

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Request for Review and Waiver by)	
Denver Public School District of)	WC Docket No. 02-6
Decision of Universal Service Administrator)	
)	

**Request for Review of Universal Service Administrative Company Decisions and
Application for Limited Waiver of Federal Communications Commission Rules and
Regulations**

I. Introduction

Denver Public School District (“DPS” or “District”) through its undersigned counsel, and pursuant to Section 54.719 of the Rules of the Federal Communications Commission (“FCC” or the “Commission”), 47 C.F.R. § 54.719, seeks FCC review of 17 Universal Service Administrative Company (“USAC”) Administrator’s Decisions on Appeal regarding Commitment Adjustment Letters (“CALs”)¹ and Funding Commitment Decision Letters (“FCDLs”) dated August 29, 2018 for Funding Years (“FY”) 2009, 2010, 2011, 2012 and 2014 (together, “Appeal Denial”) and a limited waiver of applicable Commission competitive bidding rules, 47 C.F.R. §§ 54.503(b), (c); 54.511(a); 54.516(a).²

Denver Public Schools serves over 90,000 students from diverse socio-economic and linguistic backgrounds. The overall vision of DPS is that *Every Student Succeeds*. In the past

¹ See Attachments 7A at 82; 7B at 93; 7C at 104; 7D at 114; 7E at 125; 7F at 136; 7G at 147; 8A at 159; 8B at 170; 8C at 181; 8D at 192; 8E at 203; 9A at 215; 9B at 226; 9C at 237; 10A at 244; 11A at 278.

² On October 19, 2018, DPS filed a related Request for Review of USAC’s Decisions based on Funding Commitment Decision Letters (“FCDLs”) dated August 20, 2018 (“Request for Review 1”) on FCC’s ECFS Filing System. Request for Review 1 was assigned an ID: 101900578998.

six years, DPS dramatically expanded preschool and kindergarten opportunities, posted record enrollment increases, drove the highest rate of student progress of any major district in the state, increased the graduation rate by 23 percentage points, and cut its dropout rate in half. These successes could not have been possible without the initiatives that the E-rate program supported. Over the years, the E-rate program has funded many initiatives in DPS, making telecommunications and information services more affordable for its schools and the students served. One of the more recent examples of an E-rate reimbursed initiative is the DPS fiber network. This network was installed across the District, providing reasonably priced internet access to over 90,000 students and approximately 15,000 employees. In addition to the fiber network, E-Rate reimbursements have allowed DPS to install a robust wireless network throughout the district connecting all wireless users to 7,731 wireless access points.

On February 26, 2013, DPS discovered, and self-reported to USAC, alleged improprieties of a bad actor formerly employed by the District, Bud Bullard.³ Mr. Bullard was employed by DPS in the role of Director, Network & Systems Administration in the DPS Department of Technology Services (“DoTS”). On learning of the potential improprieties, the District immediately placed Mr. Bullard on leave and retained Alvarez & Marsal Global Forensic and Dispute Services, LLC (“A&M”) to fully investigate and provide recommendations that would strengthen the District’s procurement process. Based on the investigation’s findings, Mr. Bullard was terminated.⁴ During the investigation, DPS discovered that some of its past procurement

³ See Request for Review 1, Attachment 9, Letter from Denver Public Schools Office to Associate General Counsel of the Universal Service Administrative Company at 206-207 (Feb. 26, 2013).

⁴ See Request for Review 1, Attachment 1, Letter from Denver Public Schools Office of the General Counsel to Vice President of the Schools and Libraries Division of USAC at 5 (Sept. 25, 2015). The A&M Report was completed in June 2013. The Report is attached as Attachment 8. Exhibits to the Report are available for review from DPS. In its Report, A&M focused on DPS FY 2010, 2011, 2012, and the first half of FY 2013. A&M notes that allegations against Mr. Bullard include “improper receipt of value from persons or companies doing business with DPS, such as

practices failed to meet standards set by the Commission however, they did not appear to have been unfairly or inappropriately influenced by the actions of Mr. Bullard. Since 2013, the District has implemented recommendations in the A&M Report and adopted additional safeguards in the procurement process for E-rate and non E-rate solicitations. DPS also retained CSM Consulting, Inc. (“CSM”) as special advisors to assist with day-to-day aspects of E-Rate compliance including application, monitoring, and reporting processes.⁵ DPS has worked with CSM since 2013 to overhaul the District procurement process to follow the best practices outlined in the Commission’s Rules and Regulations.⁶

Even after DPS self-reported, on June 6, 2018, USAC issued CALs to DPS seeking recovery of funds related to applications with Funding Request Numbers (“FRNs”) 1815318 (FY 2009), 1873641 (FY 2009), 1890078 (FY 2009), 2114832 (FY 2011), 2243757 (FY 2012), 2286959 (FY 2012), and 2287124 (FY 2012).⁷ On August 29, 2018, USAC notified DPS that the basis for seeking recovery of funds disbursed for FRN 1815318 was that DPS violated 47 C.F.R. § 54.516(a)-(b) by failing to provide copies of Requests for Proposals (“RFPs”) and copies of all bids received and documentation demonstrating the vendor evaluation process.⁸ For the rest of the FRNs, USAC stated that DPS failed to provide copies of all bids received and

meals, a vehicle at a reduced price, trips, tickets, and suites to sporting events; and, the steering of contracts to certain preferred vendors.” Attachment 8 at 155.

