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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
College Prep School of America Lombard, Illinois	)	File Nos. SLD-127852, 127862, 127866
	)	
Crescent School Westbury, New York	)	File Nos. SLD-127889, 127908
	)	
Iman Academy Houston, Texas	)	File Nos. SLD-127915, 127928
	)	
IQRA Open Academy Skokie, Illinois	)	File Nos. SLD-128623, 128664
	)	
Islamic Academy Day School Asbury Park, New Jersey	)	File Nos. SLD-127997, 128053
	)	
Islamic School of Alabama Birmingham, Alabama	)	File Nos. SLD-128085, 128120
	)	
Islamic School of Lawrence Lawrence, Kansas	)	File Nos. SLD-128163, 128192
	)	
Islamic School of Greater Kansas City Kansas City, Missouri	)	File Nos. SLD-128206, 128281
	)	
Mohammed Schools Little Rock, Arkansas	)	File Nos. SLD-128406, 128426
	)	
New Horizon School Pasadena, California	)	File Nos. SLD-128444, 128493
	)	
Panama City Advanced School Panama City, Florida	)	File Nos. SLD-128415, 128442
	)	
Peace Academy Tulsa, Oklahoma	)	File Nos. SLD-128502, 128580
	)	

Razi School Woodside, New York	)	File No. SLD-128587
Silicon Valley Academy Sunnyvale, California	)	File Nos. SLD-128674, 128712
Sister Clara Muhammad School Atlanta, Georgia	)	File Nos. SLD-128618, 128673
Universal Academy of Florida Tampa, Florida	)	File Nos. SLD-128703, 128736
Universal School Oak Lawn, Illinois	)	File Nos. SLD-128729, 128803
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 29, 2002 **Released: January 30, 2002**

By the Common Carrier Bureau:

1. Before the Common Carrier Bureau (Bureau) is a Request for Review filed by Douglas LaDuron as applicant contact person on behalf of the seventeen above-captioned seventeen schools (collectively, Petitioners).[1] Each Petitioner submitted one or more Funding Year 2 applications for discounts under the schools and libraries universal service mechanism, and now seeks review of decisions made by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying each application.[2] We conclude that each of the Petitioners has violated the Commission's competitive bidding rules by delegating its competitive bidding process to a representative of the service provider from which it purchased services. We therefore deny the Request for Review as to each application.[3]

[1] Letter from John L. Hampton, Lawrence Kansas, to Federal Communications Commission, filed October 6, 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] This Request for Review is also filed on behalf of Islamic Academy of Florida, File Nos. SLD-128732 and 128808. We will address this applicant in a separate order.

I. Background

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.[4] The Commission's rules provide that an eligible school, library, or consortium applying for funding must, in most cases, seek competitive bids for the products and services to be funded.[5] To comply with this competitive bidding requirement, the Commission's rules require that an applicant submit to the Administrator a completed FCC Form 470 (Form 470), in which the applicant lists the services for which it seeks discounts.[6] The Administrator then posts the Form 470 on its web site for all potential competing service providers to review.[7]

3. The Form 470 describes the applicant's planned service requirements, as well as other information regarding the applicant and its competitive bidding process that may be relevant to the preparation of bids.[8] The Form 470 must be completed by the entity that will negotiate with prospective service providers and must be signed by the person authorized to order the requested services on behalf of the applicant.[9] The signatory must make several certifications, under oath, relating to the eligibility of the applicant and the applicant's ability to make use of the services requested.[10] The Form 470 also requires that the applicant name a person whom prospective service providers may contact for additional information (contact person).[11] The contact person should be able to answer questions regarding the information included on the Form 470 and the services requested by the applicant, including how to obtain a copy of the applicant's request for proposal (RFP), if the applicant has prepared one.[12]

4. After the Form 470 is posted on the Administrator's website, the applicant must wait at least 28 days before entering into an agreement for services with service providers and

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[4] 47 C.F.R. §§ 54.502, 54.503.

