

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	
	)	
Application for Review by Brooklyn Public	)	
Library of Streamlined Resolution of Requests	)	
Related to Actions by the Universal Service	)	
Administrative Company	)	

**APPLICATION FOR REVIEW BY BROOKLYN PUBLIC LIBRARY**

Ari Q. Fitzgerald  
C. Sean Spivey  
Hogan Lovells US LLP  
555 Thirteenth Street, NW  
Washington, DC 20004  
(202) 637-5600

Chloe Wasserman  
General Counsel  
Brooklyn Public Library  
10 Grand Army Plaza  
Brooklyn, NY 11238  
(718) 230-2776

*Counsel to Brooklyn Public Library*

August 18, 2017

## TABLE OF CONTENTS

<b>I. QUESTION PRESENTED FOR REVIEW .....</b>	<b>2</b>
<b>II. STATEMENT OF FACTS .....</b>	<b>2</b>
<b>III. APPLICABLE RULES AND STANDARD OF REVIEW .....</b>	<b>8</b>
<b>IV. DISCUSSION .....</b>	<b>9</b>
<b>A. The Facts Underlying BPL’s Clerical Error Present a Unique Legal and Policy Issue     the Commission has not Directly Addressed .....</b>	<b>9</b>
<b>B. The Bureau’s Application of <i>Central Islip</i> to the Facts of this Case is Misguided and     Should be Overturned or Revised .....</b>	<b>10</b>
<b>C. Applying the FCC’s Competitive Bidding Rules to Require BPL to Return the Full     Amount of its Funding Year 2014 Award will Cause Significant Detriment to the     Residents of Brooklyn and Should be Overturned or Revised .....</b>	<b>12</b>
<b>V. CONCLUSION AND REQUEST FOR RELIEF .....</b>	<b>14</b>

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	
	)	
Application for Review by Brooklyn Public	)	
Library of Streamlined Resolution of Requests	)	
Related to Actions by the Universal Service	)	
Administrative Company	)	

**APPLICATION FOR REVIEW BY BROOKLYN PUBLIC LIBRARY**

Pursuant to Section 1.115 of the Commission’s rules,<sup>1</sup> Brooklyn Public Library (“BPL”), through its undersigned counsel, respectfully requests that the Federal Communications Commission (“FCC” or “Commission”) review and reverse the Wireline Competition Bureau’s (“Bureau’s”) perfunctory denial of BPL’s petition for waiver of Sections 54.504(a)(1)(ix) and 54.511(a) of the Commission’s rules.<sup>2</sup> BPL seeks relief from inequitable application of the FCC’s competitive bidding rules which, if not waived, would require BPL to return more than a half-million dollars to USAC based on a single clerical error BPL made in its E-rate application (“Form 471”) for Funding Year 2014.

---

<sup>1</sup> 47 C.F.R. § 1.115.

<sup>2</sup> See *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, Public Notice, CC Docket No. 02-6, DA 17-712 at 8-9 (WCB July 31, 2017) (the “Bureau Denial”). A true and correct copy of the Bureau Denial is attached hereto as “Exhibit 1.”

## **I. QUESTION PRESENTED FOR REVIEW**

Whether the Bureau erred by relying on inapposite precedent in *Central Islip Free Union School District et al.*<sup>3</sup> to summarily deny BPL’s petition for waiver of Sections 54.504(a)(1)(ix) and 54.511(a) of the Commission’s rules when, consistent with FCC rules, BPL: (1) created a bid selection evaluation framework that made the price of eligible products and services the primary factor for consideration; (2) awarded the lowest-priced bidder the highest raw score for the price factor; and (3) at all times acted in good faith and consistent with the purposes underlying the FCC’s competitive bidding rules, and where application of the rules would force BPL to materially reduce its operating budget for items such as technology in the next year.

## **II. STATEMENT OF FACTS**

BPL is a not-for-profit system of 60 public libraries that has served New York City’s borough of Brooklyn since its creation by the New York State Assembly on May 1, 1892.<sup>4</sup> Independent from the New York City and Queens libraries, BPL is the fifth largest public library system in the United States.<sup>5</sup> BPL provides access to library services to the approximately 2.5 million residents of the borough of Brooklyn in New York City, New York.<sup>6</sup> Every Brooklyn

---

<sup>3</sup> See *Requests for Review of Decisions of the Universal Service Administrator by Central Islip Free Union School District et al.; Schools and Libraries Universal Service Support Mechanism*, Order, 26 FCC Rcd 8630, 8634-35, 8638, ¶¶ 9, 17 (WCB June 22, 2011) (“*Central Islip Order*”).

<sup>4</sup> See Declaration of Brett D. Robinson on Behalf of Brooklyn Public Library (the “Robinson Declaration”). A true and correct copy of the Robinson Declaration is attached hereto as “Exhibit 2.”

<sup>5</sup> See Robinson Declaration ¶ 3.

<sup>6</sup> See NYC Population: Current and Projected Populations, <http://www1.nyc.gov/site/planning/data-maps/nyc-population/current-future-populations.page> (last visited Aug. 2, 2017). Brooklyn’s neighborhoods are some of the most diverse in the country. Over 37 percent (37.6%) of Brooklyn’s residents were born outside of the United States, and 23.3 percent of its residents’ English proficiency is ranked “less than ‘very well.’” See AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES; DP02: SELECTED SOCIAL CHARACTERISTICS IN THE UNITED STATES; NEW YORK CITY AND BOROUGHES 11-12 (2015),

resident is located within a half-mile of a BPL branch, putting free and open access to information for education, recreation, and reference easily within reach.<sup>7</sup> BPL boasts over 1.6 million cardholders across its 60 branches and logged approximately 8.65 million visits to its branches last year.<sup>8</sup> In June 2016, BPL received the National Medal, the nation's highest honor for museums and libraries which is awarded to institutions that "demonstrate impactful programs and services that exceed the expected levels of community outreach."<sup>9</sup> BPL provided over two million personal computer sessions over its 1,400 PCs in the last fiscal year, and nearly one million attendees participated in BPL's award-winning programs last year.<sup>10</sup>

BPL relies on funding from the FCC's E-rate program<sup>11</sup> to provide digital services to its patrons.<sup>12</sup> BPL has applied for and received E-rate funding since 1998.<sup>13</sup> To date, BPL has received funding commitments totaling \$48 million.<sup>14</sup> Over these nearly two decades, BPL has at all times acted in good faith and complied with the FCC's and USAC's rules for E-rate

---

[http://www1.nyc.gov/assets/planning/download/pdf/data-maps/nyc-population/acs/soc\\_2015acs1yr\\_nyc.pdf](http://www1.nyc.gov/assets/planning/download/pdf/data-maps/nyc-population/acs/soc_2015acs1yr_nyc.pdf) (last visited Aug. 2, 2017).

<sup>7</sup> Robinson Declaration ¶ 3.

<sup>8</sup> *Id.*

<sup>9</sup> See Press Release, Brooklyn Public Library Earns Nation's Highest Honor for Museums and Libraries (June 1, 2016), <https://www.bklynlibrary.org/media/press/brooklyn-public-library-e-5> (last visited Aug. 2, 2017) ("BPL National Medal Release").

<sup>10</sup> Robinson Declaration ¶ 3.

<sup>11</sup> The FCC's E-rate program is formally known as the schools and libraries universal service program. For ease of reference, BPL refers to the program as the "E-rate" program herein.

<sup>12</sup> See Robinson Declaration ¶ 4.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

funding.<sup>15</sup> BPL has used this critical funding to purchase digital transmission and internet access services to connect its library branches to one another and its patrons to the world.

Consistent with its past practices, BPL initiated a competitive bidding process for Funding Year 2014 in the early part of that year.<sup>16</sup> Specifically, BPL submitted an FCC Form 470 describing the E-rate eligible services it wished to purchase for Funding Year 2014 on January 15, 2014.<sup>17</sup> BPL received proposals from Verizon Business (“Bid 1” or “Verizon”), Windstream Communications, LLC (“Bid 2” or “Windstream”) and Cogent Communications, Inc. (“Bid 3” or “Cogent”) to provide the services BPL sought in its Form 470.

BPL evaluated each of the three proposals using its “E-Rate Bid Assessment Worksheet” created for this purpose.<sup>18</sup> The Bid Worksheet included five selection criteria: (1) Prices/Charges; (2) Understanding of Needs; (3) Prior Experience; (4) Personnel Qualifications; and (5) Financial Stability.<sup>19</sup> BPL made clear in the notes section of the Bid Worksheet that each selection criteria should be evaluated on a scale of one to five (with one representing the lowest score and five representing the highest score) and that the “[p]ercentage weights must add up to 100%. **Price must be weighted the heaviest.**”<sup>20</sup> BPL assigned a weighting value of 50 points to the Prices/Charges criteria—30 points more than the next highest weighted selection criteria

---

<sup>15</sup> *Id.* ¶¶ 4, 6.

