

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Request for Waiver by)
Tennessee E-Rate Consortium) File Nos. SLD-826426 et al.
Nashville, TN)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

ORDER

Adopted: August 2, 2019

Released: August 2, 2019

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a Request for Waiver filed by the Tennessee E-Rate Consortium (Tennessee Consortium or Consortium) seeking waiver of the Commission’s E-Rate1 competitive bidding rules for the funding year 2012 funding requests submitted by school districts that were not members of the Consortium at the time the Consortium’s contract was competitively bid.2 Based on our review of the record, and the unique circumstances presented here, we find that a limited waiver of the Commission’s E-Rate rules is warranted. Specifically, we find that the public interest is served given that the Consortium’s contract was competitively bid through a fair and open process, the contract operated as a “master contract” for the Consortium members,3 and there is no indication in the record of waste, fraud, or abuse. Additionally, granting a waiver here furthers the overall goals of the E-Rate program by ensuring that eligible entities receive much-needed funding to help connect students and teachers to high-speed broadband in today’s digital world. Strict enforcement of the Commission’s competitive bidding rules in this instance could undermine those interests, particularly because the rules did not clearly address the specific issue in question. Accordingly, we remand the funding requests listed in Appendix A to USAC to determine compliance with E-Rate program rules and requirements and for further action consistent with this Order. Additionally, we direct USAC to discontinue its recovery actions related to the funding requests listed in Appendix B and to reinstate these funding commitments no later than 60 calendar days from release of this Order.

1 The E-Rate program is formally known as the schools and libraries universal service support mechanism.

2 These funding requests are listed in Appendix A and Appendix B.

3 The Commission has not previously addressed whether a contract like the one entered into here is in fact a “master contract” or how applicants who intend for a contract to operate as a master contract should indicate such on their FCC Forms 470 or FCC Forms 471. In the absence of Commission guidance, the Bureau does not resolve the issue here. Rather, based on the record before us, we find that the Consortium’s contract, when viewed in the light of how the Tennessee Consortium structured itself and its members’ actions, operated in a manner that was sufficiently similar to how a “master contract” is treated under the Commission’s E-Rate program rules as to militate in favor of granting a limited waiver of the competitive bidding rules. We emphasize that this finding is based on the unique facts and circumstances before us.

II. BACKGROUND

A. E-Rate Program Rules and Requirements

2. Under the E-Rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible services.⁴ The Commission's rules require applicants to seek competitive bids for all eligible services for which they are considering requesting E-Rate support by submitting a completed FCC Form 470 to USAC.⁵ Eligible schools and libraries may form a consortium for the purpose of requesting competitive bids for eligible services.⁶

3. The completed FCC Form 470 must provide a description of the requested services sufficient to enable potential bidders to accurately determine the needs of the applicant.⁷ As part of that requirement, the FCC Form 470 "requires [applicants] to provide information about the entities that will receive the services" for which bids are sought.⁸ Applicants who are not seeking bids on a statewide basis must specify the total number of recipients of service included within the bid request,⁹ and identify the Billed Entity Number (BEN) for each of those entities in Block 4 of the FCC Form 470.¹⁰

4. After competitive bidding is concluded and a contract signed, an applicant must file an FCC Form 471 to request E-Rate support for the contracted services.¹¹ The FCC Form 471 requires that applicants identify the particular FCC Form 470 that sought bids for the requested services.¹² If an applicant cannot identify an FCC Form 470 that sought bids for the services requested on behalf of the eligible schools and libraries applying for E-Rate discounts (e.g., the BENs for the schools and libraries identified in the FCC Form 471 funding request do not match the BENs identified in Block 4 of the establishing FCC Form 470), the funding request may be denied on the grounds that the schools and libraries failed to commence and conduct an open and fair competitive bidding process for the requested services.¹³

5. Applicants that are not listed on an originating FCC Form 470 may still purchase services

⁴ 47 CFR §§ 54.501-54.505.

⁵ 47 CFR § 54.503(a)-(c); *see also* 47 CFR § 54.503(c)(1) ("An eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this subpart shall submit a completed FCC Form 470 to the Administrator to initiate the competitive bidding process").