[5] 47 C.F.R. § 54.504(a).

[6] 47 C.F.R. §§ 504(b)(1), (b)(2); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (December 1998) (FCC Form 470 or Form 470).

[7] 47 C.F.R. § 54.504(b).

[8] 47 C.F.R. § 54.504(b). In addition to a description of the services that the applicant plans to receive, the Form 470 requests that the applicant provide information about the number of students that attend the schools that will receive support, the number of buildings for which the applicant seeks services eligible for support, and other information relevant to a service provider's determination of services appropriate to include in its bid proposal. *See* Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form, OMB 3060-0806 (December 1998) (Form 470 Instructions).

[9] Form 470 Instructions at 2-3, 16.

[10] 47 C.F.R. § 54.504(b)(2).

[11] Form 470 Instructions at 7.

[12] Form 470 Instructions at 7.

submitting an FCC Form 471 (Form 471), which requests support for eligible services.[13] After receiving a Form 471, SLD issues a Funding Commitment Decision Letter granting or denying the applicant's requests.

5. All service providers participating in the universal service mechanism for schools and libraries must have a Service Provider Identification Number (SPIN).[14] The FCC Form 498 "Service Provider Information Form" (Form 498) is used by service providers to request a SPIN.[15]

6. The facts of this case are complicated, but the core factual issue is whether the individual listed as the contact person on the applicants' FCC Form 470 was in fact associated with the service provider with whom the applicants contracted for service. The facts are further complicated by what appears to be some sort of business dispute between two individuals both claiming to represent the applicants' service provider. Each of the seventeen above captioned applicants submitted one or more FCC Forms 471 that requested discounted services from service provider National Technology Services, Inc. (NTS), SPIN 143014849.[16] In June of 1999, SLD received a series of correspondence from Douglas LaDuron, Tanweer Papa (Papa), and

[13] 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 or Form 471).

[14] *See* Instructions for Completing Schools and Libraries Universal Service, Service Provider Information Form (FCC Form 498), OMB 3060-0824 (September 1998) (FCC Form 498 Instructions).

[15] *Id.*

[16] *See* FCC Form 471, College Prep School of America, App. No. 127852, filed April 6, 1999; FCC Form 471, College Prep School of America, App. No. 127862, filed April 6, 1999; FCC Form 471, College Prep School of America, App. No. 127866, filed April 6, 1999; FCC Form 471, Crescent School, App. No. 127889, filed April 6, 1999; FCC Form 471, Crescent School, App. No. 127908, filed April 6, 1999; FCC Form 471, Iman Academy, App. No. 127915, filed April 6, 1999; FCC Form 471, Iman Academy, App. No. 127928, filed April 6, 1999; FCC Form 471, IQRA Open Academy, App. No. 128623, filed April 6, 1999; FCC Form 471, IQRA Open Academy, App. No. 128664, filed April 6, 1999; FCC Form 471, Islamic Academy Day School, App. No. 127997, filed April 6, 1999; FCC Form 471, Islamic Academy Day School, App. No. 128053, filed April 6, 1999; FCC Form 471, Islamic School of Alabama, App. No. 128085, filed April 6, 1999; FCC Form 471, Islamic School of Alabama, App. No. 128120, filed April 6, 1999; FCC Form 471, Islamic School of Lawrence, App. No. 128163, filed April 6, 1999; FCC Form 471, Islamic School of Lawrence, App. No. 128192, filed April 6, 1999; FCC Form 471, Islamic School for Greater Kansas City, App. No. 128206, filed April 6, 1999; FCC Form 471, Islamic School for Greater Kansas City, App. No. 128281, filed April 6, 1999; FCC Form 471, Mohammed School, App. No. 128406, filed April 6, 1999; FCC Form 471, Mohammed School, App. No. 128426, filed April 6, 1999; FCC Form 471, New Horizon School, App. No. 128444, filed April 6, 1999; FCC Form 471, New Horizon School, App. No. 128493, filed April 6, 1999; FCC Form 471, Panama City Advanced School, App. No. 128415, filed April 6, 1999;, FCC Form 471, Panama City Advanced School, App. No. 128442, filed April 6, 1999; FCC Form 471, Peace Academy, App. No. 128502, filed April 6, 1999; FCC Form 471, App. No. 128580, filed April 6, 1999; FCC Form 471, Razi School, App. No. 128587, filed April 6, 1999; FCC Form 471, Silicon Valley Academy, App. No. 128674, filed April 6, 1999; FCC Form 471, Silicon Valley Academy, App. No. 128712; FCC Form 471, Sister Clara Muhammad School, App. No. 128681, filed April 6, 1999; FCC Form 471, Sister Clara Muhammad School, App. No. 128673, filed April 6, 1999; FCC Form 471, Universal Academy of Florida, App. No. 128703, filed April 6, 1999; FCC Form 471, Universal Academy of Florida, App. No. 128736, filed April 6, 1999; FCC Form 471, Universal School, App. No. 128729, filed April 6, 1999; FCC Form 471, Universal School, App. No. 128803, filed April 6, 1999.

