

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Requests for Review of Decisions of the)	
Universal Service Administrator by)	
)	
Greeley Public School District)	File No. SLD-420638
Greeley, NE)	
)	
Le Grand Union Elementary School District)	File No. SLD-259033
Le Grand, CA)	
)	
Morrow County School District)	File Nos. SLD-254806, 247557,
Lexington, OR)	361855, 366035, 413243
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: May 24, 2013

Released: May 24, 2013

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

1. In this order, we address requests for review filed by Greeley Public School District (Greeley), Le Grand Union Elementary School District (Le Grand Union), and Morrow County School District (Morrow County) of decisions of the Universal Service Administrative Company (USAC) finding improper service provider involvement in the competitive bidding processes under the E-rate program (more formally known as the schools and libraries universal service support program).¹

2. The Commission’s competitive bidding rules require E-rate applicants to submit to USAC for posting to USAC’s website an FCC Form 470, which describes the applicant’s planned service

¹ See Appendices A and B. Morrow County filed two requests for review, one on August 24, 2007 (Morrow County 2007 Request for Review) and the other on February 11, 2009 (Morrow County 2009 Request for Review). We grant in part and deny in part the Morrow County 2007 Request for Review, and have listed the application number that we deny in Appendix A, and that which we grant in Appendix B.

requirements and information regarding the applicant's competitive bidding process.² The FCC Form 470 must be completed by the entity that will negotiate with prospective service providers and the applicant must name a person with whom prospective service providers may contact for additional information.³ 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.⁴ In the *MasterMind Order*, the Commission explained that because 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 participates in the bidding process as a prospective service provider, the applicant irreparably impairs its ability to hold a fair and open competitive bidding process.⁵ Therefore, the Commission found that it is a violation of the Commission's competitive bidding rules to list a service provider as the contact person on an FCC Form 470 when that service provider is also bidding to provide the services sought pursuant to that FCC Form 470.⁶

3. In each of the instant cases, USAC found that an employee of one of the vendors selected to provide the requested E-rate products or services also participated in the applicant's competitive bidding process, thus tainting the competitive bidding process. USAC, therefore, sought recovery of all

² See 47 C.F.R. § 54.504. In the *Universal Service First Report and Order*, the Commission concluded that schools and libraries should engage in competitive bidding for all services for which they seek support, finding that competitive bidding would be the most efficient means for ensuring awareness by schools and libraries of the array of choices available to them and enabling the schools and libraries to choose the best and most efficient provider of the requested services. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 480 (1997) (subsequent history omitted) (*Universal Service First Report and Order*). See also, e.g., Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form, OMB 3060-0806 (April 2002) (FCC Form 470 Instructions).

³ See FCC Form 470 Instructions.

⁴ 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 the waste, fraud, and abuse of program resources); *Request for Review of Decisions of the Universal Service Administrator 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 (2000) (*MasterMind Order*) (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); *Requests for Review of the Decisions of the Universal Service Administrator by Approach Learning and Assessment Center; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, 22 FCC Rcd 5296, 5303, para. 19 (Wireline Comp. Bur. 2007) (finding that service provider participation may have suppressed fair and open competitive bidding); *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 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.

⁵ See *MasterMind Order*, 16 FCC Rcd at 4033, para. 10.

⁶ *Id.*

funds paid by USAC associated with the relevant FCC Forms 470. Based upon our review of the record, we deny in part and grant in part one of the requests for review filed by Morrow County⁷ and deny its other request for review, and grant the requests for review filed by Le Grand Union and by Greeley.⁸

4. We find that, with respect to application number 254806, the contact person on Morrow County's FCC Forms 470 was also the contact person for Arbogast Business Services and Computers (Arbogast Business), a service provider that participated in Morrow County's competitive bidding process as a bidder.⁹ We also find that, with respect to Morrow County's subject applications from funding years 2003 and 2004, the same employee of Arbogast Business served as the technology director for the school and also participated in Morrow County's competitive bidding process as a bidder.¹⁰ Consistent with precedent, we find that the Arbogast Business employee's dual involvement in the bidding process -- by acting on behalf of Morrow County and on behalf of a bidder -- constitutes improper service provider involvement, in contravention of E-rate program rules.¹¹ We therefore find that the applications listed in Appendix A were tainted by the service provider's involvement, and deny the requests for review relating to those applications.¹² We thus direct USAC to continue recovery actions against the party or parties responsible for the program violations with respect to the applications listed in Appendix A.

