

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
Request for Waiver of Form 470 requirements re: )
Voluntary Contract Extension Designation by )
California State E-Rate Coordinator ) CC Docket No. 96-45
Schools and Libraries Universal Service ) CC Docket No. 02-6
Support Mechanism )

ORDER

Adopted: November 23, 2010

Released: November 23, 2010

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this order, we grant the request for waiver by the California State Department of Technology Services (DTS). Specifically, we waive the requirement that applicants "submit a completed FCC Form 470" for DTS's Statewide Master Contract, in light of DTS's inadvertent failure to check the appropriate box on the FCC Form 470 to indicate that its contract featured voluntary extensions.

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible services. The applicant must file an FCC Form 470 with USAC to request discounted services. On the FCC Form 470, the applicant must describe the desired services with sufficient specificity to enable potential service providers to submit bids. Specifically, the FCC Form 470 requires an applicant, among other things, to indicate by checking a box whether services for which a new written contract is being sought include a multi-year contract, and/or

1 Letter from Russ Selken, California E-Rate Advisor, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed September 24, 2010) (Request for Waiver). The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. FCC Form 470 is available on the website of the Universal Service Administrative Company (USAC): http://www.usac.org/sl/applicants/step03/. Although DTS expressly seeks waiver of "the FCC Form 470 requirement" that if a contract features voluntary extensions, the applicant must check the appropriate box on the FCC Form 470, we note that the applicable rule is section 54.504, which requires, among other things, that applications submitted to USAC be "completed." See generally 47 C.F.R. § 54.504.

2 47 C.F.R. §§ 54.501-54.503.

3 47 C.F.R. § 54.504(b).

4 Request for Review by Ysleta Independent School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407 (2003) at para 28.

whether the contract features voluntary extensions.<sup>5</sup> The FCC Form 470 is then posted on USAC's website for all potential competing service providers to review.<sup>6</sup>

3. In 2005, DTS completed an FCC Form 470 for schools and libraries throughout the state to obtain E-rate discounts for eligible services. On the FCC Form 470, DTS checked the box that a multiyear contract was being sought<sup>7</sup> but inadvertently failed to check the box that the contract would feature voluntary extensions.<sup>8</sup> Shortly after the Form 470 was posted, DTS issued a Request for Proposal (RFP) soliciting a Statewide Master Contract for telecommunications services. The RFP clearly states that the State of California was seeking contracts for a "five-year term with a possibility of two one-year extensions at the discretion of the state."<sup>9</sup> In January 2007, the state of California entered into a five-year Statewide Master Contract with two one-year extensions. The original five-year term is set to expire on January 29, 2012.

4. DTS requests a waiver from the FCC Form 470 requirement that an applicant must check an appropriate box if a contract features voluntary extensions.<sup>10</sup> DTS argues that it made a clerical error on the FCC Form 470 and that schools in California should be permitted to continue operating under the existing Statewide Master Contract by invoking the two one-year extension options.<sup>11</sup> DTS explains that, without a waiver, numerous California school districts would be forced to undertake a burdensome and costly process seeking new bids for these services. DTS states that approximately 1,000 school districts throughout the State of California would not be able to take advantage of the Statewide Master Contract and would have to post new FCC Forms 470 seeking bids from several providers for funding year 2011/2012 in order to remain compliant with E-rate rules.<sup>12</sup> DTS explains that this additional burden placed on applicants throughout the state seems unnecessary, especially because the Commission plans to revise the FCC Form 470 in an effort to avoid clerical errors such as the one at issue here.<sup>13</sup> Moreover, DTS argues that its request is time-sensitive, because applicants are preparing for and conducting their competitive bidding processes now for the 2011 funding year.<sup>14</sup> All the schools, including many small school districts, would need to start this process as soon as possible and significant resources would need to be devoted to the process, including training.<sup>15</sup> Finally, DTS argues that if smaller applicants were

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<sup>5</sup> See FCC Form 470 available at <http://www.usac.org/sl/applicants/step03/>.

<sup>6</sup> 47. C.F.R. § 54.504(b)(3).

<sup>7</sup> Request for Waiver at 1-2.

