

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

In the Matter of	)	
	)	
Request for Review of a	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Coahoma County School District	)	File No. SLD-477513
Clarksdale, MS	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: August 8, 2011**

**Released: August 8, 2011**

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

**I. INTRODUCTION**

1. We grant a request by the Coahoma County School District (Coahoma) seeking review of a decision by the Universal Service Administrative Company (USAC) rescinding funding for discounted services under the E-rate program (more formally known as the schools and libraries universal service program) for funding year (FY) 2005.<sup>1</sup> Specifically, USAC rescinded funding for one of Coahoma's funding requests as part of its FY 2005 application on the ground that Coahoma violated the Commission's competitive bidding requirements.<sup>2</sup> Upon review of the record, we find that Coahoma did not violate the Commission's competitive bidding requirements. We therefore grant Coahoma's appeal and direct USAC to discontinue recovery actions against Coahoma and its service provider, Cellular South, Inc., consistent with this order.

**II. BACKGROUND**

2. *E-rate Program Rules and Requirements.* Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible services.<sup>3</sup> The Commission's rules provide that an eligible school, library, or consortium that includes

<sup>1</sup> See Letter from Anthony Dixon, Coahoma County School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed May 22, 2009) (regarding FCC Form 471 application number 477513, funding request number (FRN) 1319043) (Request for Review). In this order, we also use the term "appeal" to generically refer to Coahoma's request for review of USAC's decision. 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).

<sup>2</sup> See Request for Review at 1; see also Letter from USAC, Schools and Libraries Division, to Anthony Dixon, Coahoma County School District (dated March 24, 2009) (Notification of Commitment Adjustment (COMAD) Letter).

<sup>3</sup> 47 C.F.R. §§ 54.501-54.502.

eligible schools and libraries must seek competitive bids for all services eligible for support.<sup>4</sup> In accordance with the Commission's competitive bidding rules, applicants must submit for posting on USAC's website an FCC Form 470 requesting discounts for E-rate eligible services, such as tariffed telecommunications services, month-to-month Internet access, or any services for which the applicant is seeking a new contract.<sup>5</sup> The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.<sup>6</sup> The applicant must provide this description on its FCC Form 470 or indicate on the form that it has a request for proposal (RFP) available providing detail about the requested services.<sup>7</sup> The RFP must be available to all potential bidders for the duration of the bidding process.<sup>8</sup> A service provider participating in the competitive bidding process cannot be involved in the preparation of the entity's FCC Form 470.<sup>9</sup>

3. After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.<sup>10</sup> The Commission's rules require that an applicant carefully consider all submitted bids prior to entering into a contract, and price must be the primary factor in selecting the winning bid.<sup>11</sup> Once the applicant has selected a provider and entered into a service contract, the applicant must file an FCC Form 471 requesting support for eligible services.<sup>12</sup> USAC assigns a funding request number (FRN) to each request for discounted services and issues funding commitment decision letters (FCDLs) approving or denying the requests for discounted services.<sup>13</sup>

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<sup>4</sup> 47 C.F.R. § 54.503. The Commission's rules provide one exception to the competitive bidding requirement for existing, binding contracts signed on or before July 10, 1997. *See* 47 C.F.R. § 54.511(c).

<sup>5</sup> 47 C.F.R. § 54.503(c).

<sup>6</sup> *Id.*

<sup>7</sup> *See, e.g.,* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) (current FCC Form 470).

<sup>8</sup> *See* FCC Form 470.

<sup>9</sup> *See 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.*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4033 (2000) (*Mastermind Order*).

<sup>10</sup> 47 C.F.R. § 54.503(c). *See, e.g., Request for Review of the Decision of the Universal Service Administrator by Approach Learning and Assessment Center, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15510 (2008) (*Approach Learning Order*).

<sup>11</sup> 47 C.F.R. § 54.511(a).

<sup>12</sup> *See* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (current FCC Form 471).

<sup>13</sup> *See* USAC website, Schools and Libraries, Funding Commitment Decision Letter, <http://www.universalservice.org/sl/applicants/step09/funding-commitment-decision-letter.aspx> (last viewed Apr. 1, 2011).

