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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Kalamazoo Public Schools	)	File No. **SLD-164612**
Kalamazoo, Michigan	)	
	)	
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: November 1,2002 **Released: November 4,2002**

By the Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) reconsiders, *sua* ***sponte,*** an October **3,** 2002 decision denying the Request for Review filed by Kalamazoo Public Schools (Kalamazoo), Kalamazoo, Michigan (*Kalamazoo* ***Order).***[1] In its Request for Review, Kalamazoo sought review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company, which denied one of Kalamazoo's Funding Year 2000 requests for discounted services under the schools and libraries universal service support mechanism.[2] In the *Kalamazoo* ***Order,*** the Bureau found that, after posting a service request for bidding, Kalamazoo sought discounts on a contract that it had signed prior to the bidding process.[3] The Bureau concluded that Kalamazoo thereby violated the competitive bidding requirement that applicants not enter into a service agreement until the bidding process was complete.[4] On reconsideration, however, we find that, in the circumstances of this case,

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[1] ***Request for Review by Kalamazoo Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Associalion, Inc.,*** **File No. SLD-164612,** CC **Dockets** NO. 96-**45 and 97-21, Order, DA** 02-2348 **(Wireline Comp. Bur. rel. October 3,2002)** *(Kalamazoo* ***Order).***

[2] **Letter from** *Gary* Start, **Kalamazoo** Public **Schools, to the Federal Communications Commission, filed April** 9, 200 **I (Request** *for* **Review); Letter** from Schools **and Libraries Division, Universal Service Administrative Company,** *to* **Gary** L. Start, **Kalamazoo Public Schools, dated March 19, 2001 (Administrator's Decision on Appeal).**

[3] ***See Kalamazoo Order,*** **para.** 9.

[4] ***Id.***

Kalamazoo's decision to request discounts on service pursuant to its existing contract did not necessarily violate our competitive bidding rules. We therefore vacate the *Kalamazoo* ***Order*** and remand to SLD for further review of the application. We also take this opportunity to clarify that, in the future, in order to facilitate the application review process, it is advisable for applicants that choose to renew a pre-existing service after a bidding process to memorialize that decision after the bidding process is complete and record the date of this memorialization as the relevant contract award date in their submitted application for discounts.

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.[5] The Commission's rules provide that an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.[6] In accordance with the Commission rules, an applicant must file with SLD, for posting to its website, a FCC Form 470 requesting services.' The applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471 requesting support for the services ordered by the applicant.'

3. The Commission's rules also provide that eligible schools and libraries with existing contracts are exempt from the competitive bidding requirement under certain circumstances. Specifically, under section 54.511(c)(1), contracts signed on or prior to July 10, I997 are exempt from competitive bidding requirements for the duration of the contract.[9] Contracts signed after July 10, 1997 and before January 30, 1998 (the date on which the Schools and Libraries website was fully operational) are exempt from the competitive bidding requirement for services provided through June 30, 1999, the end of Funding Year 1998, regardless of the duration of the contract as a whole.'' Once an applicant submits an FCC Form

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[5] 47 C.F.R. §§ 54.502, 54.503

[6] 47 C.F.R. §§ 54.504, 54.511(c).

[7] *See* 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), at 2-3.

[8] 47 C.F.R. § 54.504(b), (c); ***see*** Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999) (Form 471 Instructions), at 4; ***see also*** SLD website, <http://www.sl.universalservice.org>.

[9] 47 C.F.R. § 54.511(c)(1).

[10] 47 C.F.R. §§ 54.511(c)(1), 54.511(d). ***See Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers. Transport Rare Structure and Pricing, End User Common Line Charge,*** CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Fourth Order on Reconsideration 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, 5441, para. 217 (1997). In June 1998, the Commission changed the funding year for the schools and libraries universal service support mechanism from a calendar year cycle (January I – December 31) to a fiscal year cycle (July I – June 30). *Federal-State Joint Board on Universal Service,* Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915, 14920, para. 8 (1998) (*Fifth Order on Reconsideration*). The year 1 period was extended to cover the 18-month period from January I, 1998 to June 30, 1999. ***Id.*** Although the Commission's rules generally do not exempt voluntary extensions of contracts from the competitive bidding requirement, the ***Fifth Order on Reconsideralion*** provided that existing contracts with termination dates between December 31, 1998 and lune 30, 1999 could be voluntarily extended to a

470 and complies with the 28-day posting period, the applicant may enter into a long-term agreement at that time and, having complied with the competitive bidding requirement prior to entering into the service contract, the applicant need not submit any additional FCC Form **470s** for the duration of that contract."

4. Kalamazoo signed a five-year contract for telecommunications service on **January 5,** 1998, and was thus exempt from the competitive bidding requirements for Funding Year 1998, but not thereafter." In Funding Year 1999, Kalamazoo posted this service for bidding, and after the 28-day period had passed, submitted **a** Funding Year 1999 FCC Form 471, requesting discounts on the original contract.[13] After reviewing Kalamazoo's application, SLD granted the request.[14] However, when Kalamazoo requested discounts on the contract in Funding ***Year*** 2000, again citing the **Year** 1999 Form **470** as support, SLD denied the request, finding that competitive bidding rules had been violated.[15] Kalamazoo filed a Request for Review **with** the Commission, asserting that the posting of the FCC Form 470 in Funding Year 1999 satisfied the competitive bidding requirements for the life of the contract.[16] In the *Kalamazoo* ***Order,*** we found that Kalamazoo had not satisfied our competitive bidding requirements because it failed to sign a new contract after the Funding **Year** 1999 bidding process."