⁵ See Request for Review I, Attachment 1 at 6.

⁶ For more information on DPS’s commitment to overhauling its procurement practices, please see Request for Review I, Attachment 1 at 17-24.

⁷ See Attachments 7A at 75; 7B at 86; 7C at 97; 7D at 108; 7E at 118; 7F at 129; 7G at 140.

⁸ See Attachment 7A at 82.

documentation demonstrating the vendor evaluation process in violation of 47 C.F.R. § 54.516(a)-(b).⁹

In separate CALs dated June 6, 2018, USAC sought recovery of funds related to applications with FRNs 1980165 (FY 2010), 1980278 (FY 2010), 1980409 (FY 2010), 2007737 (FY 2010), and 2020701 (FY 2010).¹⁰ In Administrator's Decisions on Appeal, USAC alleged DPS violated document retention requirements of 47 C.F.R. § 54.516(a)-(b), because DPS failed to provide any RFPs, copies of all bids received, and documentation demonstrating the vendor evaluation process violation.¹¹

In another series of CALs dated June 8, 2018, USAC sought recovery of distributed funds related to applications with FRNs 2001078 (FY 2010), 2108581 (FY 2011), and 2274256 (FY 2012).¹² In Administrator's Decisions on Appeal, USAC alleged that DPS violated 47 C.F.R. § 54.511(a) because the price of eligible products and services associated with the FRNs was not the primary factor in the vendor selection process.¹³

USAC issued a Funding Commitment Decision Letter ("FCDL") dated June 7, 2018 denying DPS funding for a FY 2014 funding request associated with FRN 2655195.¹⁴ In its Administrator's Decision on Appeal dated August 29, 2018, USAC denied funding for the FRN

⁹ See Attachments 7B at 93; 7C at 104; 7D at 114; 7E at 125; 7F at 136; 7G at 147.

¹⁰ See Attachments 8A at 152; 8B at 163; 8C at 174; 8D at 185; 8E at 196.

¹¹ See 8A at 159; 8B at 170; 8C at 181; 8D at 192; 8E at 203.

¹² See Attachments 9A at 208; 9B at 219; 9C at 230.

¹³ See Attachments 9A at 215; 9B at 226; 9C at 237.

¹⁴ DPS has requested, but not yet received the FCDL for FRN 2655195 from USAC.

alleging DPS violated 47 C.F.R. § 54.504(a) because it did not have a contract signed and dated by the applicant prior to the filing of the Form 471 for the products and services requested.¹⁵

Finally, in a CAL dated June 6, 2018, USAC sought recovery of funds related to FRN 1814666 (FY 2009).¹⁶ In its Administrator's Decision on Appeal, USAC alleged that DPS failed to retain or produce documents pertaining to its competitive bidding process, including copies of all bids received and documentation demonstrating vendor evaluation. USAC alleged that DPS violated 47 C.F.R. § 54.516(a) because it did not retain the requested documents for five years, as was required by FCC rules and regulations at the time.¹⁷

USAC's Administrator's Decisions on Appeal, dated August 29, 2018, were related to the applications below:

Funding Year	Funding Request Number	Form 471 Application	Form 470 Application	COMAD Recovery Amount
2009	1815318	645029	254160000703111	\$15,545.38
2009	1873641	685045	254160000703111	\$24,702.15
2009	1890078	685299	254160000703111	\$67,291.22
2009	1814666	664694	730700000507205	\$1,265,895.29
2010	1980165	732211	566990000775117	\$181,570.68
2010	1980278	732292	566990000775117	\$113,559.13
2010	1980409	732339	566990000775117	\$4,574.68
2010	2001078	740390	566990000775117	\$89,280.00
2010	2007737	703149	566990000775117	\$11,195.52

¹⁵ See Attachment 10A at 244.

¹⁶ See Attachment 11A at 271.

¹⁷ See Attachment 11A at 278.

2010	2020701	728450	566990000775117	\$28,997.66
2011	2108581	778244	566990000775117	\$72,312.00
2011	2114832	771621	566990000775117	\$11,195.52
2012	2274256	838238	715350000884545	\$75,451.50
2012	2243757	823323	892360000943612	\$11,333.52
2012	2286959	840676	892360000943612	\$0.00
2012	2287124	840780	892360000943612	\$0.00
2014	2655195	975021	858420001197801	\$0.00

DPS timely appealed USAC's initial determinations and was informed by letters on August 29, 2018 that the appeals had been denied.¹⁸ DPS now timely files¹⁹ this request for review of the Administrator's decisions and seeks a limited waiver of applicable competitive bidding rules.²⁰

USAC seeks reimbursement for funds distributed and denies funding for requests noted in the table above because it alleges that DPS violated the FCC's competitive bidding requirements. In requesting E-Rate funding from USAC, DPS acted in good faith based on its understanding of the Commission's competitive bidding rules and associated USAC guidance.

For FRNs 1815318 (FY 2009), 1873641 (FY 2009), 1890078 (FY 2009), 2114832 (FY 2011), 2243757 (FY 2012), 2286959 (FY 2012), and 2287124 (FY 2012), no service provider actually submitted a response. There were no further bidding documents to provide to USAC.

¹⁸ See Attachments 7A at 82; 7B at 93; 7C at 104; 7D at 114; 7E at 125; 7F at 136; 7G at 147; 8A at 159; 8B at 170; 8C at 181; 8D at 192; 8E at 203; 9A at 215; 9B at 226; 9C at 237; 10A at 244; 11A at 278.

