

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
Braxton County School District
Sutton, West Virginia
Summers County School District
Hinton, West Virginia
Webster County School District
Summersville, West Virginia
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.

File No. SLD-220068
(FRN 591845)
File No. SLD-220678
(FRN 592694)
File No. SLD-220685
(FRN 592113)
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: November 7, 2002

Released: November 8, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division are the Requests for Review filed by the above-captioned parties (Applicants). Each of the Applicants seeks review of a funding commitment decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) in regards to the above-captioned requests for support in Funding Year 2001 of the schools and libraries universal service program. For the reasons set forth below, we deny the Applicants' Requests for Review.

1 Letter from Nathaniel Hawthorne on behalf of the Braxton County School District, to the Federal Communications Commission, filed September 5, 2001 (Braxton County Request for Review); Letter from Nathaniel Hawthorne on behalf of the Summers County School District, to the Federal Communications Commission, filed September 17, 2001 (Summers County Request for Review); Letter from Nathaniel Hawthorne on behalf of the Webster County School District, to the Federal Communications Commission, filed August 21, 2001 (Webster County Request for Review) (collectively, the Requests for Review).

2 See Requests 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). Previously, this funding period was referred to as Funding Year 4. Funding periods are now described by the year in

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 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. The Applicants appeal decisions on Funding Request Numbers (FRNs) 591845, 592694, and 592113.⁸ Each of the FRNs seeks discounts on internal connections, specifically

which the funding period starts. Thus, the funding period which began on July 1, 2001 and ended on June 30, 2002, previously referred to as Funding Year 4, is now called Funding Year 2001. The funding period which began on July 1, 2002 and ends on June 30, 2003, is now known as Funding Year 2002, and so on.

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*, 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 Requests for Review at 2.

the cost for installation and maintenance of Internet access equipment.⁹ SLD denied these request on the grounds that the Applicants had “not provided sufficient documentation to determine the eligibility of this item.”¹⁰

4. The Applicants appealed these funding decisions directly to the Commission.¹¹ With respect to FRN 592694, Summers County argues that, on August 1, 2001, it provided all the supporting documentation requested by SLD during application review, including a copy of the month-to-month proposal.¹² With respect to FRN 591845, Braxton County contends that SLD did not contact them to request any documentation during application review.¹³ Braxton County notes, however, that it was contacted by an SLD representative on June 16, 2001 and understood from this communication that there were no outstanding items regarding Braxton.¹⁴ With respect to FRN 592113, Webster County contends that SLD did not contact them to request any documentation or data (other than a description of the maintenance to be provided), nor to answer any other questions during application review.¹⁵ Webster County notes, however, that it understood from an SLD representative that “this item . . . was ‘completed.’”¹⁶

5. We have reviewed the Applicants’ appeals and conclude that the Applicants have not shown that their requests were improperly denied. Given the enormous volume of applications and other submissions that SLD processes and reviews each year, it is necessary for SLD to put in place measures to ensure prompt resolution of applications. One such measure in

⁹ FCC Form 471, Braxton County School District, filed January 17, 2001 (Braxton County Form 471) (Block 5, Funding Request Number (FRN) 591906); FCC Form 471, Summers County School District, filed January 18, 2001 (Summers County Form 471) (Block 5, FRN 592706); FCC Form 471, Webster County School District, filed January 17, 2001 (Webster County Form 471) (Block 5, FRN 592119).

¹⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Paul Karas, Braxton County School District, dated August 7, 2001; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Paul Karas, Summers County School District, dated August 20, 2001; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Paul Karas, Webster County School District, dated July 23, 2001.

¹¹ Request for Reviews. In their Requests for Review, the Applicants also appealed SLD’s denial of each of their funding requests for Internet access services to be provided by the Regional Education Service Agency of West Virginia (RESA), FRNs 591906, 592119, and 592706. *See* Requests for Review. On January 11, 2002, however, the Applicants filed a request to withdraw each of their appeals concerning the RESA Internet access services. *See* Letter from Nathaniel Hawthorne, Counsel for Braxton County School District, to Federal Communications Commission, filed January 11, 2002; Letter from Nathaniel Hawthorne, Counsel for Summers County School District, to Federal Communications Commission, filed January 11, 2002; and Letter from Nathaniel Hawthorne, Counsel for Webster County School District, to Federal Communications Commission, filed January 11, 2002. This Order only addresses those funding requests that were not specifically withdrawn by the Applicants.

¹² Summers County Request for Review at 2.

