

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

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| In the Matter of |) | |
| |) | |
| Petition for Reconsideration by |) | |
| |) | |
| Chicago Public Schools |) | File Nos. SLD-819303 |
| Chicago, Illinois |) | |
| |) | |
| Schools and Libraries Universal Service |) | CC Docket No. 02-6 |
| Support Mechanism |) | |

ORDER ON RECONSIDERATION

Adopted: July 30, 2014

Released: July 30, 2014

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

1. Consistent with precedent,¹ we dismiss a petition for reconsideration filed by Chicago Public Schools (CPS)² of a decision by the Wireline Competition Bureau (Bureau) finding that CPS violated the Commission’s competitive bidding rules for the E-rate program (more formally known as the schools and libraries universal service support program).³ CPS seeks reconsideration of the Bureau’s *Central Technology Center Order*, to the extent it denied CPS’s request for review and/or waiver of the decision made by the Universal Service Administrative Company (USAC) to deny CPS’s request for E-rate funding for internal connections in funding year 2011. For the reasons explained below, we dismiss the Petition for Reconsideration as procedurally defective. In addition, as an alternative and independent basis for the decision, we affirm our previous denial of CPS’s request for waiver on the merits.

2. *Dismissal.* In its decision, USAC found that CPS violated section 54.503(c)(4) of our rules, which requires an E-rate applicant to wait “at least four weeks from the date on which its description of services is posted on [USAC’s] website before making commitments with the selected providers of services.”⁴ Specifically, USAC found that the FCC Form 470 filed by CPS that established its

¹ See *Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District, et al., Schools and Libraries Universal Service Support Mechanism*, 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 Albert Lea Area Schools, et al.*, CC Docket No. 02-6, Order, 24 FCC Rcd 4533 (Wireline Comp. Bur. 2009) (*Albert Lea Order*) (denying the appeal of applicants that filed FCC Forms 470 that did not include the types of services for which the applicants later requested E-rate funding).

² Petition for Reconsideration by Chicago Public Schools, CC Docket No. 02-6 (filed June 8, 2012) (Petition for Reconsideration).

³ *Requests for Waiver of Decisions of the Universal Service Administrator by Central Technology Center et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 5086 (Wireline Comp. Bur. 2012) (*Central Technology Center Order*) (finding that eight petitioners, including CPS, violated the Commission’s competitive bidding requirements and that the Petitioners did not demonstrate that good cause existed to justify a waiver of the Commission’s competitive bidding requirements).

⁴ 47 C.F.R. §54.503(c)(4); see also Letter from USAC, Schools and Libraries Division, to Pamela D. Flowers, Chicago Public Schools, at 3 (dated Feb. 14, 2012) (USAC Decision Letter) (regarding CPS Funding Year 2011 FCC Form 471 application number 819303, funding request number 2228423).

competitive bidding process did not indicate that CPS sought internal connections service, and therefore CPS had not put those services out for bid for 28-days as required by our rules.⁵

3. CPS sought review of USAC's decision, arguing that it satisfied the Commission's competitive bidding requirements because CPS's omission of internal connections on its FCC Form 470 was a ministerial and clerical error, this omission did not stifle competition, and the Request for Proposals (RFP), which was referenced on CPS's FCC Form 470, included a full description of each service sought by CPS and that RFP was posted on CPS's website for 28 days.⁶ In the alternative, CPS requested a waiver of the rules on the basis that the omission of internal connections from the list of services for which it sought competitive bids on its FCC Form 470 was a ministerial error that did not stifle competition.⁷ Based on our review of the record, we denied the request for review and/or waiver.⁸ Specifically, we found that CPS had not demonstrated that good cause existed to justify a waiver of the Commission's rules and we otherwise declined to grant CPS's request for review.⁹

4. In its Petition for Reconsideration, CPS seeks reconsideration only of its request for a waiver.¹⁰ Our rules provide that a petition for reconsideration will only be entertained if it relies on facts or arguments that have changed or were unknown to the petitioner when it previously filed its appeal.¹¹ In the Petition for Reconsideration, CPS merely restates the facts and arguments it previously asserted in the CPS Appeal.¹² We have already fully considered and rejected these facts and arguments.¹³ Therefore, we dismiss the Petition for Reconsideration pursuant to section 1.106(p)(3) of the Commission's rules.¹⁴

5. *Denial.* In addition, although it is unnecessary to reach the merits of the Petition for Reconsideration, independently, and in the alternative, we deny the Petition for Reconsideration on the merits. In denying the CPS Appeal, we relied on the Commission's rules and precedent that require

⁵ See USAC Decision Letter at 3. On its FCC Form 470, CPS identified basic maintenance of internal connections as the only service category for which it sought bids. See FCC Form 470, CPS (posted Sept. 15, 2010) (CPS FCC Form 470 number 750890000853166).

