DOCKET FILE COPY ORIGINAL



RECEIVED & INSPECTED
MAY 2 0 2002
FCC - MAILROOM

**Before the**
**Federal Communications Commission**
**Washington, DC 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Request for Review of the | ) | |
| Decision of the | ) | |
| Universal Service Administrator by | ) | |
| | ) | |
| North Carolina Department of Commerce -SIPS | ) | File No. SLD-194401 |
| Wright School | ) | |
| Durham, North Carolina | ) | |
| | ) | |
| Federal-State Joint Board on | ) | CC Docket No. 96-45 |
| Universal Service | ) | |
| | ) | |
| Changes to the Board of Directors of the | ) | CC Docket No. 97-21 |
| National Exchange Carrier Association, Inc. | ) | |

# ORDER

**Adopted: May 22, 2002** **Released: May 23, 2002**

By the Telecommunication Access Policy Division, Wireline Competition Bureau:

1. The Telecommunication Access Policy Division has under consideration a Request for Review filed by the North Carolina Office of Information Technology Services (Petitioner) on behalf of North Carolina Department of Commerce - SIPS, Wright School (Wright), Durham, North Carolina, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).[1] The Petitioner seeks review of SLD's denial of Wright's application for discounts under the schools and libraries universal service support mechanism.[2] For the reasons set forth below, we deny the 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

[1] Letter from Nancy Atkins, North Carolina Office of Information Technology Services, on behalf of North Carolina Department of Commerce – SIPS, Wright School, to Federal Communications Commission, filed May 31, 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).

discounts for eligible telecommunications services, Internet access, and internal connections.[3] The Commission's rules provide that an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.[4] In accordance with the Commission rules, an applicant must file with SLD, for posting to its website, a FCC Form 470 requesting services.[5] 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.[6] SLD reviews the FCC Form 471s to determine whether the applicant is eligible to receive the services sought.

3. Commission rules exempt contracts entered into on or prior to July 10, 1997 from competitive bidding requirements for the duration of the contract.[7] These rules also provide that contracts signed after July 10, 1997 and before January 30, 1998 (the date on which the Schools and Libraries website was fully operational) are exempt from the competitive bidding requirement for services provided through December 31, 1998.[8] This exemption applies only to services provided through December 31, 1998, regardless of whether the contract as a whole extends beyond that date.[9] The Commission set out these exemptions because it did not wish to penalize schools and libraries that had to negotiate contracts prior to the date that the universal service competitive bidding system became fully operational.[10]

---

[3] 47 C.F.R. §§ 54.502, 54.503.

[4] 47 C.F.R. §§ 54.504, 54.511(c).

[5] *See* Instructions for Completing the Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB Approval No. 3060-0806 (September 1999) (FCC Form 470 Instructions), at pp. 2-3.

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

[7] 47 C.F.R. § 54.511(c)(1). *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5441, para. 217 (1998) (*Fourth Reconsideration Order*). Previously, in an order released on July 10, 1997, the Commission found that only contracts signed after November 8, 1996 and prior to January 30, 1998 were exempt from the competitive bidding requirement for services provided through December 31, 1998. *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order on Reconsideration, 12 FCC Rcd 10095 (1997) (*July 10 Order*). Upon reconsideration, however, the Commission subsequently amended section 54.511(c) in order to avoid penalizing those that were uncertain of their rights prior to the release of the *July 10 Order*. *Fourth Reconsideration Order*, 13 FCC Rcd at 5445, para. 217.

[8] *Id.*

[9] *Id.*

[10] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (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.*

4. Wright filed its FCC Form 470 electronically on January 13, 2000.[11] Wright's FCC Form 470 did not indicate the category of service from which support was sought.[12] Wright's FCC Form 470 described "a multi-year contract signed on or before July 10, 1997, but for which no Form 470 has been filed in a previous year."[13] Accordingly, SLD did not post Wright's FCC Form 470 to its website.

5. Wright filed its FCC Form 471 on January 19, 2001, seeking discounts for telecommunication services.[14] Wright did not attach a copy of its contract to its application.[15] By letter dated October 13, 2000, SLD denied Wright's funding request.[16] SLD indicated that Wright did not meet the 28-day competitive bidding requirement. SLD explained that the type of service requested on the FCC Form 471 was not posted to SLD's website because Wright had indicated by checking Block 2, Item 7d on its FCC Form 470 that it was requesting support for an exempt contract.[17]

6. Petitioner then filed an appeal on behalf of Wright with SLD.[18] In its appeal, the Petitioner argued that Wright checked Block 2, Item 7d on its FCC Form 470, indicating that it had a multi-year contract that was signed on or before July 10, 1997.[19] Petitioner stated that because its service agreement involved a multi-year contract, it was not required to comply with the competitive bidding requirement. Addressing Wright's failure to indicate a category of service on its FCC Form 470, Petitioner also stated that although Block 2, Item 8 was not checked on Wright's FCC Form 470, Block 3, Item 14 was checked, which clearly indicated that the funding request was for "basic telephone service only."[20] Petitioner also argued that other

---

*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); *July 10 Order*, 12 FCC Rcd at 10098, para. 9.

[11] FCC From 470, Wright School, filed January 13, 2000.

[12] *Id.*

[13] *Id.* at Block 2, Item 7d.

[14] FCC Form 471, Wright School, filed January 19, 2001.

[15] *Id.*

[16] Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Rachel Bowman, North Carolina Department of Commerce, SIPS, dated October 13, 2000 (Funding Commitment Decision Letter).

[17] *Id. See also* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (Form 470), and Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (Form 471). Block 2 of the FCC Form 470 is the section in which the applicant provides the "Summary Description of Needs or Services Requested."

