

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

IN THE MATTER OF:	)	CC Docket No. 02-6
	)	
REQUEST FOR REVIEW BY THE	)	Form 471 Application No. 171005337
LINCOLN PUBLIC SCHOOL DISTRICT	)	Form 471 Application No. 171006482
OF DECISION OF UNIVERSAL	)	
SERVICE ADMINISTRATOR	)	
	)	
SCHOOLS AND LIBRARIES	)	APPEAL
UNIVERSAL SERVICE SUPPORT	)	
MECHANISM	)	

Lancaster County School District 001, also known as the Lincoln Public School District (hereinafter “School”), pursuant to 47 C.F.R. § 54.719(b), respectfully submits this consolidated appeal / request for review of the decisions by the Universal Service Administrative Company (hereinafter “USAC”) on FCC Form 471 Application No. 171005337, Funding Request No. 1799011360 (“FRN 360”), and FCC Form 471 Application No. 171006482, Funding Request Nos. 1799011404 (“FRN 404”) and 1799011434 (“FRN 434”).

**A. STATEMENT OF PARTY’S INTEREST IN MATTER  
PRESENTED FOR REVIEW**

The School is a grade K-12 public school district and political subdivision under the laws of the State of Nebraska. As such, the School is both an elementary school and secondary school, and therefore an eligible recipient, under the rules for universal service pursuant to the federal Communications Act of 1934, as amended. See 47 C.F.R. § 54.501(a). The School has an interest in this matter by virtue of the funding request denials issued by USAC for FRN 360, FRN 404 and FRN 434 submitted by the School.

## **B. STATEMENT OF RELEVANT, MATERIAL FACTS**

### **REQUEST FOR PROPOSALS FOR ELIGIBLE E-RATE SERVICES**

The School issued its Request for Proposal #8778 (“RFP #8778”) on October 26, 2016, requesting competitive proposals for both leased lit fiber and leased dark fiber wide area network (“WAN”) solutions. (See Exhibit A) Also on October 26, 2016, the School issued Request for Proposal #8781 (“RFP #8781”) requesting competitive proposals for related core and edge network switching equipment. (See Exhibit B) The School issued Addendum No. 1 to RFP #8778 on November 7, 2016, which modified the requirements for the leased lit fiber proposals. (See Exhibit C)

The purpose of the two RFPs was to obtain proposals for a complete fiber network solution that would be fully compatible with and would connect the School’s existing leased dark fiber WAN to two newly constructed School facilities. RFP #8778 requested proposals for the off-site leased fiber network. RFP #8781 requested proposals for on-site network switching equipment that would be necessary to connect a leased dark fiber solution, if that solution were selected under RFP #8778, to the School’s local area network (“LAN”) in the two new facilities.

RFP #8778 and Addendum contained the following specifications for leased lit fiber and leased dark fiber WAN services:

#### Leased Lit Fiber Specifications:

- 10 Gigabit Ethernet interface physical hand-off (Exhibit A, p.4)
- Cost-effective, scalable, and flexible transport solution that will be able to meet current and future demands (Exhibit A, p.4)
- Scope of work includes a request for Special Construction Charges to be assessed as a one-time fee (Exhibit A, p. 5)
- Consists of a separate network alongside the School’s current dark fiber network that connects all of the School’s other locations

- Interconnects with the School’s current fiber network so as to create a seamless, high-speed, wide area network among all of the School’s locations
- One circuit between each location; Industry standard would indicate each of the circuits would have 2 fibers terminating at each location for the lit fiber solution
- Core switching equipment necessary to power the fiber modules and connect to the School’s existing WAN (Exhibit C, p.1)

Leased Dark Fiber Specifications:

- Connects sites in the proposal, which is to be incorporated into the School’s current dark fiber infrastructure (Exhibit A, p.10)
- Scope of work included in section C on page 11 of Exhibit A
- No core network switching equipment included

RFP #8781 specified the type of network switching equipment that would be necessary to connect the School’s building LANs to a leased dark fiber solution. (Exhibit B, p.4-5) It was the intent that RFP #8781 would be considered only in conjunction with a leased dark fiber proposal.