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date no later than June **30, 1999** in order to account for the change in the funding year cycle, and to avoid the undue hardship that would result from requiring schools and libraries to participate in competitive bidding **for** the six-month period between January 1, **1999** through June **30, 1999.** *Id.* at **14923,** para. **14.** The Commission subsequently amended this exemption from the competitive bidding requirement to include applicants with existing contracts that expired between the closing dates of the **1998** filing window and June **30, 1999,** but only for services received between January 1, **1999** and June **30, 1999.** ***Federal-Stale Joint Board on Universal Service,*** CC Docket No. **96-45,** Tenth Order on Reconsideration, 14 FCC Rcd **5983, 5989-5991,** paras. **12-15 (1999); 47** C.F.R. § **54.511(d)(1).**

[11] ***Federal-State Joint Board on Universal Service,*** CC Docket No. **96-45,** Order, DA **99-1773, 1999 WL 680424,** para. 10 (Com. Car. Bur. **1999)** ("We conclude that permitting a school or library to commit to a long-term contract after participating in the competitive bidding process does not compromise the benefits derived from competition. **As** long as all providers have had the opportunity to compete for the same contract, schools or libraries **can** enter into renewable contracts of any length or form, as permitted by state law.").

[12] ***See*** Request for Review, Attachment (Contract).

[13] ***See*** FCC Form **470,** Kalarnazoo Public School District, posted December 10, **1999** (Kalamazoo Form **470);** FCC Form **471,** Kalamazoo Public Schools, signed March **26, 1999.**

[14] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Chris Williams, Kalamazoo Public School District, dated July **8, 1999.**

[15] ***See*** Letter from Schools and Libraries Division, Universal Service Administrative Company, to Chris Williams, Kalamazoo Public Schools, dated July 21, **2000** (Funding Commitment Decision Letter); Administrator's Decision **on** Appeal.

[16] ***See*** Request for Review.

[17] ***See Kalammoo Order.***

5. On reconsideration, however, we modify our decision to take into account relevant precedent in the *Cochmne-Fountain City School District Order*.[18] The applicant in that case (hereinafter Cochrane) had signed a multi-year contract between July 10, 1997 and January 30, 1998.[19] As a result, Cochrane's contract for service, which lasted through June 30, 2000, was exempt from competitive bidding requirements for Funding Year 1998.[20] In Funding Year 1999, Cochrane posted an FCC Form 470 presenting the service for competitive bidding, waited until the 28-day bidding period had passed, and then signed and submitted an FCC Form 471 seeking discounts on the existing contract.[21] The Bureau found that, by submitting its FCC Form 470 for posting on the SLD website, as well as waiting for 28 days before signing and submitting an FCC Form 471, Cochrane adhered to all applicable requirements with respect to the Commission's competitive bidding policy.[22] In particular, the Bureau concluded that Cochrane had carefully considered other proposals before choosing to continue service under its existing contract, as required under the Commission's rules.[23]

6. Consistent with this decision, we recognize that Kalamazoo was not necessarily required to sign a new contract to satisfy the competitive bidding rules. Instead, the relevant question is whether, after Kalamazoo post–d its service for bidding with a Funding Year 1999 FCC Form 470 and waited the 28-day competitive bidding period, it carefully considered all bids before choosing to continue service under its existing contract. Because the record does not address or resolve this question, we remand the application to SLD to consider this issue and for all necessary further review.

7. Although applicants who, after a bidding process, choose to continue service under an existing contract need not formally enter into a new contract, we believe it would facilitate application processing for applicants to memorialize their decision to continue the service and enter the date of this memorialization as the contract award date of the renewed contract in their FCC Form 471. Such action will help SLD to determine whether the ap licant has in fact properly complied with the Commission's competitive bidding requirements.[24] Such a memorialization is also in keeping with the certifications on the FCC Form 471, which require an applicant to certify, among other things, that "the entity(ies) I represent has complied with all program rules [including competitive bidding rules]" and that "I will retain for five years any and

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[18] *Requestfor Review by Cochrane-Fountain City School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-140683, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 16628 (Corn. Car. Bur. *2000)* (*Cochrane-Fountain City School District Order).*

[19] *Cochrane-Fountain Cig School District Order,* 15 FCC Rcd at 16631, para. 6.

[20] Id

[21] *Cochrane-Fountain City School District Order,* 15 FCC Rcd at 16631, paras. 6-7

[22] *Cochrane-Fountain Cig School District Order,* 15 FCC Rcd at 16632, para. 7.

[21] *Cochrane-Fountain City School District Order,* 15 FCC Rcd at 16632, n.24.

[24] If applicants seek discounts on a newly bid service but enter the original contract's award date, *i.e.*, a date prior to the bidding process, as the relevant contract award date for their service request, SLD may well conclude from this information that a competitive bidding violation has occurred.

all worksheets and other records that I rely upon to fill out this application, and, if audited, will make available to the Administrator such records."[25] By noting an appropriate post-bidding contract award date that can be entered into the FCC Form 471, the memorialization will help SLD during application review to recognize instances where an applicant's reliance on an existing contract does not facially violate competitive bidding rules. It will also aid applicants by clarifying how they should enter requests for discounts on existing contracts in such situations.

8. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 0.291 and 1.108 of the Commission's rules, 47 C.F.R. §§ 0.291 and 1.108, we hereby reconsider and vacate, on our own motion, our October 3,2002 Order denying the Request for Review filed by Kalamazoo Public Schools, Kalamazoo, Michigan, on April 9, 2001.

9. IT IS FURTHER ORDERED that the Request for Review IS GRANTED, and this application is REMANDED to SLD for further review consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey

Carol E. Mattey
Deputy Chief, Wireline Competition Bureau

[25] *See* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000), Block 6.