

Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of)
)
 Request for Review of the)
 Decision of the)
 Universal Service Administrator by)
)
 Wayland Free Library)
 Wayland, New York)
)
 South Carolina Budget and Control Board)
 Office of Information Resources)
 Columbia, South Carolina)
)
 Federal-State Joint Board on)
 Universal Service)
)
 Changes to the Board of Directors of the)
 National Exchange Carrier Association, Inc.)

File No. SLD-134324

File No. SLD-120219

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: November 19, 2001

Released: November 20, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) are Requests for Review filed by Wayland Free Library (Wayland), Wayland, New York, and South Carolina Budget and Control Board, Office of Information Resources (SC), Columbia, South Carolina (collectively, Petitioners).¹ Petitioners seek review of decisions by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying requests for discounts under the schools and libraries universal service support mechanism for failure to satisfy the 28-day competitive bidding requirement.² For the reasons discussed below, we grant the pending Requests for Review and remand for further consideration.

¹ See Letter from Marian Crawford, Wayland Free Library, to Federal Communications Commission, filed May 9, 2000 (Wayland Request for Review); *Request for Review of the Decision of the Universal Service Administrator By South Carolina Budget and Control Board, Office of Information Resources*, CC Docket Nos. 96-45 and 97-21, Request for Review, filed July 12, 2000 (SC 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).

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 rates.⁵

3. The Commission's competitive bidding 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 assigns each FCC Form 470 a unique identifying number, which in Funding Year 2 was called a Universal Service Control Number (USCN). The Administrator must then post the FCC Form 470 on its web site and the applicant is required to wait 28 days before making a commitment to a selected service provider.⁷ The Commission's rules provide a limited exemption from the 28-day competitive bidding requirement for applicants that have pre-existing contracts as defined by the Commission's rules; in this case, the contract need not be subjected to competitive bidding, but must still be identified in an FCC Form 470.⁸ 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, and cites the FCC Form 470 that presented the service for competitive bidding, or in the case of services based on pre-existing contracts, the FCC Form 470 that presented that contract.⁹

4. In each of the pending applications, SLD issued Funding Commitment Decision Letters, denying a funding request because it found that the request had cited an FCC Form 470

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504(a).

⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 480 (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).

⁶ 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); *Universal Service Order*, para. 575.

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

⁸ 47 C.F.R. § 54.511(c); Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (December 1998) (Form 471 Instructions), at 7.

⁹ 47 C.F.R. § 54.504(c); FCC Form 471, Block 5.

that did not support the request.¹⁰ Each of the Petitioners then appealed to SLD, informing SLD that the USCN cited in the funding request was the result of a clerical error and referring SLD to the correct FCC Form 470 USCN.¹¹ SLD denied both appeals, on the grounds that the new FCC Form 470 numbers submitted by the Petitioners constituted impermissible new evidence.¹² Each of the Petitioners then submitted a Request for Review, again referring to a USCN that allegedly supports their funding requests.¹³

5. Under SLD's appeal review procedures, SLD will grant appeals when the applicant has cited the wrong FCC Form 470 in a Funding Request Number (FRN) but did have an FCC Form 470 that supports the FRN and cites that correct FCC Form 470 in its appeal to SLD.¹⁴ Because this procedure is applicable here, we find that SLD should have reviewed the funding requests in light of the new FCC Form 470 USCN numbers. We therefore reverse and remand the pending applications for further consideration.

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 on May 9, 2000 by Wayland Free Library, Wayland, New York, IS GRANTED and this application IS REMANDED to SLD for further action consistent with this opinion.

¹⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Walter A. Taylor, South Carolina Budget and Control Board, Office of Information Resources, dated August 31, 1999, at 4; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Marian Crawford, Wayland Free Library, dated November 2, 1999, at 4.

¹¹ Letter from Walter A. Taylor, South Carolina Budget and Control Board, Office of Information Resources, to Schools and Libraries Division, Universal Service Administrative Company, filed September 13, 1999 (SC Appeal to SLD), at 1; Letter from Marian Crawford, Wayland Free Library, to Schools and Libraries Division, Universal Service Administrative Company, filed November 15, 1999 (Wayland Appeal to SLD), at 1.

¹² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Walter A. Taylor, South Carolina Budget and Control Board, Office of Information Resources, dated June 14, 2000, at 1; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Marian Crawford, Wayland Free Library, dated April 25, 2000, at 1.

¹³ Wayland Request for Review, at 1; SC Request for Review, at 1-2.

¹⁴ See *Request for Review by Reg 6 & 8 SW/CTRL/W Srv Co-op, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-199902, CC Dockets No. 96-45 and 97-21, Order, DA 01-2026, para. 6 (Com. Car. Bur. rel. August 29, 2001).

7. IT IS FURTHER ORDERED that the Request for Review filed on July 12, 2000 by South Carolina Budget and Control Board, Office of Information Resources, Columbia, South Carolina, IS GRANTED, and this application IS REMANDED to SLD for further action consistent with this opinion

FEDERAL COMMUNICATIONS COMMISSION



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