their attorneys that raised questions regarding the control and representation of NTS.[17] The record demonstrates that NTS initially submitted a Form 498 requesting a SPIN number to SLD on August 3, 1998, filed by Leonard LaDuron as CEO and listing Douglas LaDuron as contact person.[18] However, on June 2, 1999, Papa, claiming to be vice-president of NTS, sent notice to the Administrator by e-mail that Douglas LaDuron was no longer contact person of NTS.[19] A June 23, 1999 letter from Papa's attorney stated that Papa was president of NTS and that Douglas LaDuron was no longer associated with the company in any way.[20]

7. On June 16, 1999, Douglas LaDuron requested a SPIN for "National Technology Services," with a new address of 3514 Clinton Parkway, Lawrence, Kansas, 66047.[21] The request indicated that Douglas LaDuron was to be the contact person.[22] SLD issued this company the SPIN 143018982.[23] In July 1999, Douglas LaDuron, as applicant contact person for the Petitioners, faxed a letter to SLD requesting that his contact address be changed to "3514 Clinton Parkway, Suite A, Lawrence Kansas."[24] In the same letter, he requested that SLD change the SPIN in the pending Petitioners' applications from 143014849 to 143018982.[25] The request was denied by SLD on October 7, 1999.[26]

[17] For a full description of the events surrounding the dispute, *see* Funding Administrator's Explanation of Administrator's Action Concerning SPIN 143014849 and SPIN 143018982, dated December 7, 1999 (Administrator's Explanation). A copy of the Administrator's Explanation was sent to Douglas LaDuron's attorney on December 7, 1999. *See* Letter from D. Scott Barash, Universal Service Administrative Company, to John L. Hampton and Gregory Carpenter, dated December 7, 1999.

[18] Administrator's Explanation, at 1.

[19] Administrator's Explanation, at 3.

[20] *Id.*; *see also* Letter from Gregory A. Carpenter, Gunn, Shank, & Stover, to Ron Miller, Universal Service Administrative Company, at 1.

[21] *Id.*

[22] *See* SLD web site, Reference Area, "SPIN and BEAR Contact Search," <http://www.sl.universalservice.org/Forms/SPIN_Contact_Search.asp> (containing data on National Technology Services, drawn from the provider's FCC Form 498).

[23] *Id.*

[24] Letter from Douglas LaDuron to Schools and Libraries Division, Universal Service Administrative Company, dated July 29, 1999. This letter is in the application record of several of the Petitioners, *e.g.*, Islamic School of Lawrence, File No. SLD-128192.

[25] *Id.*

[26] Administrator's Explanation, at 4 (stating that "[s]ince NTS, Inc. is neither out of business, unwilling to participate in the e-rate program, or in breach of contract, SPIN changes from NTS, Inc. to any other vendor will not be honored at this time.").

