

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	Escuela del Deporte
)	Billed Entity Number 16052523
Requests for Review of)	Funding Year 2014
Decisions of the)	Form 471 Application No. 985994
Universal Service Administrator by)	
)	Funding Requests No. 2689151
Escuela del Deporte)	
)	
)	CC Docket No. 02-6
)	
)	
)	
Schools and Libraries Universal Service)	
Support Mechanism)	
)	
)	

ATT: Telecommunications Access Policy Division
Wireline Competition Bureau

REQUEST FOR REVIEW AND WAIVER

Escuela del Deporte of the Municipality of San Juan (hereinafter, the “Escuela del Deporte”) in the Commonwealth of Puerto Rico, pursuant to Sections 54.719(c) and 54.722(a) of the Federal Communications Commission’s (“FCC” or “Commission”) rules,¹ hereby petitions the Commission’s Wireline Competition Bureau for review of adverse decisions by the Universal Service Administrative Company (“USAC”) with respect to the above-referenced Funding

¹ 47 C.F.R. §§ 54.719(c), 54.722(a).

² Michael A. Fletcher, *Puerto Rico, With At Least \$70 Billion In Debt, Confronts a Rising Economic Misery*,

Request Number (“FRNs”) for Funding Year 2014 filed by the Escuela del Deporte. In the alternative, the Escuela del Deporte seeks a waiver of the Commission’s rules for good cause.

I. BACKGROUND

Escuela del Deporte operates under the jurisdiction of the Municipal Educational System of the City of San Juan, Puerto Rico. E-rate funds are critical to our ability to bring Internet access into the classroom and offer students with a 21st Century education that will allow them to compete in an increasingly global economy. Puerto Rico is divided into seventy-eight (78) “municipalities.” Each municipality has a mayor and a legislature. San Juan is Puerto Rico’s capital and most populous municipality.

The economy in Puerto Rico has been in a very serious recession for nearly eight years, driving tax revenues down and pushing the unemployment rate up to nearly fifteen (15) percent.² Almost forty-seven (47) percent of residents in Puerto Rico live below the poverty line (by comparison, the poverty rate in Mississippi, the poorest state in the United States, is twenty-three (23) percent). Unfortunately, a disproportionate number of those living below the poverty line are children. According to a 2013 study conducted by the Annie E. Casey Foundation and the National Council of La Raza using data from the U.S. Census American Community Survey, more than eighty (80) percent of children in Puerto Rico live in high-poverty areas (in contrast to eleven (11) percent of children across the United States) and fifty-six (56) percent of Puerto Rican children live in poverty (compared with twenty-two (22) percent for the entire United

² Michael A. Fletcher, *Puerto Rico, With At Least \$70 Billion In Debt, Confronts a Rising Economic Misery*, The Wash. Post, November 30, 2013, available at: http://www.washingtonpost.com/business/economy/puerto-rico-with-at-least-70-billion-in-debt-confronts-a-rising-economic-misery/2013/11/30/f40a22c6-5376-11e3-9fe0-fd2ca728e67c_story.html (last visited January 14, 2014).

States).³ San Juan, being Puerto Rico's largest city, is home to a disproportionately large number of these impoverished children. The economic situation in Puerto Rico is so precarious that the Obama Administration recently named a team of Administration experts to work with Puerto Rico "to marshal existing federal resources" and assist Puerto Rico in "maximizing the impact of existing federal funds flowing to the Island."⁴ If USAC's decisions are left to stand, the results would be devastating to Escuela del Deporte and the hundreds of low income students it serves.

Because USAC did not issue an Funding Commitment Decision Letter "FCDL" until the end of the funding year in question (May 13, 2015), we started receiving Internet access service from our selected vendor after following all of the programs rules with the expectation that a positive FCDL would be issued. Now we find ourselves in an extremely difficult position because, after having received Internet service from our vendor for the entire funding year, USAC's decision not to fund the application means that we could be liable to our vendor. We qualify for a ninety (90) percent discount, which in this case amounts to \$61,020.00.

In addition, given the precarious state of Puerto Rico's economy, it is not surprising that our students, who are mostly living under the poverty levels – rely on the Escuela del Deporte for their main (and sometimes only) source of Internet access. In case of the absence of the Commission's grant of the Request for the Review or Waiver, the Escuela del Deporte would most probably have to cease providing access to all Internet services to its students. E-Rate

³ Dania Alexandrino, *Study: Puerto Rico's children mired in poverty that dwarfs rest of U.S.*, CNN, August 1, 2013, available at: <http://www.cnn.com/2013/08/01/us/puerto-rico-child-poverty> (last visited January 14, 2014).

