

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Requests for Review of)
Decisions of the)
Universal Service Administrator by)
Portales Municipal School District) File Nos. SLD-433016, 523631
Portales, New Mexico)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

ORDER

Adopted: April 17, 2012

Released: April 17, 2012

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

1. Consistent with precedent,1 we deny two requests from Portales Municipal School District (Portales)2 seeking review of decisions made by the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program).3 In its decisions, USAC found violations of the Commission’s competitive bidding requirements. Based on our review of the record, we affirm USAC’s decisions and find that Portales violated section 54.503 of the Commission’s rules because it did not make a bona fide request for services by submitting a complete description of the services it was requesting to enable interested service providers to submit bids.4 We also find that Portales did not have a signed contract in place when it filed its FCC Form 471 in violation of section 54.504 of the Commission’s rules.5 We further find that Portales

1 See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 481 (1997) (subsequent history omitted); Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5452-53, para. 233 (1997); 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 (2003); Request for Review of the Decision of the Universal Service Administrator by Colorado City Unified School District, et al., Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 26 FCC Rcd 8630 (Wireline Comp. Bur. 2008).

2 See Letters from Mike Rackler, Technology Director, Portales Municipal School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 06-2 (filed Nov. 3, 2011) (Requests for Review) (regarding FCC Form 471 application numbers 433016 and 523631).

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 47 C.F.R. § 54.504 (2002) amended by 47 C.F.R. § 54.503 (2011).

5 See 47 C.F.R. § 54.504 (2002) amended by 47 C.F.R. § 54.504 (2011).

has not demonstrated that good cause exists to waive the Commission's competitive bidding requirements.⁶

2. 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 the requests for review filed by Portales Municipal School District ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

⁶ 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. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.