¹⁹ See 47 C.F.R. § 54.720 (stating that an affected party asking for waiver or requesting review of an Administrator's decision must file a request within 60 days from the date the decision is issued). Following the Commission's rules, 60 days after August 29, 2018 is October 28, 2018. October 28 falls on a Sunday. DPS called the ECFS helpline on October 24, 2018 to confirm that the deadline to file the instant appeal and request for waiver is October 29, 2018.

²⁰ DPS asks for a limited waiver of the following rules: 47 C.F.R. §§ 54.503(b), (c); 54.511(a); 54.516(a).

DPS reasonably believed at the time it was only required to issue FCC Form 470s (“Form 470s”) for month-to-month cellular phone services without a further Request for Proposals (“RFPs”). The DPS Form 470 practice was to specify services like “Telephone Services” for an identified number of sites. It was not normal DPS practice to submit RFPs for the services.²¹ Instead, DPS used the existing service provider bills and invoices as a response to the Form 470s and submitted Form 471s and funding requests after the required 28-day Form 470 period expired. This was, and still is, an allowable method of selecting a service provider to deliver eligible services on a month-to-month basis when no responses are received for a request for services.²²

For the FRNs 1980165 (FY 2010), 1980278 (FY 2010), 1980409 (FY 2010), 2007737 (FY 2010), and 2020701 (FY 2010), DPS officials mistakenly checked Item 8(a) in Block 2, signaling that an RFP was available for its request for Telephone Services. No such RFP existed, and under Mr. Bullard, it was not DPS practice to release supplemental RFPs outside of a Form 470 for Telephone Services. No service provider submitted a response for cellular telephone services, so there were no further competitive bidding documents to provide to USAC. Instead, DPS used existing bills and invoices from service providers as a response to the FY 2010 Form

²¹ “Telephone Service” was defined as “communication that takes place using the public switched telephone network” and included “wireless telephone services, e.g., cellular service” USAC, *Eligible Services List: Schools and Libraries Support Mechanism for Funding Year 2011* at 3-4 (Sept. 23, 2010), available at https://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_110910.pdf; see also USAC, *Schools and Libraries: Universal Services Support Mechanism Eligible Services List for Funding Year 2012* at 5 (Sept. 28, 2011) (same), available at https://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList-2012.pdf; USAC, *Schools and Libraries Universal Service Support Mechanism: Eligible Services List* at 5 (Sept. 27, 2012), available at https://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList-2013.pdf.

²² See, e.g., USAC, *The E-Rate Program: Road to Success Fall 2011 Applicant Trainings* at 26 (2011) (stating that there may be no bids, and that an existing contract can be used as a bid response to the posted Form 470), available at <https://www.usac.org/res/documents/sl/training/2011/2011-sl-fall-Road-to-Success.pdf>; see also USAC, *Step 2: How to Select a Provider* (“If you did not receive any bids, you can solicit bids. If you currently receive service from a service provider, you can ask your current provider to submit information in response to your FCC Form 470.”), available at <https://www.usac.org/sl/applicants/step02/default.aspx>.

470. In the instances above, DPS properly believed it was fully compliant with federal and state law.

For FRNs 2001078 (FY 2010), 2108581 (FY 2011), and 2274256 (FY 2012), DPS asks for waiver of Commission bidding rules, 47 C.F.R. § 54.511(a). For these FRNs, USAC claims that price was not the primary factor in evaluating bids for the FRNs. DPS regrets that individuals with information about the FRNs, like Mr. Bullard, are no longer employed by DPS, and DPS does not have any information or documentation beyond what was provided to USAC. However, DPS reviewed the vendor selection and found the vendor that was awarded the contract submitted the lowest bid obtained by the District:

Vendor	Price	Adj. Price	Design	Adj. Design	Experience	Installation	Total Score	Adj. Score
<i>Total Points Available</i>	30	35	30	25	15	25	100	100
CIC	30	35	18	15	15	25	88	90
21st Century	20	23	20	17	0	9	49	49
Parlant	28	33	28	23	10	9	75	75
Saf-T-Net	17	20	28	23	12	9	66	64
Reliance	17	20	25	21	13	9	64	63

The Commission has provided waivers for similar cases in instances where it is unclear whether an applicant evaluated bids without assigning price as the primary evaluation bid factor but the

applicant selected the lowest priced option, regardless of the bid evaluation and there was no evidence of waste, fraud, or abuse.²³ There is no evidence of waste, fraud, or abuse in this case.

For FRN 2655195 (2014), DPS asks for a limited waiver of Commission's bidding rules, 47 C.F.R § 54.504(a). In its Administrator's Decision on Appeal dated August 29, 2018, USAC denied funding for the FRN alleging DPS violated 47 C.F.R. § 54.504(a) because it did not have a signed contract signed and dated prior to filing the Form 471 for the products and services requested.²⁴ DPS believes it qualifies for a limited waiver of Commission's bidding rules because USAC rigidly adhered to procedural rules and did not take into consideration documents DPS submitted showing that a contract was in place with a service provider prior to filing the Form 471. FCC has granted limited waivers to school districts that have shown that a contract was in place that met the Commission's rules and regulations when submitting their Forms 471, and there is no evidence of waste, fraud, or abuse in the record.²⁵