⁴ *Supporting Puerto Rico's Economic Development Progress*, The White House, President Obama and the Hispanic Community, Nov. 21, 2013, available at: <http://www.whitehouse.gov/blog/2013/11/21/supporting-puerto-rico-s-economic-development-progress> (last visited January 14, 2014).

funding is critical to Puerto Rico's economy and to the Escuela del Deporte's students and faculty.

The Escuela del Deporte appealed the COMAD ("Commitment Adjustment") Notification impacting the above-captioned FRN associated with FCC Form 471 Application Number 985994 with a Letter of Appeal dated June 26, 2015.⁵ On October 19, 2015 the Escuela del Deporte received the *Administrator's Decision on Appeal - Funding Year 2014-2015*, to the undersigned, Evelyn Lafontaine, Acting Director of the Municipal Education System in the Municipality.

II. THE ESCUELA DEL DEPORTE DID NOT RECEIVE ASSISTANCE FROM VENDOR IN THE CREATION OF FCC FORM 470.

The *Administrator's Decision on Appeal - Funding Year 2014-2015* states the following reason for the denial:

The above listed funding request (FRN) is denied because you indicated in response to the Administrator's Information Request that you received any assistance from Service Provider A New Vision in Educational Services & Materials (NEVESEM) d.b.a Dreyfous & Associates, SPIN 143022659, in the creation of the referenced FCC Form 470 for the FRN. A service provider that participates in the competitive bidding process as a bidder cannot be involved in the preparation or certification of the entity's FCC Form 470. In addition, you indicated that the service provider supplied you with the list of services to request on your FCC Form 470. This action constitutes improper service provider involvement and the FRN was denied. In your appeal, you did not demonstrate that USAC's decision was incorrect. Consequently, your appeal is denied.

A negative FCDL was the result of a complete misunderstanding on our part regarding USAC's questions in a selective review by USAC of our submission. In this regard, we ask the Commission to take into consideration the fact that Spanish is the first language of all of our

⁵ Letter of Appeal for FY 2014 by the Escuela del Deporte dated June 26, 2015 (**Exhibit 1**).

personnel, including the undersigned. After reviewing the FCDL and the reason for the denial along with our initial response, we came to realize that we had misinterpreted USAC's questions. As the Municipality has previously stated to the Commission in the context of an appeal for another funding year, the fact that the E-rate program is in English presents a very real challenge to the Municipality (and the Escuela del Deporte), because E-rate personnel may not fully appreciate the precise nature of the communications from USAC.

Below we transcribe the specific USAC question at issue, our response, and the reason why we misinterpreted the question. Once we realized our honest mistake, we submitted a correction to our initial response, but USAC still denied the funding. To wit:

Question C in USAC's letter dated October 16, 2014 stated:

*Did a service provider's employee(s) **assist** your entity with the completion and/or posting Form 470 #699400001227454? Yes ____ or No _____. If yes:*

- *Provide the name, title, contact information (address, telephone, fax and email) of the service provider's employee(s).*
- *Describe the **assistance** they provided, (i.e., did they fill out any portion of the form, provide you with information for you to add to the form, post the form to the USAC website etc.)*
- *Explain why you selected your service provider's employee(s) to **assist** your entity with completing or posting your Form 470.*

It is acknowledged that we indicated "yes" in response to the question above, and stated the following in describing the assistance given: *"In how to enroll and get the entity numbers for our schools"* and *"In how to identify the services that we need in accordance to the assessment of necessities in the schools."* We also made the following statement: *"We procure the advice of our service provider's to fill the FCC Forms due to a professional relationship through a contract of services with our schools systems and for its expertise in this technical field."*

We responded to this question incorrectly because we misunderstood USAC's question. As explained below, when we read Question "C", we focused on the words "assist" and "assistance" in general terms and did not realize that the question was whether we received assistance in the completion and/or posting of Form 470. We believe this misunderstanding is due to the fact that the questions were in English and the primary language of those of us working on E-rate matters for the school is Spanish. We deeply regret this misunderstanding and took the opportunity to correct each of our statements in our Letter of Appeal submitted on June 26, 2015.