¹³ Braxton County Request for Review at 2.

¹⁴ *Id.*

¹⁵ Webster County Request for Review at 2.

¹⁶ *Id.*

place is an administrative policy that applicants from whom SLD solicits additional information necessary to complete their application respond with that information within seven days of being contacted.¹⁷ The policy has been necessary in order to prevent applicants from unduly delaying the application process.

6. With respect to FRN 592694, SLD requested a quote for one-time and monthly charges and a breakdown of services on April 26 and July 26, 2001.¹⁸ Summers County concededly did not respond until August 1, 2001.¹⁹ Under SLD's seven-day policy, it properly did not consider the late information, and therefore correctly denied FRN 592694.

7. With respect to FRN 591845, SLD requested a quote for one-time and monthly charges and a breakdown of services on April 18, 25, and 26, and June 25, 2001.²⁰ There is no indication in the record before us that Braxton County satisfactorily responded to any of these requests. On July 16, 2001, SLD informed Braxton County's representative that the seven-day period had expired, but then proceeded to request his immediate attention on eight West Virginia applications. This electronic mail, however, only identified six of these applications and none of these included Braxton County's application.²¹ We find that it was unreasonable for Braxton County to conclude from this communication that there was no longer any issue with respect to FRN 591845 in light of SLD's previous requests for information from Braxton County concerning FRN 591845. We note that Braxton County's representative could have sought clarification of the ambiguity contained in SLD's communication to reach this conclusion rather than rely on this ambiguity in its appeal before us now. Under SLD's seven-day policy, it correctly denied FRN 591845.

8. With respect to FRN 592113, SLD requested a quote for one-time and monthly charges and a breakdown of services on June 6 and 13, 2001.²² Webster County contends that

¹⁷ See *Request for Review by Nefesh Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-27881, CC Dockets No. 96-45 and 97-21, Order, DA 99-2284 (Com. Car. Bur. rel. October 22, 1999) (citing seven-day rule). See also SLD Website, Reference Area, "Program Integrity Assurance (PIA)," <http://www.universalservice.org/reference/6pia.asp>.

¹⁸ See Universal Service Administrative Company, Schools and Libraries Division, Review Activity Log, April 26 and July 16, 2001 (Review Activity Log).

¹⁹ Summers County Request for Review at 2.

²⁰ See Universal Service Administrative Company, Schools and Libraries Division, Review Activity Log, April 18, 25, and 29, and June 25, 2001 (Review Activity Log). See also Braxton County Request for Review, Attachment C (Facsimile from John Piznak, Schools and Libraries Division, Universal Service Administrative Company, to Paul Karas, dated July 16, 2001, forwarding a copy of an electronic mail of even date and informing Mr. Karas that SLD required "all documentation [requested in the electronic mail] by July 19").

²¹ Electronic mail from John Piznak, Schools and Libraries Division, Universal Service Administrative Company, to Paul Karas at pkaras@naa.com, dated July 16, 2001 4:58 PM (Piznak Electronic Mail).

²² See Universal Service Administrative Company, Schools and Libraries Division, Review Activity Log, June 6 and 13, 2001 (Review Activity Log). See also Webster County Request for Review, unmarked attachment (Facsimile from John Piznak, Schools and Libraries Division, Universal Service Administrative Company, to Paul Karas, dated July 16, 2001, forwarding a copy of the Piznak Electronic Mail as well as an electronic mail from Phyllis Justice at pjustice@access.k12.wv.us to Alice Carmody, Schools and Libraries Division, Universal Service Administrative

Webster County had fully responded to SLD's request and points to certain handwritten notations on a faxed copy of an electronic mail from SLD to indicate that Webster County had fulfilled SLD's request.²³ We find, however, that there is no evidence in the record before us that Webster County ever responded to these requests in any way, and it is clear from the documents submitted with its Request for Review that they were responsive. We find further that the "completed" notation on the faxed copy from SLD does not excuse Webster County for its failure to respond. Under SLD's seven-day procedure, it correctly denied FRN 592113.

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 Braxton County School District, Sutton, West Virginia, on September 5, 2001, the Request for Review filed by Summers County School District, Hinton, West Virginia, on September 17, 2001, and the Request for Review filed by Webster County School District, on August 21, 2001, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

Company, dated May 15, 2001 12:16 PM, with handwritten notations concerning the status of the various applicants' responses to SLD's requests for information (Carmody Electronic Mail)).

²³ Webster County Request for Review at 2; Carmody Electronic Mail at 2.