²³ See *In the Matter of Requests for Review of Decisions of the Universal Service Administrator by Allendale Country School District Cedar Mountain, North Carolina* ("Allendale County"), DA 11-723, 26 FCC Rcd. 6109, at ¶¶ 10-12 (Wireline Competition Bureau 2011); *STREAMLINED RESOLUTION OF REQUESTS RELATED TO ACTIONS BY THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY*, Public Notice, WC Docket No. 06-122, DA 16-1320, 31 FCC Rcd 12697, at *12703 n.24 (F.C.C. 2016); *In the Matter of Petition for Reconsideration by Fall River Public School District Fall River, MA; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, DA 13-2055, 28 FCC Rcd 14650, at ¶ 4 (Wireline Competition Bureau 2013) (granting a waiver in the public interest); *In the Matter of Requests for Review and Waiver of Decisions of the Universal Service Administrator by Colorado Springs School District Colorado Springs, CO Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, DA 12-962, 27 FCC Rcd 7022, at ¶ 1 (F.C.C. 2012).

²⁴ See Attachment 10A at 244.

²⁵ See *Requests for Waiver of the Decision of the Universal Service Administrator by Barberton City School District, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15526 (Wireline Comp. Bur. 2008); *Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Animas School District 6 et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 16903 (Wireline Comp. Bur. 2011); *Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Administrative Headquarters et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 13509 (Wireline Comp. Bur. 2012); *Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Bayfield School District, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 15890 (Wireline Comp. Bur. 2012) (all granting appeals on the basis that petitioners had agreements in place with their service providers before filing their FCC Forms 471, even though the contracts in question were not signed and dated by both parties before the petitioners filed their FCC Forms 471).

While no formal contract was signed before the FY 2014 Form 471 was submitted, based on Colorado law, DPS contends it had a valid contract with Comcast, the service provider associated with the FRN. DPS submitted documents to USAC showing that the services were part of a multiyear contract, where the initial contract/service was accepted via the services quote from Comcast; the services quote was submitted with the Form 471.²⁶ Two further documents were submitted showing that an extension of the agreement with Comcast was utilized based on that FY 2014 Form 470.²⁷ Also, there was no evidence of waste, fraud, or abuse in the record. As a result, DPS qualifies for, and seeks, a limited waiver of applicable Commission rules.

For FRN 1814666 (FY 2009), DPS asks for a limited waiver of the Commission's competitive bidding rules and regulations, 47 C.F.R. § 54.516(a). USAC alleged that DPS failed to retain or produce documents pertaining to its competitive bidding process, including copies of all bids received and documentation demonstrating vendor evaluation. USAC argued that DPS violated 47 C.F.R. § 54.516(a) because it did not retain the requested documents for five years, as was required by FCC rules and regulations at the time.²⁸ However, FRN 1814666 was a renewal of a contract that was originally awarded in 2005 after a competitive bidding process.²⁹ The original contract was a three-year contract with two one-year renewals. As a renewal of a previously bid contract, a new RFP was not issued in 2009; as a result there are no further competitive bidding documents that can be provided for FRN 1814666. Of particular importance, FRN 1297629 was initially denied by USAC in 2005; however, after further review,

²⁶ See Attachment 10B at 247.

²⁷ See Attachment 10C at 249; Attachment 10D at 251.

²⁸ See Attachment 11A at 278.

²⁹ See Attachment 11B at 281.

USAC approved the funding for the FRN on the original contract. Since FRN 1814666 was a contract renewal, no competitive bidding documents were collected for the FRN, DPS could not have provided documents to USAC for review. As a result, DPS asks for a waiver of the FCC's rules and regulations with regard to the FRN.

Since the time DPS self-reported the concerns raised during the investigation of Mr. Bullard's activities in 2013, DPS has worked with auditors from USAC and hired CSM to revamp its E-Rate competitive bidding processes. Unfortunately for DPS, Mr. Bullard was the sole employee capable of providing additional information needed to demonstrate compliance with FCC rules associated with Forms 470 for the aforementioned FRNs. Mr. Bullard will not cooperate with DPS to provide additional information. Considering its actions to rectify its past deficiencies and to comply with the Commission's current requirements, and in light of its inability to secure cooperation from Mr. Bullard to provide additional information, DPS respectfully requests that the FCC review the Administrator's Decisions, provide a limited waiver of applicable competitive bidding rules, and overturn USAC's Appeal Denial.

II. Argument

A. The Equities Strongly Support a Waiver

The FCC may waive its rules if there is good cause to do so and may exercise discretion to waive a rule where strict compliance would be inconsistent with the public interest.³⁰ In determining whether a waiver should be granted, the FCC must determine whether a waiver is in

³⁰ See *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) *vacated in part by Saco River Cellular v. FCC*, No. 93-1423, 1997 U.S. App. LEXIS 19007 (D.C. Cir. June 5, 1997)).

the public interest and apply a rational standard to determine whether the circumstances are sufficient to justify departing from the general rule.³¹

The FCC has stated that “recovery may not be appropriate for violation of all rules regardless of the reason for codification.”³² Further, where an entity believes there are reasons why recovery for a rule violation is inappropriate, the Commission allows the party “to present such information in seeking review of USAC’s decision to recover monies, pursuant to Section 54.722.”³³

If the FCC cannot see a path to approve this appeal, DPS requests a limited waiver of competitive bidding rules related to the aforementioned FRNs because of the unique circumstances presented by DPS which, in an attempt to insure compliance with all FCC rules, self-reported a potential concern. DPS acted in good faith with USAC and with the FCC and asks for a waiver of relevant competitive bidding rules because a denial of funding requests for the outstanding FRNs, given the present circumstances, would be inappropriate and would not serve the public interest.

