

FCC MAIL ROOM

Before the  
Federal Communications Commission  
Washington, DC 20554

2002 AUG -3 P 1: 24

In the Matter of 2001 AUG -3 P 1: 29 )  
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 Request for Review of the )  
 Decision of the )  
 Universal Service Administrator by I V E D )  
 )  
 Goshen Community Schools )  
 Goshen, Indiana )  
 )  
 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-185214

CC Docket No. 96-45

CC Docket No. 97-21 ✓

**ORDER**

**Adopted: July 30, 2001**

**Released: July 31, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by Goshen Community Schools, Goshen, Indiana, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).<sup>1</sup> Goshen seeks review of SLD's partial denial of its Funding Year 3 application for discounts under the schools and libraries universal service mechanism.<sup>2</sup> For the reasons discussed 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.<sup>3</sup> The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.<sup>4</sup> In accordance with the Commission's

<sup>1</sup> Letter from Steven Clason, Goshen Community Schools, to Federal Communications Commission, dated March 26, 2001 (Request for Review).

<sup>2</sup> 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).

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>4</sup> 47 C.F.R. §§ 54.504, 54.511(c).

rules, an applicant must file with SLD, for posting to its website, an FCC Form 470 requesting services.<sup>5</sup> The applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471 requesting support for the services ordered by the applicant.<sup>6</sup> The Commission's rules provide a limited exemption from the 28-day competitive bid requirement when applicants have "existing contracts," as defined by the Commission's rules.<sup>7</sup>

3. On August 4, 2000, SLD issued a Funding Commitment Decision Letter that, *inter alia*, denied Funding Request Number (FRN) 384636 of Goshen's Funding Year 3 application on the grounds that the FCC Form 470 cited in support of the request was a Funding Year 2 FCC Form 470.<sup>8</sup> On August 11, 2000, Goshen appealed, asserting that it had made an error in FRN 384636, stating that it was a month-to-month service when it was actually a tariff service.<sup>9</sup> Goshen asserted that it "in fact did not do a new 470 as these three services [included in FRN 384636] were just continuations of existing services."<sup>10</sup> On March 12, 2001, SLD denied the appeal, finding that a service offered pursuant to a tariff still had to be competitively bid each funding year, and thus could not be supported by an FCC Form 470 posted in a previous year.<sup>11</sup> Goshen then filed the pending Request for Review.

4. In its Request for Review, Goshen argues that it did not file a FCC Form 470 in Funding Year 3, because it had an existing, signed contract.<sup>12</sup> The issue is whether the filing of Goshen's FCC Form 470 is governed by the filing rules for existing contracts or the rules for tariff and/or month-to-month services. Services that are covered by a qualified existing contract for all or part of the funding year do not require the filing of a FCC Form 470; a qualified existing contract is a signed multi-year or renewable contract executed pursuant to the posting of a FCC Form 470 in a previous year.<sup>13</sup> Tariff services are telecommunication services purchased

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<sup>5</sup> 47 C.F.R. §§ 54.504(b)(1), 54.504(b)(3); *see* Instructions for Completing the Schools and Libraries Universal Service, Description of Services Requested and Certification Form (FCC Form 471), OMB Approval No. 3060-0806 (September 1999) at 2-3.

<sup>6</sup> 47 C.F.R. § 54.504(c); *see* Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB Approval No. 3060-0806 (September 1999) at 4; *see also* SLD Website, <<http://www.universalservice.org>>.

<sup>7</sup> 47 C.F.R. § 54.511(c).

<sup>8</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Steven Clason, Goshen Community Schools District, dated August 4, 2000, at 5.

<sup>9</sup> Letter from Steven Clason, Goshen Community Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed August 11, 2000, at 1.

<sup>10</sup> *Id.*

<sup>11</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Steven Clason, Goshen Community Schools District, dated March 12, 2001, at 1-2.

<sup>12</sup> Request for Review at 2.

<sup>13</sup> *Request for Review by Tomahawk, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-183249, CC Dockets No. 96-45 and 97-

at regulated rates for which the applicant does not have a signed, written contract.<sup>14</sup> A FCC Form 471 must be filed each year for discounts for month-to-month and tariff services.<sup>15</sup>

5. On review, we find that SLD correctly concluded on the record before it that Goshen's tariff service does not qualify as an existing contract. Although Goshen asserts that the service is pursuant to an existing contract, the information it provided in FRN 384636 is inconsistent with that assertion, in that it includes no contract award date, contract number, or contract termination date.<sup>16</sup> Nor did Goshen supply any additional documentation demonstrating the existence of a pre-existing written contract with its FCC Form 471.<sup>17</sup> Based on this record, we affirm SLD's conclusion that the request was for a tariff service unsupported by a multi-year written contract, and that Goshen's failure to file a new FCC Form 470 in Funding Year 3 supporting the request warranted denial of the request.

6. 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 Goshen Community Schools, Goshen, Indiana, on March 26, 2001, IS DENIED.

## FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert  
Deputy Chief, Accounting Policy Division

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21, Order, DA 01-1036, para. 5 (Com. Car. Bur. rel. April 24, 2001) (*Tomahawk*); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 6732 (Com. Car. Bur. 1999) (holding that where a contract was awarded pursuant to the posting of an FCC Form 470, contract renewal provision may be exercised in subsequent years without further posting of FCC Form 470).

<sup>14</sup> *Tomahawk* at para. 5.

<sup>15</sup> *Id.*

<sup>16</sup> FCC Form 471, Goshen Community School District, filed January 17, 2000, at 3.

<sup>17</sup> *Cf. Tomahawk* at para. 6 (finding that applicant demonstrated that tariff service was supported by contract where copy of the contract had been attached to the Form 471).