



**Department of  
Education**

Chancellor Richard A. Carranza

Howard Friedman  
General Counsel

July 26, 2018

FCC

Office of the Secretary  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Re: CC Docket No. 02-6  
Appeal of Funding Request Number 2707394  
Form 471 Application Number: 992007  
Funding Request Number: 2707394  
Billed Entity Number: 153135  
Billed Entity FCC RN: 011919750  
Applicant's Form Identifier: NYC141ISP  
Funding Commitment Decision Letter for Funding Year 2014

Dear Appeals Unit:

Pursuant to 47 C.F.R. § 54.719 (C), the New York City Department of Education ("NYC DOE") writes to appeal the Decision on Appeal issued by the Universal Services Administrative Company ("USAC") on May 30, 2018 for the above-referenced FRN, denying funding for Funding Year 2014.

In the Decision on Appeal, USAC denied NYC DOE's application for funding for Internet services for TW Telecom Holdings Inc. ("TW Telecom") for Funding Year ("FY") 2014, because USAC concluded that utilizing TW Telecom services, in addition to services provided by Sidera, was not the most cost-effective means of obtaining internet access, since it was the second lowest bidder for this service. While we disagree with USAC's assessment that selecting two service providers was duplicative and violated *Macomb*, for purposes of this appeal, the NYC DOE is only seeking a funding commitment for TW Telecom services at the rate set forth by Sidera and is no longer seeking funding at TW Telecom's rate.

**Introduction and Summary**

NYC DOE has one of the largest Internet connected networks in the United States, public or private. The network provides service to over 1,300 buildings and more than 1,800 unique schools, reaching 1.1 million students and more than 80,000 teachers. Over time, NYC DOE's

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capacity requirements have expanded rapidly in order to provide sufficient connectivity for online learning, state testing and assessment, and internet based programs for over 1.1 million students. Addressing the ever-growing bandwidth demands is a challenge for even the largest Internet service providers. The providers that NYC DOE utilized prior to 2014 lacked the ability to reliably provide sufficient capacity that met the NYC DOE's needs. Providers tended to oversubscribe their networks leading to bottlenecks during peak periods.

In order to address these challenges in an efficient and cost-effective manner, particularly in light of the reality that NYC DOE's capacity requirements continued to increase, NYC DOE's Division of Instruction and Information Technology determined in 2014 that the most cost-effective way to obtain sufficient, reliable internet service, that met the NYC DOE's needs, was to select two Internet service providers and utilize a load sharing solution. NYC DOE's experience after the 2001 attack on the World Trade Center, which brought down the school district's sole provider of Internet access, and during Hurricane Sandy in 2012, reemphasized the importance of having two service providers. When one of the two provider's network failed, NYC DOE was able to utilize the second provider for all schools until the first provider was able to bring its network back into service. At other times, each provider would provide services to separate buildings and schools.

At the time in which the NYC DOE completed the application for Funding Year 2014, it was our view that one service provider could not meet the full needs of the district for the reasons stated above. Because the NYC DOE determined that using two vendors was the best and most cost-effective method of fulfilling its internet access needs, it indicated its intention to select two vendors. Accordingly, NYC DOE solicited and, using price as the primary factor, selected the two most cost-effective service providers to provide internet access. TW Telecom and Sidera were the two lowest bidders. Sidera's bid was the lowest and TW Telecom's bid was the second lowest. TW Telecom was selected as a supplemental service and in fact provided services to meet aggregate bandwidth requirements throughout the NYC DOE for Funding Year 2014.

#### **NYC DOE's Use of Two Internet Service Providers was not Duplicative**

In the decision on appeal dated May 30, 2018, USAC cites the FCC's *Macomb Order* as the basis for its decision. In the *Macomb Order*, the FCC stated that because "price should be the primary factor considered when determining which service offering is most cost-effective, ... requests for duplicative services, described as *services that provide the same functionality for the same population in the same location for the same period of time*, will be rejected." *In the Matter*

*of Requests for Review by Macomb Intermediate Sch. Dist. Tech. Consortium*, CC Docket No. 02-6, Order, FCC 07-64, 22 FCC Red 8771, 8774, 3 (2007) (*Macomb Order*) (emphasis added).

Under the approach set forth by the NYC DOE in 2014, there was no point at which the services provided by the two Internet service providers were duplicative. Each service provider had its own network entry point and served specific, different schools and/or administrative nodes on a given day. The network was configured so that each service provider could serve different schools on different days. Furthermore, the load balancing equipment was designed to ensure that the DOE maximized the use of bandwidth, and the network configuration prevented both service providers from delivering services at the same time.

Both providers' routes were utilized at approximately 80% capacity every day. All school traffic egressed the DOE from one of three statically defined locations. At each location, traffic could egress the DOE using either internet service provider, based upon traffic and load conditions at the time. Coming back into the DOE, traffic was managed by access control lists on firewalls and switches so that both service providers had balanced traffic patterns. This mechanism balanced traffic and load conditions, and thereby reduced the likelihood that one service provider's bottlenecks would affect NYC DOE's internet access.

The percentage of total NYC DOE locations served by one service provider varied from one time period to the next as schools were dynamically assigned to one or the other service provider based on total traffic volume, however, all locations were served exclusively by a single service provider at any point in time. Each service provider maintained its own separate facility connecting to NYC DOE's network and traffic from an individual school was transmitted over only one of those connections at any point in time. Furthermore, the Eligible Services List provides that "Services that provide necessary bandwidth requirements, such as multiple T-1 lines, when appropriate for the population served and the services to be received are not duplicative."

#### **USAC should Fund TW Telecom at the Rate Provided by Sidera**

Consistent with the decision in *Macomb*, even if there is a determination that TW Telecom was retained as a "duplicate" service provider, the NYC DOE should still receive funding at the rate approved from Sidera. NYC DOE does not concede that the services at issue were duplicative, or that they were not the most cost-effective method to meet the needs of the NYC DOE school system to ensure internet service for all its schools; however, given USAC's determination on appeal, it should approve the FY2014 FRN for TW Telecom services at the rate provided by Sidera.

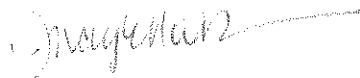
In the *Macomb* Order, the FCC found that where services were not the most cost-effective because there was no showing that the lower priced vendor of eligible services could not meet the full needs of the district, the applicant was entitled to E-rate funding at a rate

associated with the most cost-effective vendor See *Macomb Order* at ¶ 9. By denying the FCDL in its entirety, USAC overlooks this aspect of the *Macomb Order* and appears to be concluding that it will not fund TW Telecom's FRNs at Sidera's lower rate because it is not the rate in TW Telecom's bid or the rate that TW Telecom charged NYC DOE. This is contrary to the *Macomb Order*, in which the FCC explicitly stated that the school district could receive funding "at a rate associated with the least expensive of the duplicative services." *Macomb Order* at ¶ 9.

**Conclusion**

For reasons stated above, USAC should approve funding for TW Telecom's services at the rate associated with Sidera, the least expensive vendor providing this service, for Funding Year 2014. If you need additional information or have any further questions, please contact the undersigned at 212-374-2993 or jnathan@schools.nyc.gov or Eddy Pierrecharles, E-rate Compliance Officer, at 718-935-5115. Our office address is 52 Chambers Street, New York, NY 10007 and our office fax number is 212-374-5596.

Respectfully Submitted,



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