B. DPS Has Completely Revamped its E-Rate Process

Since the self-reporting in 2013, DPS completely revamped its E-Rate Process and implemented stronger internal controls. DPS reviewed its procurement policies and procedures to ensure compliance with DPS and federal procurement guidelines. DPS began regularly

³¹ *N. Am. Catholic Educ. Programming Found. V. Sandridge*, 800 F. Supp. 2d 239, 246 (D.D.C. 2011) (stating that agencies must use more than a “we-know-it-when-we-see-it standard” in determining whether a waiver should be applied).

³² Schs. & Libraries Universal Serv. Support Mechanism, FCC 04-190, 19 FCC Rcd. 15808 15,815 ¶ 19 (2004) (“Fifth Report and Order”).

³³ *Id.* at ¶29.

training DOT employees on these procurement policies, which are particularly important for E-rate contracts.

DPS also implemented the use of a standard evaluation matrix, based on the USAC sample points-based bid evaluation matrix, for each round of scoring by evaluators. DPS ensured that the standard matrix at a minimum includes the following criteria:

- The cost of E-rate eligible goods/services factor is weighed higher than any other individual factor.
- The factors and corresponding weights are consistent through subsequent rounds of evaluation.
- The total points assigned to each factor, each bidder's (service provider's) total points, as well as a breakdown by factor, are clearly presented in the matrix. A second layer of information provides how each evaluator scored the bidder.

Training based on USAC-provided guidance is now mandatory for all staff involved with the procurement process, all staff involved in the bidding process, and all staff who serve as evaluators. DPS evaluation staff and other staff relevant to the E-Rate process attend formal Colorado Department of Education E-Rate training sessions. The DPS E-Rate vendor, CSM, provides training via webinars. Evaluation team members also receive in-house training from the district E-Rate Coordinator and subject matter experts from the Strategic Sourcing department.

Employees receive refresher training each year, highlighting any changes in guidelines from the past year.

At the beginning of the RFP process a DPS Purchasing Department representative ensures everyone on the procurement team is operating from the same guidelines by providing an overview of procurement guidelines.

DPS also clearly identifies and documents the individuals involved in the evaluation process, including their names and titles. In addition, DPS determines the factors and

corresponding weights for evaluation, identifies and documents whether there is or may be potential conflicts of interest, seeks approval or guidance from counsel, and documents any deviations from the usual procurement process. DPS retains meeting notes, attendee lists, and any resulting documents as part of the procurement process record retention.

DPS now has strong systems in place to retain all vendor selection documentation, including: winning and losing bids, correspondence, memos, bid evaluation documents, etc. DPS created a shared drive system where all procurement files are organized into folders that can be accessed.

DPS adopted a new procurement system (Lawson), which streamlined and modernized the procurement process. Lawson transitioned many of the manual, paper processes like vendor submission of proposals to digital processes. Accompanying the implementation of the new system was training for Purchasing Department employees as well as the creation of new online training materials.

Finally, DPS implemented an anonymous hotline whereby individuals can report fraud, waste, and abuse.³⁴ Complaints submitted through this hotline are reviewed and investigated by the DPS Internal Audit Department.

C. Funding Should Not be Withheld from DPS Because of Ministerial Shortcomings in Form 470-Based Bidding.

USAC is seeking recovery of funds disbursed or has attempted to deny funding for all seventeen FRNs without considering the special circumstances present that were associated with Mr. Bullard's impact on the DPS E-Rate process from FY 2009-2013. Mr. Bullard was and is the sole source of certain information requested by USAC. Though DPS has substantially

³⁴ Individuals can report concerns through the attached link:
<https://integraport.bkd.com/Lists/IntegraReporting/NewFormCust.aspx>.

revamped its E-Rate processes and worked with USAC and CSM to become compliant with Commission Rules and Regulations, it cannot deliver information that does not exist. DPS respectfully asks for a limited waiver of applicable Commission competitive bidding rules.

1. Other than the FCC Form 470, No Other Competitive Bidding Documents Are Available for FRNs 2173158, 2173438, 2114845, 2173316

In attempting to recover funding related to services provided in FRNs 1815318 (FY 2009), 1873641 (FY 2009), 1890078 (FY 2009), 2114832 (FY 2011), 2243757 (FY 2012), 2286959 (FY 2012), and 2287124 (FY 2012), USAC focused on whether DPS followed competitive bidding rules applicable to FYs 2009, 2011, and 2012 in submitting requests for reimbursements tied to cellular phone service. USAC alleges DPS did not provide applicable RFPs, copies of all bids received, and documentation demonstrating the vendor evaluation process related to cellular service. USAC therefore claims the District violated FCC rules that require applicants to retain all documents regarding the competitive bidding process.³⁵

On the Form 470s, DPS past practice was to specify in Item 8(c) that it required “Telephone Services” for specific sites and that providers could competitively bid on Telephone Services, including cellular services. DPS believed it was satisfying both 47 C.F.R. §§ 54.403 and 54.511. At the time, the District reasonably believed the “Telephone Service” designation was enough for eligible telecommunications providers to have the requisite information needed to submit competitive bids for the cellular phone services. In Section 8(b) of the related Form 470s³⁶, DPS informed vendors that it would not release an RFP for cellular telephone services; it was not DPS practice to issue RFPs for the services.³⁷ DPS believed that by not issuing an RFP

³⁵ See Attachments 7A at 82; 7B at 93; 7C at 104; 7D at 114; 7E at 125; 7F at 136; 7G at 147.

