

Federal Communications Commission

POSTAL ROBBERY DA 01-1513

Before the
Federal Communications Commission
Washington, DC 20554

2001 JUN 29 P 5:27

In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Rib Lake School District)
Rib Lake, Wisconsin)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-153280

CC Docket No. 96-45

CC Docket No. 97-21 ✓

RECEIVED

ORDER

Adopted: June 26, 2001

Released: June 27, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Request for Review submitted by Rib Lake School District (Rib Lake), Rib Lake, Wisconsin, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Rib Lake seeks review of SLD's August 31, 1999 decision to deny Rib Lake'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 Rib Lake'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, which is posted to the Administrator's website for all

¹ Letter from Robert Anderson and Dan Boxx, Rib Lake School District, to Federal Communications Commission, filed June 2, 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.

potential competing service providers to review.⁴ 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.⁵ 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 a limited exemption from the 28-day competitive bid requirement for applicants that have "pre-existing contracts," as defined by the Commission's rules.⁶ As described in the instructions for completing FCC Form 470, services ordered pursuant to a tariff do not constitute a "pre-existing contract."⁷ Item 10 in Block 3 of the FCC Form 470 directs the applicant to check the box if it has an existing, binding contract. If an applicant checks Item 10, the SLD will not post the FCC Form 470.⁸ Applicants with existing contracts are still required, however, to wait 28 days before filing their FCC Form 471, in order to encourage competitive bidding on contracts.⁹

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.¹⁰ The Commission has concluded that competitive bidding is

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470), 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, 9078, para. 575 (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 First Report and 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).

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

⁶ A signed contract between an eligible school, library, or consortium for services eligible for discounts under the schools and libraries universal service support mechanism is exempt from the Commission's competitive bidding requirements as follows: (1) a contract signed on or before July 10, 1997 is exempt from the competitive bid requirements for the life of the contract; and (2) a contract signed after July 10, 1997, but the [January 30, 1998] date on which the universal service competitive bid system became operational, is exempt from the competitive bid requirements only with respect to services that are provided under such contract for the first funding period. 47 C.F.R. §§ 54.511(c)(1)(i) and (ii); 54.511(d).

⁷ FCC Form 470, "Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470)" at 7. *See also Federal-State Joint Board on Universal Service and Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure, and Pricing End User Carrier Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45 and Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5441 at para. 217 (1998); *Federal-State Joint Board on Universal Service*, Tenth Order on Reconsideration, CC Docket No. 96-45, 14 FCC Rcd 5983 (1999).

⁸ 47 C.F.R. § 54.511(c).

⁹ 47 C.F.R. § 54.504(b)(4).

¹⁰ *See Federal-State Joint Board on Universal Service*, Order on Reconsideration, CC Docket No. 96-45, 12 FCC Rcd 10095, 10098, para. 9 (1997) (*July 10 Order*).

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.¹¹

5. By letter dated August 31, 1999, SLD rejected seven Funding Request Numbers (FRNs) that reflected a request for discounts made by Rib Lake for Funding Year 2 (July 1, 1999 to June 30, 2000).¹² SLD stated that the FRNs were rejected because “[t]he type of service requested on [FCC] Form 471 was not posted to the web site because Item 10 was checked on the [FCC] Form 470, thereby not meeting the 28 day competitive bidding requirement.”¹³

6. On September 22, 1999, Rib Lake appealed the decision by letter to SLD.¹⁴ SLD denied the appeal on March 21, 2000.¹⁵ SLD explained that it had rejected FRNs 270800, 270804, 270811, and 270819 because “[t]ariff telecommunications services were not posted to the Web Site for 28 days because [Rib Lake] did not post for these services on the [FCC] Form 470. FCC Competitive Bidding Requirements for this program require that these services MUST be posted to the Administrator’s Web site on a[n FCC] Form 470 for 28 days before selecting a vendor, entering into a contract, signing and submitting a[n FCC] Form 471. The 470 Instructions clearly state, if you are purchasing telecom services in accordance with a tariff and do not have a signed binding contract, you cannot treat it as an existing contract.”¹⁶

