

3/9/2018

Federal Communications Commission
Schools and Libraries Division - Correspondence Unit
445 12th Street SW
Washington, DC 20554

Re: Letter of Appeal of Funding Commitment Decision Letter for funding Year 2016, issued 06/30/2017.

Dear Sir or Madam:

I am submitting this letter of waiver regarding E-rate FY 2016 funding request for self-provisioned fiber on the grounds that, the applicant did not bid all fiber options on a single Form 470. It is evident that the filing procedure undertaken by the applicant was done so under direct guidance of a USAC Fiber consultant, who misdirected the applicant on USAC compliance. As the direct involvement of a USAC consultant who incorrectly advised the applicant, we request a waiver of the rule that E-rate eligible fiber options need to be bid out on the same, single Form 470.

Appellant Name:	e2e Exchange, LLC
Applicant Name:	Belton School District 124
471 Application Number:	161026442
Billed Entity Number:	137104
FRN:	1699052887
Service Provider:	LAN-Tel Communications

SLD Explanation for denial:

DR1: FRN is denied because you did not post for self-provisioned network and broadband services over third party network on the same FCC Form 470, which is a violation of the competitive bidding rules

Case issues:

The USAC designated Fiber consultant Joe Freddosso reached out to Belton 124 after the posting of their Form 470 and RFP to give guidance on meeting USAC compliance for bidding and procuring a self-provisioned fiber solution to be subsidized by E-rate funding. During this advisement process, the consultant directly advises the applicant to file a separate Form 470 to solicit lit fiber bids on 2/26/16/ While he advises that is “preferable” to have dark and lit fiber on the same Form 470, he then states “...since you have already file the dark fiber one { sic 470} I would file a separate 470 for lit. By then following this guidance, USAC ultimately denies the funding request for not having bid leased and dark fiber on the same Form 470.

Belton 124 Form 470 Filings

Form 470s filed by Belton SD 124

- 160030553 – Lit Fiber Only
- 160029380 – Self – Provisioned fiber only
- 160024670 – Dark Fiber Only

Three Form 470s were posted by Belton SD, each soliciting bids for one of the three types of Fiber service USAC deemed eligible for E-rate funding. The first of these Form 470s was 160024670 for Dark Fiber. It was the posting of this Form 470 that prompted Joe Freddosso to reach out to the applicant on 2/13/16. Clearly the consultant noticed issues with the Form 470, which compelled his outreach. Conversations between the USAC consultant and the applicant lead the applicant to post a new Form 470, 160029380 for Self-Provisioned fiber. On 2/24/16, the USAC consultant states to the district he sees the filing of 160029380, and asks for a corresponding Form 470 that bid out the lit services – meaning the consultant advised the applicant to file two separate Form 470s for lit fiber and self-provisioned fiber. This was also unclear to the district, since they had not posted a Form 470 for lit fiber. At this time the USAC consultant

again advises the applicant to file a separate Form 470 for lit fiber only, since the self-provisioned and dark fiber options had already been bid out.

The USAC Consultant was forthright with the applicant on his understanding of how to bid out fiber solutions; otherwise he would not have reached out initially to the applicant. The intentions of the USAC Consultant were to genuinely help the district through a process that had little guidance from USAC as a whole. This was his role – to fill the gap left by USAC on fiber training and resources that were minimal to applicants during FY 2016-2017 filings. This indicates that either the Consultant was incorrectly advised and / or trained by USAC in the first place, or that USAC changed policy procedures AFTER the guidance was given to the consultant to disseminate.

The latter of the two cases listed above seems to be applicable. This 471 was filed for the 2016-2017 funding year, but was not issued an FCDL until over a year later on 6/20/2017. A week or so before the Form 470 window closed for FY 2017-2018, USAC advised that Transport Only – No ISP had to be bid out to accompany dark fiber and self-provisioned fiber funding requests. While this new rule caused great uproar for 2017-2018 filings in its own right, to apply that rule to a previous year Form 470 and 471 is scandalous. Applying a rule that is simply impossible to be upheld by a previous funding year Form 470 leaves an application with zero chance of funding approval, and is entirely on the feet of USAC. This would be an abuse of the program's power, and is by no means in the best interest of the applicant.

USAC has clearly misled this applicant, and not provided fair equity to their requests for funding. Denying funding based on the very guidance the applicant had received from USAC is abhorrent. This is a gross injustice on behalf of the applicant. In this case it is the applicant who suffers as the results from USAC's mishandling of this application.

Procedural Errors and the Bishop Perry Order

The Bishop Perry Order should apply to the case at hand and apply provide relief to funding denial. One aspect of the Commissions Bishop Perry Order stands to provide relief for denials that are procedural in nature, and are not a source of program waste, fraud, or abuse. Under direct USAC guidance, a procedural error stopped Belton 124 from posting all fiber solutions on the same Form 470. Belton 124 was still able to solicit bids for lit, dark and self-provisioned fiber solutions and was able to evaluate all bids received as result and select a cost efficient solution that brings down the long term costs of delivering internet access and data transport to the district. The applicant had undertaken a lengthy bidding process to ensure no waste fraud or abuse occurs as a direct result of their filing. As such, the error should be seen as purely procedural in nature. Procedural errors are to be corrected by way of the Bishop Perry as this is beneficial and necessary to appeal to the public's and the applicant's best interests.

Final Summary

The Funding Commitment Decision Letter and subsequent USAC appeal have both been denied. We believe the denial is a result of USAC's limitations to grant waivers to such applicants whose circumstances warrant such a decision. The applicant was given clear and direct guidance from USAC that ultimately failed them. Furthermore, it would appear that new bidding rules from FY 2017-2018 are being upheld against a 2016-2017 application, which again lies at the feet of USAC's mistreatment of this applicant's funding. USAC is the only resource available to the schools and they have delivered incorrect program procedures directly to this applicant. The applicant's trust in USAC's administrative handling of the E-rate process has been destroyed. By approving this waiver in good faith, the applicant can continue to receive the fair equity and benefit that Universal Service is in place to provide. These circumstances as a whole are beyond the applicant's control and warrant a reversal of the denial, and restoration of the pre-discount eligible amount of \$118,489.37.

The denial of funding for a procedural error and erroneous USAC advisement places a particular hardship on a school district such as Belton SD 124.

Sean Cuskey, Director of Operations, e2e Exchange, LLC, PO Box 451, Syracuse, NY 13206, Tel. 315.422.7608, Fax 866.283.9332,
stc@e2eexchange.com

Sincerely,
E2e Exchange, LLC

Sean Cuskey, Director of Operations

CC:

Enclosures – USAC e-mails with Joe Freddosso; USAC Appeal