The reality is that we answered "yes" to the question whether a service provider employee assisted us with the completion of our Form 470, in Question C, because we misunderstood that USAC was asking if we had ever received **any** assistance from a vendor (not that it was circumscribed to Form 470. Our answer was "yes" for two reasons:

(1) We initially learned about the E-rate program from NEVESEM through their marketing efforts, at which time they offered an explanation of what the program is, what services are eligible, the existence of extensive reference materials on USAC's website, and the need to obtain a billed entity number in order to conduct business with USAC. This is the type of "assistance" we were referring to when we said we received assistance with respect to "*how to enroll and get the entity numbers for our schools.*" This type of "assistance" of course, is unrelated to the filing of our Form 470 and was not the "assistance" referred to in Question C. However, the language barrier led to our confusion of the term as defined by USAC.

(2) We selected NEVESEM as our service provider for Funding Year 2014 because it earned the highest values in terms of cost and services. In the context of that vendor-customer relationship – they have been of assistance to us by answering technical questions and providing customer support. Those questions related to installation and maintenance issues, equipment performance, equipment life expectancy, etc. Thus, when we said we received assistance with respect to "*how to identify the services that we need in accordance to the assessment of necessities in the schools,*" we meant to say that we received technical, non-Form 470 application related assistance in the context of an ongoing vendor-customer contractual relationship. This technical assistance, while useful to us in evaluating the effectiveness of our current services in light of our technology needs, is completely unrelated to the filing of our Form 470.

We also wish to clarify the following statement in our response: “*We procure the advice of our service provider’s to fill the FCC Forms due to a professional relationship through a contract of services with our schools systems and for its expertise in this technical field.*” When we made this statement we were **not referring to Form 470**. Instead, we were referring to the fact that we need information from the service provider in order to complete the Item 21 Attachment **in Form 471**. As you know, the Item 21 Attachment must include detailed equipment information such as make and model, which the service provider is best suited to provide. In an effort for accuracy, we requested "assistance" in this regard. But again, this "assistance" is **completely unrelated to the filing of our Form 470**.

In sum, we misunderstood USAC’s question. USAC’s question was whether we received *assistance* from a service provider ***with the completion and/or posting of our Form 470***. The answer to that question is unequivocally “NO.” We did not receive any assistance from NEVESEM or any other service provider in the creation and posting of Form 470. Had we understood USAC’s question correctly, we would have answered “NO.” See **Declaration Under Penalty of Perjury of Evelyn Lafontaine, Ed. D.**

As we told USAC in our response, the persons who prepared our Form 470 were the following individuals:

Ms. Luz Laboy
Special Assistant
Municipal Education System
City of San Juan

Mr. Salvador Soto
Group Leader
Municipal Education System
City of San Juan

Evelyn Lafontaine, Ed.D.
Acting Director
Municipal Education System
City of San Juan

The Form 470 was completed and submitted from a computer at the Municipal Education System's offices, which are located at: Municipal Tower Building, 8th Floor, 161 Chardon Street, Hato Rey, Puerto Rico 00902. Ms. Laboy and Mr. Soto are officials of the Municipal Education System and they were appointed by the undersigned, Evelyn Lafontaine, also an official of the Municipal Education System, to perform this task because of their professional background and expertise in dealing with matters concerning the Municipality's Education System, including issues related to grants and other programs that may benefit our schools. None of these individuals have an employee-employer relationship with the service provider NEVESEM.

We understand that a service provider that participates in the competitive bidding process as a bidder cannot be involved in the preparation or certification of an applicant's Form 470. We fully complied with this requirement because the Form 470 was prepared and completed by our own personnel without outside assistance. There was no improper service provider involvement and the FRN should not be denied.

Therefore, the Escuela del Deporte requests that the denial and rescission of the FRN at issue be reversed and that the underlying applications be remanded to USAC for further processing. In addition, and in the alternative, the Escuela del Deporte requests a waiver of the Commission's rules.