8. On October 25, 1999, the Administrator received a letter from John L. Hampton, an attorney representing Douglas LaDuron.[27] In the letter, Hampton disputed that Papa had any involvement in NTS or in the pending applications seeking service from that entity:

> It is clear the SPIN Number [for National Technology Services, Inc.] was issued as a result of the application filed by my client. It is also clear that he had intended at the time he made application, to incorporate his business, and therefore used the corporate designation on the application, however, when the SPIN Number was issued, it was correctly issued in the name of my client and his d/b/a. . . . It is also clear that the individuals [including Papa] who incorporated using the name of the business Douglas LaDuron established had nothing to do with the application process and have had no part in the grant application process. They have had no dealings with the schools that have entered into contracts with Douglas LaDuron, and it was never the intention of those schools to do business with this interloper.[28]

9. On November 23, 1999, SLD issued a separate funding decision on each of the 34 pending applications, denying discounts in each case.[29] In 33 of its decisions, SLD based its decision on the grounds that "[a]ctions associated with the filing of the Form 470 violated the intent of the bidding process."[30] However, in one of the pending applications, it denied the funding requests based on the finding that the requests included "Video Equipment," which SLD found to be an ineligible product.[31]

10. On or around December 7, 1999, the Administrator de-registered the original NTS SPIN 143014849, as well as the subsequently issued SPIN 143018982, acting in part because of this uncertainty over the ownership and control of the company and also because of demonstrable inaccuracies in the original Form 498.[32]

11. On December 22, 1999, the Petitioners, represented by counsel John Hampton, filed a consolidated appeal with SLD challenging the funding denials that resulted from a finding of competitive bidding violations.[33] Petitioners asserted that the bidding process was fair.[34]

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[27] Letter from John L. Hampton, Hampton Law Office, to D. Scott Barash, General Counsel, Universal Service Administrative Company, dated October 25, 1999 (Hampton Letter), at 1.

[28] *Id.*

[29] *See, e.g.*, Letter from Schools and Libraries Division, Universal Service Administrative Company, to Douglas LaDuron, College Prep School of America, App. No. 127852, dated November 23, 1999.

[30] *See, e.g.*, *id.*

[31] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Douglas LaDuron, College Prep School of America, App. No. 127862, dated November 23, 1999.

[32] Administrator's Explanation, at 5.

[33] *See* Letter from John L. Hampton, Hampton Law Office, to Schools and Libraries Division, Universal Service Administrative Company, filed December 22, 1999 (Competitive Bidding Violation Appeal).

[34] *Id.* at 1.

They further argued that because SPIN 143014849 was now de-registered, the applicants should be allowed to choose a new provider.[35] A separate appeal filed by Hampton sought review of SLD's decision to deny several other applications, including one of the pending applications on appeal, because they requested ineligible services.[36]

12. On September 8, 2000, SLD issued identical appeal decisions to each of the seventeen Petitioners, denying each appeal on the grounds that "[f]unding requests associated with SPIN 143014849 . . . would not have been eligible for this program either because the request sought ineligible services or because information submitted to SLD indicated that the service provider, National Technology Services, is not validly registered to participate in this program."[37] Petitioners then filed the pending unified Request for Review.[38] In the Request for Review, Petitioners argue that they should be allowed to make a SPIN change to a provider eligible to participate in the program, and assert that they have an eligible provider that is willing to provide service.[39]

II. Discussion

13. We find that the Request for Review must be denied. The record demonstrates that each of the Petitioners has violated the Commission's competitive bidding rules under *Mastermind Internet Services, Inc.* and, therefore, the Petitioners are not eligible for funding.[40] In *Mastermind*, the Commission held that an applicant violates the Commission's competitive bidding requirements when it surrenders control of the bidding process to a service provider that participates in that bidding process.[41] Such a surrender occurs when an applicant names a representative of the service provider as contact person on the Form 470.[42] Thus, the Commission concluded that "a violation of the Commission's competitive bidding requirements has occurred where a service provider that is listed as the contact person on the Form 470 also

[35] *Id.*

[36] *See* Letter from John L. Hampton, Hampton Law Office, to Schools and Libraries Division, Universal Service Administrative Company, filed December 22, 1999. This appeal addressed the College Prep Application No. 127862.

