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Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of	)	
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Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Project Interconnect Brooklyn Park, Minnesota	)	Files No. SLD-146858, 146854
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

ORDER

Adopted: July 10, 2001 **Released: July 11, 2001**

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Request for Review filed by Project Interconnect, Brooklyn Park, Minnesota, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).[1] Project Interconnect seeks review of a Funding Year 2 funding commitment decision issued by SLD denying Project Interconnect's requests in two applications under the schools and libraries program.[2] For the reasons discussed below, we grant in part and deny in part the Request for Review and remand the two applications to SLD for further review 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 on eligible telecommunications services, Internet access, and internal connections.[3] In order for an applicant to receive discounts on eligible services, the Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC

[1] Letter from William R. Leto, Project Interconnect, to Federal Communications Commission, filed October 16, 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.

Form 470, which is posted to the Administrator's website for all 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] Using information provided by the applicant in its FCC Form 471, the Administrator determines the amount of discounts for which the applicant is eligible.[6]

3. Project Interconnect is a consortium of libraries and K-12 school districts in the metropolitan area of Minneapolis/St. Paul, Minnesota.[7] Created to coordinate applications to a state telecommunications grant program, it subsequently expanded its activities to SLD applications.[8] On April 6, 1999, it filed two FCC Form 471 applications seeking Funding Year 2 support on behalf of fifty-four Minnesota school districts and several libraries.[9] In November of 1999, an SLD staff-member requested documentation demonstrating that the listed members were, in fact, participating in the consortium, and initially indicated that Project Interconnect could satisfy this demand by filing the letter of participation that each member signed upon initially joining the consortium.[10] The record reflects that a few weeks later, around December 1, 1999, Project Interconnect received an e-mail from a different SLD staff member, indicating that the letters of participation were not sufficient, and that Project Interconnect had ten days to submit a Letter of Agency from each member of the consortium specifically granting Project Interconnect the authority to seek funding from SLD on the member's behalf.[11] By December 10, 1999, Project Interconnect had submitted a number of such letters.[12]

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[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 (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).

[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] *See Request for Review by Metropolitan School District of Pike Township, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-120821, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 13891, para. 2 (rel. 2000).

[7] Request for Review at 1; Letter from Mary Mehsikomer, Minnesota Dept. of Children, Families & Learning, to Schools and Libraries Division, Universal Service Administrative Co., filed April 11, 2000 (CFL Appeal Letter) at 2.

[8] Request for Review at 1.

[9] FCC Form 471, Project Interconnect, App. No. 146854, filed April 6, 1999; FCC Form 471, Project Interconnect, App. No. 146858, filed April 6, 1999.

[10] Request for Review at 1.

[11] Request for Review at 1.

[12] *Id.*.

4. On March 27, 2000, SLD issued a funding decision denying both of Project Interconnect's applications.[13] It based this decision on its finding that at the time the applications were filed, Project Interconnect did not have permission to act on behalf of all of its members.[14] SLD stated that "at least one member of your consortium was unaware of the application that you submitted, and you were unable to provide us with a Letter of Agency from that entity."[15] SLD noted that applicants must certify on their FCC Form 471 that they are authorized to submit an application on behalf of each listed entity, and held that "since you are unable to support your certification, your application must be denied in full."[16]

5. On April 25, 2000, Project Interconnect appealed the decision to SLD.[17] It conceded that "[g]iven the short time frame and season, [it] may have missed a few letters out of sixty or so required."[18] However, it asserted that a complete set was provided with the appeal, and further argued that all members of the project should not be penalized because of the slow response of a few of the members.[19]

6. By decision dated September 15, 2000, SLD denied the appeal. It asserted that it had given Project Interconnect longer than the standard seven days to produce the requested documentation, and that although additional Letters of Agency were provided with Project Interconnect's appeal papers, these letters were not signed until April 2000 and still did not cover all of the members of the consortium.[20] Project Interconnect filed the instant Request for Review on October 16, 2000.

7. In its Request for Review, Project Interconnect asserts that the set of Letters of Agency submitted with its SLD appeal did constitute a complete set.[21] It argues that throughout the process, it followed the procedures requested by SLD and made every attempt to meet SLD's documentation request.[22] As in its previous appeal to SLD, it asserts that it initially failed to submit a few of the Letters of Agency because of the short time given to produce them, and that because letters were submitted on behalf of most of the school districts, the few letters that were

[13] Letter from Schools and Libraries Division to William R. Leto, Project Interconnect, dated March 27, 2000 (Decision on Application).

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] Letter from William R. Leto, Project Interconnect, to Schools and Libraries Division, Universal Service Administrative Co., filed April 25, 2000 (SLD Appeal).

[18] SLD Appeal at 1.

[19] SLD Appeal at 1-2.

[20] Letter from Schools and Libraries Division, Universal Service Administrative Co., to William R. Leto, Project Interconnect, dated September 15, 2000 (Administrator's Decision on Appeal).

