Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of a Decision of the Universal Service Administrator by	)	
	)	
Tulsa Technology Center Tulsa, OK	)	File No. SLD-351405
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6

ORDER

Adopted: September 14, 2011 **Released: September 14, 2011**

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

I. INTRODUCTION

1. In this order, we grant a request by the Tulsa Technology Center, Tulsa, Oklahoma (Tulsa) seeking review of a decision 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under the E-rate program (more formally known as the schools and libraries universal service support program).[1] USAC rescinded the funding commitment of one of Tulsa's funding requests on the ground that Tulsa violated the Commission's competitive bidding requirements by including the price of ineligible items in its evaluation of the most cost-effective proposal during its vendor selection process.[2] Upon review of the record, we find that Tulsa did not violate the Commission's competitive bidding requirements. We therefore direct USAC to discontinue recovery actions against Tulsa and its service provider, AT&T Wireless (AT&T). To the extent any funds have already been recovered from the parties for this funding request, we direct USAC to refund any such amounts to the parties no later than 60 days from the release date of this order.

II. BACKGROUND

2. <u>*E-rate Program Rules and Requirements.*</u> Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible

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[1] *See* Letter from Deborah Sovereign, Consultant, Kellogg & Sovereign Consulting, LLC, on behalf of Tulsa Technology Center, to Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed July 26, 2008) (regarding FCC Form 471 application number 351405, funding request number (FRN) 980351) (Request for Review). In this order, we use the term "appeal" to generically refer to Tulsa'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).

[2] *See* Letter from USAC, Schools and Libraries Division, to Debi Sovereign, Tulsa Technology Center (dated July 17, 2008) (Notification of Commitment Adjustment Letter (COMAD); Request for Review at 1.

telecommunications services, Internet access services and internal connections.[3] The Commission's rules provide that these entities must seek competitive bids for all services eligible for support.[4] In accordance with the Commission's competitive bidding requirements, each applicant must submit for posting on USAC's website an FCC Form 470 requesting discounts for E-rate eligible services. The Commission's rules require that an applicant must carefully consider all submitted bids prior to entering into a contract, and that the price of eligible products and services must be the primary factor in selecting the winning bid.[5] Applicants cannot consider the cost of ineligible services in selecting a winner bidder.[6] 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.[7] USAC then assigns a FRN to each request for discounted services and issues funding commitment decision letters (FCDLs) approving or denying the requests for discounted services.[8]

3. Applicants may only seek support for services eligible for support.[9] Each year, the Commission releases a revised list of eligible services to assist applicants in their efforts to request only eligible services.[10] When USAC reviews an application and identifies an ineligible service, it will deny funding for that service.

4. Request for Review. In November 2002, Tulsa submitted an FCC Form 470 to USAC to initiate the competitive bidding process for E-rate eligible services for funding year (FY) 2003.[11] Tulsa subsequently entered into service contracts and filed its FCC Form 471 application with USAC for FY

[3] 47 C.F.R. §§ 54.501-54.502.

[4] 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).

[5] *See* 47 C.F.R. § 54.503(b) (stating that an eligible entity shall seek competitive bids for all services eligible for support); 47 C.F.R. § 54.511(a) (stating that when selecting a provider of eligible services, the applicant shall select the most cost-effective service offering with price being the primary factor considered). *See also* USAC website, Schools and Libraries, Construct an Evaluation, http://www.usac.org/sl/applicants/step04/construct-evaluation.aspx (last visited July 21, 2011) (stating that price of the eligible products and services must be the primary factor when constructing the evaluation of bid responses).

[6] *See* 47 C.F.R. §§ 54.503(b), 54.511(a); USAC website, Schools and Libraries, Construct an Evaluation, http://www.usac.org/sl/applicants/step04/construct-evaluation.aspx (last visited July 21, 2011).

[7] *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).

[8] *See* USAC website, Schools and Libraries, Funding Commitment Decision Letter, http://www.universalservice.org/sl/applicants/step09/funding-commitment-decision-letter.aspx (last visited July 19, 2011).

[9] *See* 47 C.F.R. § 54.502; Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000), at 17 (FCC Form 471 Instructions) (stating that applicants may not seek support for ineligible services, entities, or uses); *see also Request for Review by Chelmsford Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-121771, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd 761, 762, para. 3 (Com. Car. Bur. 2002).

[10] *See* 47 C.F.R. § 54.502(b).