[37] *See, e.g.*, Letter from Schools and Libraries Division, Universal Service Administrative Company, to Douglas LaDuron, College Prep of America, dated September 8, 2000 (Administrator's Decision on Appeal), at 1.

[38] Request for Review.

[39] Request for Review, at 1.

[40] *Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, SPIN-143006149, CC Docket No. 96-45, 16 FCC Rcd 4028 (2000) (*Mastermind*).

[41] *Mastermind*, 16 FCC Rcd, at 4032, para. 10.

[42] *Mastermind*, 16 FCC Rcd, at 4033, para. 10.

participates in the competitive bidding process as a bidder."[43] In such a case, the Form 470 is invalid and any funding request based on that Form 470 must be denied.[44]

14. Here, the conditions of a *Mastermind* violation are present in each of the pending applications. Each of the Petitioners named Douglas LaDuron as its Form 470 contact person.[45] Each of the Petitioners also contracted for service with NTS, whose Form 498, filed with SLD on August 3, 1998, lists Douglas LaDuron as contact person.[46] Accordingly, we find that the Petitioners violated the Commission's competitive bidding rules.

15. The subsequent events relating to Papa and NTS do not change our analysis. In June of 1999, Papa notified SLD that Douglas LaDuron ceased to be a representative of his company, "National Technology Services, Inc."[47] Even if we accept this allegation as true, there is no evidence in the record establishing that Douglas LaDuron was not an NTS representative on April 6, 1999, when the pending applications were filed.[48] Indeed, in the record before the Bureau, Papa does not dispute that Petitioners' contracts with NTS were negotiated by Douglas LaDuron. Therefore, there is no evidence suggesting that Douglas LaDuron did not represent NTS during the competitive bidding process. More importantly, we conclude from the record that Douglas LaDuron's employment status in Papa's company is not relevant because the service provider that Douglas LaDuron was representing and that participated in the competitive bidding process was a provider distinct from Papa's company, although using the same name and, initially, the same address. In other words, there apparently were two firms doing business under the name NTS, but the applicants contracted with the firm with which LaDuron was associated.

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[43] *Mastermind*, 16 FCC Rcd, at 4033, para. 10.

[44] *Mastermind*, 16 FCC Rcd, at 4032, para. 9.

[45] *See* FCC Form 470, College Prep School of America, filed December 3,1998; FCC Form 470, Crescent School, filed February 1, 1999; FCC Form 470, Iman Academy, filed January 5, 1999; FCC Form 470, IQRA Open Academy, December 2, 1998; FCC Form 470, Islamic Academy Day School, filed February 1, 1999; FCC Form 470, Islamic School of Alabama, filed February 4, 1999; FCC Form 470, Islamic School of Lawrence, filed January 5, 1999; FCC Form 470, Islamic School for Greater Kansas City, filed December 3, 1998; FCC Form 470, Mohammed School, filed January 28, 1999; FCC Form 470, New Horizon School, filed February 4, 1999; FCC Form 470, Panama City Advanced School, filed January 4, 1999; FCC Form 470, Peace Academy, filed December 22, 1998; FCC Form 470, Silicon Valley Academy, filed February 4,1999; FCC Form 470, Sister Clara Muhammad School, filed December 22, 1998; FCC Form 470, Universal Academy of Florida, December 22, 1998; FCC Form 470, Universal School, filed January 28, 1999.

[46] *See supra*, n.14; FCC Form 498, National Technology Services, Inc., filed August 3, 1998.