	Leased Lit Fiber Total Solution	Leased Dark Fiber Total Solution
Leased Fiber Price	RFP #8778	RFP #8778
Network Switching Price	Included in RFP #8778	RFP #8781

The network switching equipment specified in RFP #8781 was identical to the network switching equipment specified to be supplied with the leased lit fiber solution in RFP #8778.

Both RFPs identified the selection criteria, which provided that the price of eligible services would be the most heavily weighted factor. (See Exhibit A, p.19; Exhibit C, pp.5-6)

**RFP RESPONSES**

The School received written proposals for RFP #8778 from three vendors: NebraskaLink, Time Warner Cable (hereinafter “TWC”), and Unite Private Networks (hereinafter “UPN”).

(See Exhibit D, p.1 – tabulation of proposal responses) The proposal responses are summarized as follows:

Vendor	Leased Lit Fiber Total Price	Leased Dark Fiber Total Price
NebraskaLink	\$ 1,430,000	\$ 1,480,329
TWC	\$ 1,187,900	None
UPN	\$ 177,809	\$ 177,809

The School received one written proposal for RFP #8781 from Sirius Computer Solutions. (See Exhibit D, p.3 – tabulation of proposal response) The proposal response for the network switching equipment is summarized as follows:

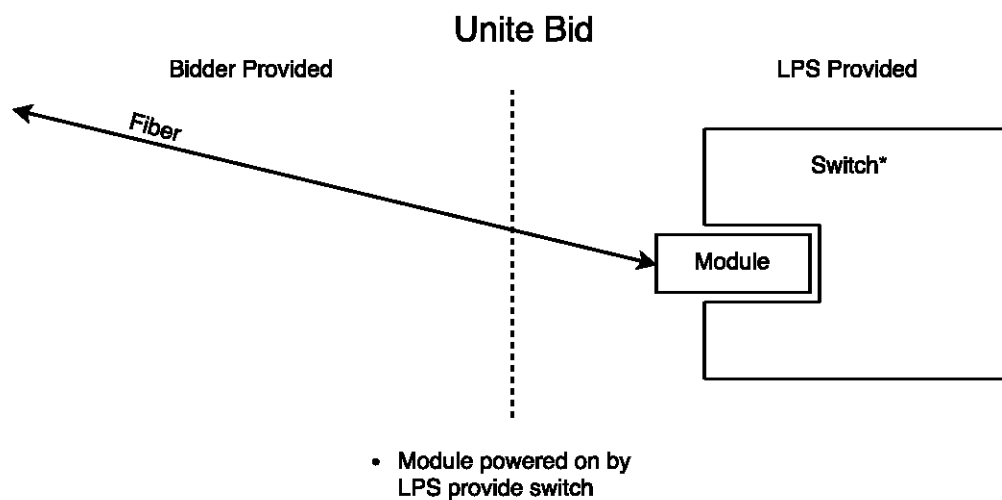
	Core Switches Total Price	Edge Switches Total Price
Equipment (one-time)	\$26,400.00	\$63,321.25
Operation & Maintenance (12 month)	\$1,468.80	N/A

#### **SCHOOL'S PROPOSAL EVALUATION**

On RFP #8778, TWC was given a total score of zero (0) points for its proposal because it failed to submit a response for the leased dark fiber solution. (See Exhibit D, p.2) NebraskaLink was given a total score of sixty (60) points. (See Exhibit D, p.2) On the price factor, NebraskaLink scored zero (0) points due to the fact that its proposal prices for both leased lit fiber and leased dark fiber were more than seven times (7x) the price of the lowest proposal. (See Exhibit D, p.2) UPN was given a total score of ninety (90) points, including a full thirty (30) points for the price factor. (See Exhibit D, p.2) This was due to the fact that UPN had the lowest price offering for both the leased lit fiber and leased dark fiber solutions.