<sup>16</sup> *Id.* ¶ 5.

<sup>17</sup> See FCC Form 470 Application No. 221680001199170, Brooklyn Public Library (filed Jan. 15, 2014), [http://www.sifforms.universalservice.org/Form470Expert/5/PrintPreview.aspx?appl\\_id=1199170&fy=2014&src=search](http://www.sifforms.universalservice.org/Form470Expert/5/PrintPreview.aspx?appl_id=1199170&fy=2014&src=search) (last visited May 18, 2017).

<sup>18</sup> See BPL E-Rate Bid Assessment Worksheet for Internet Access Service (the “Bid Worksheet”). A true and correct copy of the Bid Worksheet is attached hereto as “Exhibit 3.”

<sup>19</sup> See Bid Worksheet.

<sup>20</sup> *Id.* (emphasis added).

(Understanding of Needs).<sup>21</sup> Thus, the evaluation framework in the Bid Worksheet complied with the FCC's competitive bidding rules for the E-rate program.

Unfortunately, in applying its evaluation framework, BPL committed a clerical error that resulted in it selecting a different service provider than Bid 3, the lowest-priced bidder.<sup>22</sup> BPL assigned Bid 3 the highest raw score (five points) for the Prices/Charges selection criteria. But BPL mistakenly transposed the raw scores for the other two bidders, Verizon and Windstream, inadvertently assigning Verizon a raw score of three points and Windstream a raw score of four points, despite the fact that Verizon's proposal included lower monthly recurring charges than Windstream's proposal.<sup>23</sup> BPL's clerical data-entry error, combined with the automatic tabulation of the vendors' overall rankings in the electronic Bid Worksheet, led to BPL selecting Windstream as the most cost-effective provider based on application of BPL's evaluation framework.<sup>24</sup> BPL filed an FCC Form 471 seeking E-rate funding for services based on the Windstream proposal.<sup>25</sup>

In 2016, USAC commissioned an independent audit of BPL's selection process for Funding Year 2014.<sup>26</sup> KPMG, the independent auditing firm hired by USAC to conduct the audit, found that "[w]hile [BPL] had bid evaluation criteria in place to weight price as the

---

<sup>21</sup> *Id.*

<sup>22</sup> Robinson Declaration ¶ 5.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See FCC Form 471 Application No. 954303, Brooklyn Public Library (filed Mar. 19, 2014), [http://www.slforms.universalservice.org/Form471Expert/FY17/PrintPreview.aspx?appl\\_id=954303&prevPage=true&isDisplay=true](http://www.slforms.universalservice.org/Form471Expert/FY17/PrintPreview.aspx?appl_id=954303&prevPage=true&isDisplay=true) (last visited Aug. 2, 2017).

<sup>26</sup> See KPMG LLC, *Brooklyn Public Library, Audit ID: SL2015BE112 (Ben: 123803); Performance audit for the Universal Service Schools and Libraries Program Disbursements related to Funding Year 2014 as of August 31, 2015* (July 27, 2016) (the "KPMG Audit"). A true and correct copy of the KPMG Audit is attached hereto as "Exhibit 4."

primary factor, [it] did not correctly calculate the raw pricing scores for two of three bids . . . .”<sup>27</sup> USAC agreed with KPMG that BPL made price the primary factor in its bid evaluation criteria.<sup>28</sup> Nonetheless, KPMG found that BPL had violated the FCC’s competitive bidding rules.<sup>29</sup> KPMG recommended that USAC seek recovery from BPL in the amount of \$570,426, the full amount of the funding commitment for the services purchased from Windstream for Funding Year 2014.<sup>30</sup>

USAC issued a Notification of Commitment Adjustment (“COMAD”) letter to BPL on March 24, 2017, rescinding the funding commitment in full.<sup>31</sup> In the COMAD letter, USAC alleged that “[t]he price of eligible products and services was not the primary factor in the vendor selection process . . . .”<sup>32</sup> BPL subsequently filed its Waiver Petition with the Bureau.<sup>33</sup>

In the Waiver Petition, BPL explained how its evaluation framework and process complied with the FCC’s competitive bidding rules.<sup>34</sup> BPL highlighted its otherwise spotless E-

---

<sup>27</sup> KPMG Audit at 10.

<sup>28</sup> *Id.* at 12.

<sup>29</sup> *See generally id.*

<sup>30</sup> *Id.*

<sup>31</sup> *See* Letter from Schools and Libraries Division, USAC, to Selvon Smith, Director of IT, Brooklyn Public Library (Mar. 24, 2017) (the “COMAD Letter”). A true and correct copy of the COMAD Letter is attached hereto as “Exhibit 5.”

<sup>32</sup> COMAD Letter at 4.

<sup>33</sup> *See* Petition for Waiver by Brooklyn Public Library of Sections 54.504(a)(1)(ix) and 54.511(a) of the Commission’s Rules, CC Docket No. 02-6 (filed May 22, 2017) (the “Waiver Petition”). On the same day BPL filed the Waiver Petition, BPL also filed an appeal with USAC. *See* Letter from Ari Q. Fitzgerald, Counsel to Brooklyn Public Library to Schools and Libraries Program Correspondence Unit, USAC, Letter of Appeal – Form 471 Application No. 954303 (May 22, 2017) (the “USAC Appeal”). USAC denied BPL’s appeal on June 22, 2017. *See* USAC, Administrator’s Decision on Appeal – Funding Year 2014-2015, Letter to Ari Q. Fitzgerald, Counsel to Brooklyn Public Library (June 22, 2017). BPL is filing a request for review of USAC’s denial contemporaneously with this appeal. *See* Request for Review by Brooklyn Public Library of a Decision of Universal Service Administrator, CC Docket No. 02-6 (filed August 18, 2017).

<sup>34</sup> *See* Waiver Petition at 7-8.



rate participation record over the past two decades.<sup>35</sup> And BPL described the severe cuts in critical services it would need to make in the event the FCC upheld the COMAD Letter.<sup>36</sup> BPL asked the Bureau to waive the FCC's rules and allow BPL to retain its original funding amount in full or, in the alternative, grant BPL a partial waiver of the rule and allow it to retain \$137,904, the estimated total amount of the lowest-priced bid (Bid 3) for Funding Year 2014.<sup>37</sup>

The Bureau denied BPL's waiver petition on July 31, 2017.<sup>38</sup> The Bureau announced its denial in its monthly *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company Public Notice*, without regard to the unique circumstances presented in this case and the compelling justifications for waiver of the Commission's rules.<sup>39</sup> In its decision, the Bureau merely cited to prior precedent "denying funding requests where the evidence demonstrated the applicant 'failed to adhere to its own evaluation criteria in the vendor selection process.'"<sup>40</sup>

---

<sup>35</sup> *Id.* at 8.

<sup>36</sup> Waiver Petition at 8-9.

<sup>37</sup> *See id.* at 9-11. Cogent and Windstream did not propose identical services. Cogent provided a price schedule for a 500 Mbps Dedicated Internet Access ("DIA") line, a 700 Mbps DIA line and a 1000 Mbps DIA line. Windstream, meanwhile, proposed a 500 Mbps transport line and a 750 Mbps line. Both Cogent and Windstream provided pricing for a 12 month service term. BPL therefore has calculated the estimated price of Cogent's services by adding together the monthly recurring charges for a 500 Mbps line and a 700 Mbps line for a one year service term.

<sup>38</sup> *See* Bureau Denial.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 8-9, n.16 (citing *Central Islip Order* at 8634-35, 8638, ¶¶ 9, 17).

### III. APPLICABLE RULES AND STANDARD OF REVIEW

#### *Section 54.511(a)*

Section 54.511(a) of the Commission’s rules requires E-rate recipients to “carefully consider all bids submitted and [ ] select the most cost-effective service offering.”<sup>41</sup> “In 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.”<sup>42</sup> The FCC does not require schools and libraries to select the lowest bids offered, but rather “permit[s] schools and libraries ‘maximum flexibility’ to take service quality into account and to choose the offering or offerings that meets their needs ‘most effectively and efficiently,’ where this is consistent with other procurement rules under which they are obligated to operate.”<sup>43</sup> “When evaluating bids, however, applicants must have a separate ‘cost category’ and that category must be given more weight than any other single factor.”<sup>44</sup>

#### *Standard of Review*

The Commission may waive its rules if good cause is shown.<sup>45</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>46</sup> In addition, the Commission may take into account

---

<sup>41</sup> 47 C.F.R. § 54.511(a).