[21] Request for Review at 2.

[22] *Id.*

late should not result in the denial of funds to all members.[23] It suggests that if a reduction of funding is found to be appropriate, then the Commission should consider deleting the funding requests for those districts which did not provide the letters by December 10, 1999 and approve funding for the remainder.[24]

8. We initially note that SLD was acting within its authority in requiring Project Interconnect to produce Letters of Agency from each of its members expressly authorizing the consortium leader to submit an application on its behalf. Administration of the schools and libraries support mechanism is the responsibility of SLD under the oversight of the Schools and Libraries Committee of USAC.[25] Under the rules adopted in the Commission's *Eighth Reconsideration Order*, the Schools and Libraries Committee's functions include "development of applications and associated instructions," "review of bills for services that are submitted by schools and libraries," and "administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations."[26] Thus, under the *Eighth Reconsideration Order*, the Commission vested in the Schools and Libraries Committee and SLD the responsibility for administering the application process for the universal service support mechanism for eligible schools and libraries. We find that requiring a consortium to submit Letters of Agency from its members is consistent with the authority to implement administrative procedures which ensure compliance with Commission rules and regulations as granted in the *Eighth Reconsideration Order*.

9. The Commission's regulations allow schools and libraries to form consortia for purposes of seeking competitive bids on their service requests.[27] However, since discounts are restricted by statute to "bona fide request[s]" for services, a consortium application may only be submitted on behalf of schools and libraries which have actually authorized the consortium to make the request.[28] In Funding Year 2, this limitation was implemented in Item 29 of Block 6 of the FCC Form 471, in which an applicant was required to certify that it was authorized to submit the request on behalf of the consortium seeking discounts.[29] Although we have not previously addressed SLD's authority to demand documentation in support of the authority certification

[23] *Id.*

[24] *Id.*

[25] 47 C.F.R. § 54.705(a)(1) (setting forth the functions of the Schools and Libraries Committee) and 47 C.F.R. § 54.701(g)(i) (directing the Administrator to establish the Schools and Libraries Division, and setting forth its functions).

[26] 47 C.F.R. § 54.705(a)(1). *See also Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal State Joint Board on Universal Service, Third Report and Order and Fourth Order on Reconsideration* in CC Docket No. 97-21 and *Eighth Order on Reconsideration* in CC Docket No. 96- 45, 13 FCC Rcd 25058, 25075-76, paras. 30-31 and 34 (1998) (*Eighth Reconsideration Order*) (describing the functions of the Schools and Libraries Committee).

[27] 47 C.F.R. § 54.501(d)(1).

[28] 47 U.S.C. § 254(h)(1)(B).

[29] School and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806, Block 6, Item 29 (December 1998).

specifically, the Commission affirmed in *United Talmudical Academy* that SLD may engage in a detailed review of an applicant's FCC Form 471 Item 22 certification, in which the applicant certifies that the schools and libraries represented by the applicant have secured access to all of the resources necessary to make effective use of the services.[30] The Commission concluded that a detailed review of that certification helped to ensure compliance with the Commission's rules and also helped to avoid waste, fraud and abuse in the schools and libraries universal service support mechanism.[31] We find that engaging in a review of the Item 29 certification of FCC Form 471 serves the same purposes, and we therefore affirm SLD's authority to demand supporting documentation.

10. Project Interconnect asserted that the consortium membership forms which it initially offered to SLD should satisfy SLD's FCC Form 471 Item 29 certification review because Minnesota law mandates that school districts, as prerequisites for receiving state funding of telecommunications services, become members of a consortium like Project Interconnect and further mandates that the consortium seek funding from SLD. However, we find that SLD acted reasonably in requiring specific Letters of Agency. The proffered membership forms might have established Project Interconnect's authority under state law to submit an application on a school district's behalf, but an applicant's authority under state law to represent a school or library is not SLD's only concern. In the case of consortia applications, SLD must also ensure that the consortium members are aware of the application to be filed and how that application obligates the expenditure of financial and professional resources. Ensuring that a school or library is aware of and approves the application on its behalf also helps to avoid cases of duplicative requests from different applicants applying on behalf of the same school or library.

11. Some of these potential problems regarding consortia membership are demonstrated in the application before us. The record reflects that, after receiving Project Interconnect's FCC Form 471 application, SLD determined that at least one school district which was claimed as a member was unaware that the application had been submitted on its behalf. In reviewing the record, we have also determined that the pending applications by Project Interconnect and a separate application by a consortium named Central Minnesota Computer Center sought Year 2 funding for Internet access on behalf of the Minnesota public schools in the Chisago Lakes school district.[32] The requirement that consortium leaders provide Letters of Agency can help to avoid this confusion over who a school district has actually chosen to seek SLD funding on its behalf.[33] We therefore find that SLD appropriately required that Project Interconnect submit Letters of Agency demonstrating that its consortium members were actually aware of the funding application and authorized Project Interconnect to submit it on their behalf.

