

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Requests for Review of a)	
Decision of the)	
Universal Service Administrator by)	
)	
Riverdale Unified School District)	File No. SLD-595033
Riverdale, CA)	
)	
Cherokee County School District)	File No. SLD-624508
Murphy, NC)	
)	
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. In this order, we grant requests by the Riverdale Unified School District, Riverdale, California (Riverdale) and Cherokee County School District (Cherokee) seeking review of decisions by the Universal Service Administrative Company (USAC) denying funding for discounted services under the E-rate program (more formally known as the schools and libraries universal service support program).¹ Specifically, USAC denied one of Riverdale's funding requests and two of Cherokee's funding requests on the ground that each petitioner violated the Commission's competitive bidding requirements.² Upon review of the record, we find that Riverdale and Cherokee did not violate the Commission's competitive bidding requirements. We therefore grant the appeals filed by Riverdale and Cherokee and remand the underlying funding requests associated with these appeals to USAC for further

¹ See Letter from Elaine Cash, Superintendent, Riverdale Unified School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 30, 2009) (regarding funding year (FY) 2008 FCC Form 471 application number 595033, funding request number (FRN) 1642689) (Riverdale Request for Review); Letter from Jeana Hardin, Executive Director for Technology, Cherokee County School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 29, 2009) (regarding FCC Form 471 application number 624508, funding request numbers (FRNs) 1723230 and 1723249) (Cherokee Request for Review). In this order, we use the term "appeal" to generically refer to Riverdale's and Cherokee's requests for review of USAC's decisions. 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 See Request for Review at 1.

action consistent with this order.³ To ensure that the underlying funding requests are resolved expeditiously, we direct USAC to complete its review of the funding requests and issue a decision based on a complete review and analysis no later than 90 calendar days from the release date of this order.⁴

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.⁵ The Commission's rules provide that an eligible school, library, or consortium that includes eligible schools and libraries must seek competitive bids for all services eligible for support.⁶

3. 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.⁷ The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.⁸ 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.⁹ The RFP must be available to all potential bidders for the duration of the bidding process.¹⁰ The Commission has determined that a service provider participating in the competitive bidding process cannot be involved in the preparation of the entity's FCC Form 470.¹¹

³ We estimate that the appeal granted in this order involves a funding request for approximately \$110,000 in funding. We note that USAC has already reserved sufficient funds to address outstanding appeals. *See, e.g.,* Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2011 (Jan. 31, 2011). We thus determine that the action we take today should have minimal impact on the universal service fund as a whole.

⁴ In performing a complete review and analysis of the underlying funding request, USAC shall either grant the underlying funding request before it, or, if denying the funding request, provide the applicant with any and all grounds for denial.

⁵ 47 C.F.R. §§ 54.501-54.502.

⁶ 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).

⁷ 47 C.F.R. § 54.503(c).

⁸ *Id.*

⁹ *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).

¹⁰ *See* FCC Form 470.

¹¹ *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*).

4. After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.¹² 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.¹³ 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.¹⁴ 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.¹⁵

5. *Riverdale Request for Review.* In September 2007, Riverdale submitted an FCC Form 470 application to USAC to initiate the competitive bidding process for E-rate eligible Internet access services.¹⁶ Riverdale also released an RFP containing the same information listed on its FCC Form 470.¹⁷ Riverdale subsequently entered into a multi-year service contract and filed its FCC Form 471 application with USAC for FY 2008. In December 2008, USAC denied Riverdale's FCC Form 471 application on the ground that Riverdale violated the Commission's competitive bidding rules because it issued an RFP, despite having indicated on its FCC Form 470 that no RFP existed.¹⁸ Riverdale then filed the instant appeal with the Commission.¹⁹

6. In its request for review, Riverdale states that its failure to indicate on the FCC Form 470 that an RFP existed was a clerical error and did not interfere with its competitive bidding process.²⁰ Riverdale explains that the RFP that was released did not contain any additional or new information that was not already included on the FCC Form 470.²¹ Riverdale further states that it received only one bid and that there was no contact by any other prospective vendor during the bidding process.²²

7. *Cherokee Request for Review.* In January 2008, Cherokee submitted an FCC Form 470 to USAC to initiate the competitive bidding process for E-rate eligible telecommunications and Internet

¹² 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*).

¹³ 47 C.F.R. § 54.511(a).

¹⁴ 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).

¹⁵ See USAC website, Schools and Libraries, Funding Commitment Decision Letter, <http://www.universalservice.org/sl/applicants/step09/funding-commitment-decision-letter.aspx> (last visited Mar. 31, 2011).

¹⁶ See FCC Form 470, Riverdale Unified School District (posted Sept. 10, 2007) (Riverdale FCC Form 470).

¹⁷ See Riverdale Request for Review at 1.

¹⁸ Letter from USAC, Schools and Libraries Division, to Richard Jex, Riverdale Unified School District (dated Dec. 10, 2008) (Riverdale Funding Commitment Decision Letter (FCDL)).