[11] *See* FCC Form 470, Tulsa Technology Center (posted Sept. 10, 2002).

2003.[12] In March 2004, USAC approved Tulsa's FY 2003 FCC Form 471 application for telecommunications services and Internet access.[13] During post-funding review, however, USAC rescinded Tulsa's funding commitment for FRN 980351 from its FY 2003 FCC Form 471 application on the ground that Tulsa violated the Commission's competitive bidding requirements.[14] Specifically, USAC found that Tulsa included the price of ineligible items (i.e., "costs associated with changing phone numbers") in its evaluation of the most cost-effective proposal during the vendor selection process.[15] Tulsa then filed an appeal of USAC's notification of commitment adjustment letter with the Commission.[16]

5. In its appeal, Tulsa argues that it did not include ineligible products and services in its vendor selection process.[17] Tulsa maintains that during post-funding review, it informed USAC that it selected AT&T because it offered the lowest price and was the most cost-effective solution.[18] Tulsa also explains that AT&T was the existing provider and that the "[c]osts to change to another provider (change phone numbers and incur activation fees) [was] too high in comparison to any cost savings gained from switching providers."[19] Tulsa argues that USAC's decision to rescind funding was based on a misunderstanding of what Tulsa meant by this explanation.[20] Tulsa asserts that the cost to change providers was meant to denote activation fees and primary interexchange carrier change charges, both of which are eligible charges.[21] Thus, Tulsa maintains that its vendor selection process did not violate the Commission's competitive bidding requirements and that staying with AT&T was the most cost-effective solution.[22]

III. DISCUSSION

6. We grant Tulsa's appeal. After review of the record, we find that Tulsa complied with the Commission's competitive bidding requirements for FRN 980351.[23] Specifically, we conclude that USAC erred in rescinding Tulsa's funding commitment for FRN 980351 as part of its FY 2003 FCC Form 471 application on the ground that Tulsa included the prices of ineligible products and services in

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[12] *See* FCC Form 471, Tulsa Technology Center (filed Feb. 3, 2003).

[13] *See* Letter from USAC, Schools and Libraries Division, to Debi Sovereign, Tulsa Technology Center (dated Mar. 3, 2004) (Tulsa FCDL).

[14] *See* COMAD.

[15] *Id.*

[16] *See* Request for Review.

[17] *Id.* at 2, Attachment B.

[18] *Id.*.

[19] *Id.* at Attachment D-1.

[20] *Id.* at 3.

[21] *Id.* at Attachment D-2.

[22] *Id.* at 3.

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

the vendor selection process.[24] According to the eligible services list for FY 2003, presubscribed interexchange carrier (PIC) change charges and change fees were eligible for discounts.[25] We therefore find that Tulsa's consideration of the costs associated with changing providers – i.e., PIC change charges and activation fees – was consistent with the Commission's competitive bidding rules.

7. We thus conclude that rejecting Tulsa's funding request on the ground that Tulsa's vendor selection process violated the Commission's competitive biding rules is not warranted in this instance. In addition, we find no evidence in the record at this time of waste, fraud or abuse, or misuse of funds, or a failure to adhere to core program requirements with respect to this procurement. We therefore grant Tulsa's appeal and direct USAC to discontinue recovery actions against Tulsa and AT&T concerning FRN 980351 as part of Tulsa's FY 2003 FCC Form 471 application.[26] To the extent any funds have already been recovered from the parties under this underlying funding request, we direct USAC to refund the parties no later than 60 days from the release date of this order.

IV. ORDERING CLAUSES

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 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 Tulsa Technology Center on July 26, 2008, IS GRANTED.

9. 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 Tulsa Technology Center and AT&T Wireless to the extent provided herein.

10. 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 REFUND Tulsa Technology Center and AT&T Wireless any funds that have already been recovered no later than 60 days from the release date of this order.

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[24] *See* COMAD.

[25] *See* 2003 ESL at 7, 30 (stating that PIC change charges and change fees are eligible for discounts). A PIC change is described as a change from one long distance company to another at the request of the customer. *See* 2003 ESL. There is a one-time PIC change charge assessed by the local telephone company to cover the cost of re-programming the telephone company central office switch. *Id.* at 7. Telephone companies also assess change fees when the customer modifies an existing eligible service to another eligible service. *Id.* at 30.

11. 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

Gina Spade
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