<sup>42</sup> *Id.*.

<sup>43</sup> *See Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 ¶ 481 (1997).

<sup>44</sup> *See Application for Review of a Decision of the Wireline Competition Bureau by Henrico County School District Richmond, Virginia*, Order, 29 FCC Rcd 10837, 10838 ¶ 2 (2014) (“*Henrico FCC Order*”) (citing *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, Order, 18 FCC Rcd 26407 ¶ 50 (2003)).

<sup>45</sup> 47 C.F.R. § 1.3.

<sup>46</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

considerations of hardship, equity or more effective implementation of overall policy on an individual basis.<sup>47</sup>

The Commission reviews the record in this proceeding and the Bureau Denial with fresh eyes. As the Commission has previously explained, it “need not defer to a Bureau’s findings or conclusions in disposing of an application for review of a Bureau decision.”<sup>48</sup> “In passing upon applications for review, the Commission may grant, in whole or in part . . . such applications without specifying any reasons therefor.”<sup>49</sup>

#### **IV. DISCUSSION**

##### **A. The Facts Underlying BPL’s Clerical Error Present a Unique Legal and Policy Issue the Commission has not Directly Addressed**

The Commission generally requires return in full of E-rate funds disbursed for any requests in which the beneficiary failed to comply with the competitive bidding rules.<sup>50</sup> As Chairman Pai has previously chastised, however, “[this] penalty for [E-rate] paperwork mistakes is harsh.”<sup>51</sup> For example, the Commission has required schools or libraries found to have committed small procedural violations of the competitive bidding rules to forfeit funding commitments in their entirety.<sup>52</sup> But the Commission has also held that “recovery may not be appropriate for violation of all rules *regardless of the reason for their codification*.”<sup>53</sup> Recently,

---

<sup>47</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>48</sup> *See TCR Sports Broadcasting Holding, L.L.P. d/b/a Mid-Atlantic Sports Network v. Time Warner Cable Inc.*, Memorandum Opinion and Order, 25 FCC Rcd 18099, 18099 ¶ 1 n.5 (2010).

<sup>49</sup> *See* 47 U.S.C. § 155(c)(5).

<sup>50</sup> *See Schools and Libraries Universal Service Support Mechanism*, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15815-16 ¶ 21 (2004) (“*E-rate Fifth Report and Order*”).

<sup>51</sup> *See Henrico FCC Order*, 29 FCC Rcd at 10843 (Concurring Statement of Commissioner Ajit Pai).

<sup>52</sup> *Id.*

<sup>53</sup> *E-rate Fifth Report and Order*, 19 FCC Rcd at 15815 ¶ 19 (emphasis added).

the Commission sought comment on changing this rule in its *E-rate Modernization NPRM*,<sup>54</sup> but has not yet issued a final decision in that proceeding.

BPL has searched for FCC precedent with facts similar to those presented in this case but has not found a decision directly on point. Stated another way, as far as BPL is aware the FCC has not ruled that creating an E-rate bid evaluation framework that complies with the competitive bidding rules, but committing a clerical error in applying that framework, results in a violation of the competitive bidding rules. Thus, the facts in this case are an issue of first impression for the Commission. Chairman Pai and the FCC have both acknowledged that the agency may have previously applied the rules in a way that is unnecessary to achieving the FCC's policy objectives.

BPL therefore asks the Commission to reverse the Bureau's decision to deny BPL's waiver petition based on (1) the unique nature of the facts presented in this application, combined with (2) the Commission's prior recognition of the overly harsh penalties that can result from minor, unintentional clerical errors that can occur during the competitive bidding process.

**B. The Bureau's Application of *Central Islip* to the Facts of this Case is Misguided and Should be Overturned or Revised**

The Bureau cited to its decision in *Central Islip Free Union School District* as precedent for denying BPL's petition.<sup>55</sup> The Bureau specifically cited to its decision on a request for review from Northwest Arctic Borough School ("Northwest") for the proposition that BPL

---

<sup>54</sup> See *Modernizing the E-rate Program for Schools and Libraries*, Notice of Proposed Rulemaking, 28 FCC Rcd 11304, 11371-72 ¶¶ 252-53 (2013) (noting that "the risks to applicants of having USAC or the Commission seek full reimbursement of previously disbursed funds based on a rule or program violation has also grown, and sometimes full reimbursement is not commensurate with the violation incurred").

<sup>55</sup> See Bureau Denial at 8-9 (citing *Central Islip Order*).

“failed to adhere to its own evaluation criteria in the vendor selection process.”<sup>56</sup> But the facts in that case are markedly different from the facts in this case. The Bureau’s decision in *Central Islip* does not support denial of BPL’s waiver petition and should not be applied here.

In *Central Islip*, the Bureau refused to overturn USAC’s determination that Northwest failed to adhere to its own evaluation criteria during the vendor selection process.<sup>57</sup> Northwest purportedly created a scoring matrix that included several evaluation criteria, but was unable to attest to using the matrix as part of its bidder selection process.<sup>58</sup> Indeed, in an affidavit submitted with its request for review, a member of Northwest’s Board of Education swore that he could not recall filling out a scoring matrix and that he “underst[ood] that the lack of a scoring matrix means that [Northwest] cannot provide important documentation as to the fairness of the selection process.”<sup>59</sup> The Bureau held that the blank scoring matrix provided no evidence of how Northwest reviewed, scored or ranked the bids submitted on behalf of the bidders.<sup>60</sup>

By contrast, in this case BPL created a scoring matrix that indisputably complied with the FCC’s competitive bidding rules and used its matrix to evaluate the bids submitted for the 2014 Funding Year. BPL’s matrix included a separate cost category and awarded that category more weight than any of the other evaluation criteria. And BPL awarded the lowest-priced bidder the most points for the price criteria. BPL identified several other, lower weighted evaluation criteria and awarded scores for each of the other criteria as well. The only unintentional error BPL made was to transpose the scores for two of the three bidders on the price criteria. Unlike

---

<sup>56</sup> *Id.* (internal citation omitted).

<sup>57</sup> *Central Islip Order* ¶ 17.

<sup>58</sup> *Id.* ¶¶ 18-19.

<sup>59</sup> *See Appeal of Northwest Arctic Borough School District*, CC Docket No. 02-6 at Ex. D ¶ 10 (filed May 7, 2009).

<sup>60</sup> *Central Islip Order* ¶ 19.

the recipient in *Central Islip*, no one here contests that BPL used its rule-compliant Bid Worksheet to evaluate bids for Funding Year 2014.

The Bureau committed reversible error in holding that BPL failed to adhere to its evaluation criteria in the vendor selection process. BPL created a compliant bid review process and adhered to it in all material respects but for a single clerical error. *Central Islip* is inapposite to the facts of this case and does not support denial of BPL's waiver petition.

Assuming, *arguendo*, that the *Central Islip* precedent cited by the Bureau in its decision is applicable to the facts at issue here (a premise that BPL rejects), BPL notes that the Commission is not bound by Bureau precedent.<sup>61</sup> Indeed, the facts in this case and the disproportionate hardship that would result if BPL were required to reimburse USAC for the full amount of its Funding Year 2014 commitment militate in favor of distinguishing or declining to apply the Bureau's *Central Islip* precedent in this instance.

**C. Applying the FCC's Competitive Bidding Rules to Require BPL to Return the Full Amount of its Funding Year 2014 Award will Cause Significant Detriment to the Residents of Brooklyn and Should be Overturned or Revised**

To the extent BPL violated the FCC's competitive bidding rules, BPL deserves a waiver of the rule.<sup>62</sup> Adopting a strict liability standard under the special circumstances of this case would harm the public interest rather than further it. Principles of equity counsel in favor of a waiver and against seeking recovery of BPL's Funding Year 2014 commitment.

---

<sup>61</sup> See, e.g., *Comcast Corp. v. FCC*, 526 F.3d 763, 769-70 (D.C. Cir. 2008).

<sup>62</sup> BPL does not concede that its actions resulted in a violation of Sections 54.504(a)(1)(ix) or 54.511(a) or any of the FCC's other competitive bidding rules applicable to E-rate funding applications. As noted above, BPL has filed a request for review of USAC's decision contemporaneously with this application for review arguing, among other points, that BPL made a clerical error that does not rise to the level of a violation of the FCC's competitive bidding rules. See *infra* n.33.