³⁶ See Attachments 1 at 7-8; 3 at 32; 5 at 56.

³⁷ “Telephone Service” was defined as “communication that takes place using the public switched telephone network” and included “wireless telephone services, *e.g.*, cellular service” USAC, *Eligible Services List*:

for the services, it would indicate to potential providers that they could solicit the business from individual departments within the school.³⁸

For the FYs 2009, 2011, and 2012, no telecommunications service providers provided bids. USAC alleges that DPS failed to retain competitive bidding documents for five years from the last date of service and failed to provide the documents on request: however, there **were no additional** DPS competitive bidding documents related to the FYs 2009, 2011, and 2012 beyond the Form 470s themselves.

The person that would have been knowledgeable on whether any service providers submitted bids, Mr. Bullard, is no longer communicating with DPS. After Mr. Bullard was terminated, DPS retained Mr. Bullard's email correspondence and performed exhaustive searches to determine whether vendors submitted any bids to offer cellular telephone service. From the review, it was clear that an RFP for cellular telephone services was not released for FYs 2009, 2011, or 2012 and there were no indications that any vendor responses existed with regard to cellular telephone services. As a result, DPS contends it did not violate 47 C.F.R. § 54.516 because the properly filed Form 470 was the only competitive bidding document for cellular phone services for the years in question.

Schools and Libraries Support Mechanism for Funding Year 2011 at 3-4 (Sept. 23, 2010), available at https://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_110910.pdf; see also USAC, *Schools and Libraries: Universal Services Support Mechanism Eligible Services List for Funding Year 2012* at 5 (Sept. 28, 2011) (same), available at https://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList-2012.pdf; USAC, *Schools and Libraries Universal Service Support Mechanism: Eligible Services List* at 5 (Sept. 27, 2012), available at https://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList-2013.pdf.

³⁸ See, e.g., USAC, *The E-Rate Program: Road to Success Fall 2011 Applicant Trainings* at 26 (2011) (stating that there may be no bids, and that an existing contract can be used as a bid response to the posted Form 470), available at <https://www.usac.org/res/documents/sl/training/2011/2011-sl-fall-Road-to-Success.pdf>; see also USAC, *Step 2: How to Select a Provider* ("If you did not receive any bids, you can solicit bids. If you currently receive service from a service provider, you can ask your current provider to submit information in response to your FCC Form 470."), available at <https://www.usac.org/sl/applicants/step02/default.aspx>.

Instead of competitive bid responses to an RFP, DPS used bills and invoices from incumbent providers as a response to the Form 470s. Under Mr. Bullard, DPS adopted a policy where each division seeking cellular phone services could retain a service provider of its choosing on a month-to-month basis, and the incumbent vendor continued to provide the specified services. DPS could not provide competitive bidding documents to USAC because there were no such documents. The Form 470s stated that an RFP for cellular telephone services would not be provided.

In FYs 2009, 2011, and 2012, DPS reasonably believed its Form 470 was sufficiently detailed to support funding for month-to-month cellular phone services. There is no evidence of waste, fraud or abuse associated with the FRNs in question. Instead, the deficiencies noted by USAC amount to a simple misunderstanding of the complex and often ambiguous ESL language that included “cellular service” in the same category as Telephone Service. DPS respectfully requests the Commission consider the effect of Mr. Bullard’s past errors, grant a limited waiver of the FCC competitive bidding rules, and direct USAC to allow DPS to retain funds disbursed related to the FRNs.

2. No RFP Was Issued for Cellular Services Related to FRNs 1980165 (FY 2010), 1980278 (FY 2010), 1980409 (FY 2010), 2007737 (FY 2010), and 2020701 (FY 2010).

USAC attempts to recover funding related to services provided in FRNs 1980165 (FY 2010), 1980278 (FY 2010), 1980409 (FY 2010), 2007737 (FY 2010), and 2020701 (FY 2010), alleging DPS did not retain and could not provide all documentation regarding the competitive bidding process related to the FRNs.³⁹ DPS stated in the relevant Form 470 that it would issue

³⁹ See Attachments 8A at 159; 8B at 170; 8C at 181; 8D at 192; 8E at 203.

an RFP, but DPS records are not available to show that DPS released an RFP for month-to-month services associated with the FRNs.⁴⁰

DPS respectfully requests the Commission grant a limited waiver of competitive bidding rules because the DPS statement that it would release an RFP was a minor mistake. Checking box 8(a) of the Form 470 was a minor, understandable, and excusable error because it was not DPS practice to issue RFPs for the services.⁴¹ DPS did file a Form 470, requesting bids from service providers for “Telephone Services.” After Mr. Bullard was terminated, DPS performed exhaustive searches of Mr. Bullard’s email correspondence to determine whether vendors submitted any bids to offer month-to-month services. From the review, DPS found no RFP for month-to-month services for FY 2010. No bids were submitted, and no RFP materials dealing with month-to-month services associated with the FRNs were released. There was no evidence of waste, fraud, abuse, misuse of funds, or failure to adhere to core program requirements. DPS believed it was following applicable competitive bidding rules.⁴² As a result, FCC should waive the minor error on the FY 2010 Form 470 and direct USAC to fund the associated FRNs.