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[30] *Request for Review by United Talmudical Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-105791, 15 FCC Rcd 423, paras. 9, 14 (2000) (*United Talmudical Academy*).

[31] *Id.* at para. 14.

[32] *See* FCC Form 471, Project Interconnect, File No. SLD-146858, filed April 6, 1999; FCC Form 471, Central Minnesota Computing Center, File No. SLD-143701, filed April 6, 1999.

[33] Given the dual representation of the Chisago Lakes School District, it is interesting to note that, as discussed in greater detail below, Project Interconnect failed to submit a Letter of Agency from Chisago Lakes.

12. We also find that SLD correctly denied funding for those school districts from which it received no Letter of Agency prior to making its funding decision.[34] In order to ensure that implementation of the schools and libraries program is not unduly delayed, there cannot be an open-ended time period in which applicants are allowed to respond to requests for information.[35] Therefore, when SLD requests information with respect to a consortium leader's authority to file an FCC Form 471 on behalf of each of its members, applicants must respond within a reasonable time period or risk the potential of denial because SLD has not established authorization by the members in question.[36]

13. Project Interconnect asserts in its Request for Review that the additional ten days from December 1, 1999 that SLD provided to Project Interconnect to submit the required Letters of Agency was not a reasonable period of time.[37] However, we note that the Administrator's decision denying the applications was not issued until March 27, 2000, almost four months later, and that by that time, five Letters of Agency from Spring Lake Park, Waconia, Chaska, Saint Paul, and Chisago Lakes school districts had still not been filed.[38] The first four school districts did not submit Letters of Agency until April, 2000, as evidenced by the fact that the signatures on the Letters of Agency were dated in that month.[39] As for the fifth, Chisago Lakes, there is no evidence in the record that it ever submitted a Letter of Agency, either before or after the SLD decision. Given the period of time between the documentation demand and SLD's denial of the applications, and the absence of any justification for the delay, we find that SLD correctly denied the application requests from the consortia members Spring Lake Park, Waconia, Chaska, Saint Paul, and Chisago Lakes.

14. However, we find that SLD should not have denied support for the entire consortium based on the failure of these five districts to submit their Letters of Agency. We note initially that the consortium leader, Project Interconnect, had letters of membership from each of its members establishing their participation in the consortium.[40] Thus, there is no evidence that Project Interconnect was acting in bad faith in putting forward an application seeking support for

[34] *See* Administrator's Decision on Appeal at 1; Decision on Application at 1; Request for Review at 2 (conceding that Project Interconnect's original documentation response was "missing certain letters").

[35] *Request for Review by Nefesh Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-27881, CC Dockets No. 96-45 and 97-21, Order, DA 99-2284, para. 4 (Com. Car. Bur. rel. October 22, 1999).

[36] *Id.*

[37] Request for Review at 2 (asserting that applicant was unable to obtain all the Letters of Agency because of the "short period of time" afforded).

[38] These districts include 135 schools. *See* FCC Form 471, Project Interconnect, App. No. 146858, filed April 6, 1999.

[39] *See* Letter of Agency For Project Interconnect from Spring Lake Park Public Schools, dated April 11, 2000; Letter of Agency For Project Interconnect from Saint Paul Public Schools, dated April 13, 2000; Letter of Agency for Project Interconnect from Chaska Public Schools, dated April 20, 2000; Letter of Agency for Project Interconnect from Waconia Public Schools, dated April 20, 2000.

[40] Request for Review at 1.

these districts, a factor that might warrant a more general denial. Further, we find that Project Interconnect substantially complied with SLD's request by obtaining Letters of Agency from the vast majority of its member school districts in a timely fashion. We conclude that to deny the entire application under these circumstances would unfairly penalize the entire consortium where only a few members of the consortium failed to produce the requested documentation. Further, it would tend to make applicants reluctant to risk applying as consortia, in contravention to the Commission's stated desire to "encourage schools and libraries to aggregate their demand with others to create a consortium with sufficient demand to attract competitors and thereby negotiate lower rates . . . ."[41]

15. Therefore, although we affirm SLD's denial of funding to the consortium members Spring Lake Park, Waconia, Chaska, Saint Paul, and Chisago Lakes, we reverse its denial as to the remaining members of the consortium, and we remand these applications to SLD for further review. In doing so, we make no determination as to whether the remaining members of the consortium are ultimately entitled to discounts, beyond our finding that they should not be denied on grounds that Project Interconnect lacks authority to make the applications on their behalf.

16. 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 by Project Interconnect on October 16, 2000, IS GRANTED IN PART AND DENIED IN PART, and these applications are remanded to SLD for further action consistent with this opinion.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey

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[41] *Universal Service Order*, 12 FCC Rcd 8776, 9027.