First, BPL's only violation of the competitive bidding rules, assuming there was a violation, was to inadvertently transpose the raw bid scores for two of the three bids. Critically, BPL complied with the FCC's competitive bidding rules in every other respect. BPL's Bid Worksheet created a separate evaluation category for cost and weighted the cost category more heavily than any of the other evaluation categories. BPL also awarded the highest raw score to the lowest-priced bidder. BPL thus fully intended to comply with the competitive bidding rules and neither KPMG nor USAC has alleged that BPL attempted to act with any fraud, malice or intent to deceive.

Second, BPL has been a model steward of E-rate funds throughout its 19 years of participation in the program. The KPMG Audit and subsequent COMAD Letter were the first alleged violation of the FCC's competitive bidding rules by BPL.<sup>63</sup> And BPL has already implemented KPMG's recommendations to ensure that it does not make a similar clerical error in the future. BPL has enhanced its review process to verify that its Bid Worksheets are accurate and to ensure that a similar clerical error cannot occur again by building-in several layers of review prior to selecting a winning bidder.<sup>64</sup>

Third, and perhaps most importantly, BPL's ability to satisfy its digital transmission and internet access service needs is contingent upon its receipt of E-rate funds. BPL estimates that it would need to materially reduce its operating budget for key items such as technology if it is forced to return the funds USAC awarded it for internet service for Funding Year 2014.<sup>65</sup> BPL provides critical internet connectivity to thousands of library patrons in the Brooklyn borough each year, helping to bridge the digital divide in minority and low-income communities. Strict

---

<sup>63</sup> Robinson Declaration ¶ 6.

<sup>64</sup> *See id.*; KPMG Audit at 12.

<sup>65</sup> Robinson Declaration ¶ 7.

application of the competitive bidding rules in this case would jeopardize BPL's ongoing ability to connect its community to the rest of the digital universe.

BPL raised each of these public interest concerns in its Waiver Petition,<sup>66</sup> but the Bureau Denial is devoid of any discussion of these issues. The Bureau's failure to address these issues warrants a reversal of the Bureau Denial. The slightness of BPL's inadvertent clerical error, coupled with the hardship strict compliance with the competitive bidding rules would bring upon the Brooklyn community, support a decision to allow BPL to keep its Funding Year 2014 funding amount in full.

If, however, the Commission is unwilling to allow BPL to retain its entire funding amount for Funding Year 2014, BPL asks the Commission to grant a partial waiver of the rule and allow BPL to retain the amount of the lowest-priced bid. The more equitable result would be to only seek recovery from BPL of the difference between Windstream's and Cogent's bid amounts. The Commission would be well within its waiver authority to grant this equitable relief to BPL—an E-rate recipient with an otherwise faultless record of compliance with the Commission's rules that provides life-improving learning and social services to its community.

## **V. CONCLUSION AND REQUEST FOR RELIEF**

For the foregoing reasons, the Commission should reverse the Bureau Denial and waive 47 C.F.R. §§ 54.504(a)(1)(ix), 54.511(a) and any other applicable rules underlying the adverse findings in the KPMG Audit, the COMAD Letter and the Bureau Denial. Allowing BPL to retain the full amount of its original funding commitment for Funding Year 2014 would serve the public interest. In the alternative, BPL asks the Commission to partially waive its rules and only require BPL to return the difference between the amounts of Windstream's and Cogent's bids.

---

<sup>66</sup> See Waiver Petition at 7-9.



Respectfully submitted,

/s/ Ari Q. Fitzgerald

Ari Q. Fitzgerald  
C. Sean Spivey  
Hogan Lovells US LLP  
555 Thirteenth Street, NW  
Washington, DC 20004  
(202) 637-5600

Chloe Wasserman  
General Counsel  
Brooklyn Public Library  
10 Grand Army Plaza  
Brooklyn, NY 11238  
(718) 230-2776

cc: William Elliott  
Windstream Communications, LLC  
1440 M Street, 6th Floor  
Lincoln, NE 68510  
(402) 436-4466

Exhibits: Exhibit 1: *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, Public Notice, CC Docket No. 02-6, DA 17-712 (WCB July 31, 2017)

Exhibit 2: Declaration of Brett D. Robinson on behalf of Brooklyn Public Library

Exhibit 3: BPL 2014 E-Rate Bid Assessment Worksheet for Internet Access Service

Exhibit 4: KPMG LLC, *Brooklyn Public Library, Audit ID: SL2015BE112 (Ben: 123803); Performance audit for the Universal Service Schools and Libraries Program Disbursements related to Funding Year 2014 as of August 31, 2015* (July 27, 2016)

Exhibit 5: Letter from Schools and Libraries Division, USAC, to Selvon Smith, Director of IT, Brooklyn Public Library (Mar. 24, 2017)

## CERTIFICATE OF SERVICE

Pursuant to Section 54.721(c) of the Commission's rules, 47 C.F.R. § 54.721(c), I, C. Sean Spivey, hereby caused a true and correct copy of the foregoing **APPLICATION FOR REVIEW BY BROOKLYN PUBLIC LIBRARY** to be served on the following via United States mail this 18th day of August, 2017:

USAC  
Schools and Libraries Program – Correspondence Unit  
30 Lanidex Plaza West  
P.O. Box 685  
Parsippany, NJ 07054-0685

*C. Sean Spivey*  
\_\_\_\_\_  
C. Sean Spivey

# **Exhibit 1**



# PUBLIC NOTICE

**Federal Communications Commission**  
**445 12<sup>th</sup> St., S.W.**  
**Washington, D.C. 20554**

**News Media Information 202 / 418-0500**  
**Internet: <https://www.fcc.gov>**  
**TTY: 1-888-835-5322**

---

**DA 17-712**

**Released: July 31, 2017**

## **STREAMLINED RESOLUTION OF REQUESTS RELATED TO ACTIONS BY THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY**

### **CC Docket No. 02-6**

Pursuant to our procedure for resolving requests for review, requests for waiver, and petitions for reconsideration of decisions related to actions taken by the Universal Service Administrative Company (USAC) that are consistent with precedent (collectively, Requests), the Wireline Competition Bureau (Bureau) grants, dismisses, or denies the following Requests.<sup>1</sup> The deadline for filing petitions for reconsideration or applications for review concerning the disposition of any of these Requests is 30 days from release of this Public Notice.<sup>2</sup>

---

#### **Schools and Libraries (E-rate)**

##### **CC Docket No. 02-6**

##### **Dismissed as Moot**<sup>3</sup>

Ashwaubenon School District, WI, Application No. 1030484, Request for Waiver, CC Docket No. 02-6 (filed Dec. 16, 2016)

City of Holyoke Gas and Electric Department (Holyoke School District), MA, Application No. 937000, Petition for Reconsideration, CC Docket No. 02-6 (filed May 17, 2016)

---

<sup>1</sup> See *Streamlined Process for Resolving Requests for Review of Decisions by the Universal Service Administrative Company*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60, 06-122, 08-71, 10-90, 11-42, and 14-58, Public Notice, 29 FCC Rcd 11094 (WCB 2014). Section 54.719(b) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC, after first seeking review at USAC, may seek review from the Commission. Section 54.719(c) of the Commission's rules provides that parties seeking waivers of the Commission's rules shall seek review directly from the Commission. 47 CFR § 54.719(b)-(c). In this Public Notice, we have reclassified as Requests for Waiver those appeals seeking review of a USAC decision that appropriately should have requested a waiver of the Commission's rules. Similarly, we have reclassified as Requests for Review those appeals seeking a waiver of the Commission's rules but are actually seeking review of a USAC decision.

<sup>2</sup> See 47 CFR §§ 1.106(f), 1.115(d); see also 47 CFR § 1.4(b)(2) (setting forth the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission).

<sup>3</sup> See, e.g., *Requests for Review of Decision of the Universal Service Administrator by Diversified Computer Solutions, Inc.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 5250, 5251, para. 3 (WCB 2012) (dismissing appeals as moot where invoicing records demonstrate that the entity was fully compensated for the funding it requested and all submitted invoices funded).

