

Federal Communications Commission

DA 01-1825

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Before the
Federal Communications Commission
Washington, DC 20554

2001 AUG -3 P 1: 28

2002 AUG -3 P 1: 25

In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
ACCEPT Educational Collaborative)
Framingham, Massachusetts)
)
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-35535
CC Docket No. 96-45 ✓
CC Docket No. 97-21

ORDER

Adopted: July 31, 2001

Released: August 1, 2001

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Request for Review submitted by the ACCEPT Educational Collaborative (ACCEPT), Framingham, Massachusetts, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ ACCEPT seeks review of SLD's decision to deny in part ACCEPT'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 ACCEPT'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 470,⁴ which is posted to the Administrator's website for all potential competing service providers to

¹ Letter from Michael J. Palladino, Accept Educational Collaborative, to Federal Communications Commission, dated April 7, 1999 (Request for Review). 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).

² See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Michael J. Palladino, ACCEPT Educational Collaborative, dated October 29, 1999 (Funding Commitment Decision Letter).

³ 47 C.F.R. §§ 54.502, 54.503.

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

review.⁵ 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.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. In the *Tenth Reconsideration Order*, the Commission amended its rules governing the exemption of pre-existing contracts from the competitive bidding requirements of the schools and libraries universal service support mechanism to account for changes in the funding year from a calendar to a fiscal year.⁷ Specifically, the Commission amended its rules to permit eligible schools, libraries, and consortia that had filed, in the initial filing window for the 1998 funding year, applications for discounts under existing contracts otherwise terminating between April 15, 1998 and June 30, 1999, to extend or renew those contracts to a date no later than June 30, 1999.⁸ Furthermore, the *Tenth Reconsideration Order* permitted applicants making such extensions to continue to receive discounts for services delivered from January 1, 1999 through June 30, 1999 under the extended contracts.⁹ This change allowed applicants receiving discounts on services provided under pre-existing contracts terminating after the filing window closed to continue to receive discounts on the services provided under those contracts from January 1, 1999 until the end of the first funding year on June 30, 1999, without having to re-bid those services for this brief interim period.¹⁰

4. The *Tenth Reconsideration Order* ensured that the extension to June 30, 1999 of the exemption from competitive bidding under the program, extended as a result of the Commission changing the dates of the annual funding cycle, applied not just to those whose contracts expired between December 31, 1998 and June 30, 1999, but also to those whose contracts expired between the close of the 1998 filing window and December 31, 1998. The *Tenth Reconsideration Order*, however, did not allow for discounts for the period between the original contract expiration date and December 31, 1998.¹¹ For example, if a recipient's contract termination date was in July of 1998, the *Tenth Reconsideration Order* provided that the recipient could extend the contract and receive discounts from January 1, 1999 to June 30, 1999, but could not receive discounts between the July, 1998 contract end date and December 31, 1998. Because a recipient with a contract expiring before the start of the original January 1, 1999 funding year would not, under the original funding year cycle, have received discounts for the period between the contract end date and the start of the funding year on January 1, 1999, allowing discounts for such a

⁵ 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 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).

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

⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration, 14 FCC Rcd 5983 (1999).

⁸ *See id.* at 5989-91, paras. 12-15.

⁹ *See id.* at 5990-91, para. 15.

¹⁰ *See id.* at 5989-91, paras. 12-15.

¹¹ *See id.* at 5991, para. 15.

recipient during that period, after the funding cycle had been changed, would provide the applicant with discounts it would not otherwise have received.¹²

5. ACCEPT filed its FCC Form 471 on April 15, 1998, the last day of the filing window for Funding Year 1 applications. In its FCC Form 471, ACCEPT indicated that on August 1, 1997, it had awarded the Merrimack Education Center a contract for Internet access. It also indicated a contract expiration date of July 1, 1998 in the funding request.¹³

6. More than eight months after ACCEPT filed its FCC Form 471, ACCEPT filed a letter on January 4, 1999 with SLD indicating that it had erred in citing July 1, 1998 as the contract expiration date, and that the correct contract end date was June 30, 1999 or July 1, 1999.¹⁴ In its appeal, ACCEPT sought full funding from January 1, 1998, through June 30, 1999, rather than have funding terminated on July 1, 1998.¹⁵ At approximately the same time that ACCEPT filed its appeal, it also filed its FCC Form 486, signifying that service had begun.¹⁶ In response to ACCEPT's filing of its Form 486, SLD notified ACCEPT that funding would be provided for the period from January 1, 1998 (the start of the program) to July 1, 1998 (which ACCEPT had originally described as the contract expiration date).¹⁷

7. On March 11, 1999, SLD issued an Administrator's Decision on Appeal in response to ACCEPT's appeal, rejecting ACCEPT's claim for discounts beyond July 1, 1998.¹⁸ SLD explained, "Program rules restrict the funding of discounts on approved services that are delivered during the 1998 funding period (the actual service start date or January 1, 1998, whichever is later, through the contract end date or June 30, 1999, whichever is earlier)."¹⁹ On April 7, 1999, ACCEPT appealed SLD's decision to the Commission.²⁰

8. On May 10, 1999, SLD issued another Administrator's Decision on Appeal letter, supplanting its March 11, 1999 decision.²¹ SLD stated, "The original funding commitment was based on the contract dates listed on your Form 471; nothing in the documentation supplied with your Form 471 indicated a contract end date other than 7/01/98; nor did you attempt to correct the date during problem

¹² *See id.*

¹³ FCC Form 471, ACCEPT Educational Collaborative, filed April 15, 1998.