4. *State Master Contracts.* Applicants may purchase eligible services from “master contracts” negotiated by a third party such as a governmental entity.<sup>14</sup> The third party initiating the master contract must comply with the Commission’s competitive bidding requirements and state procurement laws.<sup>15</sup> The applicant is not required to satisfy the competitive bidding requirements if it takes service from a master contract that either has been competitively bid or qualifies for the existing contract exemption.<sup>16</sup> If a third party has negotiated a master contract without complying with the competitive bidding requirements, the applicant must comply with the Commission’s competitive bidding requirements and state and local procurement laws before it may receive discounts or reduced rates for services purchased from that master contract.<sup>17</sup> Compliance with state and local procurement requirements does not relieve a school from its obligation also to follow Commission rules specifically for the E-rate program.<sup>18</sup> The applicant must certify its compliance with the competitive bidding rules when submitting its FCC Form 471 application.<sup>19</sup>

5. *Request for Review.* In May 2004, the Mississippi Department of Information Technology Services (Mississippi ITS) submitted an FCC Form 470 on behalf of all school districts in the state of Mississippi to initiate the competitive bidding process for E-rate eligible services.<sup>20</sup> In July 2004, Mississippi ITS negotiated a state master contract to be used by Mississippi agencies, universities, junior colleges, and other governing authorities, including school districts, for the acquisition of wireless telecommunications services and equipment.<sup>21</sup> Coahoma subsequently selected its existing service provider, Cellular South, Inc., fka Telepak, Inc., (Cellular South) from the Mississippi master contract for a two-year term.<sup>22</sup> In FY 2005, Coahoma filed an FCC Form 471 application seeking support for telecommunications services.<sup>23</sup> Coahoma’s application identified the Mississippi ITS FCC Form 470 as the establishing FCC Form 470 for the funding request at issue, i.e., FRN 1319043.<sup>24</sup> In October 2006,

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<sup>14</sup> See 47 C.F.R. § 54.500(g) (defining “master contract” as a contract negotiated with a service provider by a third party, the terms and conditions of which are then made available to an eligible school, library, rural health care provider, or consortium that purchases directly from the service provider).

<sup>15</sup> See *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5452-53, para. 233 (1997) (*Fourth Reconsideration Order*).

<sup>16</sup> *Id.* at 5452-53, para. 233.

<sup>17</sup> *Fourth Reconsideration Order*, 13 FCC Rcd at 5452-53, para. 233; see also *Request for Review of the Decision of the Universal Service Administrator by Patterson School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 13101 (2006) (*Patterson Order*); USAC website, Schools and Libraries, Contract Guidance, <http://www.usac.org/sl/applicants/step04/contract-guidance.aspx> (last visited Apr. 1, 2011); 47 C.F.R. §§ 54.503, 54.511.

<sup>18</sup> See *Ysleta Order*, 18 FCC Rcd at 26424-26, paras. 41-44.

<sup>19</sup> See FCC Form 471, Block 6.

<sup>20</sup> FCC Form 470, Mississippi Department of Information Technology Services (posted May 5, 2004).

<sup>21</sup> See Memorandum, Mississippi Department of Information Technology Services, Cellular Express Products List (EPL) 3389-A (July 12, 2004).

<sup>22</sup> See FCC Form 471, Coahoma County School District (Feb. 18, 2005) (Coahoma FCC Form 471).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

USAC approved all of the funding requests included in Coahoma's FY 2005 FCC Form 471 application.<sup>25</sup> During post funding review, however, USAC rescinded Coahoma's funding commitment for FRN 1319043 on the ground that Coahoma failed to comply with state and local procurement laws and thus violated the Commission's competitive bidding rules.<sup>26</sup> Specifically, USAC determined that Coahoma continued service with its existing vendor without evaluating other vendors on the Mississippi ITS Express Products List (EPL) as required under Mississippi master contracts rules.<sup>27</sup> USAC also determined that Coahoma submitted an invoice for March 2006 which exceeded the amount billed for the services provided by Cellular South by \$45.<sup>28</sup> Coahoma then filed the instant appeal with the Commission.<sup>29</sup>

6. In its appeal, Coahoma states that it followed all federal, state, and local competitive bidding rules and that USAC acted on an incorrect interpretation of the Mississippi ITS EPL requirements.<sup>30</sup> Coahoma argues that it was not required to re-bid the services listed on the EPL, as USAC implies, because the Mississippi ITS already had completed the bidding process for them.<sup>31</sup> Coahoma further argues that the EPL encourages customers to contact two or more EPL vendors before making decisions, but they are not required to do so.<sup>32</sup> Coahoma asserts that it selected Cellular South from the EPL based on best price and because it was the only local vendor listed on the EPL that had coverage in Coahoma's service area at the time.<sup>33</sup> Coahoma did not refute USAC's determination regarding the invoice discrepancy.<sup>34</sup>

### III. DISCUSSION

7. After reviewing the underlying record, we grant Coahoma's appeal.<sup>35</sup> USAC denied support for one FRN (FRN 1319043) contained in Coahoma's FY 2005 FCC Form 471 application on the ground that Coahoma did not comply with state and local procurement law and thus violated the

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<sup>25</sup> See Letter from USAC, Schools and Libraries Division, to Anthony Dixon, Coahoma County School District (dated Oct. 23, 2006) (Funding Commitment Decision Letter (FCDL)).

<sup>26</sup> See COMAD Letter.

