

Federal Communications Commission
Washington, DC 20554

OCT 7 2002

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Salina Independent School District 16)	File No. SLD-170607
Salina, Oklahoma)	
)	
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: October 4, 2002

Released: October 7, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by the Salina Independent School District 16 (Salina), Salina, Oklahoma, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Salina seeks review of SLD's denial of a request for discounts for telecommunications services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we grant Salina's appeal and remand its application to SLD for further processing.

2. Under the school 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 provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools or libraries must seek

¹ Letter from Vol Woods, Salina Independent School District 16, to Federal Communications Commission, filed April 11, 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

competitive bids for all services eligible for support.⁴ In accordance with the Commission's rules, an applicant must file with SLD, for posting to its website, an 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 Further, the instructions for the FCC Form 471 state that the date of signature on the Block 6 certification page of the FCC Form 471 "CANNOT be earlier than any Allowable Contract Date you cited in Item (17) of any Block 5 submitted with this application."⁷

3. Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁷ In Funding Year 2000, applicants could file their FCC Forms 471 either by mail or by using the on-line application process available on SLD's website to file their FCC Forms 471 electronically.⁹ Regardless of the method chosen, in Block 6 of the FCC Form 471, applicants were required to make certain certifications." Applicants that filed their FCC Forms 471 electronically had to print out a Block 6 certification page at the end of the on-line application filing process and then, after signing and dating the certification page, were required to separately submit it by mail."

4. Salina filed its Funding Year 2000 FCC Form 471 electronically on January 13, 2000 (Application Number 170607), including Funding Request Number (FRN) 336475, requesting support for telecommunications services.¹² In Block 5, Item 12 of its application,

⁴ 47 C.F.R. §§ 54.504, 54.511(c).

⁵ See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

⁶ 47 C.F.R. § 54.504(c); see Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

⁷ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471) (September 1999) (FCC Form 471 Instructions), at 26.

⁸ 47 C.F.R. § 54.504(c).

⁹ FCC Form 471 Instructions, at 5. Previously, this funding period would be referred to as Funding Year 3. Funding periods are now described by the year in which the funding period starts. Thus the funding period which began on July 1, 2000 and ends on June 30, 2001 is now called Funding Year 2000. The funding period which began on July 1, 2001 and ends on June 30, 2002, previously described as Funding Year 4, is now called Funding Year 2001, and so on.

¹⁰ See FCC Form 471, Block 6.

¹¹ FCC Form 471 Instructions, at 24

¹² FCC Form 471, Salina Independent School District 16, filed January 13, 2000 (Salina FCC Form 471)

Salina listed its establishing FCC Form 470 as application number 910150000266771.¹³ In Block 5, Item 23 of its application, Salina listed its shared discount percentage as 81%.¹⁴ During the application review process SLD changed the establishing FCC Form 470 to application number 172230000129842 with Salina's consent.¹⁵ SLD also reclassified FRN 336475 from telecommunications services to internal connections due to the inclusion of a charge for a Key System battery back-up in the request for telecommunications services.¹⁶ On December 22, 2000, SLD issued a Funding Commitment Decision Letter denying FRN 336475.¹⁷ SLD explained that the "funding cap will not provide for Internal Connections less than 82% discount to be funded."*

5. Salina appealed SLD's decision to reclassify Salina's FRN 336475 from telecommunications services to internal connections." To support its claim, Salina attached,

¹³ *Id.* at Block 5, Item 12 (FRN 336475).

¹⁴ *Id.* at Block 5, Item 23 (FRN 336475)

¹⁵ Universal Service Administrative Company, Schools and Libraries Division, Form 471 PIA Review Log, January 13, 2000; Letter from Vol Woods, Salina Independent School District 16, dated April 14, 2000.

¹⁶ Appeal Register (SLD No. 170607), Schools and Libraries Division, Universal Service Administrative Company, April 19, 2001 (12:29:12 PM).

¹⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Vol Woods, Salina Independent School District 16, dated November 24, 2000 (Funding Commitment Decision Letter).

¹⁸ *Id.* In the *Fifth Reconsideration Order*, the Commission established rules to govern how discounts would be allocated when total demand exceeds the amount of funds available and a filing window is in effect. *See Federal-State Joint Board on Universal Service*, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915, 14934, para. 31 (1998) (*Fifth Reconsideration Order*). These rules provide that requests for telecommunications and Internet access service for all discount categories shall receive first priority for available funds (Priority One services), and requests for internal connections shall receive second priority (Priority Two services). *See* 47 C.F.R. § 54.507(g)(1)(i). Thus, when total demand exceeds the total support available, SLD is directed to give first priority for available funding to telecommunications service and Internet access. The annual cap on federal universal service support for schools and libraries is \$2.25 billion per funding year. *See* 47 C.F.R. § 54.507(a). Any funding remaining is allocated to requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix (*Fifth Reconsideration Order*, 13 FCC Rcd at 14938, para. 36): the schools and libraries discount matrix reflects both an applicant's urban or rural status as well as the percentage of its students eligible for the national school lunch program. 47 C.F.R. § 54.505. Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their request for internal connections. To the extent that funds remain, the Administrator would continue to allocate funds for discounts to eligible applicants at each descending single discount percentage, e.g., eighty-nine percent, eighty-eight percent, and so on until there are no funds remaining. 47 C.F.R. § 54.507(g)(1)(iii). In the *Eleventh Order on Reconsideration*, the Commission clarified that to the extent that there are single discount percentage levels associated with "shared services," the Administrator shall allocate funds for internal connections beginning at the ninety percent discount level, then for eighty-nine percent, eighty-eight percent and so on. *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, Fifth Order on Reconsideration in CC Docket No. 97-21, Eleventh Order on Reconsideration in CC Docket No. 96-45, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 6033, 6035, para. 6 (1999) (*Eleventh Order on Reconsideration*).