⁶ See Letter from Anthony Mcphearson, Acting Chief Information Officers, Chicago Public Schools, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6, at 1-2 (filed Mar. 13, 2012) (CPS Appeal).

⁷ See *id.* at 2-3.

⁸ See *Central Technology Center Order*, 27 FCC Rcd at 5086, para. 1.

⁹ *Id.* at 5087, para. 3.

¹⁰ See Petition for Reconsideration at 5 (“[T]he Commission should grant this petition, waive Section 54.503(c)(4) with respect to the underlying Form 470 (for funding years 2011-2013), and remand CPS's funding request to USAC for further consideration on the merits.”).

¹¹ See 47 C.F.R. § 1.106(b)(2).

¹² See, e.g., CPS Appeal at 2 (“We did not select the boxes to include Internal Connections. However, the associated RFP did request bids on the internal connections services.”); *id.* (“this ministerial error did not dissuade vendors from bidding on the RFP.”); Petition for Reconsideration, at 3-4 (“[CPS] mistakenly identified Item 11 (‘Basic Maintenance of Internal Connections’) as the only service category required by CPS. By mere oversight, CPS did not also select Item 10 (‘Internal Connections Other than Basic Maintenance’).”); *id.* at 4 (“[T]he associated RFP included a full description of each service sought by CPS and invited potential vendors to submit competitive bids for the provision of such services (including Internal Connections service)”); *id.* at 12 (“CPS's ministerial and clerical mistake had no material impact on the competitive bidding process”).

¹³ See *Central Technology Center Order*, 27 FCC Rcd at 5086, para. 3.

¹⁴ 47 C.F.R. § 1.106(p)(3) (allowing the Commission to dismiss petitions for reconsideration that rely on arguments that have been fully considered and rejected by the Commission within the same proceeding).

applicants seeking waivers to demonstrate that special circumstances warrant a deviation from the general rule, and that such deviation would better serve the public interest than strict adherence to the general rule.¹⁵ While CPS suggests that the *Central Technology Center Order* did not discuss the facts presented by CPS,¹⁶ we find that our denial was fully supported by cited precedent.

6. In its Petition for Reconsideration, CPS seeks a waiver of section 54.503(c)(4) of the Commission's rules.¹⁷ Although it does not affect our ultimate conclusion in this proceeding, we clarify that, in addition to violating section 54.503(c)(4) of the Commission's rules, CPS also violated section 54.503(b), which requires applicants to "seek competitive bids . . . for all services eligible for support."¹⁸ Because CPS's FCC Form 470 did not indicate that CPS sought bids on internal connections services and CPS later requested E-rate funding for these services, CPS also violated section 54.503(b).¹⁹

7. Accounting for this additional rule violation, we find that CPS has not demonstrated the existence of special circumstances to warrant a waiver of sections 54.503(c)(4) or 54.503(b). 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.²⁰ CPS first argues that the omission of internal connections on its FCC Form 470 is a ministerial or clerical error that constitutes special circumstances that the Commission has previously found to warrant a waiver.²¹ We disagree with CPS's contention that failure to identify the services for which it is seeking competitive bids is a mere ministerial or clerical error. The types of errors that the Commission has waived as "ministerial or clerical" errors include mistyping a number or using the wrong name or phone number,²² errors that could not have resulted in the applicants receiving more funding than they were entitled to.²³ By contrast, identification on the FCC Form 470 of all services for which an applicant is seeking competitive bids, and posting of that FCC Form 470 for at least 28 days, is fundamental to the competitive bidding requirements of the E-rate program.²⁴ Because of the importance of the competitive bidding process to

¹⁵ See *Central Technology Center Order*, 27 FCC Rcd at 5086, para. 1 (citing *Aberdeen School District Order*, 22 FCC Rcd 8757; *Request for Review of the Decision of the Universal Service Administrator by Henrico County School District*, CC Docket No. 96-45, Order, 17 FCC Rcd 706 (Com. Car. Bur. 2002)). 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. *Northeast Cellular*, 897 F.2d at 1166.