Contact Network LLC (Homewood City Schools), AL, Application No. 973478, Request for Waiver, CC Docket No. 02-6 (filed Mar. 14, 2016)

Contact Network LLC (Lawrence County School District), AL, Application No. 947478, Request for Waiver, CC Docket No. 02-6 (filed Mar. 14, 2016)

Contact Network LLC (North Bolivar Consolidated School District), AL, Application No. 982311, Request for Waiver, CC Docket No. 02-6 (filed Mar. 14, 2016)

Contact Network LLC (Shelby County School District), AL, Application No. 964515, Request for Waiver, CC Docket No. 02-6 (filed Mar. 14, 2016)

Contact Network LLC (Walthall County School District), AL, Application No. 955007, Request for Waiver, CC Docket No. 02-6 (filed Mar. 14, 2016)

Manchester School District, NH, Application No. 940513, Request for Waiver, CC Docket No. 02-6 (filed Oct. 3, 2016)

#### Dismissed for Failure to Comply with the Commission's Basic Filing Requirements<sup>4</sup>

Success School, AZ, Application No. 1032426, Request for Waiver, CC Docket No. 02-6 (filed Feb. 21, 2017)

#### Dismissed on Reconsideration<sup>5</sup>

Sun Wireless (Lemon Grove Elementary School District), CA, Application No. 884447, Petition for Reconsideration, CC Docket No. 02-6 (filed June 30, 2017)

#### Granted<sup>6</sup>

---

<sup>4</sup> 47 CFR § 54.721 (setting forth general filing requirements for requests for review of decisions issued by USAC, including the requirement that the request for review include supporting documentation); *see also Wireline Competition Bureau Reminds Parties of Requirements for Request for Review of Decisions by the Universal Service Administrative Company*, CC Docket Nos. 96-45, 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 11-42, 13-184, 14-58, Public Notice, 29 FCC Rcd 13874 (WCB 2014) (reminding parties submitting appeals to the Bureau of the general filing requirements contained in the Commission's rules which, along with a proper caption and reference to the applicable docket number, require (1) a statement setting forth the party's interest in the matter presented for review; (2) a full statement of relevant, material facts with supporting affidavits and documentation; (3) the question presented for review, with reference, where appropriate, to the relevant Commission rule, order or statutory provision; and (4) a statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought); *Universal Service Contribution Methodology; Request for Review by Alternative Phone, Inc. and Request for Waiver*, WC Docket No. 06-122, Order, 26 FCC Rcd 6079 (WCB 2011) (dismissing without prejudice a request for review that failed to meet the requirements of section 54.721 of the Commission's rules).

<sup>5</sup> *See, e.g., Requests for Waiver and Review of Decisions of the Universal Service Administrator by Allan Shivers Library et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Order on Reconsideration, 29 FCC Rcd 10356, 10357, para. 2 (WCB 2014) (dismissing petitions for reconsideration that fail to identify any material error, omission, or reason warranting reconsideration, and rely on arguments that have been fully considered and rejected by the Bureau within the same proceeding).

<sup>6</sup> We remand these applications to USAC and direct USAC to complete its review of the applications, and issue a funding commitment or a denial based on a complete review and analysis, no later than 90 calendar days from the

(continued....)

*Discount Calculation*<sup>7</sup>

EAGLE College Prep II, Inc., AZ, Application No. 998267, Request for Review, CC Docket No. 02-6 (filed Dec. 3, 2015)

EAGLE College Prep II, Inc., AZ, Application No. 998270, Request for Review, CC Docket No. 02-6 (filed Dec. 4, 2015)

*Late-Filed FCC Form 471 Applications Filed within 14 Days of the Close of the Window*<sup>8</sup>

Academia Bautista Sotera Sanchez, PR, Application No. 171049067, Request for Waiver, CC Docket No. 02-6 (filed May 24, 2017)

Bartonville School District 66, IL, Application No. 171038735, Request for Waiver, CC Docket No. 02-6 (filed June 19, 2017)

Bensalem Township School District, PA, Application No. 171048830, Request for Waiver, CC Docket No. 02-6 (filed May 16, 2017)

Beverly Hills Unified School District, CA, Application No. 171040712, Request for Waiver, CC Docket No. 02-6 (filed June 1, 2017)

Brooklyn-Guernsey-Malcom School, IA, Application No. 171048733, Request for Waiver, CC Docket No. 02-6 (filed June 22, 2017)

Cambridge Montessori School, MA, Application No. 171048950, Request for Waiver, CC Docket No. 02-6 (filed July 12, 2017)

Cambridge Montessori School, MA, Application No. 171048951, Request for Waiver, CC Docket No. 02-6 (filed July 12, 2017)

Camden's Promise Charter School, et al., NJ and NY, Application Nos. 171049140, 171049147, 171048855, 171048819, 171049146, 171049094, 171048844, 171049124, 171049142,

(Continued from previous page) \_\_\_\_\_  
release date of this Public Notice. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications. We also waive sections 54.507(d) and 54.514(a) of the Commission's rules and direct USAC to waive any procedural deadline that might be necessary to effectuate our ruling. *See* 47 CFR § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year); 47 CFR § 54.514(a) (codifying the invoice filing deadline).

<sup>7</sup> *See, e.g., Requests for Waiver and Review of Decisions of the Universal Service Administrator by Aberdeen School District 5 et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 2152, 2152, para. 1 (WCB 2012) (finding that petitioners demonstrated that they are eligible for the discount level requested); 47 CFR § 54.505.

<sup>8</sup> *See, e.g., Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9259, para. 8 (2010) (*Academy of Math and Science Order*) (finding special circumstances exist to justify granting waiver requests where, for example, petitioners filed their FCC Forms 471 within 14 days of the FCC Form 471 filing window deadline).

171049081, 171049121, 171049132, 171048800, 171048851, Request for Waiver, CC Docket No. 02-6 (filed June 14, 2017)

Carroll County School District, MS, Application Nos. 171049123, 171049126, Request for Waiver, CC Docket No. 02-6 (filed May 25, 2017, supplemented June 30, 2017)

Cedar Grove School District, NJ, Application No. 171023621, Request for Waiver, CC Docket No. 02-6 (filed June 7, 2017)

Center School, NJ, Application No. 171049031, Request for Waiver, CC Docket No. 02-6 (filed May 25, 2017)

Charles E. Smith Jewish Day School, MD, Application No. 171028435, Request for Waiver, CC Docket No. 02-6 (filed June 6, 2017)

Cheder Bnei Torah, NJ, Application No. 171024426, Request for Waiver, CC Docket No. 02-6 (filed May 25, 2017)

Community Independent School District, Greenville School District 3, Indianola Independent School District, OK and TX, Application Nos. 171049069, 171049064, 171049062, Request for Waiver, CC Docket No. 02-6 (filed June 6, 2017)

Delaware County Christian School, PA, Application No. 171049077, Request for Waiver, CC Docket No. 02-6 (filed June 28, 2017)

Dracut Public Schools, MA, Application No. 171049165, Request for Waiver, CC Docket No. 02-6 (filed July 10, 2017)

Dublin Christian Academy, NH, Application No. 171049020, Request for Waiver, CC Docket No. 02-6 (filed July 12, 2017)

Eagle's Landing Christian Academy, GA, Application No. 171028448, Request for Waiver, CC Docket No. 02-6 (filed June 28, 2017)

Educational Alliance, NY, Application No. 171049149, Request for Waiver, CC Docket No. 02-6 (filed May 25, 2017)

Falmouth Academy, MA, Application No. 171049071, Request for Waiver, CC Docket No. 02-6 (filed June 28, 2017)

First Coast Christian School, FL, Application No. 171048787, Request for Waiver, CC Docket No. 02-6 (filed June 6, 2017)

Four Square Community Action, NC, Application No. 171049033, Request for Waiver, CC Docket No. 02-6 (filed May 25, 2017)

Frenship Independent School District, Lake Worth Independent School District, Legacy Preparatory Charter Academy, TX, Application Nos. 171049116, 171049115, 171049035, Request for Waiver, CC Docket No. 02-6 (filed June 20, 2017)

Grant County Library, AR, Application No. 171048052, Request for Waiver, CC Docket No. 02-

6 (filed June 12, 2017)

Guadalupe Center Educational Programs, Inc., UT, Application No. 171038734, Request for Waiver, CC Docket No. 02-6 (filed May 19, 2017)

Ivymount School, MD, Application No. 171049167, Request for Waiver, CC Docket No. 02-6 (filed May 25, 2017)

Joseph Kushner Hebrew Academy, NJ, Application No. 171024928, Request for Waiver, CC Docket No. 02-6 (filed June 28, 2017)

Kings Kids Academy of Health Sciences, FL, Application No. 171049135, Request for Waiver, CC Docket No. 02-6 (filed May 25, 2017)

La Salle Catholic School, IA, Application No. 171012502, Request for Waiver, CC Docket No. 02-6 (filed May 18, 2017)

Lawrence County Library, AR, Application No. 171045195, Request for Waiver, CC Docket No. 02-6 (filed June 7, 2017)

Lima School District #12, MT, Application Nos. 171036138, 171049053, Request for Waiver, CC Docket No. 02-6 (filed May 26, 2017)