3. The Vendor Chosen to Perform Services for FRNs 2001078 (FY 2010), 2108581 (FY 2011), and 2274256 (FY 2012) Submitted the Lowest Priced Bid for the Services.

USAC attempts to recover funding related to services provided in FRNs 2001078 (FY 2010), 2108581 (FY 2011), and 2274256 (FY 2012), alleging the price of eligible products and

⁴⁰ See Attachment 3 at 32.

⁴¹ See *In the Matter of Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School*, File Nos. SLD-487170, et al., 21 FCC Rcd 5316, 5321 (2006) (holding that competitive bidding rules should be waived for minor filing errors where there was no evidence of waste, fraud or abuse, misuse of funds, or failure to adhere to core program requirements.).

⁴² Compare with *In the Matter of Request for Review of a Decision of the Universal Service Administrator by Albert Lea Area Schools*, File No. SLD-517274, et al., 24 FCC Rcd. 4533, (Wireline Comp. Bureau 2009) (holding that the petitioners did not file a Form 470 or entered into agreements with a selected provider before posting a Form 470, and they did not seek competitive bids, in violation of 47 C.F.R. § 54.504).

services was not the primary factor in the vendor selection process in violation of 47 C.F.R. § 54.511(a).⁴³ The bids were awarded to Computer Information Services, Inc. (“CIC”), and after reexamining the bids for related to the FRNs, DPS notes that CIC provided the lowest price bid in each of the FYs. Unfortunately, the individuals involved in preparing the RFP for the services, like Mr. Bullard, no longer are employed by or communicating with DPS. DPS does not have any information or documentation related to these FRN vendor selections beyond what was provided to USAC.

DPS respectfully requests the Commission grant a limited waiver under 47 C.F.R §§ 54.503(c)(2)(ii)(B) and 54.511(a), because DPS ultimately selected the vendor that submitted the lowest-priced bid for each FRN. The FCC recognizes a limited waiver of its rules detailing that price must serve as the primary factor in awarding contracts if it is unclear whether an applicant evaluated bids without putting most emphasis on price but the applicant selected the lowest priced option and there is no evidence of waste, fraud, or abuse.⁴⁴ In *Allendale County*, the FCC noted that 11 petitioners failed to assign the highest weight to the price category during their respective bid evaluations, contrary to competitive bidding requirements.⁴⁵ The FCC noted that for seven petitioners, the winning provider’s cost proposal was lower than all competing bids, and stated: “Therefore, consistent with the policy goals underlying the Commission’s competitive bidding rules, the least expensive responsive service offering was ultimately selected by ... [the] petitioners that failed to assign the highest weight to the price category.”⁴⁶ The FCC held that

⁴³ See Attachments 9A at 215; 9B at 226; 9C at 237.

⁴⁴ See *In the Matter of Requests for Review of Decisions of the Universal Service Administrator by Allendale County School District Cedar Mountain, North Carolina* (“Allendale County”), DA 11-723, 26 FCC Rcd. 6109, at ¶¶ 10-12 (Wireline Competition Bureau 2011).

⁴⁵ *Id.* at ¶ 10.

⁴⁶ *Id.*

there was no evidence of a violation of state or local procurement laws and allowed the petitioners' funding requests by granting a waiver of Section 54.503(c)(2)(ii)(B) and 54.511(a) bidding factor requirements. The FCC has since granted similar waivers a number of times.⁴⁷

As in *Allendale County*, there is ambiguity whether, under Mr. Bullard, DPS evaluated bids related to the FRNs while considering price as the primary factor before awarding contracts to CIC. After reexamining bids that were received for the RFPs, it was clear that CIC submitted the lowest competing bid for each of the fiscal years:

Vendor	Price	Adj. Price	Design	Adj. Design	Experience	Installation	Total Score	Adj. Score
Total Points Available	30	35	30	25	15	25	100	100
CIC	30	35	18	15	15	25	88	90
21st Century	20	23	20	17	0	9	49	49
Parlant	28	33	28	23	10	9	75	75
Saf-T-Net	17	20	28	23	12	9	66	64
Reliance	17	20	25	21	13	9	64	63

⁴⁷ See *STREAMLINED RESOLUTION OF REQUESTS RELATED TO ACTIONS BY THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY*, Public Notice, WC Docket No. 06-122, DA 16-1320, 31 FCC Rcd 12697, at *12703 n.24 (F.C.C. 2016); *In the Matter of Petition for Reconsideration by Fall River Public School District Fall River, MA; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, DA 13-2055, 28 FCC Rcd 14650, at ¶ 4 (Wireline Competition Bureau 2013) (granting a waiver in the public interest); *In the Matter of Requests for Review and Waiver of Decisions of the Universal Service Administrator by Colorado Springs School District Colorado Springs, CO Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, DA 12-962, 27 FCC Rcd 7022, at ¶ 1 (F.C.C. 2012). But see *In the Matter of Petition for Reconsideration by Henrico County School District Henrico, VA; Schools and Libraries Universal Service Support Mechanism*, File No. SLD-607894, DA 13-1884, 28 FCC Rcd 13015, at ¶ 4 (Wireline Competition Bureau 2013) (denying waiver because petitioner did not present a waiver argument in its initial request for review).