¹⁹ See Riverdale Request for Review.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

access services, internal connections and basic maintenance.²³ Cherokee indicated on its FCC Form 470 that it also intended to release an RFP for Internet access services, internal connections, and basic maintenance.²⁴ Cherokee did not indicate on the FCC Form 470 that it intended to release an RFP for telecommunications services.²⁵ On January 7, 2008, Cherokee released an RFP containing information about the desired Internet access services, internal connections, and basic maintenance, as well as information related to telecommunications services.²⁶ Cherokee subsequently entered into service contracts for the desired products and services and submitted its FCC Form 471 application to USAC for funding year (FY) 2008.²⁷ In March 2009, USAC denied FRNs 1723230 and 1723249 as part of Cherokee's FCC Form 471 application on the ground that Cherokee violated the Commission's competitive bidding rules because it issued an RFP for telecommunications services, despite having indicated on its FCC Form 470 that no RFP existed.²⁸ Cherokee then filed the instant request for review with the Commission.²⁹

8. In its request for review, Cherokee states that its failure to indicate on the FCC Form 470 that an RFP existed for telecommunications services was an administrative error and did not interfere with its competitive bidding process.³⁰ Cherokee explains that information relating to telecommunications services was not supposed to be included in the RFP and that prospective service providers did not need to read any documents other than Cherokee's FCC Form 470 in order to prepare bids.³¹ Cherokee further states that all of the bids received were evaluated in a fair and open manner with price being the most heavily weighted factor.³²

III. DISCUSSION

9. For the reasons explained below, we grant the appeals filed by Riverdale and Cherokee and remand the underlying funding requests associated with these appeals to USAC for further action consistent with this order.³³ After review of the record, we find that Riverdale and Cherokee complied with the Commission's competitive bidding requirements for the FRNs at issue, and under the circumstances of each case, it is in the public interest to provide the requested relief. Specifically, we find that the petitioners' FCC Forms 470 contained enough detail for vendors to identify the desired services

²³ See FCC Form 470, Cherokee County School District (posted Jan. 4, 2008) (Cherokee FCC Form 470).

²⁴ See *id.*

²⁵ *Id.*

²⁶ See Cherokee Request for Review at 2.

²⁷ See FCC Form 471, Cherokee County School District (filed Feb. 7, 2008) (Cherokee FCC Form 471).

²⁸ Letter from USAC, Schools and Libraries Division, to Anthony Martin, Cherokee County School District (dated Mar. 24, 2009) (Cherokee Funding Commitment Decision Letter (FCDL)).

²⁹ See Cherokee Request for Review.

³⁰ *Id.* at 2.

³¹ *Id.*; see also Cherokee FCC Form 471.

³² Cherokee Request for Review at 2.

³³ The Bureau must conduct a *de novo* review of requests for review of decisions issued by USAC. 47 C.F.R. § 54.723.

and to formulate bids.³⁴ Thus, all bidders were on a level playing field despite the petitioners' failure to correctly indicate on their FCC Forms 470 whether they had issued an RFP. Consistent with precedent, we thus conclude that rejecting Riverdale's and Cherokee's funding requests on the ground that they failed to advise bidders that an RFP existed is not warranted in these instances.³⁵ In addition, we find no evidence in the record at this time of waste, fraud, or abuse. We therefore grant the appeals filed by Riverdale and Cherokee and remand the underlying funding requests to USAC for further processing consistent with the terms of this order. In remanding this funding request to USAC, we make no finding as to the ultimate eligibility of the services requested therein.³⁶

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 Riverdale Unified School District on January 30, 2009, IS GRANTED and the funding request, FRN 1642689, IS REMANDED to USAC for further action consistent with the terms of this order.

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, 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 Cherokee County School District on April 29, 2009, IS GRANTED and the funding requests, FRNs 1723230 and 1723249, ARE REMANDED to USAC for further action consistent with the terms 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 USAC SHALL COMPLETE its review of the remanded funding requests and SHALL ISSUE an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order.

³⁴ See Riverdale FCC Form 470 (requesting local, long distance, and cellular telephone service, high speed data lines, Internet access, email service, and webhosting); Cherokee FCC Form 470 (requesting, for example, local, long distance, and cellular telephone service, personal data service, voice over IP service, Internet connection, web hosting and email service, broadband Internet access, e-mail server, and wireless access points.).

³⁵ See *Approach Learning Order*, 23 FCC Rcd 15510 (concluding that petitioners did not violate the Commission's competitive bidding rules by failing to correctly indicate on their FCC Forms 470 whether they had issued an RFP).

³⁶ Additionally, nothing in this order is intended: (1) to authorize or require payment of any claim that previously may have been released by a service provider or applicant, including in a civil settlement or plea agreement with the United States; or (2) to authorize or require payment to any person or entity that has been debarred from participation in the E-rate program.

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

FEDERAL COMMUNICATIONS COMMISSION

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