

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review of a Decision of the)	
Universal Service Administrative Company)	
By)	
)	
Thomas Communications & Technologies)	File No. SLD-201719
Syracuse, New York)	
)	
Federal-State Joint Board on)	WC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	WC Docket No. 97-21
National Exchange Carriers Association, Inc.)	

ORDER

Adopted: April 10, 2002

Released: April 11, 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 Thomas Communications & Technologies (Thomas).¹ Thomas requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) relating to an application filed on behalf of John A. Coleman Catholic High School (Coleman) for discounts under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny Thomas' Request for Review.

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

¹ *Request for Review of the Decision of the Universal Service Administrator by Thomas Communications & Technologies, LLS*, CC Docket Nos. 96-45 and 97-21, filed January 29, 2001 (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).

² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Nicole O'Neal, The Thomas Group, Syracuse, New York, dated January 2, 2001 (Administrator's Decision on Appeal).

³ 47 C.F.R. §§ 54.502, 54.503.

with the Administrator a FCC Form 470.⁴ There are three categories of service under which an applicant may request services: telecommunications services, Internet access, and internal connections. In Funding Year 3, applicants were required to provide SLD with information about the category of services they were requesting in items 8 through 10 of the FCC Form 470.⁵ Item 8 was to be completed for requests for telecommunications services, item 9 was to be completed for requests for Internet access, and item 10 was to be completed for requests for internal connections.

3. Upon submission of the FCC Form 470 to SLD, each request is posted to the Administrator's web site for all potential competing service providers to review.⁶ 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.⁷ The Commission has concluded that competitive bidding is the most efficient means for ensuring both that eligible schools and libraries are informed about the choices available to them and that prices are not unnecessarily high.⁸ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting a FCC Form 471, which requests support for eligible services.⁹ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules. To demonstrate compliance with the competitive bidding requirement, an applicant must, in connection with each funding request, cite a FCC Form 470 in which the same service for which the funding request seeks discounts was posted for competitive bidding.¹⁰ Because funding is applied for and awarded on an annual basis, the cited FCC Form 470 must also have sought the same category of service later contracted for and reflected in the FCC Form 471.¹¹

4. Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, the applicant must submit a

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470).

⁵ 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).

⁶ 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).

⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10098, para. 9 (1997).

⁸ *Universal Service Order*, 12 FCC Rcd at 9029, para. 480.

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

¹⁰ Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999), at 19 (FCC Form 471 Instructions).

¹¹ *Id.*

completed FCC Form 471 application to the Administrator.¹² The Commission's rules allow the Administrator to implement an initial filing period ("filing window") for FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.¹³ Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.¹⁴ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window. The last day of the filing window for Funding Year 3 was January 19, 2000.¹⁵

5. On December 16, 1999, Thomas submitted a FCC Form 470 to SLD on behalf of Coleman for Funding Year 3. Thomas completed item 8 of the FCC Form 470, and left items 9 and 10 blank. In doing so, Thomas thereby indicated to SLD that Coleman was requesting only telecommunications services from eligible common carrier telecommunications companies.¹⁶ In accord with the Commission's rules, those requests were posted on SLD's web site in order to solicit bids.¹⁷

6. After reviewing bids, Thomas filed a FCC Form 471 with SLD on January 18, 2000.¹⁸ In Block 5, page 4 of 4 of its FCC Form 471, Thomas requested Internet access services from the service provider Intermedia Communications (Intermedia).¹⁹ In item 11 of Block 5, applicants are required to state the category of service by choosing among the following categories: telecommunications services, Internet access, and internal connections.²⁰ Thomas designated its request as Internet access.²¹ The service contract attached to the FCC Form 471 explained that the agreement was for a "56K IP" to provide Internet services.²² On May 17, 2000, after the close of the filing window, Thomas sent SLD a revised copy of Block 5, page 4 of

¹² 47 C.F.R. § 54.504(c).

¹³ 47 C.F.R. § 54.507(c).

¹⁴ 47 C.F.R. § 54.507(g).

¹⁵ SLD web site, SLD Announces Availability of Year 3 Forms (October 29, 1999), <<http://www.sl.universalservice.org/whatsnew/101999.asp#form>>.

¹⁶ In order to be eligible for funding as a telecommunications service, a service provider must be an eligible common carrier. See Form 470 Instructions. The instructions note that "[i]f you receive telecommunications services from a provider that is not a common carrier, your Form 471 Funding Request for such services will be denied."

