

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

In the Matter of)
)
Federal-State Joint Board)
on Universal Service) CC Docket No. 96-45
)

ORDER

Adopted: September 1, 1999

Released: September 1, 1999

By the Acting Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In May 1998, the Florida Department of Management Services ("Florida DMS") filed a Motion for Declaratory Ruling or, Alternatively, a Petition for Waiver, of the Commission's rule regarding the application of the Commission's universal service schools and libraries support mechanism rules to voluntary extensions of contracts.¹ For the reasons explained below, in this Order, we confirm the two interpretations of our rules that Florida DMS seeks. Specifically, we first clarify that schools and libraries that have signed contracts based on service requests that have been posted on the School and Library Division (SLD)² website may exercise renewal terms in the original contract without any further posting. Second, schools and libraries that are considering renewal provisions of contracts that were not based on service requests previously posted on the SLD website must submit service requests for posting before renewing those existing contracts, but we do not require that schools and libraries undertake a fresh new bidding process if they find renewal of the existing contracts to be in their best interests after considering the results of that posting.

II. BACKGROUND

A. Section 254 and the Commission's Rules

2. The Telecommunications Act of 1996 added section 254 to the Communications Act of 1934, as amended. Section 254 establishes, among other things, that schools and libraries

¹ See Florida Department of Management Services, Motion for Declaratory Ruling or, Alternatively, Petition for Waiver, filed May 11, 1998 at 1 (*Florida DMS Motion*).

² SLD was formerly known as the Schools and Libraries Corporation (SLC), before it merged into the Universal Service Administrative Company (USAC).

receive telecommunications and information services at discounted rates.³ In the *Universal Service Order*,⁴ the Commission sought to ensure that schools and libraries benefit from the development of competition by encouraging providers to approach schools and libraries with competing offers for meeting their telecommunications and information service needs.⁵ The Commission recognized that such competition would result in more efficient pricing for telecommunications and information services purchased by schools and libraries, thus minimizing the amount of support needed.

3. The Commission concluded that enabling schools and libraries to post relatively simple requests on a website would provide a minimally burdensome means for them to get competing providers to approach them, so that schools and libraries could then select the best service packages subject to their state and local rules.⁶ The Commission, therefore, required that the administrator of the schools and libraries support mechanism establish and maintain a website that would be known and accessible to all providers to allow them to identify potential customers quickly and easily.⁷

4. Although the Commission wanted all schools and libraries participating in the program to enjoy the benefits of competition generated by postings on the SLD website, and wanted contracts supported by the program opened to all competing providers, it recognized that some schools and libraries were legally bound by existing contracts that they could not breach without triggering a penalty. The Commission did not want to exclude these schools and libraries from receiving the benefits of universal service support until their binding contracts expired,⁸ and it was concerned that voiding those contracts could be unfair to providers.⁹ On the other hand, the Commission was concerned that it not enable incumbent carriers to use long-term contracts to lock out competitors before those competitors had a chance to contact schools and libraries.¹⁰

³ See 47 U.S.C. 254 (h)(1)(B).

⁴ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Erratum, FCC 97-157 (rel. June 4, 1997), *aff'd in part, rev'd in part, remanded in part sub nom Texas Office of Public Utility Counsel v. FCC*, No. 97-60421 (5th Cir., July 30, 1999) (*First Report and Order*).

⁵ See *Universal Service Order*, 12 FCC Rcd at 9028-29, 9078.

⁶ See *Universal Service Order*, 12 FCC Rcd at 9079.

⁷ See *Universal Service Order*, 12 FCC Rcd at 9078-79.

⁸ See *Universal Service Order*, 12 FCC Rcd at 9064.

⁹ See *Universal Service Order*, 12 FCC Rcd at 9063.

¹⁰ See *Fourth Reconsideration Order*, 13 FCC Rcd at 5442.

5. The Commission resolved this difficulty by permitting schools and libraries to receive discounts on existing contracts without posting such contracts on the website, but only until the contract expired or until a renewal provision *permitted* them to consider other options.¹¹ Once a school or library is free, under its existing contract, to consider other options, the Commission's rules require it to submit its service requests (FCC Form 470 applications) for posting on the website, where they can be considered by all potential competitors.¹² The school or library must then wait four weeks¹³ and "carefully consider all bids submitted"¹⁴ before selecting a provider, subject to any state or local procurement rules. The Commission concluded that this process "is the most efficient means for ensuring that eligible schools and libraries are informed about the choices available to them and receive the lowest prices."¹⁵

B. Florida's Petition

6. The Florida DMS provides telecommunications services to schools and libraries throughout the State of Florida using competitively-bid master contracts.¹⁶ Pursuant to the Commission's universal service rules, the Florida DMS applied for support of its provision of telecommunications services to eligible schools and libraries.¹⁷

7. On May 11, 1998, Florida DMS filed a Motion for Declaratory Ruling or, Alternatively, a Petition for Waiver, of the Commission's rule regarding voluntary extensions of contracts.¹⁸ The Florida DMS first seeks a declaratory ruling that the exercise of the renewal provisions of its master contracts is not a "voluntary extension" of a contract, and, thus, is exempt from the Commission's competitive bid requirements.¹⁹ In the event the Commission is unwilling to render such a ruling, the Florida DMS alternatively seeks a waiver of the Commission's rule on

¹¹ See *Universal Service Order*, 12 FCC Rcd at 9062-64.