7. SLD also denied FRNs 270807, 270814, and 270822, explaining, “[s]ervices requested on the [FCC] Form 471 that you filed for [F]unding [Y]ear two (July 1, 1999-June 20, 2000) were not posted to the SLD Web site for 28 days because the [FCC] Form 470 that you referenced on your [FCC] Form 471 (470 USCN: 282420000198320 and 454730000154932) did not request Internet Access Service. FCC Competitive Bidding Requirements for this program state that services MUST be posted to the Administrator’s Web site on a[n FCC] Form 470 for 28 days before selecting a vendor, entering into a contract, signing a submitting a[n FCC] Form 471.”¹⁷

8. In the instant Request for Review, Rib Lake asserts that it did not follow competitive bidding procedures because (1) it claims that it has a contract date of June 1, 1997, which would constitute a “pre-existing contract” exempt under program rules from the competitive bidding

¹¹ *Universal Service First Report and Order*, 12 FCC Rcd at 9029, para. 480.

¹² Funding Commitment Decision Letter.

¹³ *Id.*

¹⁴ Letter from Robert Anderson and Dan Boxx, Rib Lake School District, to Schools and Libraries Division, Universal Service Administrative Company, filed September 22, 1999; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robert Anderson, Rib Lake School District, dated May 4, 2000 (Administrator’s Decision on Appeal).

¹⁵ Administrator’s Decision on Appeal.

¹⁶ *Id.*

¹⁷ *Id.*

process:¹⁸ (2) it understood from SLD help desk personnel that it had such a pre-existing contract that was exempt from competitive bidding; and (3) it believed that it did not have to engage in competitive bidding because its service provider, WiscNet, had a statewide contract with SLD in Wisconsin.¹⁹

9. We find that SLD properly denied Rib Lake's funding requests. Rib Lake contends that it checked Item 10 on its FCC Form 470, and therefore did not post the form for competitive bidding, because it had a pre-existing contract for services that was signed on June 1, 1997.²⁰ However, in its FCC Form 471, Rib Lake listed all but the WiscNet Internet Access service as tariffed services, not contract services.²¹ As for the WiscNet contract, it listed the award date for the WiscNet service as January 5, 1999, which indicates that that contract is not a pre-existing contract under our rules. Based on the information that Rib Lake gave SLD in the application process, SLD reasonably concluded that Rib Lake had no pre-existing contract. Therefore, nothing in the record suggests that Rib Lake was exempt from posting its FCC Form 470 for competitive bidding as required by the program rules.

10. As for Rib Lake's argument that it merely followed SLD's advice and instructions, precedent is clear that even where a party has received erroneous advice, the government is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when the requested relief is contrary to a rule.²²

11. Rib Lake also contends that it believed that because WiscNet held a contract statewide, Rib Lake was exempt from the competitive bidding process.²³ Yet our program rules provide for no such exemption. To the contrary, our rules and decisions consistently emphasize the importance of competitive bidding in all situations except where an applicant has a pre-existing contract.²⁴ Given that SLD had no evidence of such a contract, we find that on the record before it, SLD correctly denied funding to Rib Lake for failure to comply with the competitive bidding rules.

¹⁸ It is unclear from the Request for Review which funding requests Rib Lake claims were made pursuant to a pre-existing contract.

¹⁹ Request for Review.

²⁰ *Id.*

²¹ *Id.*

²² *In re Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4707-08, para. 22 (1991) (citing *Office of Personnel Management v. Richmond*, 497 U.S. 1046 (1990)).

²³ Request for Review.

²⁴ See, e.g., *Universal Service Order* at 9029, para. 480.

12. 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 June 2, 2000 Request for Review filed by Rib Lake School District, Rib Lake, Wisconsin, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Anita Choy for

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