⁶ 47 CFR § 54.501(c)(1) (2011-2012); *see* 47 CFR § 54.500 ("A 'consortium' is any local, statewide, regional, or interstate cooperative association of schools and/or libraries eligible for E-rate support that seeks competitive bids for eligible services or funding for eligible services on behalf of some or all of its members"); *see also Request for Waiver of the Decision of the Universal Service Administrator by Tri-River Educational Computer Association, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 4754, 4755, para. 3 (WCB 2007) (*Tri-River Order*).

⁷ 47 CFR § 54.503(c)(1)(ii); *see also Federal-State Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (subsequent history omitted).

⁸ Schools and Libraries Universal Service, Instructions for Completing the Description of Services Requested and Certification Form 470, OMB 3060-0806 (October 2004) (*2004 FCC Form 470 Instructions*) at 15, Block 4; Schools and Libraries Universal Service, Instructions for Completing the Description of Services Requested and Certification Form 470, OMB 3060-0806 (October 2010) (*2010 FCC Form 470 Instructions*), at 6, Block 1.

⁹ Schools and Libraries Universal Service, Description of Services Requested and Certification Form 470, OMB 3060-0806 (October 2004) (*2004 FCC Form 470*) at Block 4; Schools and Libraries Universal Service, Description of Services Requested and Certification Form 470, OMB 3060-0806 (October 2010) (*2010 FCC Form 470*) at Block 4.

¹⁰ *2004 FCC Form 470* at Block 4; *2010 FCC Form 470* at Block 4.

¹¹ 47 CFR § 54.504(a).

based upon that FCC Form 470 if the resulting contract is a competitively bid master contract.¹⁴ A master contract is a contract “negotiated with a service provider by a third party, the terms and conditions of which are then made available to an eligible school, library, rural health care provider, or consortium that purchases directly from the service provider.”¹⁵

B. Tennessee Consortium Formation and Competitive Bidding Process

6. The Tennessee Consortium was formed in late 2010 and was initially comprised of 78 Tennessee public school districts.¹⁶ All 78 school districts were previously members of the Greeneville City Consortium (Greeneville Consortium), a nearly state-wide consortium formed in 2008. The Greeneville Consortium’s contract with Education Networks of America, Inc. and ENA Services, LLC (collectively, ENA) expired at the end of funding year 2011.¹⁷ Prior to the expiration of the ENA contract, the 78 school districts formed the Tennessee Consortium, with Metropolitan Nashville Public Schools (MNPS) as its lead.

7. On February 4, 2011, the Consortium submitted an FCC Form 470 and a Request for Proposals (RFP) to USAC, seeking bids for telecommunications services, Internet access services, and internal connections on behalf of the Consortium’s members for delivery in funding year 2011.¹⁸ The 78 school districts were all identified by BEN on Block 4 of the FCC Form 470.¹⁹ The RFP stated that “the method for all of the K-12 public school districts of Tennessee to purchase from this contract is TCA Title 12, Chapter 3, Part 10, which effectively allows Local Education Agencies (LEAs) to make purchases based on the terms of a contract signed by another LEA.”²⁰ After completing the competitive bidding process, MNPS signed a five-year service contract with ENA (the MNPS Contract).²¹ While the Consortium sought competitive bids on a consortium-wide level, every member entity filed separate FCC Forms 471, each of which indicated that their funding request was “covered under a master contract” and cited the MNPS Contract.²²

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¹² See *Request for Review of a Decision of the Universal Service Administrator by Idaho Falls School District 91, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 5512, 5513, para. 2 (WCB 2010) (*Idaho Falls Order*); see also *Schools and Libraries Universal Service, Description of Services Ordered and Certification Form 471*, OMB 3060-0806 (October 2010) (*FY2011 FCC Form 471*), at Block 5. The FCC Form 470 that an applicant identifies in its FCC Form 471 is commonly referred to as the “establishing” or “originating” FCC Form 470 for the funding request. See, e.g., *Request for Review of a Decision by the Universal Service Administrator by Coahoma County School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11201, 11203, para. 5 (WCB 2011).

