

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Requests for Review and/or Waiver of)	
Decisions of the Universal Service Administrator by)	
)	
Al-Ihsan Academy)	File Nos. SLD-575979, 582051,
South Ozone Park, New York, <i>et al.</i>)	582081, <i>et al.</i>
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: December 5, 2011

Released: December 5, 2011

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

1. In this order, we grant five and deny six appeals of decisions by the Universal Service Administrative Company (USAC) concerning applications in various funding years for discounted services under the E-rate program.¹ All of the appeals concern alleged violations of the Commission’s competitive bidding rules. Specifically, USAC denied funding because the petitioners failed to comply with the requirement that a request for proposal (RFP) be available for the entire 28-day period after the FCC Form 470 is posted to USAC’s website or failed to indicate on its FCC Form 470 that an RFP was being used for procurement purposes.

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible services.² The Commission’s rules provide that each funding year an eligible school, library, or consortium must seek competitive bids for all services eligible for support.³ In accordance with the Commission’s rules, an applicant must file with USAC an FCC Form 470 requesting discounted services, which is then posted to USAC’s website.⁴ The applicant must wait 28 days after the FCC Form 470 is posted to the USAC website or after public availability of an applicant’s RFP, whichever is later, before entering into an agreement with a service provider for the requested services.⁵ An applicant must indicate on its FCC Form 470 that it is using an RFP for procurement purposes.⁶

¹ In this order, we use the term “appeals” generally to refer to requests for review of decisions, or waivers related to such decisions, issued by USAC. 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). The E-rate program is also known as the schools and libraries universal service mechanism.

² 47 C.F.R. §§ 54.501-54.502 (2011).

³ 47 C.F.R. §§ 54.503, 54.511 (2011).

⁴ 47 C.F.R. § 54.503(c) (2011); *see also* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806, available at http://www.usac.org/_res/documents/sl/pdf/470.pdf (October 2010) (FCC Form 470).

⁵ 47 C.F.R. § 54.503(c) (2011); *see* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806, available at http://www.usac.org/_res/documents/sl/pdf/471_FY05.pdf (October 2010) (continued....)

3. Once the school or library has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, it must file an FCC Form 471 application to request funding.⁷ On the FCC Form 471, applicants notify USAC of the services that have been ordered, the service providers with which the applicant has entered into an agreement, and a request for funding needed to cover the discounts to be given for eligible services.⁸

4. The E-rate program's competitive bidding requirements seek to ensure the most efficient pricing for telecommunications and information services purchased by schools and libraries.⁹ In the *Aberdeen School District Order*, the Commission found that waiver of the rules was not justified when an applicant's contract with its service provider was never subject to the competitive bidding process.¹⁰ However, the Commission has granted waivers in situations where applicants mistakenly signed their contracts or certified their FCC Forms 471 a few days before the allowable contract date.¹¹ The Commission has also granted a waiver after finding that the competitive bidding process was not harmed by an applicant posting an RFP without notifying bidders on the FCC Form 470.¹²

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(FCC Form 471); Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, et al., CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 26423-26424, FCC 03-313, para. 39 (2003).

⁶ FCC Form 470.

⁷ 47 C.F.R. § 54.504 (2011).

⁸ *Id.*; FCC Form 471.

⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9080, para. 579 (1997) (*Universal Service First Report and Order*), *aff'd in part, rev'd in part, remanded in part nom.*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *cert. denied*, 530 U.S. 1210 (2000), *cert. dismissed*, 531 U.S. 975 (2000).

¹⁰ *Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District, Aberdeen, WA*, et al., *Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-297249, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 8757 (2007) (*Aberdeen School District Order*) (denying an appeal for an applicant that requested E-rate program funds without posting an FCC Form 470 for the services); *see also Request for Review of the Decision of the Universal Service Administrator by Henrico County School District, Richmond, Virginia, Federal-State Joint Board on Universal Service*, File No. SLD-209204, CC Docket No. 96-45, Order, 17 FCC Rcd 706 (Com. Car. Bur. 2002) (denying a request for review where applicant relied upon an FCC Form 470 posted in Funding Year 3 in support of its Funding Year 2 service requests).

¹¹ *Aberdeen School District Order*, 22 FCC Rcd at 8763, para. 9; *see also Request for Review of the Decision of the Universal Service Administrator by Albert Lea Area Schools*, File Nos. SLD-517274, et al., CC Docket No. 02-6, Order, 24 FCC Rcd 4533 (Wireline Comp. Bur. 2009) (*Albert Lea Order*); *Requests for Review and/or Waiver of Albuquerque School District, Albuquerque, NM, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-548427, et al., CC Docket No. 02-6, Order, 26 FCC Rcd 5878 (Wireline Comp. Bur. 2011) (*Albuquerque School District Order*).