Madera Unified School District, CA, Application No. 171048657, Request for Waiver, CC Docket No. 02-6 (filed May 15, 2017)

Manchester Essex Public School District, MA, Application No. 171049019, Request for Waiver, CC Docket No. 02-6 (filed July 10, 2017)

Monson School District, MA, Application No. 171048971, Request for Waiver, CC Docket No. 02-6 (filed July 10, 2017)

Monson School District, MA, Application No. 171048973, Request for Waiver, CC Docket No. 02-6 (filed July 10, 2017)

Nauset Regional School District, MA, Application No. 171048957, Request for Waiver, CC Docket No. 02-6 (filed July 10, 2017)

Notre Dame High School, MO, Application No. 171049005, Request for Waiver, CC Docket No. 02-6 (filed May 18, 2017)

Pittsburgh Central Catholic High School, PA, Application No. 171049061, Request for Waiver, CC Docket No. 02-6 (filed July 10, 2017)

Rockport School District, MA, Application No. 171037328, Request for Waiver, CC Docket No. 02-6 (filed July 10, 2017)

St Joseph School, MA, Application No. 171049164, Request for Waiver, CC Docket No. 02-6 (filed July 12, 2017)

St Joseph School, MA, Application No. 171048968, Request for Waiver, CC Docket No. 02-6



(filed July 12, 2017)

St. Rose of Lima (Archdiocese of Miami Schools), FL, Application No. 171049027, Request for Waiver, CC Docket No. 02-6 (filed May 19, 2017)

Stevenson School, CA, Application No. 171049163, Request for Waiver, CC Docket No. 02-6 (filed July 10, 2017)

United South Central School District 2134, MN, Application No. 171015080, Request for Waiver, CC Docket No. 02-6 (filed May 22, 2017)

University Preparatory School, CO, Application No. 171048824, Request for Waiver, CC Docket No. 02-6 (filed June 21, 2017)

Wapakoneta City School District, OH, Application No. 171027702, Request for Waiver, CC Docket No. 02-6 (filed June 23, 2017)

Washington Central Supervisory Union, VT, Application No. 171048817, Request for Waiver, CC Docket No. 02-6 (filed July 10, 2017)

Washington Central Supervisory Union, VT, Application No. 171048818, Request for Waiver, CC Docket No. 02-6 (filed July 10, 2017)

*FCC Form 486 – Late-Filed<sup>9</sup>*

Bell County School District, KY, Application Nos. 161923, 258334, 537311, 537391, Request for Review, CC Docket No. 02-6 (filed July 3, 2017 and supplemented July 13, 2017)

Cudahy School District, WI, Application Nos. 247677, 248085, 322899, 323815, 324020, 584003, 620131, 620682, 622648, 624209, 626345, 629186, 629539, 629727, 629803, 629932, 630035, 630164, 687345, 687400, 687432, 687447, 687458, 689464, 689596, 689684, 689791, 692557, 754949, 754977, 754985, 754989, 754993, 754997, 758234, 758240, 868050, 871495, 871942, Request for Review, CC Docket No. 02-6 (filed July 3, 2017 and supplemented July 12, 2017)

Floyd Municipal School District, NM, Application Nos. 388909, 532642, 579663, 636465, 763752, 923617, 928128, Request for Review, CC Docket No. 02-6 (filed July 3, 2017 and supplemented July 12, 2017)

Madera County Office of Education, CA, Application Nos. 429930, 486589, 757651, 991281,

---

<sup>9</sup> See, e.g., *Requests for Review and Waiver of the Decision of the Universal Service Administrator by Alaska Gateway School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 10182, 10185, para. 6 (WCB 2006) (*Alaska Gateway Order*) (granting appeals where applicants filed their FCC Forms 486 late as the result of immaterial clerical, ministerial or procedural errors, or filed late due to circumstances beyond their control); *Requests for Waiver of Decisions of the Universal Service Administrator by Archdiocese of New Orleans, Louisiana et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 31 FCC Rcd 11747, 11751, para. 11 (WCB 2016) (*Archdiocese of New Orleans Order*) (establishing a more rigid standard for late-filed FCC Forms 486 but continuing to apply the current *Alaska Gateway Order*-based standard to appeals filed with USAC or the Commission before January 30, 2017).

990971, 1050453, Request for Review, CC Docket No. 02-6 (filed June 26, 2017)

Sno-Isle Rural Libraries, WA, Application Nos. 148960 (FRNs 288580, 288582), 266305, 382691, 434583, Request for Review and Waiver, CC Docket No. 02-6 (filed Oct. 18, 2013)<sup>10</sup>

*Ministerial and/or Clerical Error*<sup>11</sup>

Erie 1 BOCES, NY, Application No. 1012609, Request for Review, CC Docket No. 02-6 (filed Mar. 16, 2017)

Meridian Joint School District, ID, Application No. 1028609, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2017)

North Penn School District, PA, Application No. 161026788, Request for Waiver, CC Docket No. 02-6 (filed July 11, 2017)

*Payment of Applicant's Share of the Purchase Price*<sup>12</sup>

---

<sup>10</sup> For FCC Form 471 application numbers 489285, 821891, and 875656, we deny the requests to review of the FY2005 Funding Commitment Decision Letter (FCDL) (dated Feb. 15, 2006), the FY2011 FCDL (dated Feb. 21, 2012), and the FY2012 FCDL (dated Oct. 2, 2012) as untimely. In addition, we deny the requests to modify the service start dates for the FCC Forms 486 for application numbers 691322, 769113, and 821891 as the requests were filed more than 60 days after the dates of the FCC Form 486 Notification Letters (dated Dec. 27, 2012 and Oct. 2, 2012) and are untimely. *See, e.g., Requests for Review of Decisions of the Universal Service Administrator by Agra Public Schools I-134 et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 5684, 5685, para. 3 (WCB 2010) (*Agra Public Schools Order*); *Requests for Waiver or Review of Decisions of the Universal Service Administrator by Bound Brook School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 5823, para. 1 (WCB 2014) (*Bound Brook School District*) (denying appeals on the grounds that the petitioners failed to submit their appeals either to the Commission or to USAC within 60 days, as required by the Commission's rules, and did not show special circumstances necessary for the Commission to waive the deadline). For the requests for waiver for FYs 1998 (application numbers 30571, 64254, 85219, 31423), 1999 (application number 148960, FRNs 288563, 288565, 288567, 288584, 288575), 2000 (application number 190290), 2006 (application number 538951), 2007 (application number 586757), and 2008 (application number 637629), we find that the request for an invoice deadline extension is more than 12 months late and does not present extraordinary circumstances. *See, e.g., Requests for Waiver or Review of Decisions of the Universal Service Administrator by Hancock County Library System et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 30 FCC Rcd 4723, 4726, para. 9 (denying requests for invoice extensions from funding years prior to 2014 that failed to demonstrate "extraordinary circumstances" that would justify filing invoice extension requests more than 12 months late). We also deny the request for a second invoice deadline extension for application number 821891 that was filed seven months after its latest deadline because Sno-Isle offers no basis on which to find that the delay in invoicing or seeking an extension was reasonable. *See, e.g., id.* at para. 10 (finding that employee misunderstanding of the E-rate invoicing procedures does not present extraordinary circumstances, nor offer a reasonable basis for a substantial delay in submitting invoices). We make no finding as the ultimate eligibility of the four applications for which we allow a late-filed FCC Form 486. *See supra* note 6.

<sup>11</sup> *See, e.g., Requests for Review of Decisions of the Universal Service Administrator by Archer Public Library et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15518, 15521-22, nn.19 & 21 (WCB 2008) (permitting correction of error concerning copying wrong price from a contract and mislabeling eligible services on an Item 21); *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 17319, 17320, para. 2, nn.5 & 21 (WCB 2010) (permitting applicants to add items from a source list omitted from FCC Form 471 and correct typographical errors).