[47] We note that the Request for Review is brought by Douglas LaDuron as applicant contact person, and that Douglas LaDuron has denied Papa's allegations. *See* Request for Review, at 1; Hampton Letter, at 1. As a result, Petitioners are arguably estopped from relying on these allegations. However, Douglas LaDuron's previous assertions appear to have been made in his role as NTS representative, whereas we now must consider the rights of the Petitioners. We therefore exercise our discretion to consider whether Papa's allegations support granting the Request for Review notwithstanding the fact that the party bringing the Request for Review denies their accuracy.

[48] *See supra*, n. 14; *see also* Administrator's Explanation, at 3 (noting Papa's assertion that he had filed a May 20, 1999 letter with SLD stating that Douglas LaDuron "*will no longer be* the contact person) (emphasis added).

16. Our conclusion that Petitioners violated the Commission's requirements for a fair and competitive bidding process is supported by the letter submitted with the original NTS Form 498 to certify its accuracy.[49] This letter asserts that the CEO of NTS was Leonard LaDuron, not Papa.[50] Further, we note that in July of 1999, Douglas LaDuron acting as Petitioners' contact person sought a SPIN correction to SPIN 143018982, which was located at Douglas LaDuron's Lawrence, Kansas address.[51] Given that Douglas LaDuron was both applicant contact person and signer of the FCC Form 471 certifications, and thus had authority to act on behalf of the applicants, his assertion that the applicants were seeking service from the provider that he represented instead of Papa's company is substantial evidence that the service provider was, in fact, one represented by Douglas LaDuron. In addition, as noted above, Douglas LaDuron's attorney has stated that the service contracts that Petitioners signed were signed with Douglas LaDuron, and that Papa's company had no involvement.[52] This assertion also finds support in the record, specifically, examples of the service contracts signed by Petitioners that specify the address of NTS as the Lawrence, Kansas address used by Douglas LaDuron, not the Kansas City, Missouri address used by Papa's company.[53]

17. We agree with SLD that Douglas LaDuron's claim that the firm that requested a SPIN in the original Form 498 had no connection to Papa's company is highly questionable given that (1) it listed a provider with the same name, address, and phone number as Papa's company, and (2) Douglas LaDuron apparently was working for Papa's company at the time.[54] In concluding that Douglas LaDuron was representing a firm called NTS distinct from Papa's company, also called NTS, we need not determine whether, at some point, Douglas LaDuron misrepresented the entity on whose behalf he was acting. For purposes of this decision, we find only that Douglas LaDuron did in fact represent a service provider distinct from Papa's company, and one that was subsequently awarded service contracts in each of the pending applications. Based on the foregoing, we therefore find that NTS, the service provider that participated in the competitive bidding process and received all of the service contracts in each of the 34 pending applications, was represented by Douglas LaDuron at the time the Forms 470 and 471 were filed.[55]

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[49] Letter from Leonard LaDuron, National Technology Services, Inc., to Universal Service Administrative Company, dated July 29, 1998.

[50] *Id.*

[51] Letter from Douglas LaDuron to Schools and Libraries Division, Universal Service Administrative Company, dated July 29, 1999.

[52] Hampton Letter, at 1.

[53] *See, e.g.*, Telecommunications Agreement, National Technology Services and Islamic School of Lawrence, signed March 31, 1999 (Islamic School of Lawrence Contract), at 1.

[54] *See* Administrator's Explanation, at 4 (finding Douglas LaDuron's claim that the original Form 498 was issued on behalf of Douglas LaDuron as a sole proprietorship as "not credible").

[55]

18. Because Douglas LaDuron was the applicant contact person on each Form 470, and was also a representative of a service provider participating in the competitive bidding process, each of the Petitioners violated the Commission's competitive bidding rules. As a result, the Forms 470 posted by the Petitioners were invalid, and the pending applications, which relied on those Forms 470, were properly denied.

19. Petitioners request that they be allowed to substitute a new provider for NTS in their applications. However, changing the service provider from whom they are seeking services will not alter the invalidity of their Forms 470, and thus provide no basis for granting applications based on those Forms 470. We therefore deny the request.

20. 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 behalf of the above-captioned Petitioners on October 6, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey
Deputy Chief, Common Carrier Bureau