's rules, funds available for discounted services are provided on a first-come-first-served basis, but applications filed within an initial filing period (the filing window) are treated as if they were received simultaneously. 47 C.F.R. § 54.507(c). In Funding Year 1, because demand for discounted services exceeded the available funding, no applications for discounted services filed outside the filing window (which closed on April 15, 1998) received funding. See *Request for Review by Be'er Hagolah Institutes, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-108710, CC Dockets No. 96-45 and 97-21, Order, DA 99-2297, para. 2 (Com. Car. Bur. rel. October 25, 1999).

¹⁹ See FCC Forms 471, Altoona Area School District, filed June 2, 1998. This date is confirmed by the date stamp on the submitted copies of the FCC Forms 471 as well as by SLD internal records. We also note that the FCC (continued....)

8. Therefore, while Altoona is correct that, because its agreements were entered into prior to July 10, 1997, it is exempt from the posting requirement, we must deny this appeal because Altoona filed its Forms 471 after the filing window closed. Altoona's exemption from the 28-day posting requirement did not relieve it of its obligation under program rules to file its Forms 471 prior to the close of the application window, and we uphold SLD's denial of funding on that grounds.

9. 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, 54.722(a), that the Request for Review filed by Altoona Area School District, Altoona, Pennsylvania, on February 7, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Mark G. Seifert for".

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

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Forms 471 were signed and dated May 25, 1998, which is consistent with the receipt date of June 2, 1998 rather than Altoona's claim that the FCC Forms 471 were submitted by April 15, 1998.