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

In the Matter of)	
Requests for Waiver and Review of Decisions of the Universal Service Administrator by)))	
Akisha Networks, Inc. Houston, TX)	SLD File Nos. 599288, 631306
Central Montcalm Public School District Stanton, MI)	SLD File Nos. 449655, 495449, 572376, 597140
Schools and Libraries Universal Service Support Mechanism)))	CC Docket No. 02-6
	ODDED	

ORDER

Adopted: July 25, 2012 Released: July 25, 2012

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

Consistent with precedent, we deny three appeals seeking review of decisions of the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as

 $^{^1}$ See Request for Review by Approach Learning and Assessment Center, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 22 FCC Rcd 5296, para. 19 (2007) (finding that when an applicant gives an entity the ability to control the dissemination of information regarding the service requests and that entity also participates in the competitive bidding process as a prospective service provider, the applicant impairs its ability to hold fair and open competitive bidding process); Request for Review of the Decision of the Universal Service Administrator by Send Technologies, L.L.C., CC Docket No. 02-6, 22 FCC Rcd 4920, 4952, para. 6 (2007) (finding a conflict of interest existed between the applicant and its selected service provider where an employee named as the contact person on the FCC Form 470 also owned a 15 percent interest in the service provider and participated in the request and preparation for bids); see also Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26434, para. 60 (2003) (stating "[w]e stress that direct involvement in an application process by a service provider would thwart the competitive bidding process").

² See Letter from Jake Helms, Central Montcalm Public School District, to Federal Communications Commission, CC Docket No. 02-6 (filed Oct. 3, 2011) (Central Montcalm Request for Review); Letter from Ronald T. Smith, Akisha Networks, Inc., to Federal Communications Commission, CC Docket No. 02-6 (dated Mar. 11, 2011) (requesting an opportunity to respond to USAC's decision because it had not received notice of USAC's decision relating to Houston Heights Learning Academy (Houston Heights)) (Akisha Houston Heights Request for Review); Letter from Ronald T. Smith, Akisha Networks, Inc., to Federal Communications Commission, CC Docket No. 02-6 (dated Mar. 26, 2012) (Akisha Houston Heights Supplement); Letter from Ronald T. Smith, Akisha Networks, Inc., to Federal Communications Commission, CC Docket No. 02-6 (dated Mar. 11, 2011) (relating to La Amistad Love and Learning Academy (La Amistad)) (Akisha La Amistad Request for Review). The three appeals are also identified in the Appendix.

the schools and libraries universal service support program).³ In each of the decisions, USAC found that there was improper vendor involvement in the competitive bidding process in violation of the Commission's requirements.⁴ Based on the record before us, we affirm USAC's decisions and find improper vendor involvement in the competitive bidding process in each case.⁵

2. In each instance, we find that the financial relationship between the E-rate consultant and the selected service provider constitutes a prohibited conflict of interest under E-rate program rules. We deny the appeal filed by the Central Montcalm Public School District because we find that Elite Fund, Inc. (Elite), owned by Steve Meinhardt, assisted Central Montcalm in the preparation of its FCC Form 470, and Central Montcalm subsequently entered into a multi-year service agreement with another company owned by Mr. Meinhardt, CASAIR, Inc. We also deny two appeals filed by the service provider, Akisha Networks, because Akisha Networks paid a sales commission to a consultant that was used by both La Amistad Love and Learning Academy and Houston Heights Learning Academy to assist

⁷ See Central Montcalm Request for Review at 2 (stating that although Steve Meinhardt owned both companies, they "were run completely separate"). Central Montcalm's funding year 2006 through 2008 FCC Form 471 applications each referenced the underlying FCC Form 470. See e.g. Central Montcalm Public School District, FCC Form 471 (filed on Feb. 2, 2006) (citing Central Montcalm Public School District, FCC Form 470 (posted Nov. 28, 2005) (FCC Form 470 No. 84425000548560)).

³ 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).

