

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

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Dickenson County Public Schools	)	File No. SLD-239477
Clintwood, Virginia	)	
	)	
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 ON RECONSIDERATION**

**Adopted: August 8, 2002**

**Released: August 9, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division (Division) is a Petition for Reconsideration filed by Dickenson County Public Schools (Dickenson), Clintwood, Virginia.<sup>1</sup> Dickenson seeks reconsideration of our order denying its Request for Review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).<sup>2</sup> SLD had denied Dickenson's requests for Funding Year 2001 discounts under the schools and libraries universal service mechanism due to competitive bidding violations.<sup>3</sup> In our Order, we affirmed the decision.<sup>4</sup> For the reasons set forth below, we now deny the Petition for Reconsideration.

<sup>1</sup> *Petition for Reconsideration of Request for Review of the Decision of the Universal Service Administrator by Dickenson County Schools*, File No. SLD-, CC Dockets No. 96-45 and 97-21, Petition for Reconsideration, filed November 5, 2001 (Petition for Reconsideration).

<sup>2</sup> See Petition for Reconsideration. Parties may seek reconsideration from a final action of the Commission or its designated authority pursuant to 47 C.F.R. § 1.106.

<sup>3</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to David Yates, Dickenson County School District, dated September 14, 2001 (Funding Commitment Decision Letter), at 6. In prior years, this funding period 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, 2001 and ended on June 30, 2002, previously known 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.

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.<sup>5</sup> The Commission's rules provide that an eligible school, library, or consortium applying for funding must, in most cases, seek competitive bids for the products and services to be funded.<sup>6</sup> To comply with this competitive bid requirement, the Commission's rules require that an applicant submit to the Administrator a completed FCC Form 470 in which the applicant lists the services for which it seeks discounts.<sup>7</sup> The Administrator then posts the FCC Form 470 on its web site for all potential competing service providers to review.<sup>8</sup>

3. In *Mastermind Internet Services, Inc.*, the Commission held that, where an FCC Form 470 lists a contact person who is an employee or representative of a service provider, the FCC Form 470 is defective.<sup>9</sup> The Commission observed that the "contact person exerts great influence over an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested."<sup>10</sup> On this basis, the Commission found that "when an applicant delegates that power to an entity that also will participate in the bidding process as a prospective service provider, the applicant irreparably impairs its ability to hold a fair and open competitive bidding process."<sup>11</sup> It concluded that "a violation of the Commission's competitive bidding requirements has occurred where a service provider that is listed as the contact person on the FCC Form 470 also participates in the competitive bidding process as a bidder."<sup>12</sup> In such cases, SLD must deny any funding request based on that FCC Form 470.<sup>13</sup>

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<sup>4</sup> See *Request for Review by Dickenson County 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-239447, CC Dockets No. 96-45 and 97-21, Order, DA 02-1212 (Com. Car. Bur. May 22, 2002) (*Dickenson Order*).

<sup>5</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>6</sup> 47 C.F.R. § 54.504(a).

<sup>7</sup> 47 C.F.R. §§ 504(b)(1), (b)(2); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 470).

<sup>8</sup> 47 C.F.R. § 54.504(b).

<sup>9</sup> *Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, SPIN-143006149, CC Docket No. 96-45, FCC 00-167, para. 9 (2000) (*Mastermind*).

<sup>10</sup> *Id.*, para. 10.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*, para. 9 ("to the extent a [service provider] employee was listed as the contact person on the FCC Form 470 that initiated a competitive bidding process in which [the service provider] participated, such Forms 470 were defective and violated our competitive bidding requirements. In the absence of valid Forms 470, the requests for support were properly denied.").