¹³ *2004 FCC Form 470* at Block 4 (“[i]f a Billed Entity cited on your Form 471 is not listed [in Block 4] below, funding may be denied for the funding requests associated with this Form 470.”); *2010 FCC Form 470* at Block 4 (same); see also 47 CFR § 54.503(a)-(c); *Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8757, 8765, para. 10 (2007) (*Aberdeen Order*) (denying a waiver where the FCC Form 470 cited in the applicant’s funding request did not request bids for the services requested for a particular funding year).

¹⁴ See *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, Fourth Order on Reconsideration and Report and Order, 13 FCC Rcd 2372, paras. 232-33 (WCB 1997) (*Fourth Order on Reconsideration*).

¹⁵ 47 CFR § 54.500(g).

¹⁶ See Letter from Kimberly Friends, State E-rate Coordinator, Tennessee Department of Education, and Tom Bayersdorfer, Tennessee E-Rate Consortium Lead, Metropolitan Nashville Public Schools, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (Feb. 11, 2013) (Request for Waiver). The Request for Waiver consistently refers to 79 original school district members, but both the Consortium’s funding year 2011 FCC Form 470 and the Request for Proposals list 78 school district BENs. We therefore note 78 school districts when referring to the Consortium’s original membership throughout this Order. In addition, throughout its

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8. Prior to the start of funding year 2012, an additional 43 school districts that also had been members of the Greeneville Consortium sought to join the Tennessee Consortium and purchase services for funding year 2012 via the MNPS Contract.²³ Each new school district filed a Letter of Agency (LOA) with the Tennessee Consortium.²⁴ Given that the 43 school districts were new members of the Consortium, none of them had been identified in Block 4 of the Consortium's originating, funding year 2011 FCC Form 470.²⁵

9. In preparation for the filing of their funding year 2012 E-Rate funding requests, an MNPS representative sought guidance from USAC as to whether new consortium members, when filing FCC Forms 471 requesting E-Rate discounts for services purchased through a multi-year contract, could rely on an FCC Form 470 that did not include them.²⁶ USAC indicated that such an action was procedurally acceptable.²⁷ In subsequent days, the MNPS representative made additional queries to USAC seeking further confirmation that consortia could add members by having the new members file an LOA prior to filing an FCC Form 471. USAC responded in the affirmative.²⁸

10. During the funding year 2012 application window, the 43 new Tennessee Consortium members each filed their own FCC Forms 471 seeking E-Rate support for funding year 2012 for services to be purchased at rates negotiated on behalf of the Consortium by MNPS and reflected in the MNPS Contract.²⁹ In all, 90 funding requests for funding year 2012 were filed by the new Consortium members, totaling slightly more than \$17 million and each citing to the Consortium's funding year 2011 FCC Form 470 as the establishing FCC Form 470. USAC initially approved 42 of the 90 funding requests, but subsequently rescinded nine of the approved funding requests due to a competitive bidding violation.³⁰ USAC issued Funding Commitment Decision Letters (FCDLs) denying an additional 46 funding requests due to the same competitive bidding violation.³¹ Specifically, USAC rescinded and denied the funding requests because the BENs listed on the FCC Forms 471 were not among those listed in Block 4 of the Consortium's funding year 2011 FCC Form 470.³² Many of the denial letters further stated that "the

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Request for Waiver, the Consortium occasionally refers to its members as Local Education Agencies (LEAs). LEAs are synonymous with public school districts in the E-Rate filings at issue and in this Order. See 2004 FCC Form 470 at Block 1 (including LEAs within the "School District" type of application); 2010 FCC Form 470 at Block 1.

¹⁷ Request for Waiver at 6. Funding year 2011 began on July 1, 2011 and ended on June 30, 2012.

¹⁸ *Id.* at 2; see also FCC Form 470 No. 534070000900066, Metropolitan Nashville Public Schools (Feb. 4, 2011), http://www.slforms.universalservice.org/Form470Expert/PrintPreviewFY8.aspx?appl_id=900066&fy=2011&src=search (FY 2011 Tennessee Consortium FCC Form 470); Metropolitan Nashville Public Schools, Request for Proposals: Managed Internet Access, Voice-Over-IP and Video Conferencing, RFP Number 11-4 (Feb. 4, 2011) (Tennessee Consortium RFP).

¹⁹ See FY 2011 Tennessee Consortium FCC Form 470 at Block 4.