Once the School determined that UPN had the highest ranked proposal under RFP #8778 for both leased lit fiber and leased dark fiber solutions, the School considered which of the two UPN offerings—leased lit fiber vs. leased dark fiber—was the most cost effective.

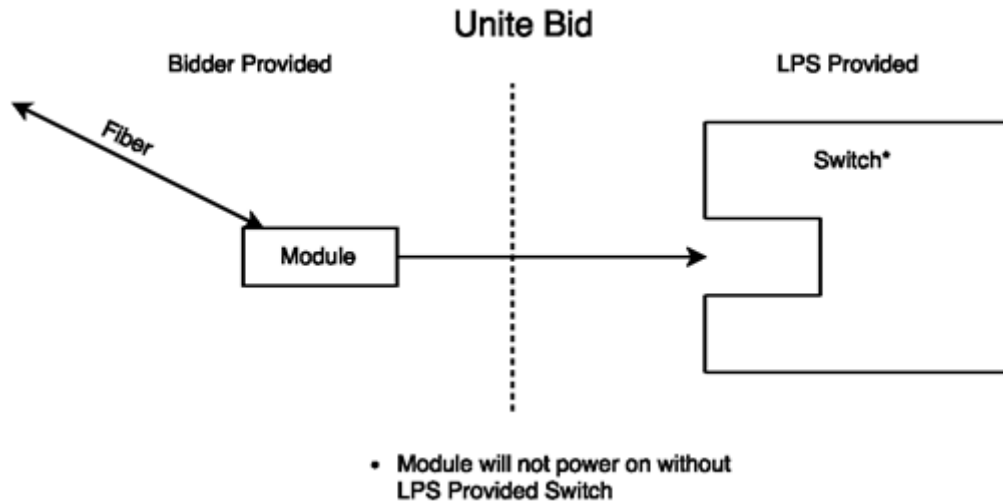
UPN's leased dark fiber proposal included 12 to 144 count fiber (depending on the location and consistent with the School's requests), for a total cost of \$177,809 over a 6-year lease term. (Exhibit E, p.6) Fiber modules and network switching equipment were not included in the leased dark fiber solution and were to be sourced by the School separately. See Diagram A.



**Diagram A (Leased Dark Fiber Solution)**

UPN's leased lit fiber proposal included one (1) ten (10) Gig Ethernet circuit between each of the School locations, for a total cost of \$177,809 over a 6-year lease term. (Exhibit E, p.6) However, Pricing Note 7 in UPN's proposal indicated that only modules (SFP/GBIC's) would be supplied and no network switching equipment was included. (Exhibit E, p.6) Thus, notwithstanding the requirements of RFP #8778, UPN's lit fiber proposal price did not include costs for network switching equipment. See Diagram B (below).

Because UPN proposed its leased lit fiber solution without network switching equipment, the School recognized that it would have to add that equipment to make the lit fiber solution



**Diagram B (Leased Lit Fiber Solution)**

functional. Now, the network switching equipment under RFP #8781 was needed for both UPN's leased dark fiber solution and UPN's leased lit fiber solution.

	Leased Lit Fiber Total Solution	Leased Dark Fiber Total Solution
Leased Fiber Price	UPN's proposal on RFP #8778	UPN's proposal on RFP #8778
Network Switching Price	Sirius' proposal on RFP #8781	Sirius' proposal on RFP #8781

Effectively, the net result of UPN's proposal made UPN's leased lit fiber proposal directly comparable to UPN's leased dark fiber proposal. The total cost of UPN's leased lit fiber solution was \$177,809 for six years. The total cost for UPN's leased dark fiber solution was \$177,809 for six years. In other words, the total cost was the same for UPN's leased lit fiber and leased dark fiber solutions.