¹² *Request for Review of a Decision of the Universal Service Administrator by Hillsboro Independent School District, Richmond, TX*, File No. SLD-529671, CC Docket 02-6, Order, 23 FCC Rcd 15424, 15429, para. 10 (Wireline Comp. Bur. 2008) (*Hillsboro ISD Order*) (finding that even though Hillsboro failed to inform bidders that an RFP was issued, its FCC Form 470 contained sufficient information to allow service providers to bid on the services and, further, the one-page long RFP did not contain more information than the FCC Form 470).

5. Consistent with the Commission's *Aberdeen School District Order*,¹³ and based on our review of the record, we find that, for San Lorenzo Unified School District, good cause exists to waive section 54.503(b)(4) of the Commission's rules, which states that E-rate applicants must wait 28 days after their FCC Forms 470 are posted to USAC's website, or after public availability of an applicant's RFP, before entering into an agreement with a service provider for the requested services.¹⁴ In this case, the petitioner posted its FCC Form 470 for the entire 28-day period, but its RFP required bid submissions to be submitted three days before the 28-day period expired.¹⁵ Consistent with the *Aberdeen School District Order*, we find that while not waiting the full 28 days before ending the bidding period, the applicant only missed the 28-day deadline by a minimal number of days (*i.e.*, one to three days) and therefore gave all potential vendors adequate time to prepare and submit bids.¹⁶

6. Consistent with our decision in the *Hillsboro ISD Order*, we also waive our rules for Northwest Arctic Borough because it failed to provide notice on its FCC Form 470 that an RFP was available.¹⁷ As in *Hillsboro ISD Order*, we find the FCC Forms 470 at issue contained sufficient information to allow service providers to bid on the services sought.¹⁸ More importantly, any service provider that might have received the RFP would not have had more information than a service provider that did not receive the RFP, and there was no harm to the competitive bidding process.¹⁹ We deny, however, an appeal filed by Klamath-Trinity Joint Unified School District (Klamath-Trinity) that also failed to provide notice on its FCC Form 470 that an RFP was available.²⁰ In this case, the RFP contained eight pages of information with current and proposed network schematics and diagrams of each school building.²¹ Klamath-Trinity's FCC Form 470, on the other hand, contained only basic information on what was needed and in what quantity.²² Further, Klamath-Trinity said it only provided the RFP to parties that requested it, creating an unfair advantage to bidders relying only on the FCC Form 470.²³ Consistent with precedent, we deny Klamath-Trinity's request for review.²⁴

¹³ See *Aberdeen School District Order*, 22 FCC Rcd at 8763, para. 9 (waiving the Commission's competitive bidding rules for certain petitioners that demonstrated good cause for such a waiver); see also *Albert Lea Order*, 24 FCC Rcd at 4538-39, para. 8.

¹⁴ 47 C.F.R. § 54.503(b)(4) (2011).

¹⁵ Request for Review of San Lorenzo Unified School District.

¹⁶ *Aberdeen School District Order*, 22 FCC Rcd at 8763, para. 9.

¹⁷ *Hillsboro ISD*, 23 FCC Rcd at 15429, para. 10. Request for Review of Northwest Arctic Borough.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Request for Review of Klamath-Trinity Joint Unified School District.

²¹ See Request for Review of Klamath-Trinity Joint Unified School District at attachment C.

²² See Klamath-Trinity Joint Unified School District FCC Form 470 (posted Nov. 16, 2004).

²³ Request for Review of Klamath-Trinity Joint Unified School District at 3.

²⁴ See *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26424, para. 40 (2003) (clarifying that applicants with RFPs that provide more detailed solicitations for bidders than the FCC Form 470 must indicate on their FCC Forms 470 that they have released or will release an RFP and that the RFP must be available for 28 days).

7. We also waive our rules for Hesperia Unified School District (Hesperia).²⁵ Hesperia posted its FCC Form 470 for the entire 28-day period and then, four days later, posted an RFP to comply with state procurement law. Even though the FCC Form 470 did not indicate that an RFP was available, Hesperia notified all eight FCC Form 470 bidders that an RFP was issued and gave them copies of the document.²⁶ Because all potential vendors were informed and given copies of the RFP, we find no indication in the record that the competitive bidding process was harmed.