¹⁹ Letter from Vol Woods, Salina Independent School District, to Schools and Libraries Division, Universal Service Administrative Company, filed December 29, 2000 (SLD Appeal Letter).

among other things, a copy of its FCC Form 471 and its Receipt Acknowledgement Letter dated January 24, 2000 as proof that the services it requested were telecommunications services, not internal connections.²⁰

6. On March 14, 2001, SLD issued its decision on Salina's appeal, finding that Salina's FCC Form 470 application number 910150000266771 -- which was originally listed in Block 5, Item 12 of Salina's FCC Form 471 -- was the establishing form for the funding request.²¹ SLD also agreed that the category of service requested in FRN 336475 should have been categorized as a telecommunications service.²²

7. SLD denied Salina's funding request, however, explaining that Salina's FCC Form 470 was posted to SLD's website on December 10, 1999, and the FCC Form 470 Receipt Acknowledgment Letter sent to Salina indicated that the earliest date upon which Salina could sign and submit its FCC Form 471 was January 7, 2000.²³ SLD indicated that Salina had signed the Block 6 certification page of its FCC Form 471 on January 2, 2000.²⁴ Thus, SLD concluded that Salina's application did not comply with the competitive bidding requirement that the FCC Form 470 be posted on the website for 28 days prior to signing and submitting the FCC Form 471.

8. In response, Salina filed the instant Request for Review with the Commission? In its Request for Review, Salina states that SLD denied its application on erroneous grounds. Salina's primary argument is that SLD erred when it determined that its FCC Form 471 was filed prior to January 7, 2000.²⁶ Salina maintains that its FCC Form 471 was submitted online and its Block 6 certification page was mailed on January 13, 2000. Salina attached a copy of its United States Postal Office Express Mail receipt dated January 13, 2000, as proof that its application complied with the competitive bidding requirements.' Salina also attached a copy of its

²⁰ *Id.*

²¹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Vol Woods, Salina Independent School District 16, dated March 14, 2001 (Administrator's Decision on Appeal).

²² *Id.*

²³ *Id. See also* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Vol Woods, Salina Independent School District 16, dated December 13, 1999 (FCC Form 470 Receipt Acknowledgment Letter).

²⁴ *Id. See also* Salina FCC Form 471

²⁵ Request for Review.

²⁶ *Id.* Salina correctly notes that the Administrator's Decision on Appeal erroneously references FRN 473891 instead of 336475. Because the Administrator's Decision also referenced the correct FRN at the top of the page, we find that this error was immaterial. As support for its contention that Salina complied with the competitive bidding requirements, Salina also notes that on Application Number 170607, it had also filed a request for Internet access and that request was approved as submitted.

²⁷ *Id. See also* United States Post Office Express Mail Receipt from Salina Public Schools to SLD, postmarked January 13, 2000.

electronically filed FCC Form 471, noting that the contract award date in Block 5, Item 18 is listed as January 10, 2000.²⁸

9. We have reviewed the record, including Salina's FCC Form 471, and conclude that SLD erred in denying FRN 336475. Although Salina's FCC Form 471 application, on its face, bears a signature date prior to the expiration of the 28-day waiting period, the record demonstrates that the signature date entered by the applicant was erroneous. Specifically, when Salina printed out its Block 6 certification for mailing to SLD, the actual date of printing was indicated as a footer on the bottom of the page; the electronic date stamp on the printed page reads January 13, 2000.²⁹ However, when the form was signed, Salina's representative incorrectly dated the form January 2, 2000.³⁰ The footer on the signature page demonstrates that the application was, in fact, signed after the 28-day waiting period. Further, Block 5, Item 18 of Salina's FCC Form 471 indicates that Salina entered into **an** agreement with its chosen service provider on January 10, 2000, after the 28-day waiting period.³¹ In addition, Salina's express mail receipt confirms that its Block 6 certification page was sent to SLD on January 13, 2000.³² Thus, the record evidence supports Salina's claim that it did wait the **28** days required by the Commission's **rule** before submitting its FCC Form 471. Therefore, based on the evidence in the record, we find it appropriate to reverse SLD's decision and remand Salina's application to SLD for further consideration.

²⁸ *Id.*

²⁹ *See* Salina FCC Form 471

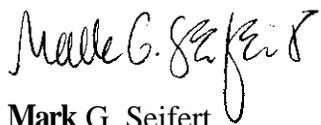
³⁰ *Id.* at Block 6.

³¹ *Id.* at Block 5, Item 18.

³² *See supra* n.25.

10. 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 April 11, 2001, by Salina Independent School District 16, Salina, Oklahoma, IS GRANTED to the extent provided herein, and Salina's application is REMANDED to SLD for further consideration consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION



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