Price being equal, the School determined that UPN's leased lit fiber solution would require the School to coordinate with UPN in the event that additional bandwidth would be needed to meet future demand; and, if additional fibers were needed, the School and UPN would

incur additional construction costs. Whereas, UPN's leased dark fiber solution provided additional fibers at each location that could be lit without additional construction costs.

As a result, the School selected UPN's leased dark fiber solution as the most cost-effective solution for the following reasons:

1. The costs were the same for leased lit fiber and leased dark fiber solutions – each a one-time payment of \$177,809 and no ongoing costs;
2. Both the leased lit fiber and leased dark fiber proposals covered the full six (6) year period requested in the RFP;
3. Both the leased lit fiber and leased dark fiber proposals included ongoing maintenance during the term;
4. The leased dark fiber solution could be completely integrated into the District's current WAN infrastructure for its other locations;
5. The leased dark fiber solution provided 23 additional fiber pairs over the leased lit fiber solution; and
6. The leased dark fiber solution allowed for additional bandwidth capacity above 10 Gbps while the leased lit fiber solution was capped at 10 Gbps.

On RFP #8781, the School selected the only proposal for edge switching equipment, which consisted of a one-time cost for hardware of \$26,400, and one-time cost for operation and maintenance of \$1,468.00.

#### **USAC DENIAL OF FRN 360**

The School submitted a FCC Form 471 for Application No. 171005337, FRN 360, relating to its selection of UPN's leased dark fiber solution (RFP #8778). (See Exhibit F) In this application for FRN 360, the School identified UPN as the service provider (Exhibit F, p.6), leased dark fiber as the selected solution (Exhibit F, p.6), and \$177,809 as the total one-time charge (Exhibit F, p.10).

On November 17, 2017, USAC denied FRN 360 for the following reason:

FCC Rules require applicants to evaluate the cost effectiveness of all bids received and to choose the most cost effective solution. Documentation provided failed to demonstrate that the selected solution, Dark Fiber with Unite Private Networks, LLC, is the most cost effective option in comparison to Lit Fiber with Unite Private Networks, LLC based on the vendor responses to the FCC Form 470 associated with this FRN. The total cost of the leased dark fiber solution over 3 years is \$208,615.40. This includes the non-recurring special construction charge of \$177,809.00, the non-recurring network equipment charge of \$26,400.00, and the non-recurring maintenance charge of \$1,468.80. The total cost of the leased lit fiber solution over 3 years is \$177,809.00. This FRN is denied as the applicant did not select the most cost effective solution.

(See Exhibit G)

#### **USAC DENIAL OF FRN 404 AND FRN 434**

The School submitted a FCC Form 471 for Application No. 171006482, FRN 404 and FRN 434, relating to its selection of Sirius' core network switching equipment (RFP #8781). (See Exhibit H) In its application for FRN 404, the School identified Sirius as the service provider (Exhibit H, p.6), leased dark fiber as the network solution on which the equipment would be connected and used (Exhibit H, p.6), and \$26,400 as the total one-time charge for equipment (Exhibit H, p.15) In its application for FRN 434, the School similarly identified Sirius as the service provider (Exhibit H, p.16), leased dark fiber as the network solution on which the equipment would be connected and used (Exhibit H, p.16), and \$1,468.80 as the total one-time charge for maintenance and operations of the equipment (Exhibit H, p.19). Total combined funding for the application for both FRN 404 and 434 was \$27,868.80. (Exhibit H, p21)

On November 17, 2017, USAC denied both FRNs for the following reason:

This FRN is associated with FCC Form 471 #171005337, FRN 1799011360. FRN 1799011360 is denied because FCC Rules require applicants to evaluate the cost effectiveness of all bids received and to choose the most cost effective solution. Documentation provided failed to demonstrate that the selected solution, Dark Fiber with Unite Private Networks, LLC, is the most cost effective option in comparison to Lit Fiber with Unite Private Networks, LLC based on the



vendor responses to the FCC Form 470 associated with this FRN. The total cost of the leased dark fiber solution over 3 years is \$208,615.40. This includes the non-recurring special construction charge of \$177,809.00, the non-recurring network equipment charge of \$26,400.00, and the non-recurring maintenance charge of \$1,468.80. The total cost of the leased lit fiber solution over 3 years is \$177,809.00. This FRN requests Network Equipment services for dark fiber associated with the denied FRN. Therefore, this FRN is also denied.

