

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of
Decisions of the
Universal Service Administrator by
Assumption-All Saints School, et al.
Jersey City, New Jersey
Schools and Libraries Universal Service
Support Mechanism
SLD File Nos. 357472, et al.
CC Docket No. 02-6

ORDER

Adopted: August 10, 2012

Released: August 10, 2012

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

1. Consistent with precedent, we deny an appeal filed by 10 applicants and their service provider, Future Generation, Inc. (collectively, petitioners) seeking review of decisions of the Universal Service Administrative Company (USAC) under the E-rate program (more formally know as the schools and libraries universal service support program) for funding year 2003. In each decision, USAC found that by providing an e-mail address affiliated with their selected service provider, Future Generation, on their FCC Forms 470, the applicants tainted the competitive bidding process. USAC subsequently issued commitment adjustment (COMAD) letters rescinding the applicants' funding commitments.

1 See Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4033, para.10 (stating that "the contact person exerts great influence over an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested...when an applicant delegates that power to an entity that also will participate in the bidding process as a prospective service provider, the applicant irreparably impairs its ability to hold a fair and open competitive bidding process," and concluding "that a violation of the Commission's competitive bidding requirements has occurred where a service provider that is listed as the contact person on the Form 470 also participates in the competitive bidding process as a bidder") (Mastermind Order).

2 See Letter from Raymond Barto, Kaps & Barto, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated Dec. 22, 2006) (Request for Review); Appendix.

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, e.g., Letter from USAC, Schools and Libraries Division, to Raymond Barto, St. Mary High School (dated Nov. 16, 2006).

5 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). Subsequently, in the Schools and Libraries Fourth Report (continued...)

2. In accordance with the Commission's competitive bidding rules, applicants must submit to USAC for posting to USAC's website an FCC Form 470, which describes the applicants planned service requirements and information regarding the applicant's competitive bidding process.<sup>6</sup> The FCC Form 470 must be completed by the entity that will negotiate with prospective service providers and the applicant must name a person whom prospective service providers may contact for additional information.<sup>7</sup> The competitive bidding process must be fair and open, not compromised because of improper conduct by the applicant and/or the service provider, and all potential bidders must have access to the same information and must be treated the same throughout the bidding procurement process.<sup>8</sup> In this case, Future Generations was a service provider for each of the applicants and the ultimate winner in the competitive bidding process involving each of the applications at issue in this appeal. In each instance, the applicants provided Future Generation's email address as the preferred method for contacting the applicant on the relevant FCC Forms 470.<sup>9</sup>

3. The Commission has previously determined that a violation of the Commission's competitive bidding requirements occurs when a service provider is listed as the contact person on the FCC Form 470 and also participates in the competitive bidding process as a bidder.<sup>10</sup> Consistent with that precedent, we find that by listing an email address affiliated with Future Generation and by instructing potential bidders to contact Future Generations, concerning their E-rate applications, each applicant committed a violation of the Commission's competitive bidding requirements. We therefore deny the request for review and direct USAC to continue recovery actions against the party or parties responsible for the violation.

4. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4

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*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, para. 10-15 (2004). The Commission stated that the modified rules should apply to COMAD recovery actions that were under appeal to USAC or the Commission. *See id.* at 15255-15256, para. 10.

<sup>6</sup> 47 C.F.R. § 54.503, *see* Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form, OMB 3060-0806 (April 2002) (FCC Form 470).

<sup>7</sup> *See* FCC Form 470.

<sup>8</sup> *See, e.g., Schools and Libraries Universal Service Support Mechanism*, Third Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 02-6, 18 FCC Rcd 26912, 26939, para. 66 (stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources); *See Mastermind Order*, 16 FCC Rcd at 4033, para. 10 (finding that the FCC Form 470 contact person influences an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested and, when an applicant delegates that power to an entity that also participates in the bidding process as a prospective service provider, the applicant impairs its ability to hold a fair competitive bidding process); *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, 5303, para. 19 (Wireline Comp. Bur. 2007) (finding that service provider participation may have suppressed fair and open competitive bidding). *See Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan for Our Future*, Sixth Report and Order, CC Docket 02-6, 25 FCC Rcd 18762, 18798-800, paras. 85-86 (2010) (codifying the existing requirement that the E-rate competitive bidding process be fair and open); 47 C.F.R. § 54.503.

<sup>9</sup> *See e.g., FCC Form 470, St. Patrick School* (dated Dec. 5, 2002).

<sup>10</sup> *Mastermind Order*, 16 FCC Rcd at 4033, para. 10.

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 the request for review filed by the petitioners listed in the Appendix IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

## APPENDIX

Petitioner	Application Number	Funding Year	Date Appeal Filed
Assumption-All Saints School Jersey City, New Jersey	357472	2003	Dec. 22, 2006
Blessed Sacrament School Newark, New Jersey	358234	2003	Dec. 22, 2006
Holy Trinity Elementary School Hackensack, New Jersey	357557	2003	Dec. 22, 2006
Mother Seton Parochial School Union City, New Jersey	357662	2003	Dec. 22, 2006
Our Lady Help of Christians School East Orange, New Jersey	357752	2003	Dec. 22, 2006
Our Lady of Good Counsel Elementary School Newark, New Jersey	359187	2003	Dec. 22, 2006
Our Lady of Good Counsel Schools Newark, New Jersey	358346	2003	Dec. 22, 2006
St. Lucy's School Newark, New Jersey	359178	2003	Dec. 22, 2006
St. Mary's High School Jersey City, New Jersey	359171	2003	Dec. 22, 2006
St. Patrick School Jersey City, New Jersey	358142	2003	Dec. 22, 2006
Future Generation, Inc. Oradell, New Jersey	357472 358234 357557 357752 359187 358346 359178 359171 358142	2003	Dec. 22, 2006