<sup>27</sup> *Id.*; Mississippi Department of Information Technology Services, Cellular Express Products List (EPL) 3389-A, at 2.2.1 (released Jan. 7, 2005) (EPL 3389-A) ("EPL customers must still do their own evaluation to support that they are choosing the products and vendors that meet their lowest and best criteria.").

<sup>28</sup> See COMAD Letter.

<sup>29</sup> See Request for Review. The record shows that Coahoma submitted an invoice to USAC for the month of March, 2006 in the amount of \$10,078. However, the amount reflected on the service provider bill was \$10,028, resulting in an overpayment to Coahoma of \$45.

<sup>30</sup> *Id.* at 4-5.

<sup>31</sup> *Id.* at 6.

<sup>32</sup> *Id.* at 7; see also EPL 3389-A at 2.1 (providing that "ITS encourages you to work with more than one vendor as you make your decisions.").

<sup>33</sup> See Request for Review at 5.

<sup>34</sup> See Request for Review.

<sup>35</sup> The Bureau must conduct a *de novo* review of requests for review of decisions issued by USAC. 47 C.F.R. § 54.723.

Commission's competitive bidding requirements.<sup>36</sup> After review of the record, however, we find that Coahoma did not violate state and local procurement requirements for FRN 1319043, and under the circumstances of this case, we grant the requested relief.

8. As indicated above, an applicant is not required to satisfy the Commission's competitive bidding requirements if it takes service from a master contract that has been competitively bid.<sup>37</sup> First, the record shows that Coahoma selected a vendor from a Mississippi master contract that complied with the Commission's E-rate rules.<sup>38</sup> Furthermore, the Mississippi master contract contains pricing information, and the service providers listed on the EPL are ranked according to price. The best price offering is listed first followed by the second best price offering, and so on.<sup>39</sup> Second, we find that Coahoma was not required by its state procurement regulations to initiate and complete its own competitive bidding process for the services listed on the Mississippi ITS EPL. Instead, the state's master contract establishes best practices. The EPL encourages customers to contact more than one vendor when making their decisions; it does not require such contact.<sup>40</sup> This provision in its entirety reads as follows:

Review the specifications from the Request for Proposal, which are incorporated into Chapter One of this EPL. ITS evaluates product offerings to make sure they meet specifications. EPL customers must still do their own evaluation to support that they are choosing the products and vendors that meet their lowest and best criteria.<sup>41</sup>

This provision does not require Mississippi entities to complete an additional competitive bidding process for the services appearing on the EPL, as suggested by USAC.<sup>42</sup> Rather, it directs customers to review each of the service offerings that are listed on the EPL and choose the product and vendor that best meets their needs.<sup>43</sup> We therefore disagree with USAC's interpretation of the state procurement provision it relied upon in rescinding Coahoma's funding request.

9. Based on these factors, we find that Coahoma did not violate its state and local competitive bidding process and therefore did not violate E-rate program rules. We grant Coahoma's appeal and direct USAC to discontinue recovery actions against Coahoma and its service provider, Cellular South, Inc., for FRN 1319043 as part of Coahoma's FY 2005 application. However, we direct Coahoma to reimburse USAC the \$45 difference between the amount requested on its March 2006 invoice and the amount reflected on the Cellular South, Inc. bill for the services at issue.

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<sup>36</sup> See COMAD Letter.

<sup>37</sup> See *supra* para. 4.

<sup>38</sup> See Request for Review.

<sup>39</sup> See EPL 3389-A.

<sup>40</sup> See EPL 3389-A at 2.1 ("ITS *encourages* you to work with more than one vendor as you make your decisions.") (emphasis added).

<sup>41</sup> See EPL 3389-A at 2.2.1.

<sup>42</sup> See COMAD Letter.

<sup>43</sup> The service providers listed on the EPL are ranked according to price. The best price offering is listed first followed by the second best price offering, and so on. See EPL 3389-A.

**IV. ORDERING CLAUSES**

10. 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 pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 54.722(a), that the request for review filed by the Coahoma County School District on May 22, 2009 regarding funding request number 1319043 IS GRANTED to the extent provided herein.

11. IT IS FURTHER 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 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, 54.722(a), that USAC SHALL DISCONTINUE its recovery actions against Coahoma County School District and its service provider, Cellular South, Inc., to the extent provided herein, and USAC SHALL REFUND the Coahoma School District and/or Cellular South, Inc. any funds that have already been recovered no later than 60 calendar days from the release date of this order.

12. IT IS FURTHER 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 pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 54.722(a), that Coahoma School District SHALL REIMBURSE USAC the difference between the amount requested on its March 2006 invoice and the amount reflected on the Cellular South, Inc. bill (\$45) for the services provided under funding request number 1319043.

FEDERAL COMMUNICATIONS COMMISSION

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