²⁰ Tennessee Consortium RFP at 4.

²¹ Request for Waiver at 2. The MNPS Contract became effective on July 1, 2011 and expired on June 30, 2016. See Contract Between Metropolitan Nashville Public Schools on Behalf of the Metropolitan Board of Public Education and ENA Services, LLC (MNPS Contract).

²² Request for Waiver at 2.

²³ *Id.* at 3.

²⁴ See, e.g., Letter of Agency for Funding Years 2011-2015, Athens City Schools, signed January 30, 2012.

²⁵ *Id.* at 3, 7; see also FY 2011 Tennessee Consortium FCC Form 470 at Block 4.

²⁶ Request for Waiver at 3. According to the Request for Waiver, the MNPS representative asked the following question: "Could new consortium members post a Form 471 funding request based on an awarded multi-year contract even though the new consortium members were not originally listed on the Form 470 posted in February 2011?" *Id.* at 3.

addition of your BEN would cause a change in the scope of services sought in the [competitive bidding] solicitation.”³³

C. Request for Waiver and Supplemental Filings

11. On February 11, 2013, the Tennessee Consortium filed a Request for Waiver, seeking a waiver of the competitive bidding requirements of section 54.503 of the Commission’s rules with respect to the funding year 2012 FCC Forms 471 identified in Appendix A and Appendix B.³⁴ The Consortium argues that the Commission’s rules are silent as to whether new members may join a consortium after the competitive bidding process has closed.³⁵ The Consortium also asserts that the addition of the new members here would not have changed the scope of the bids or outcome of the competitive bidding process, and that a waiver is warranted based on its detrimental reliance on USAC’s guidance and the economic hardship that would result if a waiver is not granted.³⁶ The Consortium’s service provider, ENA, subsequently submitted *ex parte* filings in 2014 and 2018 in support of the Consortium’s Request for Waiver.³⁷ In its filings, ENA argues that Tennessee state law allowed the new members to purchase off of the MNPS Contract without engaging in their own competitive bidding process, and that the contract’s scope was not changed because the contract acted as a master contract.³⁸

III. DISCUSSION

12. Based on a review of the record and the unique circumstances presented here, we grant the Tennessee Consortium’s Request for Waiver and remand the funding year 2012 funding requests listed in Appendix A to USAC for further action consistent with this Order. In addition, we direct USAC to discontinue its recovery actions related to the funding requests listed in Appendix B and to reinstate these funding commitments. The Tennessee Consortium does not specify the provision within section 54.503 of the Commission’s rules for which it seeks a waiver; however, because USAC’s determination for denying the FCC Form 471 applications at issue in this proceeding was based on the Consortium’s

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²⁷ *Id.*

²⁸ *Id.*, Exhs. C, D.

²⁹ Request for Waiver at 4; *see, e.g.*, Email from Craig Clayton, Sumner County Schools, to Maria Donawa, USAC (dated Jan. 2, 2013) (“We then signed individual contracts with ENA and proceeded to file our Form 471s and associated funding requests . . .”).

³⁰ *See* Request for Waiver at 4-5; *see also* Appendix B.

³¹ Two funding requests were cancelled by their respective applicants. *See* Letter from USAC, Schools and Libraries Division, to Larry Stein, Sweetwater City School District (dated June 17, 2013) (confirming cancellation of FRN # 2341989); Letter from USAC, Schools and Libraries Division, to Will Lockert, Cheatham County School District (dated Mar. 18, 2013) (confirming cancellation of FRN # 2324017).

³² Request for Waiver at 4-5; *see, e.g.*, Letter from USAC, Schools and Libraries Division, to Curtis Fullbright, Washington County School District at 3 (dated Jan. 23, 2013).

³³ *See, e.g.*, Letter from USAC, Schools and Libraries Division, to Karen Allen, Loudon County School District at 3 (dated Jan. 29, 2013). The COMAD letters stated that the funding requests must be rescinded in full because “[t]he billed entities in Block 4 of the FCC Form 471 were not listed in Block 4 of FCC Form 470 # 534070000900066 that established the competitive bidding process for the FCC Form 471.” *See, e.g.*, Letter from USAC, Schools and Libraries Division, to Jill Cloyd, White County School District at 4 (dated Jan. 30, 2013) (regarding FRN # 2263029) (explaining that “[p]rogram rules require that the billed entity filing an FCC Form 471 application also be identified on the establishing FCC Form 470 in order to ensure that potential bidders were aware of the scope of work being requested”).

