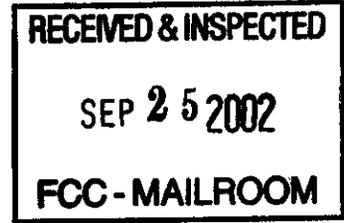


Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Picher-Cardin Independent School District 15)
Picher, Oklahoma)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-242429

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: September 19, 2002

Released: September 20, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division is a Request for Review filed by Picher-Cardin Independent School District 15 (Picher), Picher, Oklahoma.¹ Picher appeals the denial of two of its funding requests for Funding Year 4 discounts under the schools and libraries universal service mechanism.² For the reasons set forth below, we remand the Request for Review to SLD to decide in the first instance.

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, which is posted to the Administrator's website for all potential competing service providers to review.⁴ After the FCC Form 470 is posted, the

¹ Letter from Bob Walker, Picher-Cardin Independent School District 15, to Federal Communications Commission, filed March 7, 2002 (Request for Review).

² See 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).

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 (September 1999) (FCC Form 470); 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*,

applicant must wait at least 28 days before entering an agreement for services. Prior to entering into an agreement with a service provider, the Commission's rules require that the applicant carefully consider all bids submitted for provision of the requested services.⁵ The Commission has held that price should be the primary factor in selecting a bid, but has noted several additional factors that also should be considered by the applicant in determining which service provider meets their needs "most effectively and efficiently."⁶ After entering into service agreements, the applicant must submit an FCC Form 471, which requests support for eligible services.⁷ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. Picher appeals the denial of Funding Request Number (FRN) 580921, which seeks discounted Internet access, and FRN 580924, which seeks discounted internal connections.⁸ In SLD's Funding Commitment Decision Letter, SLD denied these FRNs on the grounds that "[d]ocumentation provided demonstrates that price was not the primary factor in selecting this service provider's proposal."⁹ This decision appears to rest, at least in part, on documentation that SLD requested and received from Picher during application review, including evidence of Picher's bid requests, copies of all bids received, and documentation indicating how and why the service providers were selected.¹⁰ After receiving the Funding Commitment Decision Letter, Picher appealed directly to the Commission with the pending Request for Review.

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).

⁵ 47 C.F.R. § 54.511(a).

⁶ *Universal Service Order*, at 9029, para. 481. Additional factors that an applicant should consider—when permitted by state and local procurement rules—include "prior experience, including past performance; personnel qualifications, including technical excellence; management capability, including schedule compliance; and environmental objectives." *Id.*; see also *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc. of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13734, 13739, para. 10 (1999).

⁷ 47 C.F.R. § 54.504(b), (c); *Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (October 2000) (FCC Form 471).

⁸ Request for Review.

⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bob Walker, Picher-Cardin Independent School District 15, dated February 8, 2002 (Funding Commitment Decision Letter), at 6.

¹⁰ Facsimile from Michael Deusinger, Schools and Libraries Division, Universal Service Administrative Company, to Bob Walker, Picher-Cardin Independent School District 15, dated June 12, 2001, at 2; Request for Review, Attachment (letter from Bob Walker, Picher-Cardin Independent School District 15, to Michael Deusinger, Schools and Libraries Division, Universal Service Administrative Company, dated June 18, 2001).

4. In its Request for Review, Picher states that it is “confused” as to what documentation led SLD to conclude that price was not the primary factor in the selection of Mastermind Internet Services, Inc. as service provider for the Internet access request.¹¹ It asserts that it received only one bid for internal connections services.¹² Further, Picher argues that the documentation submitted demonstrates that price was considered as the primary factor.¹³ Picher argues that the fact that it was aware of the necessity of paying its share of this service demonstrates that price was considered in the selection.¹⁴ Picher further asserts that, in its response to SLD’s documentation request, it addressed the price issue in connection with the Internet access service and explained its choice of provider.¹⁵

5. After reviewing the record, we find that this appeal should be addressed by SLD in the first instance. While Commission rules provide that applicants may appeal a decision of SLD directly to the Commission without first appealing to the Administrator, the rules do not preclude the possibility that the appropriate action on a direct appeal to the Commission is to remand the appeal to SLD.¹⁶ We find that such a remand is appropriate in this case. The record before us does not reveal the facts and reasoning on which SLD’s determination is based with clarity, and a remand of the appeal will provide SLD a chance to elaborate on its reasoning and to review and address the new assertions made by applicant. This in turn will aid both the applicant and the Commission should Picher find it necessary, following SLD’s decision on its appeal, to seek further review from the Commission.

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 by Picher-Cardin Independent School District 15, Picher, Oklahoma, on March 7, 2002 is REMANDED and SLD is directed to address and resolve the Request for Review.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireless Competition Bureau

¹¹ Request for Review at 1.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 2.

¹⁵ *Id.*

¹⁶ 47 C.F.R. § 54.719.