4. SLD denied Dickenson's funding requests because it found that they were supported by an FCC Form 470 that listed a contact person who was an employee of TECI, which also participated in the bidding process and provided Dickenson with internal connections service.<sup>14</sup> In its Request for Review, Dickenson conceded that its FCC Form 470 contact person was an employee of a service provider, TECI, that participated in the competitive bidding process.<sup>15</sup> It argued, however, that the FCC Form 470 should not be found invalid in connection with telecommunications requests because TECI only bid for the internal connections services and was not legally capable of bidding on telecommunications requests because it is not a common carrier.<sup>16</sup> The Division rejected that argument, finding that, under *Mastermind Internet Services, Inc.*, the FCC Form 470 as a whole was "defective," and thus, that *any* funding request based on it must be denied.<sup>17</sup>

5. In its Petition for Reconsideration, Dickenson argues again that *Mastermind Services, Inc.* should be interpreted more narrowly to hold that FCC Forms 470 listing a service provider employee as contact person are invalid only insofar as they request services that the service provider was capable of offering.<sup>18</sup> However, as discussed above, we addressed and rejected this exact argument in our previous order. The reconsideration process may not be used to "redebate[e] issues already resolved."<sup>19</sup>

6. In the alternative, Dickenson argues that it should receive a waiver of the *Mastermind* rule.<sup>20</sup> Dickenson bases its waiver request on the same circumstance underlying its argument that *Mastermind* should not be applied to invalidate its FCC Form 470 requests for telecommunications services, *i.e.*, that, because its contact person was associated with a vendor not eligible to provide discounted telecommunications, the concern with regard to fraud in connection with its telecommunications services requests is therefore diminished.<sup>21</sup> Dickenson also argues that, while the concern for fraud and waste that underlies the *Mastermind* decision is a valid one, the *Mastermind* rule itself is insufficient to prevent or deter the fraudulent efforts of

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<sup>14</sup> See *Dickenson Order*, para. 7.

<sup>15</sup> See *Dickenson Order*, para. 8; Letter from David Yates, Dickenson County Public Schools, to Federal Communications Commission, filed March 5, 2002 (Request for Review), at 1.

<sup>16</sup> Request for Review at 3-4.

<sup>17</sup> *Dickenson Order*, para. 9.

<sup>18</sup> Petition for Reconsideration at 2-4.

<sup>19</sup> See *George E. Cameron Jr. Communications (Kroq) Burbank, California For Renewal Of License Royce International Broadcasting Company Burbank, California Baker-Smith Communications, Inc. Burbank, California For Construction Permits*, 93 F.C.C.2d 789 (1983).

<sup>20</sup> Petition for Reconsideration at 6.

<sup>21</sup> Petition for Reconsideration at 2-4.

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unscrupulous parties while adding an additional technicality to the application process that trips up applicants that are acting in good faith.<sup>22</sup>

7. A waiver request can be granted only if waiving the deadline is supported by a showing of good cause.<sup>23</sup> A deviation from a general rule is not permitted unless special circumstances warrant it and the deviation would better serve the public interest than strict adherence to the general rule.<sup>24</sup> We find that the legal ineligibility of the provider to offer discounted telecommunications services does not constitute a special circumstance warranting a waiver of *Mastermind*.

8. A service provider's ineligibility to provide discounted telecommunications does not eliminate the possibility that, acting as contact person, the provider will prevent an open and fair bidding process for those services. For example, a provider may seek to steer business to other companies with which it has ties, or to obtain an applicant's contract on the provider's discounted and undiscounted services packaged together. Alternatively, it may seek to bid on the service and obtain eligibility at a later date. In addition, potential competition, unaware of the legal prohibition affecting the provider named as contact, may still be deterred from participating. Because the concern that the process will not be open and fair is still present in this circumstance, deviation from *Mastermind* would not better serve the public interest. Finally, Dickenson's argument that *Mastermind*'s benefits do not justify its costs is a disagreement with the basic rule of *Mastermind*, not a special circumstance warranting a deviation from that rule.

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 Petition for Reconsideration filed by Dickenson County Public Schools, Clintwood, Virginia, on June 3, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>22</sup> Petition for Reconsideration at 4-6.

<sup>23</sup> See 47 C.F.R. § 1.3.

<sup>24</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (appeals court vacating a Commission decision to grant a waiver in a licensing issue, because it was arbitrary and capricious).