³⁴ Request for Waiver; Letter from Kimberly Friends, State E-rate Coordinator, Tennessee Department of Education, and Tom Bayersdorfer, Tennessee E-Rate Consortium Lead, Metropolitan Nashville Public Schools, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (Dec. 17, 2013) (Supplement to Request for Waiver) (clarifying that the Consortium only seeks a waiver with respect to funding year 2012).

failure to include the 43 new Consortium members in Block 4 of the Consortium's originating funding year 2011 FCC Form 470 filing, we treat the Consortium's request as seeking a waiver of sections 54.503 (a) and (c) of the Commission's rules.³⁹

13. Generally, the Commission's rules may be waived for good cause shown.⁴⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁴¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁴² Here, although the Consortium failed to include the 43 members on the originating FCC Form 470 in violation of the requirement that a consortium applicant specify the total number of eligible entities included within the bid request and identify the BEN for each of these entities in Block 4 of the form,⁴³ we find that the policy behind our rules is not frustrated by a grant of a waiver in this limited circumstance where: (1) potential bidders were on notice that the list of potential recipients of service might expand beyond the original 78 Consortium members; (2) the competitive bidding process that resulted in the MNPS Contract was fair, open, and compliant with our competitive bidding rules; and (3) the MNPS Contract operated as a "master contract."

14. The requirement that consortia specify the total number of eligible entities included within the bid request and identify the BEN for each entity in Block 4 of the FCC Form 470 is intended to help potential bidders identify the "entities that will . . . pay[] bills directly to the service provider(s) for the services" described in the FCC Form 470 and that will file the FCC Form 471 to request E-Rate discounts for those services.⁴⁴ Stated differently, the information allows "interested service providers [to] identify . . . potential customer[s] and compete to serve [them]."⁴⁵ We find no evidence that the Consortium's omission in this instance hampered the ability of potential bidders to do so here.

15. Central to our conclusion is the Consortium's direct reference to Tennessee state law in its RFP, which put potential bidders on notice that the possible recipients of service could expand in the future. Specifically, the second paragraph of the Consortium's RFP stated that "the method for all of the

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³⁵ Request for Waiver at 6.

³⁶ Request for Waiver at 7-9.

³⁷ See Letter from James M. Smith and Danielle Frappier, Counsel for Education Networks of America, Inc. and ENA Services, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-6, at 4-9 (Oct. 1, 2014) (ENA First Ex Parte); Letter from Gina Spade, Broadband Legal Strategies, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (Nov. 26, 2018) (ENA Second Ex Parte).

³⁸ See ENA Second Ex Parte at 1.

³⁹ 47 CFR §54.503(a)(requiring all E-Rate program participants to conduct a fair and open competitive bidding process); 47 CFR §54.503(c)(requiring participants to submit a completed FCC Form 470 to USAC to initiate the competitive bidding process and specifying the minimum information to be included). The Request for Waiver (at 10) also seeks a waiver of "applicable sections" of Section 54.502 of the Commission's rules, which governs eligible services. Because USAC did not base its determinations on whether the services sought were eligible, we dismiss the request to waive Section 54.502.

⁴⁰ 47 CFR § 1.3.

⁴¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁴² *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

⁴³ *2004 FCC Form 470 Instructions* at 15, Block 4; *2010 FCC Form 470 Instructions* at 6, Block 1; *2004 FCC Form 470* at Block 4; *2010 FCC Form 470* at Block 4.

⁴⁴ *2004 FCC Form 470 Instructions* at 16, Block 4; *2010 FCC Form 470 Instructions* at 9, Block 4.

⁴⁵ *2004 FCC Form 470* at 1; *2010 FCC Form 470* at 1.

K-12 public school districts of Tennessee to purchase from this contract is TCA Title 12, Chapter 3, Part 10, which effectively allows Local Education Agencies (LEAs) to make purchases based on the terms of a contract signed by another LEA.⁴⁶ As a result, an interested service provider was on notice of the potential state-wide reach of the contract; and, consequently, was alerted to the fact that the recipients listed in Block 4 of the Consortium's FCC Form 470 might not represent the total number of recipients who could ultimately seek service under the contract's terms.