Since there is no evidence of a violation of state or local law, and there was no evidence of waste, fraud, or abuse, DPS respectfully requests a waiver of related competitive bidding rules.

4. A Limited Waiver Should be Granted for FRN 2655195 (2014) Because DPS Had a Contract In Place Prior to Filing the Form 471 Associated with the FRN.

USAC denied funding commitments related to FRN 2655195, alleging DPS violated 47 C.F.R. § 54.504(a) because the District did not have a signed contract signed and dated by the application prior to the filing for the Form 471 for the products and services requested.⁴⁸ While no formal contract was signed before the FY 2014 Form 471 was submitted, based on Colorado law, DPS contends it had a valid contract with Comcast, the service provider associated with the FRN. DPS submitted documents to USAC showing that the services were part of a multiyear contract, where the initial contract/service was accepted via the services quote from Comcast; the services quote was submitted with the Form 471.⁴⁹ Two further documents were submitted showing that an extension of the agreement with Comcast was utilized based on that FY 2014 Form 470.⁵⁰ There was no evidence of waste, fraud, or abuse in the record.

FCC has granted limited waivers to school districts that have shown a contract was in place that met the Commission's rules and regulations when submitting their Forms 471, and there is no evidence of waste, fraud, or abuse in the record.⁵¹ Here, DPS has provided evidence

⁴⁸ See Attachment 10A at 244.

⁴⁹ See Attachment 10B at 247.

⁵⁰ See Attachment 10C at 249; Attachment 10D at 251.

⁵¹ See *Requests for Waiver of the Decision of the Universal Service Administrator by Barberton City School District, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15526 (Wireline Comp. Bur. 2008); *Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Animas School District 6 et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 16903 (Wireline Comp. Bur. 2011); *Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Administrative*

that a contract was in place before submitting the Form 471, even though a formal contract was not signed. As a result, DPS asks for a grant of a limited waiver.⁵²

5. No Competitive Bidding Documents are Available for FRN 1814666 because the FRN was a Contract Renewal.

USAC attempts to recover funding related to services provided in FRN 1814666 (FY 2009) by alleging DPS did not retain and could not provide, on request, all documentation regarding the competitive bidding process related to the FRNs. USAC argued that DPS violated 47 C.F.R. § 54.516(a) because it did not retain the requested documents for five years, as was required by FCC rules and regulations at the time.⁵³

DPS respectfully requests the Commission grant a limited waiver of competitive bidding rules because no further competitive bidding documents for FRN 1814666 are available, and the person that would have been knowledgeable as to whether any further competitive bidding documents exist, Mr. Bullard, will not communicate with DPS. FRN 1814666 was a renewal of a contract that was originally awarded in 2005 after a competitive bidding process.⁵⁴ The

Headquarters et al., Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 27 FCC Rcd 13509 (Wireline Comp. Bur. 2012) *Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Bayfield School District, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 15890 (Wireline Comp. Bur. 2012) (all granting appeals on the basis that petitioners had agreements in place with their service providers before filing their FCC Forms 471, even though the contracts in question were not signed and dated by both parties before the petitioners filed their FCC Forms 471).

⁵² It is also important to note that the Commission revised 47 C.F.R. § 54.504(a) to require applicants to “have a signed contract or other legally binding agreement in place prior to filing their FCC Forms 471.” The revision to the “signed contract” rule was due to a number of waivers sought by applicants that failed to obtain signatures prior to the submission of their Forms 471. The revision to the Commission’s rules went into effect FY 2015. The FCC directed USAC to consider “consider the existence of a written offer from the service provider containing all the material terms and conditions and a written acceptance of that offer as evidence of the existence of a legally binding agreement.” Had the revised rule been in place, DPS would have qualified as having a legally binding agreement, rather than a signed contract, prior to filing its FCC Form 471. *See In the Matter of Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd. 8870 at ¶¶ 203-204 (July 11, 2014).

⁵³ See Attachment 11A at 278.

⁵⁴ See Attachment 11B at 281.

original contract was for a three-year contract with two one-year renewals. As a renewal of a previously bid contract, a new RFP was not issued in 2009; as a result there are no further competitive bidding documents that can be provided for FRN 1814666. Of particular importance, FRN 1297629 was initially denied by USAC in 2005; however, after further review, USAC approved the funding for the FRN on the original contract. Since FRN 1814666 was a contract renewal, no competitive bidding documents were collected for FRN 1814666, DPS could not have provided documents to USAC for review. After Mr. Bullard was terminated, DPS retained Mr. Bullard's email correspondence and performed exhaustive searches to determine whether any further competitive bidding documents existed; DPS could not find any associated documents. Due to impropriety of bad actors, DPS requests a waiver of applicable Commission rules.

III. Conclusion

DPS respectfully requests that the Commission consider the effect of Mr. Bullard on past E-Rate processes and take note of his effect on any shortcomings in DPS processes. Under Mr. Bullard's leadership, DPS's E-Rate processes were deficient, and DPS fully recognized the issues as reported to USAC. DPS cooperated with USAC investigations, along with employing CSM to fully revamp its competitive bidding processes to comply with Commission rules and regulations. Accordingly, DPS requests that the Commission grant a limited waiver of the FCC competitive bidding rules.

DPS requests that the Commission direct USAC to fund the identified FRNs due to DPS compliance with USAC audits and overall revamping of its competitive bidding procedures.

Respectfully submitted,



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