(See Exhibit I)

### **USAC DENIAL OF APPEALS**

By letters of appeal dated January 5, 2018, the School separately appealed USAC's denials of FRN 360 and FRNs 404 and 434. (See Exhibits J and K) On April 25, 2018, USAC denied both appeals. (See Exhibits L and M)

### **C. QUESTIONS PRESENTED FOR REVIEW**

1. Whether USAC erred in denying FRN 360 on the basis that the School did not demonstrate that the requested services were the most cost effective solution.
2. Whether USAC erred in denying FRN 404 and FRN 434.

### **D. STANDARD OF REVIEW**

Requests for review of decisions issued by USAC shall be reviewed de novo. 47 C.F.R. § 54.723.

### **E. DISCUSSION**

#### **FRN 360**

USAC erred in its comparison of the total costs of the UPN leased dark fiber solution vs. the UPN leased lit fiber solution. Looking exclusively at RFP #8778 and UPN's proposal, the total cost for UPN's leased lit fiber and leased dark fiber over a 6 year period **are identical—\$177,809.00.** (See Exhibits A, D, and E)

USAC erred in including a non-recurring network equipment charge of \$26,400.00 and a non-recurring maintenance charge of \$1,468.80 in the cost of UPN's leased dark fiber solution. The equipment and maintenance charges are all related to the network switching equipment under RFP #8781 and FCC Form 471 for FRNs 404 and 434. Restated another way, these charges are not part of UPN's proposal or FRN 360. Instead, FRN 360 only related to the cost of leased fiber.

Even if the FCC determines that the costs for the network switching equipment should be included in determining the total cost of the leased fiber solution, USAC erred in concluding that these network switching costs would only be incurred for UPNs leased dark fiber solution. As discussed above, this network switching equipment was necessary regardless of whether UPN's lit fiber or dark fiber solution was selected. Thus, the total cost for leased fiber (lit or dark) plus network switching equipment over a 6 year period **would still be identical—\$205,677.80**<sup>1</sup>

Universal service rules provide that the School "shall carefully consider all bids submitted and must select the most cost-effective service offering." 47 C.F.R. § 54.511(a). Those rules further provide that "[i]n determining which service offering is the most cost-effective, *entities may consider relevant factors other than the pre-discount prices submitted by providers*, but price should be the primary factor considered." *Id.* (Emphasis added).

Here, the School provided USAC documented evidence that the total cost for UPN's leased lit fiber and leased dark fiber solutions were identical. As such, either leased fiber solution from UPN would be cost-effective. But universal service rules provide that in determining the most cost-effective solution, the School may consider relevant, non-price factors.

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<sup>1</sup> USAC stated that the total cost for leased fiber plus network switching equipment would be \$208,615.40. USAC appears to have tripled the non-recurring maintenance and operation cost under FRN 434 to reach this number. The School is unaware why USAC took this approach. The total requested funding by the School for FRN 404 and FRN 434 was \$27,868.80. (See Exhibit H, p.21)

The School ultimately determined that the leased dark fiber solution from UPN was the most cost-effective solution. With price being equal, the School chose the dark fiber solution because it was consistent with the School's existing WAN fiber network. The School currently has over 70 locations on a dark fiber WAN from UPN. The dark fiber solution matches the School's existing WAN infrastructure. Adding another location connected via dark fiber is the most effective solution. UPN's dark fiber solution provided 23 additional fiber pairs over UPN's lit fiber solution. UPN's dark fiber solution allowed for bandwidth growth over the capped 10 Gbps bandwidth for the lit fiber solution. A dark fiber solution gives the School more control and flexibility in resolving potential issues, because the equipment for lighting the fiber is within the School's control. As most issues occur at the module level (rather than the actual fiber level), there is greater control in the troubleshooting process. The School's staff has the expertise to troubleshoot connection issues quickly and effectively in most outage situations. Using School staff rather than vendor support staff should allow the School to minimize downtime.

