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	)	
	)	
Richmond County Public Schools Warsaw, Virginia	)	File Nos. SLD-210561, 210679
	)	
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: January 11, 2002 **Released: January 14, 2002**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division (Division) has under consideration a Request for Review filed by Richmond County Public Schools (Richmond), Warsaw, Virginia.[1] Richmond seeks review of decisions by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying two of Richmond's Funding Year 2 applications for discounts under the schools and libraries universal service mechanism.[2] For the reasons that follow, we deny Richmond's Request for Review.

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

[1] Letter from Karl G. O'Dell, Richmond County Public Schools, to Federal Communications Commission, filed May 9, 2001 (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.

[4] Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (December 1998) (FCC Form 470).

potential competing service providers to 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. Richmond filed two Funding Year 2 applications, App. No. 210561 and App. No. 210679.[7] In its FCC Form 471 App. No. 210561, Richmond made two requests for discounted internal connections.[8] Both referenced the same Funding Year 2 FCC Form 470 in support, FCC Form 470 Universal Service Control Number (USCN) 145120000288982 (Funding Year 2 FCC Form 470), which had been posted on February 16, 2000, with an earliest allowable contract date of March 15, 2000.[9] Both funding requests indicated that that they were based on service contracts awarded on January 13, 2000.[10]

4. In FCC Form 471 App. No. 210679, Richmond again made two requests for discounted internal connections, which again referenced the Funding Year 2 FCC Form 470 in support.[11] These funding requests indicated that they were based on service contracts awarded on February 1, 2000.[12]

5. On April 27, 2001, SLD issued Funding Commitment Decision Letters for both applications.[13] In each Funding Commitment Decision Letter, SLD denied the funding requests

[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 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] 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1998) (FCC Form 471).

[7] FCC Form 471, Richmond County School District, App. No. 210269, filed March 26, 2000 (FCC Form 471 App. No. 210679); FCC Form 471, Richmond County School District, App. No. 210561, filed March 13, 2000 (FCC Form 471 App. No. 210561).

[8] FCC Form 471 App. No. 210561, at 3.

[9] *Id.*; FCC Form 470, Richmond County School District, USCN 145120000288982, posted February 16, 2000 (Funding Year 2 FCC Form 470).

[10] FCC Form 471 App. No. 210561, at 3.

[11] FCC Form 471 App. No. 210679, at 3.

[12] *Id.*

[13] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Nancy B. Royall, Richmond County School District, dated April 27, 2001 (App. No. 210561 Funding Commitment Decision Letter); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Nancy B. Royall, Richmond County School District, dated April 27, 2001 (App. No. 210679 Funding Commitment Decision Letter).

because it found that the 28-day waiting period requirement had been violated.[14] Richmond then filed the pending Request for Review.

6. In its Request for Review, Richmond argues that the 28-day waiting period rule should be waived for both of its applications.[15] It asserts that the internal connections service requests at issue in both applications stem from a Request for Proposal (RFP) it made that requested services for a 15 month period from April 1, 2000 to June 30, 2001.[16] It asserts that, to present this 15 month request for bidding, it posted both a Funding Year 2 FCC Form 470 and a Funding Year 3 FCC Form 470.[17] It posted the Funding Year 3 FCC Form 470 on December 14, 1999 electronically, with a resulting allowable contract date of January 13, 2000.[18] Richmond claims that, because the Funding Year 3 FCC Form 470 referred to the same RFP as the Funding Year 2 FCC Form 470, "[t]he actual services covered under the Year 2 requests were actually posted on the website for the required 28 days as part of the 15 month RFP for Year 2/3."[19] Richmond argues that the intent of the 28 day period requirement has therefore been fully satisfied.[20]

7. We find this argument unpersuasive. The posting of a Funding Year 3 FCC Form 470, even one referencing an RFP that seeks services in Funding Year 2, does not accomplish the equivalent of a competitive bidding process for Funding Year 2 services because it would not alert vendors seeking to offer services in Funding Year 2 of the Funding Year 2 service requests. The fact that the Funding Year 3 FCC Form 470 was posted more than 28 days before the contract award date does not, therefore, constitute grounds for excusing the violation.

8. We also find that the delay in the posting of the Funding Year 2 FCC Form 470 does not justify the failure to wait 28 days. We have found cause to grant a waiver where substantial delays in posting the FCC Form 470 that were not caused by the applicant forced the applicant to choose between violating the 28-day waiting period or filing an application after the close of the filing window.[21] Here, however, the FCC Form 470 was posted on February 16, 2000, allowing Richmond to enter into agreements and submit its application on or after March

[14] App. No. 210561 Funding Commitment Decision Letter, at 8; App. No. 210679 Funding Commitment Decision Letter, at 8.

[15] Request for Review, at 2.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Request for Review by New Hartford Central School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-007628, CC Dockets No. 96-45 and 97-21, Order, DA 01-2536 (Com. Car. Bur. rel. November 2, 2001).

15, 2000.[22] Thus, Richmond could have complied with the 28-day waiting period and submitted its application before the close of the Funding Year 2 filing window on March 31, 2000. Because Richmond failed to do so, we find that SLD correctly found that Richmond had violated the 28-day waiting period.

9. Richmond also asserts in its Request for Review that the contract award dates specified in its FCC Form 471s are not the actual award dates.[23] It asserts that although it did enter into contracts on January 13, 2000 (the award date specified in the funding requests for Funding Year 2 FCC Form 471 App. No. 210561), these contracts were the contracts for Funding Year 3 service, not the contracts that would apply for Funding Year 2.[24] It asserts that "the actual agreement to provide Year 2 services has never been finalized."[25]

10. These assertions do not provide grounds for relief. Even if we were to accept that no agreement was entered at the time the FCC Form 471 was filed, this fact would itself warrant denial denying the applications, because the failure to enter into an agreement for service prior to filing the FCC Form 471 is itself a violation of the competitive bidding rules.[26] However, we find that the new information cannot be accepted. The FCC Form 471s specified contract award dates for the services requested, and Richmond may not submit contrary information on appeal.[27]

[22] *See* Funding Year 2 FCC Form 470.

[23] Request for Review, at 2.

[24] *Id.*

[25] *Id.*

[26] 47 C.F.R. § 54.504(c); *see Request for Review by Folsom Cordova Unified School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-81646, CC Dockets No. 96-45 and 97-21, Order, DA 01-2645, para. 11 (Com. Car. Bur. rel. November 14, 2001).

[27] *Request for Review by Baltimore Junior Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-195870, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 14776, para. 10 (Com. Car. Bur. 2001).

11. ACCORDINGLY, IT IS HEREBY pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed by Richmond County Public Schools, Warsaw, Virginia, on May 9, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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