16. The core issue at hand is under what circumstances can members be added to a consortium and be beneficiaries of previously established consortium agreements that are still in effect without necessitating a new competitive bid process.⁴⁷ We note, as an initial matter, that nothing in our rules or orders expressly prohibits consortia from adding members after the conclusion of the competitive bidding process. At most, the Commission has held that consortia cannot add members during the course of the funding year because doing so would create untenable administrative burdens for USAC.⁴⁸ Specifically, the Commission was concerned that allowing consortia to add members during a funding year would require consortia to continually update their applications, in turn causing USAC to continually re-review and process applications. Review of applications would thus be delayed and further complicated because the number of recipients of service could change at any time during the course of the funding year.⁴⁹

17. Those concerns are not present here. The new Tennessee Consortium members filed their LOAs with the Consortium well in advance of the funding year 2012 window. USAC therefore knew precisely how many Consortium members were associated with the MNPS Contract prior to reviewing the applications for that funding year. Additionally, because each Consortium member filed individual FCC Forms 471, review of the applications would be limited to only that specific member, not the entire Consortium. The total number of recipients would therefore have no impact on the speed of the review for any individual application. Accordingly, we do not find the addition of the 43 new members to the Tennessee Consortium after funding year 2011 posed any undue administrative burdens on USAC.

18. We must also consider whether the new members can avail themselves of the MNPS Contract. Consistent with the Commission's promotion of consortia as an effective means of realizing the cost savings associated with enhanced bargaining power, the Consortium's purpose here was to leverage its group purchasing power to secure Internet access and telecommunications services at a price that no individual district could command on its own.⁵⁰ The Consortium then provided access to the negotiated contract to its members, each of whom individually purchased their preferred services—an approach that is generally consistent with our definition of a master contract.

⁴⁶ *Tennessee Consortium RFP* at 4. See Tenn. Code Ann. § 12-3-1004(b)(1) ("Any local [LEA] may purchase equipment under the same terms of a legal bid initiated by any other LEA in Tennessee."); Tenn. Code Ann. § 12-3-1004(b)(2)(A) ("Any LEA may purchase directly from a vendor the same equipment at the same price and under the same terms as provided in a contract for such equipment entered into by any other LEA.")

⁴⁷ Indeed, if the 43 entities had joined the Consortium from its inception and were omitted from Block 4 of the Consortium's originating FCC Form 470, a different issue would be presented.

⁴⁸ See *Request for Review of the Decision of the Universal Service Administrator by Kan-Ed, Kansas Board of Regents*, CC Docket No. 02-6, Order, 21 FCC Rcd 13658, 13662, para. 10 (2006) (*Kan-Ed Order*).

⁴⁹ *Id.*

⁵⁰ See *Modernizing the E-Rate Program for Schools and Libraries*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8939, paras. 168-173 (2014) (*2014 First E-Rate Order*). We note too that the FCC Form 470 instructions in effect at the time generally confirm that this is the role the Commission envisioned consortia would play. See *2004 FCC Form 470 Instructions* at 16, Block 4; *2010 FCC Form 470 Instructions* at 9, Block 4 (consortia are expected to "aggregate demand and thus secure a better price on [services] that each district will then contract for and pay individually").

19. Section 54.500 of the Commission's rules defines a master contract as "a contract negotiated with a service provider by a third party, the terms and conditions of which are then made available to an eligible school, library, rural health care provider, or consortium that purchases directly from the service provider."⁵¹ The MNPS Contract effectively operated as a master contract created for the benefit of the Consortium's members, from which the new members could purchase services without themselves having to undergo a new competitive bidding process. The evidence in the record supports our conclusion that the MNPS Contract operated as a master contract. Most notably, Block 5, Section 15c of the FCC Form 471 instructed applicants to "check this box if this Funding Request is covered under a master contract."⁵² All 78 original Consortium members checked the box in funding year 2011, as did each of the 43 newly added members in funding year 2012.⁵³ They thus clearly indicated that they thought of the MNPS Contract as a master contract.