#### **FRN 404 and FRN 434**

USAC erred in denying FRN 404 and FRN 434. USAC denied these FRNs solely because they were associated with FRN 360, which USAC also had denied. As already discussed, USAC erred in denying FRN 360. A reversal of the decision on FRN 360 necessitates a reversal of the denials of FRN 404 and FRN 434.

FRN 404 and FRN 434 related to network switching equipment that would be used to connect a leased fiber WAN solution to the School's building LAN systems. Importantly, because of how UPN proposed its leased lit fiber solution, this network switching equipment was necessary for both a leased lit fiber solution and a leased dark fiber solution.

USAC erred in determining that this network switching equipment was not necessary for a leased lit fiber solution. USAC may have reached this erroneous conclusion based on the requirements under the School's RFP #8778. However, after carefully reviewing UPN's submitted proposal, which the School and USAC must do under federal regulations, it is clear that UPN's leased lit fiber solution did not include the necessary network switching equipment. In order to make UPN's leased lit fiber solution comparable to its leased dark fiber solution, network switching equipment would be added at an additional cost.

USAC also may have reached this erroneous conclusion in part based on the School's FCC Form 471 for FRN 404 and 434. The following form questions and School responses are found under the section labeled "Fiber Request Key Information":

Form Question	School response
Is this FRN supporting leased lit fiber, dark fiber or self-provisioned new or existing fiber?	Dark Fiber
Is this Leased Dark Fiber or IRU?	Leased Dark Fiber

(See Exhibit H, p.6)

The School contends that the form of the questions led the School to believe that its answers were to be either leased lit fiber or leased dark fiber, but not both. Because the School had determined under FRN 360 that the UPN leased dark fiber solution was the most cost-effective solution, the School answered the form questions on the basis that the UPN leased dark fiber solution was the selected solution. The School did not intend to suggest that the network switching equipment was not necessary for a leased lit fiber solution. Indeed, none of the documentation supplied to USAC supports such an assumption.

For FRN 404 and FRN 434, there was only one proposal submitted to the School. Thus, this proposal was the most cost-effective solution available.

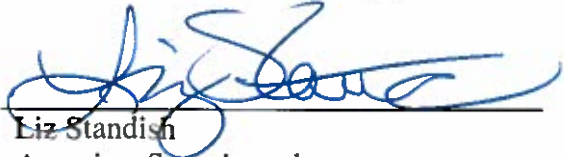
## **F. STATEMENT OF RELIEF SOUGHT**

The School respectfully requests that the Federal Communication Commission reverse the denial decisions made by USAC on FRNs 1799011360, 1799011404 and 1799011434, and remand the matter back to USAC with instructions for USAC to approve the FRNs as submitted.

DATED this 20 day of June, 2018.

LINCOLN PUBLIC SCHOOL DISTRICT

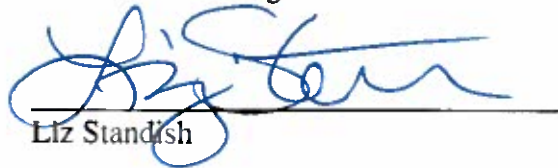
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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 20 day of June, 2018, a true and correct copy of the foregoing was filed with the FCC electronically through the FCC's Electronic Comment Filing System and pursuant to 47 C.F.R. § 54.721(c) was served on the Universal Service Administrator (USAC) by email at [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org).

  
Liz Standish