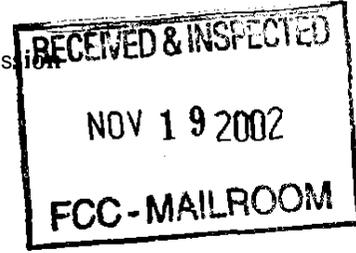


Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Roanoke Rapids Graded School District)
Roanoke Rapids, North Carolina)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-222879

CC Docket No. 96-45✓

CC Docket No. 97-21

ORDER

Adopted: November 15, 2002

Released: November 18, 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 Roanoke Rapids Graded School District (Roanoke), Roanoke Rapids, North Carolina.¹ Roanoke requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying two of Roanoke's Funding Year 2001 requests for discounts under the schools and libraries universal service support mechanism because of competitive bidding violations.² For the reasons set forth below, we deny the Request for Review and direct SLD to adjust Roanoke's Funding Year 1999 commitments.

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 In order to receive discounts on eligible services, the Commission's rules require that the applicant

¹ Letter from Linda Garner, Roanoke Rapids Graded School District, to Federal Communications Commission, filed January 2, 2002 (Request for Review).

² Previously, Funding Year 2001 was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 1999 and ended on June 30, 2000, previously known as Funding Year 2, is now called Funding Year 1999. The funding period that began on July 1, 2000 and ended on June 30, 2001 is now known as Funding Year 2000, and so on.

submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carriers with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵

3. The Commission's rules provide a limited exemption from the 28-day competitive bid requirement when applicants have "existing contracts."⁶ This limited exception exempts from competitive bidding requirements: (1) contracts signed on or before July 10, 1997, for the life of the contract; and (2) in Funding Year 1 only, contracts signed after July 10, 1997, and before the opening of the Administrator's website on January 30, 1998.⁷ An applicant seeking services on a pre-existing contract need only report the contract on an FCC Form 470 in order to seek discounts for the services provided under the contract.* However, voluntary extensions of such contracts are not exempt from competitive bidding requirements, with the exception that schools or libraries that filed an application between January 30, 1998 and April 15, 1998 for benefits in Funding Year 1998 were permitted to voluntarily extend such a contract to June 30, 1999.⁹ The Commission established the pre-existing contract exemption because it did not wish to penalize schools and libraries that had to negotiate contracts prior to the date that the SLD website became fully operational.¹⁰

4. The Commission has repeatedly emphasized the importance of the competitive bidding requirement, stating that it helps to ensure that schools and libraries will receive the lowest possible pre-discount price.¹¹ The Commission has concluded that competitive bidding is

⁴ 47 C.F.R. § 54.504 (b)(1), (b)(3)

⁵ 47 C.F.R. § 54.504(c)

⁶ 47 C.F.R. § 54.511(c)

⁷ 47 C.F.R. §§ 54.504, 54.511(c), 54.511(d)(1).

⁸ Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470), OMB 3060-0806 (September 1999) (Form 470 Instructions), at 4.

⁹ 47 C.F.R. § 54.511(d)(1)

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. 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).

¹¹ See *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10098, para. 9 (1997), as corrected by *Federal-State Joint Board on Universal Service*, Erratum, CC Docket No. 96-45, FCC 97-246 (rel. July 15, 1997) (*First Reconsideration Order*).

the most efficient means for ensuring that both eligible schools and libraries are informed about the choices available to them, reducing the contract prices, and minimizing the amount of support needed.” In adopting this requirement, the Commission was aware that some schools and libraries were bound by existing contracts that could not be breached without such schools or libraries incurring a penalty. The Commission did not want applicants with existing contracts to be precluded from benefiting from universal service support until after their contracts expired, nor did it wish to penalize providers with whom the contracts were signed.¹³ At the same time, however, the Commission has an interest in preventing incumbent carriers from using long-term contracts as a means to prevent potential competitors from offering alternative service packages to schools and libraries.¹⁴

5. Roanoke appeals SLD’s decision to deny Funding Request Numbers (FRNs) 512906 and 512926, both seeking discounts on Internet access from Roanoke’s provider, North Carolina School Link Inc.¹⁵ Both requests relied on a Funding Year 1999 FCC Form 470 that was not posted for bidding because Roanoke had checked Item 10, indicating that it was only seeking discounts for services based on an existing, binding contract.¹⁶ SLD denied the requests because the services were not posted for bidding in a Funding Year 2001 FCC Form 470.¹⁷

6. Roanoke appealed to SLD, asserting that its Internet access requests were based on a continuing contract signed on July 24, 1996.¹⁸ Roanoke also asserted that it had asked for SLD’s advice in Funding Years 1998 and 1999 and been told that it was not required to post its service requests for bidding.¹⁹ Instead, Roanoke was told in both Funding Years 1998 and 1999 to submit an FCC Form 470 indicating that its request was based on a pre-existing contract.” In

¹² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 480 (1997), as corrected by *Federal-State Joint Board on Universal Service*, Errata, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *affirmed in pari, reversed in part and remanded in part sub nam. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

¹³ *Id.* at 9063-9064, para. 547.

¹⁴ See *First Reconsideration Order*, 12 FCC Rcd at 10098, para. 9; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Role Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-262, 94-1, 91-21; 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, 5442, para. 213 (1998) (*Fourth Reconsideration Order*).