¹⁶ See Petition for Reconsideration at 5.

¹⁷ See *id.* at 1-2, 5.

¹⁸ 47 C.F.R. §54.503(b).

¹⁹ *Id.*; see also *Albert Lea Order*, 24 FCC Rcd at 4542, para. 15.

²⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²¹ Petition for Reconsideration at 6-12.

²² See, e.g., *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 6487, 6489, para. 5 (2011) ("[Clerical and ministerial] errors include only the kinds of errors that a typist might make when entering data from one list to another, such as mistyping a number, using the wrong name or phone number, failing to enter an item from the source list onto the application, or making an arithmetic error.").

²³ See *Aberdeen School District Order*, 22 FCC Rcd at 8762, para. 7.

²⁴ See, e.g., *Albert Lea Order*, 24 FCC Rcd at 4542, para. 15.

the program, the Commission has consistently required that all potential bidders be treated equally and that no bidders receive an unfair advantage.²⁵ Failure by an applicant to identify the services on which it is seeking bids on the FCC Form 470, and therefore to seek bids on those services by virtue of having that FCC Form 470 available for consideration for at least 28 days, undermines the framework of the competitive bidding process by suppressing fair and open competitive bidding.²⁶ As a result, the Bureau has declined to grant waivers to applicants who submit funding requests for services not included on such applicants' FCC Form 470.²⁷

8. CPS also argues that special circumstances exist here because its omission of internal connections on its FCC Form 470 did not negatively impact the competitive bidding process.²⁸ To support this contention, CPS cites to the fact that (1) its RFP identified the services for which CPS later requested E-rate funding and (2) CPS received the same number of vendor responses to its RFP seeking bids for internal connections services in funding year 2011 as it received when it previously sought E-rate bids for similar services in 2005.²⁹ However, internal connections, by their very nature, are separate and distinct from the basic maintenance services for which CPS indicated it was seeking bids.³⁰ As a result, a vendor who sells internal connections components would not necessarily also provide the maintenance of those products. Accordingly, a vendor interested in bidding on internal connections would, after reviewing CPS's FCC Form 470, have had no reason to inspect the CPS RFP to find out that CPS was seeking bids for internal connections. Failure to identify the services on which an applicant is seeking bids necessarily stifles potential competition and therefore prevents USAC from determining whether the applicant has made the most cost-effective purchasing decisions.³¹ Moreover, the fact that CPS received the same number of vendor responses in one year as it did in another is not evidence of how many responses it would have received in funding year 2011 if its FCC Form 470 had properly provided notice to all vendors of CPS's interest in seeking bids on internal connections. Thus, CPS has failed to present special circumstances that warrant deviation from the general rule.³² We, therefore, affirm USAC's denial of E-rate funds to CPS and our *Central Technology Center Order*.

9. 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, 1.106, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 1.106 and

²⁵ See, e.g., *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26939, para. 66 (2003) (stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources).

²⁶ See *Albert Lea Order*, 24 FCC Rcd at 4542, para. 15.

²⁷ See *id.* at 4542, para. 15-16.

²⁸ Petition for Reconsideration at 12-14.

²⁹ *Id.*

³⁰ Compare USAC, Schools and Libraries, Funding Year 2012 Eligible Services List, at 12, available at http://www.usac.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList-2012.pdf (last visited Jun. 3, 2014) ("Internal Connections are components located at the applicant site that are necessary to transport information to classrooms, publicly accessible rooms of a library, and to eligible administrative areas or buildings."), with *id.* at 21 ("The following basic maintenance services are eligible: Repair and upkeep of eligible hardware[,] Wire and cable maintenance[,] Basic technical support[, and] Configuration changes[.]").

³¹ See *Albert Lea Order*, 24 FCC Rcd at 4542, para. 16 ("Because the petitioners did not comply with the Commission's competitive bidding rules and therefore did not ensure that the requested services were the most cost-effective, we find that the petitioners . . . have not demonstrated that special circumstances warrant deviation from the general rule.").

³² See *id.*

54.722(a), that the Petition for Reconsideration filed by CPS IS DISMISSED, and as an independent and alternative basis for the decision, the Petition for Reconsideration is also DENIED on the merits.

FEDERAL COMMUNICATIONS COMMISSION

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