¹⁴ Letter from Michael J. Palladino, ACCEPT Educational Collaborative, to the Schools and Libraries Corporation, filed January 4, 1999, at 1 (SLD Appeal).

¹⁵ *See id.* at 2.

¹⁶ Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (April 2000) (Form 486). The Form 486 is required to inform SLD that the eligible entity participating in the universal service support mechanism has begun or has planned to begin receiving services. Receipt of a properly completed Form 486 triggers the process for SLD to receive invoices.

¹⁷ *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Michael J. Palladino, ACCEPT Educational Collaborative, dated January 28, 1999.

¹⁸ *See* SLD Appeal at 2.

¹⁹ *Id.* at 2.

²⁰ *See* Request for Review.

²¹ *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Michael J. Palladino, ACCEPT Educational Collaborative, dated May 10, 1999 (May 10 Administrator's Decision on Appeal).

resolution.”²² SLD added, however, that in accordance with the Commission’s *Tenth Reconsideration Order*, ACCEPT would be permitted to extend its contract through June 30, 1999, and to qualify for additional discounts on services received under those contracts from January 1, 1999 through June 30, 1999.²³ SLD informed ACCEPT, however, that in accordance with the *Tenth Reconsideration Order*, discounts would not be available for the period between the original contract expiration date of July 1, 1998 and December 31, 1998.²⁴

9. On October 29, 1999, SLD issued a Funding Commitment Decision Letter to ACCEPT, partially approving its funding request for \$50,752.80.²⁵ Although it is not apparent from the Funding Commitment Decision Letter, this amount was approved for the periods of January 1, 1998 to July 1, 1998 (the end date of the contract as originally submitted on the FCC Form 471), and from January 1, 1999 through June 30, 1999 (the extension pursuant to the *Tenth Reconsideration Order*).²⁶

10. On appeal, ACCEPT has requested funding for the period from January 1, 1998 through June 30, 1999. Because SLD has committed funding to ACCEPT for the period from January 1, 1998 through June 30, 1998, and from January 1, 1999 through June 30, 1999, the only remaining question is whether to grant ACCEPT’s request for funding for the period between July 1, 1998, and December 31, 1998.

11. We conclude SLD properly denied the requested discounts. In its January 4, 1999 letter to SLD, ACCEPT concedes that it erred in listing July 1, 1998 as the contract expiration date.²⁷ Nothing in the documentation it filed originally with SLD indicated a different contract date, nor did ACCEPT provide documentation in the subsequent appeal conclusively demonstrating a different date. Therefore, based on the information it had been provided as of the time of its initial decision, SLD properly denied ACCEPT’s claim.²⁸ ACCEPT, in essence, requests that the Commission allow it to amend its original application to change the contract expiration date.²⁹ We decline to grant that request. SLD has established a policy that applicants are not permitted to amend completed FCC Forms 471 after the closure

²² *Id.*

²³ *Id.* See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration, 14 FCC Rcd 5983 (1999) (*Tenth Reconsideration Order*).

²⁴ May 10 Administrator’s Decision on Appeal, at 2.

²⁵ See Funding Commitment Decision Letter. SLD previously issued ACCEPT a Funding Commitment Decision Letter granting discounts of \$25,376.40, but that letter was superseded by the October 29, 1999 letter.

²⁶ See Funding Commitment Decision Letter; May 10 Administrator’s Decision on Appeal.

²⁷ SLD Appeal, at 1.

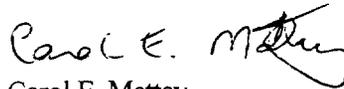
²⁸ In its appeal, ACCEPT also contends without elaboration that it was “advised [by SLD] to use the 7-1-98 expiration date.” Request for Review at 2. Even where a party has received erroneous advice, however, the government is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when relief is contrary to a rule. *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)). Moreover, ACCEPT was on notice when it submitted its Form 471 that the funding year at that time was based on a calendar year cycle (January 1-December 31), and therefore it could have requested funding for the entire year. See *Universal Service Order*, 12 FCC Rcd at 9057, para. 535.

²⁹ See Request for Review.

of the filing window.³⁰ This policy imposes upon applicants the responsibility of preparing their applications carefully and obtaining appropriate assistance. In light of the thousands of applications that SLD must review and process each year, we find that it is administratively necessary to require an applicant to be responsible for providing complete and accurate information in its FCC Form 471 upon which its ultimate funding is dependent.

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 Request for Review filed on April 7, 1999, by ACCEPT Educational Collaborative, Framingham, Massachusetts, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief, Common Carrier Bureau

³⁰ The Commission's rules require that applicants file a completed Form 471 by the filing window deadline to be considered pursuant to the funding priorities for "in-window" applicants. 47 C.F.R. §§ 54.504(c), 54.507(c).