¹⁵ Request for Review; FCC Form 471, Roanoke Rapids School District, filed December 20, 2000 (Roanoke Form 471), at 3.

¹⁶ FCC Form 470, Roanoke Rapids School District, filed March 2, 1999 (Year 2 Form 470).

¹⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Linda Garner, Roanoke Rapids School District, dated July 23, 2001 (Funding Commitment Decision Letter).

¹⁸ Letter from Linda Garner, Roanoke Rapids School District, to Schools and Libraries Division, Universal Service Administrative Company, filed August 10, 2001 (Appeal to SLD).

¹⁹ *Id.* at 2. Roanoke did not specify whether it had also asked for advice in Funding Years 2000 or 2001.

²⁰ *Id.*

its appeal to SLD. Roanoke also asserted that SLD staff also advised it, in Funding Year 1999, to enter a contract termination date of June 30, 2000, and that, despite this termination date, SLD would still accept the contract as a continuing one after June 30, 2000.²¹ Roanoke asserted that it had followed these instructions and argued that the FCC Form 470 that it filed in Funding Year 1999 established its contract with North Carolina Link, Inc. and should support its requests in Funding Year 2001.²²

7. On October 2, 2001, SLD denied the appeal.²³ It stated:

The contract that you provided indicate[s] a contract award date of July 24, 1996, which has a term of one year within a voluntary extension clause. According to program rules, voluntary contract extensions must be posted for on a new Form 470 every funding year. Therefore, your Form 470 should have been posted on the website. Consequently, SLD denies your appeal because your application did not comply with the competitive bidding requirement that your Form 470 be posted on the website for 28 days. While it is unfortunate that you might receive some incorrect information from our Client Technical Bureau, it is ultimately the applicant's responsibility to ensure that their application be in compliance with FCC rules.²⁴

8. Roanoke then filed the pending Request for Review. In its Request for Review, Roanoke argues that its 1996 contract should be funded as a continuing contract.²⁵ Roanoke asserts that, before filing its Funding Year 2001 FCC Form 471 application, it contacted SLD and was told that posting a new FCC Form 470 was not necessary.²⁶ It also asserts that it has received funding on this contract in Funding Years 1998 and 1999, the latter year based on the same Year 2 Form 470 that it relies on in Funding Year 2001.²⁷

9. We find that SLD correctly denied FRNs 512906 and 512926. Roanoke does not dispute that its contract has not been subjected to competitive bidding. Under the Commission's rules described above, because Roanoke's contract was signed on July 24, 1996, the initial one-year term qualified as a pre-existing contract, and the automatic renewal of service in July of 1997 was also exempt from competitive bidding through the end of Funding Year 1.²⁸ However, because renewal of service thereafter was voluntary, Roanoke was required, after Funding Year

²¹ *Id.*

²² *id.*

²³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Linda Gamer, Roanoke Rapids Graded School District, dated October 2, 2001 (Administrator's Decision on Appeal).

²⁴ *Id.* at 1-2

²⁵ Request for Review at 1-2

²⁶ *Id.* at 1

²⁷ *Id.* at 2.

²⁸ See Request for Review, attachment

1, to post its contract for bidding. Because the underlying service was never posted for bidding, SLD correctly found that Roanoke's Funding Year 2001 request did not satisfy competitive bidding rules.

10. Roanoke asserts that it was told at all times by SLD that its contract was exempt from bidding requirements.²⁹ Even if what Roanoke asserts is true, where a party has received erroneous advice, the government is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when relief is contrary to a rule.³⁰ In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the ultimate responsibility of complying with all relevant rules and procedures.³¹

11. Roanoke also suggests that, other than contacting SLD, there was no way to obtain the correct information regarding the need to post its automatic renewal of service for bidding.³² However, Roanoke can obtain the information from the Commission's rules, which expressly provide that where a contract is initially exempt from bidding, a voluntary renewal of the contract must be subjected to a bidding process.³³ We therefore deny the Request for Review and affirm SLD.

12. Finally, our review of the record demonstrates that Roanoke failed to properly bid its service in Funding Years 1999 and 2000 as well as in 2001, in violation of the Commission's rules.³⁴ Roanoke states that it was nevertheless awarded funds for this service in Funding Year 1999 (though not in Funding Year 2000).³⁵ We therefore direct SLD to initiate commitment adjustment procedures in connection with the appropriate Funding Year 1999 Internet access requests.

13. 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 Roanoke Rapids Graded School District, Roanoke Rapids, North Carolina, on January 2, 2002 IS DENIED.

²⁹ Request for Review at 2.

³⁰ *In re Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705-4707-08, para. 22 (1991) (citing *Office of Personnel Management v. Richmond*, 491 U.S. 1046 (1990)).

³¹ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Application Universal Service, Change? to the Board of Directors of the National Exchange Carrier Association*, Fil. No. SLD-13364, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, para. 8 (Coin. Car. Bur. 2000).

³² *Id.*

³³ 47 C.F.R. § 54.511(d)(1).

³⁴ See Request for Review at 1-2.

³⁵ *Id.* at 1.

14 IT IS FURTHER ORDERED that SLD pursue funding commitment adjustment in accordance with the terms of this Order and the established commitment adjustment procedures.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert

Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau