

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Bancroft Rosalie Community Schools)	File No. SLD-130114
Bancroft, Nebraska)	
)	
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 25, 2000

Released: October 26, 2000

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration an appeal filed by Bancroft Rosalie Community Schools, Bancroft, Nebraska (Bancroft) on February 9, 2000, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator).¹ Bancroft seeks review of SLD’s denial of its application for discounted services under the schools and libraries universal service support mechanism. For the reasons set forth below, we deny the Letter of Appeal and affirm SLD’s denial of Bancroft’s application.

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.² The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library or consortium must seek competitive bids for all services eligible for support.³ An applicant fulfills the competitive bidding requirement by filing with the Administrator a completed FCC Form 470, setting forth the applicant’s technological needs and

¹ Letter from Dr. Jon Cerny, Bancroft Rosalie Community Schools, to Federal Communications Commission, filed February 9, 2000 (Letter of Appeal).

² 47 C.F.R. §§ 54.502, 54.503.

³ 47 C.F.R. §§ 54.504, 54.511(c).

the services for which it seeks discounts.⁴ SLD posts an applicant's FCC Form 470 specifying requested services on its web page for 28 days.⁵ The applicant must wait until the close of the 28-day period⁶ and “carefully consider all bids submitted”⁷ prior to signing a contract for eligible services. Once the applicant has contracted for eligible services, it is required to file an FCC Form 471 application to apprise the Administrator of the services that have been ordered, the service provider with whom the applicant has signed the contract, and an estimate of the funds necessary to cover the discounts to be given for eligible services.⁸ Using information provided by the applicant in its FCC Form 471, the Administrator determines the amount of discounts for which the applicant is eligible.

3. In a letter dated September 8, 1999, SLD denied funding for five of Bancroft’s funding requests on the grounds that Bancroft had signed its Form 471 prior to the end of its 28-day waiting period.⁹ By letter dated September 15, 1999, Bancroft’s Superintendent of Schools, acknowledged that error, but stated that the error occurred because he entered the date February 1, 1999 in Item 31 when he began to fill in the form and he “did not think that putting down February 1 on the signature page was a problem.”¹⁰ He stated, however, that he did not mail the form until February 8, 1999, at which point the 28-day waiting period had ended. He also noted that the only contract for the five funding requests “was entered into on March 9, 1999,” well after the 28-day waiting period.¹¹ Despite Bancroft’s explanation, SLD’s letter dated January 31, 2000 denied Bancroft’s appeal, for the same reason as it had denied Bancroft’s initial request: Bancroft’s failure to meet the 28-day waiting period.¹² In the instant appeal, Bancroft again argues that it did not submit its FCC Form 471 or enter into a contract until after the end of the 28-day waiting period.¹³

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

⁴ 47 C.F.R. §§ 54.504(b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. § 54.504(b)(4).

⁷ 47 C.F.R. § 54.511(a).

⁸ See Schools and Libraries Universal Service, Services Order and Clarification Form, OMB 3060-0806 (FCC Form 471), Block 5, Item 15; Instructions for Completing the Schools and Libraries Universal Service, Services Ordered, and Certification Form, OMB 3060-0806.

⁹ Letter of the Schools and Libraries Division of the Universal Service Administrative Company to Dr. Jon Cerny, Bancroft Rosalie Community Schools, dated September 8, 1999.

¹⁰ Letter from Dr. Jon Cerny, Bancroft Rosalie Community Schools, to Schools and Libraries Division of the Universal Service Administrative Company, dated September 15, 1999.

¹¹ The other four funding requests concerned tariffed offerings.

¹² Letter of the Schools and Libraries Division of the Universal Service Administrative Company to Dr. Jon Cerny, Bancroft Rosalie Community Schools, dated September 8, 1999.