[18] Letter from Nancy Atkins, North Carolina Office of Information Technology Services, to the Schools and Libraries Division, Universal Service Administrative Company, filed November 9, 2000 (SLD Appeal).

[19] *Id.*

[20] *Id. See also* FCC Form 470, Block 2, Item 8 (where the applicant provides a summary description of the telecommunications services that it is seeking) and Block 3, Item 14 (where the applicant indicates whether it is seeking discounts for basic telephone service only).

similarly styled applications filed by the same billed entity (North Carolina Department of Commerce – SIPS) for telecommunications services were funded.

7. By letter dated May 1, 2001, SLD denied the appeal.[21] The Administrator's Decision on Appeal focused on Wright's failure to provide sufficient documentation to support its funding request. SLD stated that it contacted Wright on several different occasions for a copy of the contract terms, pricing, and signature pages with dates, but was told that that information could not be provided. SLD's decision also stated that funding determinations are based on information provided for each application, thus citing another application would have no bearing on Wright's application.

8. In response, Petitioner filed the instant Request for Review with the Commission which reiterates the argument it made on appeal to SLD.[22] Petitioner also now, for the first time, attaches a copy the State Master Contract and notes that the agreement was signed on June 27, 1997 and it continues from month-to-month until terminated by either party. Petitioner asserts that the contract provides sufficient documentation for Wright's funding request.

9. We have reviewed the record before us and conclude that SLD properly denied Wright's funding request on the basis that Wright failed to provide information to support its application. SLD was acting within its authority to implement procedures to ensure compliance with Commission rules and regulations by requiring Wright to provide a copy of its service agreement during the appeal review.[23] Applications for discounted services are scrutinized to ensure that only eligible services are funded. Such scrutiny may result in requests for additional information. Absent such additional information, applications may be denied for failure to demonstrate that the services in question are eligible for support. In order to ensure that only eligible services are funded consistent with our rules, SLD clearly may request additional information with respect to services about which there is a question of eligibility.[24] Moreover, in order to ensure that implementation of the schools and libraries program is not unduly delayed,

[21] Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Kathryn Wilson, North Carolina Office of Information Technology Services, dated May 1, 2001 (Administrator's Decision on Appeal).

[22] Request for Review.

[23] Administration of the schools and libraries support mechanism is the responsibility of SLD, under the oversight of the Schools and Libraries Committee of USAC. *See* 47 C.F.R. § 54.705(a)(1) (setting forth the functions of the Schools and Libraries Committee) and 47 C.F.R. § 54.701(g)(i) (directing the Administrator to establish the Schools and Libraries Division, and setting forth its functions). Under the rules adopted in the Commission's *Eighth Reconsideration Order*, the Schools and Libraries Committee's functions include "development of applications and associated instructions," "review of bills for services that are submitted by schools and libraries," and "administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations." *See* 47 C.F.R. § 54.705(a)(1). *See also Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal State Joint Board on Universal Service, Third Report and Order and Fourth Order on Reconsideration* in CC Docket No. 97-21 and *Eighth Order on Reconsideration* in CC Docket No. 96- 45, 13 FCC Rcd 25058, 25075-76, paras. 30-31 and 34 (1998) (*Eighth Reconsideration Order*) (describing the functions of the Schools and Libraries Committee).

[24] 47 C.F.R. §§ 54.502, 54.503, 54.506, and 54.517.

there cannot be an open-ended time period in which applicants are allowed to respond to requests for information. Therefore, when SLD requests information with respect to the eligibility status of a particular service, applicants must respond within a reasonable time period or risk the potential of denial.

10. The record demonstrates that on March 21, 2001, SLD contacted Wright and requested copies of the service agreement that supported Wright's contention that it was a party to a state master contract, which was exempt from competitive bidding pursuant to program rules.[25] The record also indicates that between March 27, 2001 and April 11, 2001, SLD contracted Wright four times requesting a copy of the service agreement.[26] In the final communication on April 11, 2001, Wright's representative stated that she could not find any information relating to its service agreement.[27] In requesting funds from the schools and libraries universal service support mechanism, the applicant bears the responsibility of providing additional information as requested to SLD within a timely manner. Consequently, we deny Petitioner's request for review on the basis that Wright failed to provide sufficient additional information to SLD.

11. To the extent that Petitioner now requests consideration of Wright's agreement which it attached to this appeal, this is impermissible. Complete applications are essential to USAC's ability to efficiently run the program. 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 to SLD. The applicant must act to ensure that its request for discounts satisfies the Commission's policies as well as program rules.[28] If applicants were permitted to amend their funding request by supplying new information that it failed to provide during the application review process or during an SLD appeal review, it would eliminate any incentive to comply with the SLD's document demands in a timely fashion. This would significantly increase the administrative burden SLD would face. We, therefore, deny Petitioner's Request for Review and uphold SLD's funding decision.

[25] Universal Service Administrative Company, Schools and Libraries Division, Appeal Register, North Carolina Department of Commerce, SIPS, April 11, 2001(SLD Appeal Register) (showing that SLD was in contacted with Wright on March 21, 2002, March 27, 2001, March 30, 2001, April 9, 2001 and April 11, 2001, seeking information to support Wright's FCC Form 471 application).

[26] SLD Appeal Register indicates that Wright and SLD communicated on March 21, 2001; March 27, 2001; April 2, 2001; April 9, 2001; and April 11, 2001.

[27] *Id.*

[28] 47 C.F.R. § 54.504 *et seq.*; *see Request for Review by Free Library of Philadelphia, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-112605, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 23820 (2000).

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 May 31, 2001, by North Carolina Office of Information Technology Services, Raleigh, North Carolina, on behalf of the North Carolina Department of Commerce - SIPS, Wright School, Durham, North Carolina, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunication Access Policy Division
Wireline Competition Bureau