Unified Networking Solutions, Inc. (Acushnet Public Schools), MA, Application No. 1029685, Request for Review, CC Docket No. 02-6 (filed Mar. 1, 2017 and Mar. 16, 2017)

*Unable to Timely Invoice Awaiting USAC Action*<sup>13</sup>

Barberton City Schools, OH, Application No. 1034332, Request for Waiver, CC Docket No. 02-6 (filed June 22, 2017)<sup>14</sup>

Lafayette Township School District, NJ, Application No. 1029028, Request for Waiver, CC Docket No. 02-6 (filed Mar. 24, 2017)

Northern Humboldt Consortium of Schools, CA, Application No. 1037347, Request for Waiver, CC Docket No. 02-6 (filed May 9, 2017)

*Waiver of Competitive Bidding Requirement to Comply with State and Local Procurement Rules*<sup>15</sup>

Encinitas Union School District, CA, Application Nos. 602626, 653949, 704220, 800921, Request for Review and/or Waiver, CC Docket No. 02-6 (filed May 10, 2013 and supplemented Sept. 19, 2013)

Encinitas Union School District, CA, Application Nos. 560067, 602626, 653949, 704220, 800921, Request for Review and/or Waiver, CC Docket No. 02-6 (filed May 10, 2013)

Denied

*Failure to Adhere to Bid Evaluation Criteria*<sup>16</sup>

(Continued from previous page) —————

<sup>12</sup> See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Al-Ihsan Academy et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 1927, para. 1 (WCB 2012) (granting an appeal from a petitioner that demonstrated it paid the required portion of the E-rate purchase price).

<sup>13</sup> See, e.g., *Request for Review and/or Waiver of Decisions of the Universal Service Administrator by Ada Public Library*; *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 32 FCC Rcd 1909, 1911-12, paras. 6, 9 (WCB 2017) (granting a waiver for applicants who were unable to file a BEAR form because they were either waiting for USAC to provide an FCC Form 498 ID or personal identification number at the time of the deadline due to one-time influx of requests in the fall of 2016 or they were waiting for USAC approval of a timely-filed request).

<sup>14</sup> Barberton City Schools' invoice was rejected because USAC's system did not recognize a previously approved contract expiration date change, making it appear as though the services were delivered after the contract lapsed.

<sup>15</sup> See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Aberdeen School District et al.*; *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 1941, 1942, para. 1 (WCB 2012) (granting waiver for a technical violation of the competitive bidding rules, and where there was no evidence of waste, fraud, and abuse); cf. *Requests for Review of Decisions of the Universal Service Administrator by Allendale County School District et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 6109, 6111, para. 4 (WCB 2011) (granting waiver where the applicant selected the lowest priced option and there was no evidence of waste, fraud or abuse).

<sup>16</sup> See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Central Islip Free Union School District et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 (continued....)

Brooklyn Public Library, NY, Application No. 954303, Request for Waiver, CC Docket No. 02-6 (filed May 22, 2017)

*FCC Form 486 – Late-Filed*<sup>17</sup>

New Glarus School District, WI, Application Nos. 553171, 863619, 925993, 998781, 1049661, Request for Review, CC Docket No. 02-6 (filed July 3, 2017 and supplemented July 12, 2017)

*Ineligible Services*<sup>18</sup>

Cooperative Education Service Agency (CESA) #10, WI, No Application Number Given, Request for Limited Exception, CC Docket No. 02-6 (filed May 12, 2016)

*Invoice Deadline Extension Requests*<sup>19</sup>

Frontier Communications Corporation (Elk Grove Unified School District), CA, Application No. 997989, Request for Waiver, CC Docket No. 02-6 (filed Apr. 25, 2017)

Whittier Union High School District, CA, Application No. 1004672, Request for Waiver, CC Docket No. 02-6 (filed Nov. 22, 2016 and supplemented Jan. 11, 2017)<sup>20</sup>

*Late-Filed FCC Form 471 Applications*<sup>21</sup>

The Academy at Ocean Reef, FL, Application No. 171017921, Request for Waiver, CC Docket No. 02-6 (filed June 30, 2017)

(Continued from previous page) \_\_\_\_\_

FCC Rcd 8630, 8634-35, 8638, paras. 9, 17 (WCB 2011) (denying funding requests where the evidence demonstrated that applicant “failed to adhere to its own evaluation criteria in the vendor selection process”).

<sup>17</sup> See *Archdiocese of New Orleans Order*, 31 FCC Rcd at 11751, para. 11 (establishing a more rigid standard for late-filed FCC Forms 486 filed at USAC or the Commission after January 30, 2017).

<sup>18</sup> See *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 30 FCC Rcd 9923, 9936 (WCB 2015) (releasing the eligible services list for funding year 2016 and stating that “[o]ff campus use, even if used for an educational purpose, is ineligible for support and must be cost allocated out of any funding request”). We find no special circumstances to justify this request for waiver.

<sup>19</sup> See, e.g., *Requests for Waiver of Decisions of the Universal Service Administrator by Ada School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 31 FCC Rcd 3834, 3836, para. 8 (WCB 2016) (denying requests for waiver of the Commission’s invoice extension rule for petitioners that failed to demonstrate extraordinary circumstances justifying a waiver); see also *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8966, para. 240 (2014) (establishing that it is generally not in the public interest to waive the Commission’s invoicing rules absent extraordinary circumstances); 47 CFR § 54.514.

<sup>20</sup> There is no record of a request for an invoice deadline extension with USAC, nor does Whittier Union High School District provide any evidence of an extension request for FRN 2740556 before its funding year 2015 invoice filing deadline of October 31, 2016.

<sup>21</sup> See, e.g., *Academy of Math and Sciences Order*, 25 FCC Rcd at 9259, para. 8 (denying requests for waiver of the FCC Form 471 filing window deadline where petitioners failed to present special circumstances justifying waiver of our rules).

Bellingham Public School District, MA, Application No. 171049343, Request for Waiver, CC Docket No. 02-6 (filed June 26, 2017)

Boston Public Library, MA, Application No. 171049218, 17049219, Request for Waiver, CC Docket No. 02-6 (filed June 27, 2017)

Caribou Public Library, ME, Application No. 171049199, Request for Waiver, CC Docket No. 02-6 (filed June 6, 2017)

Catholic Charities – Division of Developmental Disabilities District of Columbia, DC, Application Nos. 171049231, 171049413, Request for Waiver, CC Docket No. 02-6 (filed July 12, 2017)

Centro de Consejería y Recreación Kairos, PR, Application No. 171049255, Request for Waiver, CC Docket No. 02-6 (filed June 23, 2017)

Child Care Resource Center, CA, Application No. 171040818, Request for Waiver, CC Docket No. 02-6 (filed June 30, 2017)

Cobden Unit School District 17, IL, Application No. 171049251, Request for Waiver, CC Docket No. 02-6 (filed June 9, 2017)

Colegio San Jose, PR, Application No. 171049210, Request for Waiver, CC Docket No. 02-6 (filed June 1, 2017)

Columbia Community Unit School District 4, IL, Application No. 171049316, Request for Waiver, CC Docket No. 02-6 (filed June 19, 2017)

Commerce Public Library, TX, Application No. 171049221, Request for Waiver, CC Docket No. 02-6 (filed June 5, 2017)

Da Vinci Academy, PR, Application No. 171049321, Request for Waiver, CC Docket No. 02-6 (filed June 20, 2017)

Dayton SMART Bilingual Academy, OH, Application No. 171047250, Request for Waiver, CC Docket No. 02-6 (filed June 30, 2017)

Elmwood Park Public Library, IL, Application No. 171049242, Request for Waiver, CC Docket No. 02-6 (filed June 8, 2017)

Gackle-Streeter School District 56, ND, Application No. 171049288, Request for Waiver, CC Docket No. 02-6 (filed June 15, 2017)

Gardner-South Wilmington High School, IL, Application No. 171048958, Request for Waiver, CC Docket No. 02-6 (filed June 1, 2017)

Harding Charter Preparatory High School, OK, Application No. 171041281, Request for Waiver, CC Docket No. 02-6 (filed June 12, 2017)

Independence USD 446, KS, Application No. 171049170, Request for Waiver, CC Docket No. 02-6 (filed May 26, 2017)

Isleta Pueblo Library, NM, Application No. 171049268, Request for Waiver, CC Docket No. 02-6 (filed June 19, 2017)

Kingsville R-I School District, MO, No Application Number Given, Request for Waiver, CC Docket No. 02-6 (filed May 24, 2017)

Kokomo Howard County Public Library, IN, Application Nos. 171045449, 171049291, 171046119, Request for Waiver, CC Docket No. 02-6 (filed June 16, 2017)

Lubbock Public Library, TX, Application No. 171038537, Request for Waiver, CC Docket No. 02-6 (filed June 22, 2017)

Madisonville SMART Elementary, OH, Application No. 171049396, Request for Waiver, CC Docket No. 02-6 (filed June 30, 2017)

Montgomery County Public Schools, NC, Application No. 161043917, Request for Waiver, CC Docket No. 02-6 (filed Nov. 22, 2016)

Mount Olive Public Library, IL, Application No. 171049197, Request for Waiver, CC Docket No. 02-6 (filed June 5, 2017)

Mt. Olivet SDA Junior Academy, FL, Application No. 171049172, Request for Waiver, CC Docket No. 02-6 (filed May 26, 2017)