¹⁷ See 47 C.F.R. § 54.504(b)(3).

¹⁸ FCC Form 471, John A. Coleman Catholic HS, Hurley, New York, filed January 18, 2000 (Coleman FCC Form 471).

¹⁹ *Id.* at Block 5, page 4 of 4.

²⁰ FCC Form 471 Instructions at 19. With the information in Item 11, SLD is able to apply our funding priority rules properly in situations where demand exceeds the annual funding cap, as was the case in Funding Year 3. See *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order 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 (1997).

²¹ Coleman FCC Form 471 at Block 5, page 4 of 4.

²² *Id.* at Attachment.

4 of its FCC Form 471.²³ In the revised Block 5, Thomas changed the category of service in Item 11 of the funding request from Internet access to telecommunications services.²⁴

7. Upon review of the funding request, SLD assigned a funding request number (FRN 447928) and determined that the funding request was not listed correctly on the FCC Form 470.²⁵ Thomas indicated on the FCC Form 470 that the request was for telecommunications services, not Internet access, as stated on the FCC Form 471 that was filed before the close of the filing window. For that reason, the request was not posted correctly on SLD's web site for competitive bidding and SLD denied FRN 447928.

8. In the instant Request for Review, Thomas asserts that the requested service may be classified as both a telecommunications service and Internet access.²⁶ Thomas requests that the category of service for FRN 447928 be changed to telecommunications services so Coleman can comply with the Commission's competitive bidding requirements and receive funding for its request.²⁷

9. After review of the record, we conclude that Thomas' request to change the category of service for FRN 447928 contravenes established precedent that applicants should not be permitted to amend completed FCC Forms 471 to change service categories after closure of the filing window deadline.²⁸ If applicants were permitted to amend their applications after the close of the filing window, it would eliminate any incentive to avoid making unauthorized service requests or to comply with the SLD's document demands in a timely fashion.²⁹ This would significantly increase the administrative burden SLD would face while carrying out its obligation to guard against the occurrence of errors and fraud.³⁰ Furthermore, if applicants were permitted to amend their requests after the filing window closed, it could jeopardize SLD's ability to accurately apply the rules of priority in years where requests for funding exceed the annual funding cap.³¹ Therefore, regardless of whether the funding request is appropriately classified as a telecommunications service or Internet access, Thomas may not amend its FCC Form 471 after the filing window deadline.

²³ Facsimile from Michele Armani, Thomas Communications & Technologies to Chris Wittrien, Schools and Libraries Division, Universal Service Administrative Company, dated May 17, 2000 (May 2000 Fax).

²⁴ *Id.*

²⁵ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Shari Dwyer, John A. Coleman Catholic High School, dated June 9, 2000.

²⁶ *See* Request for Review.

²⁷ *Id.*

²⁸ *See* May 2000 Fax (requesting FCC Form 471 be changed). *See Request for Review by Free Library of Philadelphia, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-112605, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 23820 (Com. Car. Bur. 2000).

²⁹ *See Request for Review by Cheney Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-142969, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 5192 (Com. Car. Bur. 2001), at para. 6.

³⁰ *Id.*

³¹ *Id.*

10. Because Thomas may not amend its FCC Form 471 to revise the category of service designated for FRN 447928, we find that Thomas did not satisfy the Commission's competitive bidding requirements and deny Thomas' Request for Review. Although Thomas listed the requested service in its Form 470 as a telecommunications service (for which only eligible common carriers could provide bids), in its FCC Form 471, Thomas requested discounts for Internet access.³² As a result, service providers other than common carriers were eligible to offer bids, but were not provided with the opportunity to bid on the requested services. As noted in the FCC Form 470 Instructions, "it is important that you complete all categories that are relevant to your requested services, so the Fund Administrator can confirm that you have met the competitive bidding requirement before signing any contracts for services for which discounts are requested in FCC Form 471."³³ Because Thomas did not list its request as one for Internet access on its FCC Form 470 and 471 consistently, we conclude that Thomas failed to satisfy the Commission's competitive bidding requirements. Accordingly, we deny Thomas' Request for Review.

11. 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 January 29, 2001, by Thomas Communications & Technologies, Syracuse, New York, on behalf of John A. Coleman Catholic High School, Hurley, New York, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

³² Coleman FCC Form 471.

³³ See Form 470 Instructions.