<sup>8</sup> Request for Waiver at 1-2; Ex Parte Letter from Russell Selken to Kim Scardino, Attorney Advisor, Federal Communications Commission, CC Docket Nos. 96-45, 02-6, filed November 3, 2010 (DTS Ex Parte).

<sup>9</sup> State of California Request for Proposal at Section 1.3, available at <http://www.dts.ca.gov/stnd/calnet-II/revised-calnetII-rfp.asp?key=2130> (last viewed on November 5, 2010).

<sup>10</sup> Request for Waiver at 2.

<sup>11</sup> Request for Waiver and DTS Ex Parte.

<sup>12</sup> Request for Waiver at 2.

<sup>13</sup> *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, FCC 10-175 (rel. September 28, 2010) (*Sixth Report and Order*) at para 70 and n. 205.

<sup>14</sup> DTS Ex Parte.

<sup>15</sup> DTS Ex Parte.

required to file their own FCC Forms 470 this year, they would not be able to leverage state contract pricing, which could result in higher costs for the applicants and the program as a whole.<sup>16</sup>

5. We conclude that there is good cause to grant a waiver to DTS.<sup>17</sup> First, there is no evidence that the competitive bidding process was jeopardized in any way as a result of DTS not checking the correct box on the Form 470. The RFP clearly stated that California was looking to enter into a contract for a “five-year term with a possibility of two one-year extensions at the discretion of the state.”<sup>18</sup> Thus, bidders were fully aware of the possibility of a contract extension, and our competitive bidding rules were not undermined by the omission on the FCC Form 470. Second, requiring these 1,000 school districts to go through the FCC Form 470 processes and procedures as a result of a clerical error would cause school districts to expend unnecessarily their limited staffing and financial resources. It would not be in the public interest to require the school districts to bid for these services individually in this instance instead of taking advantage of the discounts available in the already negotiated Statewide Master Contract.

6. Finally, other applicants have committed similar technical errors related to portions of the FCC Form 470, and we have granted them relief.<sup>19</sup> We also note that, in response to a number of denials by USAC of E-rate funding because of technical deficiencies contained in the FCC Form 470, the Commission is redesigning the FCC Form 470 as set forth in the recently adopted *Sixth Report and Order*.<sup>20</sup> The Commission explained that “the portions of the FCC Form 470 related to category selections and multiyear contracts, among others, have been the basis for a multitude of funding request denials by USAC because of technical errors rather than defects that negatively affected the competitive bidding process.”<sup>21</sup>

7. We also find that, in this instance, there is no evidence in the record of waste, fraud, or abuse of E-rate funds or of a failure to adhere to core program requirements. Thus, we find it in the public interest to waive the Commission’s rule to enable DTS to continue operating under its existing Statewide Master Contract, which provides for two one-year extensions beyond January 29, 2012.

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<sup>16</sup> DTS Ex Parte at 2.

<sup>17</sup> Generally, the Commission’s rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission’s rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166. We note that, by failing to check the correct box on the FCC Form 470, DTS failed to file a completed FCC Form 470 as required by section 54.504(b) of the Commission’s rules. Thus, we waive this provision.

<sup>18</sup> State of California Request for Proposal at Section 1.3, available at <http://www.dts.ca.gov/stnd/calnet-II/revise-calnetII-rfp.asp?key=2130> (last viewed on November 5, 2010).

<sup>19</sup> *Request for Review of a Decision of the Universal Service Administrator by Albert Lea Area Schools, Schools and Libraries Universal Service Support Mechanism*, Order, File No. SLD-517274, et al, CC Docket No. 02-6, Order, 24 FCC Rcd 4533, 4539-40 at para 10 (Wireline Comp. Bur, 2009) (granting an appeals by petitioners who mistakenly did not indicate they were posting for a multiyear contract or a contract with a voluntary renewal provision when they originally posted their FCC Forms 470).

<sup>20</sup> *Sixth Report and Order* at para. 70, n.205.

<sup>21</sup> *Id* at n.205.

8. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that the request for waiver of 47 C.F.R. § 54.504(b) filed by the California State Department of Technology Services IS GRANTED.

9. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Gina Spade  
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Telecommunications Access Policy Division  
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