

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

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Saint Mary School)	File No. SLD-177446
Putnam, Connecticut)	
)	
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: January 17, 2002

Released: January 18, 2002

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by Saint Mary School (Saint Mary), Putnam, Connecticut.¹ Saint Mary seeks review of the decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying Saint Mary's Funding Year 3 application for discounts under the schools and libraries universal service mechanism.² For the reasons set forth below, we deny the Request for Review and affirm SLD's decision.

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 submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its

¹ Letter from Phyllis A. Hickey, Saint Mary School, to Federal Communications Commission, filed March 22, 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.

technological needs and the services for which it seeks discounts.³ The Administrator must post the FCC Form 470 on its web site, and the applicant is required to wait 28 days before making a commitment with a selected service provider.⁵ The Commission's rules provide a limited exemption for the 28-day competitive bidding requirements when applicants have "existing contracts."⁶ Applicants seeking discounts on tariffed services or month-to-month services must file a new FCC Form 470 each year.⁷ 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 into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁸

3. At issue is Saint Mary's application for Funding Year 3 discounts, which made one request, Funding Request Number (FRN) 356721 for discounts tariffed telecommunications services.⁹ SLD denied the request, stating that the "FRN references services that require a posting of a 470 for each Funding Year" and finding that Saint Mary had not cited such an FCC Form 470 in support of its request.¹⁰ Saint Mary appealed to SLD.¹¹ It did not dispute that its Funding Year 3 request needed to be supported by a Funding Year 3 FCC Form 470. However, it claimed that the FCC Form 470 cited by its funding request, Universal Service Control Number (USCN) 259160000245280, had been accepted by SLD as a Funding Year 3 FCC Form 470.¹² Specifically, Saint Mary stated that it had initially posted this FCC Form 470 as a request for services in Funding Year 2 but that, when Saint Mary subsequently checked SLD's web site, it discovered that the FCC Form 470 "was listed in a special category which stated that it was a year 2 form which was accepted for year 3 funding."¹³ On this basis, Saint Mary asserted, it relied on the FCC Form 470 in support of its Funding Year 3 application.¹⁴

⁴ 47 C.F.R. §§ 54.504(b)(1), (b)(3).

⁵ 47 C.F.R. §§ 54.504(b)(3) and (4); § 54.511.

⁶ 47 C.F.R. § 54.511(c).

⁷ Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (Form 470 Instructions), at 4.

⁸ 47 C.F.R. § 54.504(c).

⁹ FCC Form 471, Saint Mary School, filed December 13, 1999 (Saint Mary Form 471).

¹⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Phillis A. Hickey, Saint Mary School, dated April 14, 2000, at 5.

¹¹ Letter from Phyllis A. Hickey, Saint Mary School, to Schools and Libraries Division, Universal Service Administrative Company, filed April 28, 2000.

¹² *Id.* at 1.

¹³ *Id.*

¹⁴ *Id.*

4. SLD denied the appeal.¹⁵ It found that the cited FCC Form 470, USCN 259160000245280 was filed in Funding Year 2, that FRN 356721 sought support for tariffed or month-to-month telecommunications services that needed to be competitively bid each funding year, and that, therefore, Saint Mary had not complied with the competitive bidding requirements.¹⁶ Saint Mary then filed the pending Request for Review.

5. In its Request for Review, Saint Mary reiterates its allegation that SLD's web site specifically informed it that its FCC Form 470 had been accepted for Funding Year 3.¹⁷ Saint Mary asserts that it had not originally intended to rely upon the FCC Form 470 in Funding Year 3, but did so because of the information from SLD's web site.¹⁸

6. We have carefully reviewed the record as well as the information available on SLD's web site. The FCC Form 470 in question specifies that it seeks services in the Funding Year "07/01/1999-06/03/2000," that is, Funding Year 2.¹⁹ It is posted together with other Funding Year 2 FCC Form 470s, and, thus, can only be accessed on SLD's web site if one selects the group of FCC Form 470s posted in Funding Year 2.²⁰ Conversely, it is not accessible if one chooses the group of Funding Year 3 FCC Form 470s.²¹ We find, therefore, that the FCC Form 470 is a Funding Year 2 FCC Form 470 that does not support a Funding Year 3 request for tariffed services. It is clear that the FCC Form 470 cannot have properly bid services in Funding Year 3, because no provider seeking service requests in Funding Year 3 would have found it, and in any case, could not be expected to view it as seeking Funding Year 3 services, because it expressly asked for services in Funding Year 2.²² Accordingly, we agree with SLD that Saint Mary did not cite to a valid Funding Year 3 FCC Form 470 in support of its Funding Year 3 request, and therefore did not comply with the Commission's competitive bidding regulations. The Request for Review must therefore be denied.

7. Saint Mary's allegations may alternately be construed as seeking a waiver of the competitive bidding regulations. A waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.²³ We find that the circumstances of this application do not

¹⁵ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Phillis A. Hickey, Saint Mary School, dated February 26, 2001.

¹⁶ *Id.* at 1.

¹⁷ Request for Review, at 1.

¹⁸ *Id.*

¹⁹ FCC Form 470, Saint Mary School, USCN 259160000245280, filed October 14, 1999 (Saint Mary Form 470), at Block 1, Item 2.

²⁰ See SLD web site, <http://www.sl.universalservice.org/Search_FundYear_Select.asp>.

²¹ *Id.*

²² Saint Mary Form 470.

²³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

warrant a waiver of the competitive bidding requirements. First, Saint Mary has not provided any evidence supporting its allegation that SLD's web site expressly stated that its FCC Form 470 was accepted for Funding Year 3. All the available evidence confirms that SLD posted the FCC Form 470 as a Funding Year 2 FCC Form 470 and that it did in fact request services in Funding Year 2. Second, given that Saint Mary submitted its FCC Form 470 for Funding Year 2, and given that the FCC Form 470 expressly requested services in Funding Year 2 and was only accessible from the Funding Year 2 database of FCC Form 470s, a fact that Saint Mary could easily confirm by searching the posted FCC Form 470s in the Funding Year 2 group, Saint Mary should have understood that its FCC Form 470 would not be valid for Funding Year 3. We conclude that a waiver of the competitive bidding requirements is not appropriate.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed by Saint Mary School, Putnam, Connecticut, on March 22, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau