

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

In the Matter of
Request for Review of a
Decision of the
Universal Service Administrator by
Knox County School District
Knoxville, Tennessee
Schools and Libraries Universal Service Support
Mechanism
File Nos. SLD-847808, 847734, 847903,
847564, 847857, 847539, 847891
CC Docket No. 02-6

ORDER

Adopted: January 14, 2020

Released: January 14, 2020

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

1. In this order, we deny the request for review filed by Knox County School District (Knox County) appealing a decision by the Universal Service Administrative Company (USAC) to reduce a funding year 2012 request for funding support under the E-Rate program.

2. Background. Under the E-Rate Program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts.

1 See Letter from Pat Dickens, Knox County E-Rate Grant Accountant, to Federal Communications Commission, CC Docket No. 02-6 (filed Dec. 21, 2011) (Request for Review).

2 See, e.g., Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9215, para. 40 (2003) (2003 Second Report and Order and NPRM).

3 47 CFR § 54.501-54.503.

4 See 47 U.S.C. § 254(h)(1)(B); State Joint Board on Universal Service, CC Docket No. 96-45, Order, 12 FCC Rcd 8776 (1997).

5 47 U.S.C. § 254(h)(1)(B); Schools and Libraries Universal Support Mechanism, A National Broadband Plan for our Future, CC Docket No. 09-51, Order, 25 FCC Rcd 17324 para. 2 (2010); see also Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator, CC Docket Nos. 96-45, 97-21,

(continued...)

beyond what they “are able to substantiate as . . . likely costs during the funding year.”⁶ When applying for funding, applicants must describe each funding request, and when requesting a service that has an increase in cost, applicants must submit either a price quotation from the service provider or give the criteria used to estimate the increased cost to determine the eligibility of the funding request.⁷

3. On January 31, 2011, Knox County filed its FCC Form 470 for funding year 2011 seeking, among other things, internal connections and services on behalf of multiple schools and district buildings.⁸ Accompanying the FCC Form 470 was a request for proposal issued by Knox County that informed bidders of the services being sought, and additionally proposed a pricing structure for the contracts it would eventually enter into.⁹ The request for proposal provided that at the end of each year or contract period, if and when Knox County renewed, the service providers would have the option to increase their prices for the next contract period.¹⁰ The pricing structure set a maximum price escalation of 5% of the original quote per annual contract term.¹¹ According to the terms of the request for proposal, service providers would have to submit a written explanation for increased prices; and, in response, Knox County could choose to reject the “new” prices.¹²

4. Knox County selected Anixter, Inc., SOS Computer, LLC, and Digital Connections Inc., as the service providers for various internal connections and maintenance services and entered into an agreement with them on March 22, 2011.¹³ Each of the service providers incorporated the request for proposal into their agreements and, thus, were under a contract with a yearly option for renewal over the span of five years, beginning July 1, 2011.¹⁴ The contracts also incorporated the 5% annual price escalation structure described in the request for proposal.¹⁵

5. On March 16, 2012, Knox County filed its FCC Form 471 for funding year 2012.¹⁶ When it filed its application, Knox County used the third year of pricing under the request for proposal pricing structure.¹⁷ Knox County added 10% to the price of all the services requested in its funding year

(Continued from previous page) _____

Order, 18 FCC Rcd 26407, 26409, para. 5 (2003), citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9076, para. 570 (1997).

⁶ See Instructions for Completing the Schools and Libraries Universal Ordered and Certification Form OMB 3060-0806 (Oct. 2010) at 19 (FCC Form 471 Instructions).

⁷ See *id.* at 22-23.

⁸ Description of Services Requested and Certification Form 470 filed (Feb. 28, 2011) (Knox County FCC Form 470).

⁹ See Request for Proposal 689, Knox County School District, (Feb. 24, 2011) at 10 §§ 3.26-3.27 (Knox County RFP).

¹⁰ See *id.* at 10 § 3.26.1.

¹¹ See *id.* at 10 § 3.26.2.

¹² See *id.* at 10 §§ 3.26.1, 3.26.8.

¹³ See FCC Form 471, Knox County School District, filed (Mar. 16, 2012) (Knox County FCC Form 471).

¹⁴ See Knox County RFP at 10 § 3.26.1; Contract, Knox County Government and Anixster (dated June 12, 2011) at 1.

¹⁵ See Knox County RFP at 10 § 3.26.1.; Email from Jim Idol et al., E-Rate and Special Projects Supervisor, Knox County Schools, to Son Luu, Associate Manager and PIA Reviewer, Universal Service Administrative Company (June 26, 2013, 10:19 AM).

¹⁶ See Knox County FCC Form 471.

2012 FCC Form 471 application.¹⁸ During review, USAC reduced the funding request by removing 5% of the price escalation to reflect the second contractual period.¹⁹ USAC found that the second contractual period applies because the contract was signed in 2011 and the pricing for 2012, represented by the timing of the funding year 2012 FCC Form 471, is contract year two.²⁰ Knox County filed an appeal with USAC²¹ arguing the price escalations should be included as a part of the third contractual period²² because the price increases compensate for anticipated delays by USAC in the application processing timeline, and that the price increases could be ignored in the event that the application was processed by USAC more quickly than predicted.²³ On July 7, 2014, USAC denied Knox County's appeal.²⁴ On September 2, 2014, Knox County filed the instant request for review with the Commission.²⁵

6. *Discussion.* Based on the record before us, we find that Knox County failed to substantiate the funding request made in its funding year 2012 FCC Form 471 application as required by E-Rate program rules. Specifically, Knox County did not provide any substantiation or explanation accounting for the price escalations included in its funding request. Thus, we direct USAC to adjust Knox County's funding commitment to the initial cost of the goods and services as reflected in the contracts with the service providers.

7. Unlike situations where the applicant has negotiated in good faith with the service provider to raise pricing because of changing market conditions, inflation or other factors, Knox County unilaterally requested additional E-Rate funding support without any analysis or consultation with the service providers. Even on appeal, Knox County has not explained why the price escalation is necessary, contending only that the purpose of the price escalation is to account for USAC delays in application processing.²⁶ As the Commission has said previously, applicants must request only those amounts they can justify as reasonable estimates of the costs of eligible services.²⁷ Moreover, the Bureau has previously found that funding requests submitted in amounts that go beyond what applicants can substantiate should be reduced to the amount that is substantiated.²⁸ Consistent with precedent, we deny the appeal and reduce the amount of funding to amounts that can be substantiated.²⁹

(Continued from previous page) _____

¹⁷ See RFP at 10 §3.26.1.

¹⁸ See Knox County FCC Form 471 at Attachment 21.

¹⁹ See Letter from USAC, Schools and Libraries Division, to Pat Dickens, Knox County School District at 1 (dated May 6, 2014) (Funding Commitment Decision Letter).

²⁰ See Letter from USAC, Schools and Libraries Division, to Pat Dickens, Knox County School District at 1 (dated July 7, 2014) (Administrator's Decision on Appeal).

²¹ See Letter from Jim Idol et al., E-Rate and Special Projects Supervisor, Knox County Schools, to USAC Schools and Libraries Division (filed June 25, 2014) (Knox County Appeal to USAC).

²² Contractual periods correspond to when the contract was renewed, and which funding year applies.

²³ See Knox County Appeal to USAC at 2-3.

²⁴ See Administrator's Decision on Appeal at 1.

²⁵ Request for Review.

²⁶ See *id.* at 2-3.

²⁷ See *2003 Second Report and Order and NPRM*, 18 FCC Rcd at 9215, para. 40; 47 CFR §54.504(d).

²⁸ See, e.g., *Request for Review Iroquois West School District 10 Gilman, Illinois School & Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 20 FCC Rcd 540, 542, para. 5 (WCB 2005) (*Iroquois School Order*).

²⁹ See *Iroquois School Order* at 542, para. 5.

8. For the reasons explained above, we find Knox County did not provide an explanation or documentation supporting the requested price escalations. Without the proper substantiation required by program rules on the FCC Form 471, the funding commitment should be adjusted by removing the price escalation in a manner that reflects the original pricing in the negotiated contracts.³⁰ In this regard, we find that USAC improperly reduced the funding by removing only 5% of the increased pricing (which reflected the second contractual period), instead of 10% (which reflected both the second and third contractual periods). That is, USAC should have used the original negotiated costs reflected in the first contractual period in determining the amount of the funding commitments, without any price increase, because this was the only amount which could be substantiated.

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 pursuant to authority delegated in sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 54.722(a), that the request for review filed by Knox County School District IS DENIED.

10. 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 authority delegated in sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 54.722(a), that the request for review filed by Knox County School District be REMANDED to USAC for further action consistent with this decision.

11. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Ryan B. Palmer
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

³⁰ It is unnecessary to determine whether Knox County's inflated cost estimates used on its FCC Form 471 was a "bona fide" request for service because, on remand, we are instructing USAC to use the original negotiated costs which are substantiated.