20. Additionally, when USAC asked one of the new Consortium members to explain its relationship with the Consortium, the district responded that it had signed an LOA to join the Consortium for the 2012-2013 academic year, and that doing so "authorized us to purchase services directly from the contract that was awarded to ENA."⁵⁴ The school district's response is further evidence that the new districts understood the signing of an LOA to grant them membership to the Consortium, and thus access to the Consortium's negotiated contract. We acknowledge that although our rules define master contracts, they do not clearly instruct applicants on how to indicate that they are purchasing off of such a contract. Notwithstanding, the evidence in the record points clearly to the Consortium members' understanding of the MNPS Contract as a master contract.

21. We have previously held that applicants purchasing off of a master contract are not required to engage in their own competitive bidding process, provided the master contract was itself competitively bid.⁵⁵ Based on the record before us, the competitive bidding process that resulted in the MNPS Contract was fair, open, and fully compliant with our rules. For example, all of the entities that were members of the Consortium at the time were properly included in the relevant FCC Form 470 and RFP. The FCC Form 470 was also posted on USAC's web page for the required, minimum 28-day period, and sufficiently described the services that were being requested as required by our rules.⁵⁶ In addition, the bid evaluation matrix used price as the primary factor,⁵⁷ there is no evidence of service provider involvement before or during the competitive bidding evaluation process, and there is no indication of waste, fraud, or abuse present in the record.

22. We emphasize that no single factor here would rise to the level of special circumstances if considered in isolation. Rather, it is the totality of circumstances that justify deviation from our general rules. In this case, we recognize an ambiguity in our competitive bidding rules regarding how those rules relate to the real-world realities of consortia's changing memberships. The Consortium took several good-faith steps to resolve that confusion before seeking funding for its new members and only acted after receiving multiple assurances from USAC that its actions were within the rules. Moreover, we find no hint of waste, fraud, or abuse in the Consortium's actions. Nor was there any significant harm to potential bidders because they were on notice of the potential state-wide reach of the MNPS Contract.

⁵¹ 47 CFR § 54.500.

⁵² *2004 FCC Form 471* at Block 15; *2010 FCC Form 471* at Block 15.

⁵³ *See, e.g.*, FY2011 FCC Form 471 No. 817733, Hardeman County School District (March 24, 2011).

⁵⁴ *See, e.g.*, FY 2012 FCC Form 471 No. 852000, Loudon County School District (March 8, 2012).

⁵⁵ *Fourth Order on Reconsideration*, 13 FCC Rcd at 2372, para. 233.

⁵⁶ *See* 47 CFR § 54.503(c).

⁵⁷ *See* 47 CFR § 54.504(a)(xi).

23. Additionally, granting a waiver here furthers the general purposes of the E-Rate program by ensuring that eligible entities receive much-needed funding. There is also a legitimate public interest in encouraging participation in E-Rate consortia. Strict enforcement of the competitive bidding rules in this instance could undermine those interests, particularly because the rules did not clearly address the specific issue in question. Accordingly, we disagree with USAC's conclusion that the addition of the 43 new Consortium members in this situation necessitated a new competitive bidding process.⁵⁸

24. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Waiver filed by the Tennessee E-Rate Consortium on February 11, 2013, IS GRANTED.

25. IT IS FURTHER ORDERED, pursuant to the authority contained in section 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, and 54.722(a), section 54.503 is WAIVED to the extent described herein.

26. IT IS FURTHER ORDERED, pursuant to sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, and 54.722(a), that the applications that were denied and identified in Appendix A ARE REMANDED to USAC for further action in accordance with the terms of this order.

27. 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, sections 0.91, and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and the authority delegated to the Bureau in the *2014 First E-Rate Order*, 29 FCC Rcd at 8829, 8945, paras. 133 and 189, that USAC SHALL DISCONTINUE its recovery actions related to the funding requests that were rescinded and identified in Appendix B and SHALL REINSTATE these funding commitments no later than 60 calendar days from release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

⁵⁸ See, e.g., Letter from USAC, Schools and Libraries Division, to Karen Allen, Loudon County School District at 3 (dated Jan. 29, 2013).