⁴ See Letter from USAC, Schools and Libraries Division, to Michele Videtich, Central Montcalm Public School District (dated Aug. 16, 2011) ("Elite was considered a service provider and therefore could not act as an independent consultant on behalf of the applicant or assist the applicant with tasks that service providers are prohibited from undertaking."); Letter from USAC, Schools and Libraries Division, to Ronald T. Smith, Akisha Networks, Inc. (dated Dec. 21, 2010) (stating that the applicant's consultant was being paid a sales commission by Akisha in violation of program policies) (Akisha Houston Heights Commitment Adjustment (COMAD)); Letter from USAC, Schools and Libraries Division, to Ronald Smith, Akisha Networks, Inc. (dated Sept. 27, 2010) (Akisha La Amistad COMAD).

⁵ Because we find that there was improper vendor involvement in the competitive bidding process, we dismiss as moot Akisha Networks, Inc.'s (Akisha Networks) arguments concerning the cost-effectiveness of its selected services. See Akisha Houston Heights Supplement at 5. We grant Akisha Networks's request for waiver of the appeal filing deadline for application number 599288 because we find that Akisha Networks submitted its appeal to USAC within a reasonable period of time after receiving actual notice of USAC's adverse decision. 47 C.F.R. § 54.720. Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969); Northeast Cellular, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. Network IP, LLC v. FCC, 548 F.3d 116, 125-128 (D.C. Cir. 2008); Northeast Cellular, 897 F.2d at 1166. See, e.g., Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Albuquerque School District, 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) (waiving the Commission's filing deadline for six applicants because the Bureau found that these applicants could not submit their appeals to the Commission in a timely manner due to circumstances beyond their control or because the petitioner submitted its appeal to USAC within a reasonable period of time after receiving actual notice of USAC's adverse decision).

⁶ See supra n.1.

them with their E-rate selection processes. A consultant, acting on behalf of the applicant, exerts great influence on an applicant's bidding process and thus, should not have a financial relationship with a service provider which it selects (or recommends) on behalf of the applicant. Here, the consultant participated in the bidding process and ultimately selected a service provider with which it had business relationships. We therefore find that these relationships impaired the applicants' ability to hold fair and open competitive bidding processes. Akisha Networks appealed two commitment adjustment (COMAD) decisions made by USAC, we thus direct USAC, as it relates to the Akisha Networks appeals, to continue recovery actions against the party or parties responsible for the rule violations.

- 3. 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, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), that the appeals filed by Akisha Networks, Inc. and Central Montcalm Public School District, as listed in the Appendix, ARE DENIED.
- 4. 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 in 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 section 54.720 of the Commission's rules, IS WAIVED to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader Chief Telecommunications Access Policy Division Wireline Competition Bureau

¹⁰ *Id*.

⁸ See generally Akisha Houston Heights COMAD and Akisha La Amistad COMAD.

⁹ See generally n.1.

In the Commitment Adjustment Implementation Order, the Commission established procedures to recover funds disbursed to parties that obtained the funds in violation of the Commission's E-rate program. See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, 97-21, 96-45, Order, 15 FCC Rcd 22975 (2001) (Commitment Adjustment Implementation Order). Subsequently, in the Schools and Libraries Fourth Report and Order, the Commission modified the rules governing COMAD recovery actions to allow USAC to pursue recovery actions against the party responsible for the violation such as the school, library, or service provider. See Federal-State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Schools and Libraries Universal Service Support Mechanism, CC Docket Nos. 96-45, 97-21 and 02-6, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, 15255-15257, paras. 10-15 (2004) (Schools and Libraries Fourth Report and Order).

APPENDIX

Petitioners	Application	Funding	Date Appeal Filed
	Number(s)	Year	
Akisha Networks, Inc.	599288	2008	Mar. 11, 2011
(Houston Heights Learning Academy)			
Houston, TX			
Akisha Networks, Inc.	631306	2008	Aug. 22, 2011
(LA Amistad Love and Learning Academy)			
Houston, TX			
Central Montcalm Public School District	449655	2006	Oct. 3, 2011
Stanton, MI	495449	2006	
	572376	2007	
	597140	2008	