5. However, we grant the requests for review relating to the funding requests listed in Appendix B, because we find there was no improper service provider involvement with the bidding processes with respect to the applications identified in Appendix B.¹³ In each of those instances, while there was an employee of an E-rate service provider working for the school or school district, that service provider did not bid on the funding requests that are associated with the E-rate applications identified in Appendix B.¹⁴ We recognize that, in the *St. Margaret's School Order*, the Bureau previously interpreted the *MasterMind Order* to conclude that, if the competitive bidding process tied to a particular FCC Form 470 was found to be tainted by improper service provider involvement, all funding request numbers

⁷ See Morrow County 2007 Request for Review; Supplement to Morrow County 2007 Request for Review, filed July 21, 2011 (regarding FCC Form 471 application numbers 254806 and 247557).

⁸ See Appendices A and B.

⁹ See Morrow County 2007 Request for Review; Supplement to Morrow County 2007 Request for Review; Appendix A.

¹⁰ See Morrow County 2009 Request for Review; Supplement to Morrow County 2009 Request for Review, filed Aug. 13, 2010; Appendix A.

¹¹ See *supra* n.4.

¹² See Appendix A.

¹³ See Greeley Request for Review, filed Nov. 16, 2005; Le Grand Union Request for Review, filed Jan 23, 2007; Morrow County 2007 Request for Review; Supplement to Morrow County 2007 Request for Review (regarding FCC Form 471 application number 247557); Appendix B.

¹⁴ See Greeley Request for Review; Le Grand Union Request for Review; Morrow County 2007 Request for Review; Supplement to Morrow County 2007 Request for Review (regarding FCC Form 471 application number 247557); Appendix B.

associated with that FCC Form 470 would be denied funding.¹⁵ However, upon further consideration, we think the better reading of the *MasterMind Order* is that USAC should determine whether the contact person's company actually participated in the bidding for a particular service or not and deny only those funding requests where the company actually participated in the bidding process. When an applicant seeks bids on multiple funding requests as part of an application, improper service provider involvement during the competitive bidding process by one service provider does not indicate a violation on the part of every vendor selected to provide services arising from the same FCC Form 470.¹⁶ We therefore grant Morrow County's request for review relating to application number 247557 because we find no evidence that Arbogast Business participated in the competitive bidding process relating to the funding requests that were part of that application number.¹⁷ We also grant the requests for review filed by Greeley and Le Grand Union because we find no evidence that the relevant service providers improperly participated in the applicants' competitive bidding processes with respect to the funding requests at issue in those appeals.¹⁸ Accordingly, we direct USAC to discontinue recovery actions relating to the funding requests listed in Appendix B.

6. 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 the 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 the requests for review listed in Appendix A ARE DENIED to the extent provided herein.

¹⁵ See *Request for Review by St. Margaret's School; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 20 FCC Rcd 8166, 8167-68, paras. 4, 7 (Wireline Comp. Bur. 2005) (*St. Margaret's School Order*); see also *Requests for Review of Decisions of the Universal Service Administrator by Delano Joint Union High School District et al.*, CC Docket No. 02-6, Order, 23 FCC Rcd 15399, 15402, para. 5 n.26.

¹⁶ We note that USAC's current procedures are consistent with this interpretation of the *MasterMind Order*.

¹⁷ See Appendix B.

¹⁸ See Appendix B; Greeley Request for Review; Le Grand Union Request for Review. We note that Greeley and Le Grand Union do not contest the rescission of funding for the requests where the listed FCC Form 470 contact persons were affiliated with companies that participated in the applicants' competitive bidding processes. See Greeley Request for Review; Le Grand Union Request for Review.

7. 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 the authority delegated in 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 listed in Appendix B ARE GRANTED to the extent provided herein and that the underlying applications ARE REMANDED to USAC for further action consistent with the terms of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Kimberly A. Scardino
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX A

Applications Denied for Improper Vendor Involvement

Petitioners	Application Number	Funding Year(s)	Date Appeal Filed
Morrow County School District Lexington, OR	254806	2001	Aug. 24, 2007
Morrow County School District Lexington, OR	361855 366035 413243	2003 2003 2004	Feb. 11, 2009

APPENDIX B

Funding Requests Granted

Petitioners	Application Number	Funding Request Number(s)	Funding Year	Date Appeal Filed
Greeley Public School District Greeley, NE	420638	1159354	2004	Nov. 6, 2005
Le Grand Union Elementary School District Le Grand, CA	259033	652202 652322 652358 652399	2001	Jan. 23, 2007
Morrow County School District Lexington, OR	247557	627104 628103 628321 628701 628804 629069	2001	Aug. 24, 2007