APPENDIX A
Remanded Funding Year 2012 Funding Requests

Applicant Name	471 Application Number	Funding Request Number (FRN)	Billed Entity Number (BEN)	Funding Request Amount
Cannon County School District	826426	2258026	128255	\$316,651.20
Clinton City School District	833670	2262879	128338	\$96,471.36
Clinton City School District	833671	2262884	128338	\$22,626.10
Cumberland County School District	832021	2259329	128515	\$296,265.60
Cumberland County School District	839066	2276298	128515	\$19,440.00
Grainger County School District	843441	2289759	128393	\$264,499.20
Grainger County School District	843443	2289770	128393	\$61,824.23
Grainger County School District	843442	2289766	128393	\$8,856.00
Grundy County Schools	857728	2333803	128262	\$273,087.60
Hardin County School District	840362	2279811	128488	\$278,672.40
Hardin County School District	840365	2279822	128488	\$42,041.43
Hardin County School District	840367	2279829	128488	\$2,916.00
Hawkins County School District	834701	2265400	128390	\$383,256.72
Henderson County School District	839656	2292435	128480	\$263,232.00
Henderson County School District	839661	2292439	128480	\$39,129.60
Henderson County School District	844234	2292446	128480	\$15,360.00
Kingsport City School District	835300	2267054	128331	\$285,759.36
Lake County School	854749	2324795	128436	\$147,590.28
Lake County School	854753	2324805	128436	\$9,396.00
Lauderdale County School District	841585	2283653	128430	\$285,171.60

Applicant Name	471 Application Number	Funding Request Number (FRN)	Billed Entity Number (BEN)	Funding Request Amount
Lauderdale County School District	841588	2283666	128430	\$31,181.40
Lauderdale County School District	841590	2283679	128430	\$5,100.00
Lawrence County School District	840358	2279776	128499	\$309,024.00
Lawrence County School District	840361	2279791	128499	\$26,901.60
Loudon County School District	832413	2263727	128362	\$246,909.60
Loudon County School District	832413	2263743	128362	\$124,300.84
Loudon County School District	852000	2315892	128362	\$36,806.40
Maryville City School District	828271	2253167	128366	\$170,553.60
Maryville City School District	841579	2283639	128366	\$17,139.60
Maryville City School District	833091	2261575	128366	\$3,628.80
Memphis City School District	841086	2281897	128441	\$3,501,576.00
Memphis City School District	841087	2281906	128441	\$3,498,751.98
Memphis City School District	841031	2281692	128441	\$413,194.32
Memphis City School District	841084	2281893	128441	\$363,660.07
Overton County School District	845721	2296874	128522	\$61,653.96
Overton County School District	845723	2296877	128522	\$3,888.00
Polk County School District	835888	2268718	128269	\$214,837.20
Polk County School District	835890	2268721	128269	\$21,991.18
Polk County School District	835893	2268723	128269	\$11,952.00

Applicant Name	471 Application Number	Funding Request Number (FRN)	Billed Entity Number (BEN)	Funding Request Amount
Putnam County School District	860153	2341353	128509	\$546,915.60
Putnam County School District	860171	2341388	128509	\$17,069.98
Putnam County School District	860186	2341414	128509	\$5,544.00
Sumner County School District	837167	2297616	128225	\$494,466.00
Sumner County School District	837167	2297644	128225	\$85,460.27
Washington County School District	851996	2315887	128328	\$326,424.00
Washington County School District	852001	2315893	128328	\$16,800.00

APPENDIX B
Reinstated Funding Year 2012 Funding Requests

Applicant Name	471 Application Number	Funding Request Number (FRN)	Billed Entity Number (BEN)	Funding Request Amount
Clay County School District	838454	2274823	128513	\$39,360.00
Kingsport City School District	835301	2267056	128331	\$5,257.80
Murfreesboro City School District	830590	2256097	128241	\$141,036.00
Murfreesboro City School District	830591	2256098	128241	\$23,520.00
Scott County School System	839067	2302564	128350	\$194,400.00
West Carroll Special School District	828273	2257832	128457	\$83,836.80
West Carroll Special School District	831434	2257847	128457	\$5,904.00
White County School District	832025	2263029	128525	\$234,880.80
White County School District	834111	2264016	128525	\$3,345.60