III. WAIVER REQUEST

As previously stated, it is respectfully submitted that the Escuela del Deporte submitted a **wrong answer** to Question C in USAC's letter dated October 16, 2014, which stated:

*Did a service provider's employee(s) **assist** your entity with the completion and/or posting Form 470 #699400001227454? Yes _____ or No _____. If yes:*

- *Provide the name, title, contact information (address, telephone, fax and email) of the service provider's employee(s).*
- *Describe the **assistance** they provided, (i.e., did they fill out any portion of the form, provide you with information for you to add to the form, post the form to the USAC website etc.)*
- *Explain why you selected your service provider's employee(s) to **assist** your entity with completing or posting your Form 470.*

It is acknowledged that we indicated “yes” in response to the question above, and stated the following in describing the assistance given: *“In how to enroll and get the entity numbers for our schools”* and *“In how to identify the services that we need in accordance to the assessment of necessities in the schools.”* We also made the following statement: *“We procure the advice of our service provider's to fill the FCC Forms due to a professional relationship through a contract of services with our schools systems and for its expertise in this technical field.”*

However, as stated above, we responded to this question incorrectly **because we misunderstood USAC's question.** As explained below, when we read Question “C”, we focused on the words “assist” and “assistance” in general terms and did not realize that the question was whether we received assistance in the completion and/or posting of Form 470. We believe this misunderstanding is due to the fact that the questions were in English and the primary language of those of us working on E-rate matters for the school is Spanish. **We deeply regret this misunderstanding and took the opportunity to correct each of our statements in our Letter of Appeal submitted on June 26, 2015.**

The reality is that we answered “yes” to the question whether a service provider employee assisted us with the completion of our Form 470, in Question C, because we misunderstood that USAC was asking if we had ever received **any** assistance from a vendor (not that it was circumscribed to Form 470).

In sum, we misunderstood USAC's question. USAC's question was whether we received *assistance* from a service provider *with the completion and/or posting of our Form 470*. The answer to that question is unequivocally "NO." We did not receive any assistance from NEVESEM or any other service provider in the creation and posting of Form 470. Had we understood USAC's question correctly, we would have answered "NO." See **Declaration Under Penalty of Perjury of Evelyn Lafontaine, Ed. D.**

Given the circumstances here, failure to review USAC's denial would be most unfortunate because no improper service provider involvement occurred. We fully complied with the requirement that a service provider that participates in the competitive bidding process as a bidder cannot be involved in the preparation or certification of an applicant's Form 470. Our Form 470 was prepared and completed by our own personnel without outside assistance. Thus, it is respectfully requested that this Commission should overturn the denial and restore full funding of the FRN by allowing a waiver to rules and accept our amendment to USAC's question C, because ultimately the Escuela del Deporte **did not receive any assistance from NEVESEM or any other service provider in the creation and posting of Form 470**. There was no improper service provider involvement and the FRN should not be denied.

The monies received from USAC have been earmarked for good and valuable services received from a service provider who was selected through a fair and unbiased competitive bidding process and who, as an undisputed fact, offered the lowest cost proposal. This is a good use of E-rate funds. Under these facts, the Commission should exercise its discretion to waive its rules because strict compliance would be completely inconsistent with the public interest.

IV. CONCLUSION

For the reasons set forth above, the Escuela del Deporte respectfully requests grant of the instant Petition for Review and Waiver with respect to its E-Rate application for Funding Year 2014.

Respectfully submitted,

ESCUELA DEL DEPORTE

By: */s/ Evelyn Lafontaine*

Evelyn Lafontaine, Ed. D

Acting Director, Municipal Education System

Municipio de San Juan

P.O. Box 7179

San Juan, PR 00923-8179

Tel: (787) 480-4674

Email: elafontaine@sanjuanciudadpatria.com

Lizabel M. Negrón-Vargas, Esq.

Municipality of San Juan

P.O. Box 360764

San Juan, PR 00936-0764

Tel: (787) 392-0450

Email: lizanegron@yahoo.com

Attorney for the Municipality of San Juan

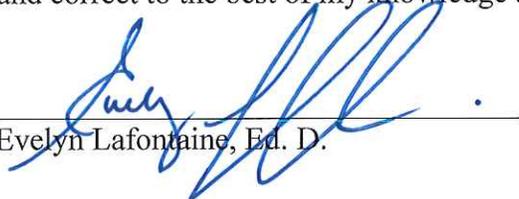
DATE: December 11, 2015

Via the FCC's Electronic Comment
Filing System (ECFS)

Declaration of Evelyn Lafontaine, Ed. D.

I, Evelyn Lafontaine, hereby declare under penalty of perjury that:

1. I am the Acting Director of the Municipality of San Juan's Municipal Education System. My business address is: My business address is: P.O. Box 70179, San Juan, PR 00936-8179.
2. I have read the accompanying *Request for Review and Waiver* by Escuela del Deporte of the Municipality of San Juan. The statements made in the *Request for Review and Waiver* are true and correct to the best of my knowledge and belief.



Evelyn Lafontaine, Ed. D.

Executed: December ____, 2015