¹³ Letter of Appeal at 1.

lowest possible pre-discount price.¹⁴ The Commission 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, thereby minimizing the amount of support needed.¹⁵ In adopting this requirement, the Commission established a minimally burdensome means for schools and libraries to inform the public of services they seek and for providers to review and submit bids in response to requests for services.¹⁶ In order to permit all interested parties sufficient time to respond to requests for services posted on the SLD web page, the Commission requires all schools and libraries, and consortia including such entities, to wait the requisite 28-day waiting period prior to signing a contract for discounted services.¹⁷

5. We find that SLD properly rejected Bancroft's funding requests for failure to satisfy the 28-day waiting period requirement. Applicants are required to follow the instructions accompanying the application forms. SLD must process thousands of applications and cannot operate effectively if applicants do not follow instructions. In addition to the Commission's rules, the instructions for FCC Form 471 state that: "Item (31) requires that the date of signature of the FCC Form 471 be provided. Please note that for applications requesting new services, this date CANNOT be earlier than the 29th day following the posting of the associated FCC Form 470 applications to the SLC Web Site."¹⁸ Thus, rather than requiring applicants to submit their contracts and individually examining thousands of such submissions, SLD relies on applicants to correctly complete Item (31) so that SLD can verify compliance with the 28-day competitive bidding requirement. The Form clearly places applicants on notice of the rules they need to adhere to.

6. Bancroft's FCC Form 470 was posted on the SLD website on January 8, 1999, and therefore a contract should not have been signed until February 5, 1999. Despite the clear instructions, Bancroft signed its FCC Form 471 on February 1, 1999, thereby indicating that on February 1, 1999, an agreement had already been entered into. Bancroft's superintendent states that he did not think that putting down the earlier date was a problem and that the FCC Form 471 was not in fact mailed until February 8, 1999. Bancroft's mailing of its FCC Form 471 after the termination of the 28-day waiting period is not sufficient to bring Bancroft's application into compliance with the Commission's rules. As noted, the purpose of the 28-day waiting period is to ensure that prospective service providers have sufficient time to prepare and submit competitive bids for the services requested in the FCC Form 470. By completing and signing the

¹⁴ See *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10098, para. 9 (1997).

¹⁵ *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 part, reversed in part and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC and USA*, 183 F.3d 393 (5th Cir. 1999) (*Universal Service Order*).

¹⁶ *Id.* at 9078, para. 575.

¹⁷ *Universal Service Order*, 12 FCC Rcd at 9080, para. 579.

¹⁸ See instructions for Form 471, (Year 2), Dec. 1998 (emphasis in the original).

FCC Form 471 before the waiting period expired, Bancroft effectively indicated that it had ceased consideration of competitive bids, thereby undermining the Commission's competitive bidding requirements. Thus, based on the information provided in Bancroft's application, SLD properly denied Bancroft's funding requests.

7. Moreover, even considering the additional information supplied in Bancroft's appeal, Bancroft is not entitled to any relief under the Commission's rules. According to Bancroft's appeal, the contract that it listed on FCC Form 471 as already contracted for when it mailed the form on February 8, 1999, had not yet been entered into by that date. Bancroft states that it did not enter into that contract until March 9, 1999, a month after it submitted FCC Form 471. The Commission's rules provide, however, that FCC Form 471 shall be filed *after* an applicant has signed a contract with its service providers.¹⁹ In addition, the instructions for Item 15, column 1, of FCC Form 471 require the applicant to list all of the service providers "with whom you *have contracted* for eligible services for which you seek discounts."²⁰ Bancroft prematurely filed its FCC Form 471, and should not have requested support for that contracted service until March 9, 1999. Therefore, we find no merit in Bancroft's appeal. Again, for the program to run efficiently, it is critical that applicants follow the Commission's rules.

8. 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 Letter of Appeal filed on February 9, 2000, by Bancroft-Rosalie Community Schools, Bancroft, Nebraska, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau

¹⁹ 47 C.F.R. § 54.504(c).

²⁰ See instructions for Form 471, (Year 2), Dec. 1998 (emphasis added).