DOCKET FILE COPY ORIGINAL

RECEIVED & INSPECTED
SEP 25 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	)	
	)	
Lone Wolf Public Schools Lone Wolf, Oklahoma	)	File No. SLD-242788
	)	
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: 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 Lone Wolf Public Schools (Lone Wolf), Lone Wolf, Oklahoma.[1] Lone Wolf 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 deny the Request for Review in part, and remand the remainder of 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 James Sutherland, Lone Wolf Public Schools, to Federal Communications Commission, filed March 4, 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. Lone Wolf appeals the denial of Funding Request Numbers (FRNs) 593334 and 593359, both of which, it alleges, were denied on the grounds that documentation Lone Wolf submitted demonstrated that price was not the primary factor in selecting the service provider's proposal.[8] Lone Wolf asserts that the documentation it submitted demonstrated that it had considered price in choosing its service provider, Mastermind Internet Services, Inc., for both FRNs.[9]

4. With regard to FRN 593359, which sought discounted internal connections, Lone Wolf is incorrect as to why the FRN was denied. The Funding Commitment Decision Letter, from which Lone Wolf has appealed, states that this FRN is denied because the "[f]unding cap will not provide for Internal Connections [with less than an] 81% discount to be funded."[10] Because Lone Wolf requested a 75% discount on FRN 593339 and internal connections were not

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 at 1.

[9] Request for Review at 1-2.

[10] Letter from Schools and Libraries Division, Universal Service Administrative Company, to James Sutherland, Lone Wolf Independent School District 2, dated February 8, 2002 (Funding Commitment Decision Letter), at 6.

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.[21] 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 Lone Wolf find it necessary, following SLD's decision on its appeal, to seek further review from the Commission.

9. 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 Lone Wolf Public Schools, Lone Wolf, Oklahoma, on March 4, 2002, is DENIED with respect to FRN 593359, and REMANDED with respect to FRN 593334, and SLD is directed to address and resolve the Request for Review with respect to FRN 593334.

FEDERAL COMMUNICATIONS COMMISSION

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

[21] 47 C.F.R. § 54.719.

funded below 85% in Funding Year 4, we find that SLD correctly denied FRN 593359.[11] We therefore deny the Request for Review in connection with this FRN.

5. With regard to FRN 593334, SLD did state in the Funding Commitment Decision Letter that the request was denied because "[d]ocumentation provided demonstrates that price was not the primary factor in selecting this service provider's proposal."[12] This decision appears to rest, at least in part, on documentation that SLD requested and received from Lone Wolf during application review, including evidence of Lone Wolf's bid requests, copies of all bids received, and documentation indicating how and why the service providers were selected.[13]

6. In its Request for Review, Lone Wolf 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.[14] It asserts that it received only one bid for Internet access services.[15] Further, Lone Wolf argues that the fact that it has demonstrated its ability to pay for its share of this service demonstrates that price was considered in the selection.[16] Lone Wolf further asserts that, in its response to SLD's documentation request, it discussed the price issue, and stated that "[i]n the case of the internet provider, [the reason for selection of the service provider] was based on past service and reliability."[17] It asserts that these considerations outweighed any pricing considerations.[18]

7. Lone Wolf also asserts that it was unable to obtain clarification of the reasons for SLD's decision.[19] It therefore requests that, should SLD bring forth new information, it be allowed the opportunity to address that information.[20]

8. 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

---

[11] FCC Form 471, Lone Wolf Independent School District 2, filed January 17, 2001, at 3; SLD web site, What's New (August 7, 2001), <http://www.sl.universalservice.org/whatsnew/082001.asp#080601>.

[12] Funding Commitment Decision Letter at 6.

[13] Facsimile from Michael Deusinger, Schools and Libraries Division, Universal Service Administrative Company, to James Sutherland, Lone Wolf Public Schools, dated December 3, 2001, at 2; Request for Review, Attachment (letter from James Sutherlland, Lone Wolf Public Schools, to Michael Deusinger, Schools and Libraries Division, Universal Service Administrative Company, dated December 6, 2001).

[14] Request for Review at 1.

[15] *Id.*

[16] *Id.* at 2.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*