¹² See 47 C.F.R. § 54.511(d).

¹³ See 47 C.F.R. § 54.504(b)(4).

¹⁴ See 47 C.F.R. § 54.511(a).

¹⁵ See *Fourth Reconsideration Order*, 13 FCC Rcd at 5447.

¹⁶ See *Florida DMS Motion* at 1.

¹⁷ See *Florida DMS Motion* at 1.

¹⁸ *Florida DMS Motion* at 1.

¹⁹ See *Florida DMS Motion* at 9-10.

voluntary extensions of contracts, such that the exercise of the Florida DMS's contract renewal options would be exempt from the Commission's competitive bid requirements.²⁰

8. On May 21, 1998, the Common Carrier Bureau (Bureau) released a public notice seeking comment on the Florida DMS Petition.²¹ Four parties filed comments,²² and two parties filed reply comments.²³ All of the parties filing comments or reply comments expressed their support for the Florida DMS petition.²⁴

9. On September 8, 1998 the Florida DMS submitted a letter in response to a staff inquiry.²⁵ In the letter, the Florida DMS clarifies the issues on which it seeks confirmation. First, it seeks confirmation that if it signs a contract based on a request made according to the Commission's competitive bidding process -- filing FCC Form 470 and waiting for four weeks after the form is posted on the schools and libraries website -- and that contract contains a renewal clause, that it can renew that contract without reposting the contract.²⁶ Second, the Florida DMS seeks confirmation that, although an applicant for support must file FCC Form 470 and wait four weeks after Form 470 has been posted before signing a renewal of a contract if it did not go through the Commission's competitive bidding process for that contract, Commission rules do not require the applicant to undertake any other formal bidding processes before renewing the existing contract.²⁷

III. DISCUSSION

²⁰ See *Florida DMS Motion* at 10.

²¹ Florida Department of Management Services Files Motion for Declaratory Ruling or, in the Alternative, Petition for Waiver, of Existing Contracts Rules, CC Docket No. 96-45, *Public Notice*, DA 98-977 (rel. May 21, 1998).

²² Comments were filed by AT&T Corporation, Bell Atlantic, US West Communications, Inc., and BellSouth.

²³ Replies were filed by National Association of State Telecommunications Directors and the New York State Office of General Services Information Technology & Procurement.

²⁴ See AT&T Corporation comments at 1; Bell Atlantic comments at 1; U.S. West comments at 1; BellSouth comments at 2; National Association of State Telecommunications Directors reply comments at 2; New York State Office General Services Information Technology & Procurement reply comments at 1.

²⁵ Letter from Colette K. Bohatch, Counsel for Florida DMS, to Mark Nadel, FCC, Accounting Policy Division, August 21, 1998; See also Letter from Colette K. Bohatch, Counsel for Florida DMS, to Mark Nadel, FCC, Accounting Policy Division, August 26, 1998; Letter from Colette K. Bohatch, Counsel for Florida DMS, to Mark Nadel, FCC, Accounting Policy Division, September 8, 1998 (*Florida DMS September letter*).

²⁶ *Florida DMS September letter* at 1.

²⁷ *Florida DMS September letter* at 2.

10. We clarify, based on our review of Commission policies regarding service request postings and of our rules, that the interpretations set forth in the Florida DMS's September 8, 1998 letter are accurate. First, once a school or library's service request has been posted on the SLD website, the school or library may sign contracts with providers that include renewal options and the school or library subsequently may exercise those renewal options without any additional service request posting. 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.

11. Second, when applicants are seeking to renew an existing contract that was not previously posted, Commission rules do not require them to undertake any further competitive bidding processes beyond posting their requests and carefully considering all bids submitted. State rules, however, might impose additional requirements. The Commission's posting requirement seeks to ensure that all competing providers that monitor the SLD website can become aware of any school or library that they might serve and to ensure that the competing providers have the opportunity to contact those schools and libraries before the latter have signed binding contracts.²⁸ As long as new competitors have the opportunity to view and respond to such postings, and applicants consider any bona fide offers, the Commission's rules would be satisfied. The Commission's rules do not require schools and libraries to undertake any additional competitive bidding procedures, although state procurement rules might trigger additional requirements.

12. We, therefore, confirm that, for a contract that has been competitively bid through the FCC Form 470 application process, no reposting of the contract is necessary before a renewal option is exercised. We also confirm that Commission rules do not require schools and libraries that submit an FCC Form 470 application for posting on the SLD website before they renew a contract to undertake any other competitive bidding processes other than to consider carefully any bona fide responses to their posting.

²⁸ See *Fourth Reconsideration*, 13 FCC Rcd at 5447.

IV. ORDERING CLAUSE

13. IT IS THEREFORE ORDERED, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and sections 0.91, 0.291, and 1.2 of the Commission's rules, 47 § C.F.R. §§ 0.91, 0.291, and 1.2, that the Florida Department of Management Services' Motion for a Declaratory Ruling is GRANTED as qualified by the above paragraph.

FEDERAL COMMUNICATIONS COMMISSION

Lisa M. Zaina
Acting Deputy Chief,
Common Carrier Bureau