8. We further find that two petitioners, Kansas City Unified School District 500 and West Harvey – Dixmoor School District #147, did not violate our rules. After posting FCC Forms 470, both schools received and responded to questions from service providers about the services the schools were seeking. Even though neither of the schools issued RFPs, USAC considered the communications with the service providers to be RFPs and denied funding on the grounds that the schools failed to provide notice on their FCC Forms 470 that an RFP was available. The communications with the service providers did not constitute an RFP but merely provided guidance directing potential bidders to already-filed FCC Forms 470.²⁷

9. Finally, we deny five appeals for failing to comply with the Commission's competitive bidding rules, consistent with our decision in *Albuquerque Schools District Order*.²⁸ Al-Ihsan Academy, Colorado Springs School District 11, Dooly County School System, Harrison School District 2, and Pinellas County Schools all required bid submissions to be submitted without waiting 28 days after issuing their RFPs.²⁹ While all four petitioners posted their FCC Forms 470 for the entire 28-day period, each applicant's RFP specified a precise time when bids were due that was more than a few days before the allowable contract date.³⁰ Consistent with our precedent, this bid submission date ended the competitive bidding process too soon before the end of the required 28-day period.³¹

10. Therefore, we remand the underlying applications to USAC for further action consistent with this order. To ensure that the underlying applications are resolved expeditiously, we direct USAC to

²⁵ Request for Review and Waiver of Hesperia Unified School District.

²⁶ *Id.*

²⁷ Request for Review of Kansas City Unified School District 500; Request for Review of West Harvey – Dixmoor School District #147.

²⁸ *Albuquerque School District Order*, 26 FCC Rcd at 5880, para. 4.

²⁹ Request for Review of Al-Ihsan Academy; Request for Review of Colorado Springs School District 11; Request for Review and Waiver of Dooly County School System; Request for Review of Harrison School District 2; Request for Review of Pinellas County Schools.

³⁰ Harrison School District 2 put multiple RFPs out for bid. All of them had bid due dates that were several days before the 28-day period ended, with the exception of one. We find, however, that the RFP that was posted for more than 28 days also was in violation of our competitive bidding rules because the FCC Form 470 did not indicate that an RFP would be issued, the RFP contained substantially more information for potential bidders than the FCC Form 470, and there is no indication that the applicant performed outreach to notify FCC Form 470 bidders that an RFP would be issued.

³¹ Even though the five petitioners argue that they waited more than 28 days after their FCC Forms 470 were posted to sign a contract, the date for RFP bid submissions was, in each case, more than a few days short of the required 28-day period for the RFPs.

complete its review of each application listed in appendices and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from release of this order.³²

11. 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, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that waivers of section 54.503(c) of the Commission's rules, 47 C.F.R. §§ 54.503(c), ARE GRANTED to the petitioners listed in Appendix A and their applications ARE REMANDED to USAC for further consideration consistent with 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 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), that the appeals filed by of Kansas City Unified School District 500 and West Harvey – Dixmoor School District #147 ARE GRANTED and their applications ARE REMANDED to USAC for further consideration consistent with this order.

13. 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 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 Hesperia Unified School.

14. 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 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, and 54.722(a), that the appeals filed by the petitioners listed in Appendix B ARE DENIED.

15. 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 the authority delegated pursuant to 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 each remanded application as listed in Appendix A and 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.

FEDERAL COMMUNICATIONS COMMISSION

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

³² During post-funding review, USAC determined that Hesperia Unified School District was in violation of the Commission's competitive bidding rules. This applicant was then subject to a funding commitment adjustment by USAC which sought recovery of funds already committed to the petitioner. In light of the decision in this order, we direct USAC to discontinue recovery actions against Hesperia Unified School District and to process any outstanding invoices.

APPENDIX A

Waiver of 47 C.F.R. § 54.503(c) Granted

Applicant	Application Number	Funding Year	Date Appeal Filed
Kansas City Unified School District 500 Kansas City, KS	665917	2009	April 22, 2010
Northwest Arctic Borough Kotzebue, AK	694107	2009	October 5, 2010
Hesperia Unified School District Hesperia, CA	554380	2007	December 17, 2010
San Lorenzo Unified School District San Lorenzo, CA	678924	2009	February 7, 2011
West Harvey—Dixmoor School District #147 Harvey, Illinois	687578, 687588	2009	February 17, 2011

APPENDIX B

Appeals Denied

Applicant	Application Number	Funding Year	Date Appeal Filed
Al-Ihsan Academy South Ozone Park, NY	575979, 582051, 582081	2007	March 14, 2008
Colorado Springs School District 11 Colorado Springs, CO	580508	2007	June 16, 2008
Dooly County School System Vienna, GA	531942, 482677	2005, 2006	January 21, 2011
Harrison School District 2 Colorado Springs, CO	524820, 458890	2005, 2006	April 11, 2011
Klamath-Trinity Joint Unified School District Hoopa, CA	483010	2005	July 15, 2009
Pinellas County Schools Largo, FL	623651, 623913	2008	August 13, 2009