

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of
Decisions of the
Universal Service Administrator by
Green Bay Area Public School District
Green Bay, Wisconsin
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-681595, 692800, 681544
CC Docket No. 02-6

ORDER

Adopted: December 6, 2010

Released: December 6, 2010

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

I. DISCUSSION

1. We grant an appeal filed by the Green Bay Area Public School District (Green Bay) of decisions by the Universal Service Administrative Company (USAC) concerning three applications for discounted services under the E-rate program (more formally known as the schools and libraries universal service program) for funding year 2009. Consistent with precedent, we find that Green Bay did not violate section 54.504(a) of the Commission's rules, which states that E-rate applicants must seek competitive bids for all services eligible for support. Despite Green Bay's failure to correctly indicate on its FCC Forms 470 that it had issued a request for proposal (RFP) for the services at issue, we find that all bidders had access to the same information during Green Bay's competitive bidding process because its FCC Forms 470 contained enough detail regarding the desired services for service providers to formulate bids. Moreover, it appears from the record that all interested bidders received copies of the RFP. Thus,

1 See Request for Review by Green Bay Area Public School District, to Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed May 24, 2010) (Request for Review) (regarding FCC Form 471 application number 681595, funding request number (FRN) 1893019, FCC Form 471 application number 692800, FRN 1900526, and FCC Form 471 application number 681544, FRN 1908084). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

2 47 C.F.R. § 54.504(a); see Request for Review of the Decision of the Universal Service Administrator by Approach Learning and Assessment Centers, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-506121, et al., CC Docket No. 02-6, Order, 23 FCC Rcd 15510 (2008) (Approach Learning Order);

3 See FCC Form 470, Green Bay Area Public Schools (posted Dec. 30, 2008) (FCC Form 470 number 908160000717506); FCC Form 470, Green Bay Area Public Schools (posted Dec. 30, 2008) (FCC Form 470 number 805070000717657).

4 See Request for Review. Three vendors submitted bids for FRN 1908084 and four vendors submitted bids for FRNs 1893019 and 1900526.

we find that there was no actual harm to the competitive bidding process and that the underlying policy of ensuring service providers a fair opportunity to bid on the services sought by E-rate applicants was not compromised by Green Bay's error.<sup>5</sup> We therefore conclude that rejecting Green Bay's applications on the ground that Green Bay failed to advise bidders that an RFP existed is not warranted in these instances, especially in the absence of any evidence of waste, fraud, or abuse. Accordingly, we grant Green Bay's appeal.

2. We emphasize, however, the limited nature of this decision. The Commission's competitive bidding rules serve as a central tenet of the E-rate program. Thus, although we grant Green Bay's appeal, our action here does not eliminate or mitigate any of our competitive bidding requirements or the obligations of participants in the E-rate program to comply with the Commission's rules.

## II. ORDERING CLAUSES

3. ACCORDINGLY, IT IS ORDERED, pursuant to 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 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), the appeal filed by Green Bay Area Public School District on May 24, 2010 IS GRANTED and the underlying applications ARE REMANDED to USAC for further action consistent with this order.

4. IT IS FURTHER ORDERED, pursuant to 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 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), that USAC SHALL COMPLETE its review of the underlying applications and ISSUE an award or a denial based on a complete review and analysis no later than 60 calendar days from the release date of this order.

FEDERAL COMMUNICATIONS COMMISSION

Gina M. Spade  
Deputy Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

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<sup>5</sup> See *Approach Learning Order*, 23 FCC Rcd at 15513-14, para. 8.