Ms. Manners Childcare Inc dba Manatee Learning Academy, FL, Application No. 171049422, Request for Waiver, CC Docket No. 02-6 (filed July 10, 2017)

Newport School District 56-415, WA, Application No. 171049366, Request for Waiver, CC Docket No. 02-6 (filed July 5, 2017)

North Olympic Library System, WA, Application Nos. 171049277, 171049278, Request for Waiver, CC Docket No. 02-6 (filed June 14, 2017)

Pelican Rapids School District #548, MN, Application No. 171049153, Request for Waiver, CC Docket No. 02-6 (filed June 5, 2017)

Prospect Ridge Academy, CO, Application No. 171049240, Request for Waiver, CC Docket No. 02-6 (filed June 7, 2017)

Red Rock Central ISD 2884, MN, Application No. 171038738, Request for Waiver, CC Docket No. 02-6 (filed June 7, 2017)

Rock County Christian School, WI, Application No. 171049402, Request for Waiver, CC Docket No. 02-6 (filed July 5, 2017)

Sacred Heart School, CA, Application No. 171049280, Request for Waiver, CC Docket No. 02-6 (filed June 29, 2017)

St. Catherine of Siena School, KY, Application No. 171049226, Request for Waiver, CC Docket No. 02-6 (filed June 6, 2017)



St. Joseph Catholic School, OK, Application No. 171049294, Request for Waiver, CC Docket No. 02-6 (filed July 5, 2017)

St. Leo the Great School, CA, Application No. 171049311, Request for Waiver, CC Docket No. 02-6 (filed June 21, 2017)

St. Pius X Elementary School, VA, Application No. 171049272, Request for Waiver, CC Docket No. 02-6 (filed June 15, 2017)

San Diego County Library, CA, Application No. 171049295, Request for Waiver, CC Docket No. 02-6 (filed June 22, 2017)

Science Technology Engineering and Math (STEM) School, CO, Application No. 171008441, Request for Waiver, CC Docket No. 02-6 (filed July 5, 2017)

Shawano School District, WI, Application No. 171029293, Request for Waiver, CC Docket No. 02-6 (filed June 21, 2017)

Shiloh Christian School, ND, Application No. 171049329, Request for Waiver, CC Docket No. 02-6 (filed June 28, 2017)

Suring Public School District, WI, Application No. 171012169, 171012193, Request for Waiver, CC Docket No. 02-6 (filed June 21, 2017)

Tarkington Community Library, TX, Application No. 171041943, Request for Waiver, CC Docket No. 02-6 (filed June 29, 2017)

Tucumcari Public Library, NM, Application No. 161062411, Request for Waiver, CC Docket No. 02-6 (filed Jan. 27, 2017)

Vanderheyden Hall School, NY, Application Not Filed, Request for Waiver, CC Docket No. 02-6 (filed May 9, 2017)

Westville School District 2, IL, Application No. 171048985, Request for Waiver, CC Docket No. 02-6 (filed July 5, 2017)

*Untimely Filed Requests for Review*<sup>22</sup>

Escuela Superior Acreditada P.E.C.E.S., Inc, PR, Application No. 161057968, Request for Waiver, CC Docket No. 02-6 (filed Jan. 23, 2017)<sup>23</sup>

---

<sup>22</sup> See, e.g., *Agra Public School Order*, 25 FCC Rcd at 5685, para. 3 (WCB 2010); *Bound Brook School District*, 29 FCC Rcd at 5823, para. 1 (WCB 2014) (denying appeals on the grounds that the petitioners failed to submit their appeals either to the Commission or to USAC within 60 days, as required by the Commission's rules, and did not show special circumstances necessary for the Commission to waive the deadline).

<sup>23</sup> In addition to submitting its appeal late, Escuela Superior Acreditada P.E.C.E.S., Inc. filed its FCC Form 470 on May 24, 2016 and submitted its FCC Form 471 eight days later on June 1, 2016, violating section 54.503(c)(4) of the Commission's rules, which states that E-rate applicants must wait 28 days after their FCC Forms 470 are posted (continued....)

Gallup-McKinley County Public Schools, NM, Application No. 248147, Request for Review, CC Docket No. 02-6 (filed July 11, 2011)<sup>24</sup>

North Central Education Service District, OR, Application No. 161061621, Request for Waiver, CC Docket No. 02-6 (filed Feb. 8, 2017)

Oconto Falls Public Schools, WI, Application No. 161058188, Request for Waiver, CC Docket No. 02-6 (filed June 22, 2017)

Perseus House, Inc., PA, Application No. 1040269, Request for Waiver, CC Docket No. 02-6 (filed May 11, 2017)

Schoolcraft Learning Community, MN, Application Nos. 161061883, 161061893, Request for Waiver, WC Docket No. 13-184 (filed Mar. 28, 2017)

For additional information concerning this Public Notice, please contact Kate Dumouchel in the Telecommunications Access Policy Division, Wireline Competition Bureau, at [kate.dumouchel@fcc.gov](mailto:kate.dumouchel@fcc.gov) or at (202) 418-7400.

- FCC -

(Continued from previous page) \_\_\_\_\_  
to USAC's website before entering into an agreement with a service provider for the requested services. 47 CFR § 54.503(c)(4).

<sup>24</sup> To be able to grant the changes it requests, Gallup-McKinley County Public Schools should have appealed either of the following USAC decisions within 60 days of the issuance of the decision in question: 1) the February 23, 2005 USAC Administrator's Decision on Appeal reducing the funding from \$1,537,125.00 to \$1,136,072.10 (a reduction of \$401,052.90 in E-rate funding) to reflect the removal of illegible services from the funding request; or 2) the December 30, 2005 Supplemental Form 471 Application Approval Letter reducing the funding \$96,697.80 to reflect a service substitution. We also find no special circumstances to merit a waiver.



# Exhibit 2

**DECLARATION OF BRETT D. ROBINSON  
ON BEHALF OF BROOKLYN PUBLIC LIBRARY**

1. I, Brett D. Robinson, am Executive Vice President for Finance and Administration for Brooklyn Public Library ("BPL"). I am over 18 years of age, of sound mind and the facts provided in this Declaration are within my personal knowledge.
2. The purpose of this Declaration is to provide background information regarding BPL and to describe the ministerial or clerical error that resulted in BPL selecting a different internet service provider for the 2014 E-rate Funding Year than the lowest-priced service provider.
3. BPL is a not-for-profit system of 60 public libraries that has served New York City's borough of Brooklyn since its creation by the New York State Assembly on May 1, 1892. Independent from the New York City and Queens libraries, the BPL is the fifth largest public library system in the United States. Every Brooklyn resident is located within a half-mile of a BPL branch. BPL has 1,605,534 cardholders across its 60 branches. BPL cardholders logged 8,650,686 visits in the last fiscal year and 994,279 people attended BPL's community programs during that period. BPL provided 2,184,487 personal computer sessions over its 1,400 PCs in the last fiscal year.
4. BPL relies on funding from the FCC's E-rate program to provide digital services to its patrons. BPL has applied for and received E-rate funding since 1998. To date, BPL has received funding commitments totaling \$48,228,098. BPL has at all times acted in good faith and complied with the FCC's and USAC's rules for E-rate funding.
5. BPL conducted a competitive bidding process for its internet access services for Funding Year 2014 and received three bids in response. BPL evaluated each of the three proposals using its "E-Rate Bid Assessment Worksheet" created for this purpose. This bid assessment worksheet was developed in compliance with the FCC's E-rate competitive bidding rules. Unfortunately, BPL committed a slight ministerial or clerical error that resulted in it selecting a different service provider than Cogent, the lowest-cost bidder. BPL assigned Cogent the highest raw score (five points) for the Prices/Charges selection criteria. But BPL mistakenly transposed the raw scores for Verizon and Windstream, inadvertently assigning Verizon a raw score of three points and Windstream a raw score of four points, despite the fact that Verizon's proposal included smaller monthly recurring charges than Windstream's proposal. BPL's clerical data-entry error, combined with the automatic tabulation of the vendors' overall rankings in the Bid Worksheet led to BPL selecting Windstream as the most cost-effective provider under its selection criteria.
6. A 2016 KPMG audit and subsequent commitment adjustment letter were the first alleged violation of the FCC's competitive bidding rules by BPL. In response to the KPMG audit, BPL has instituted measures to ensure that it does not make a similar error in the future. BPL has enhanced its review process to verify that its bid worksheets are accurate and to ensure that a similar error cannot occur again, including implementing several layers of review prior to selecting a winning bidder.

7. BPL will need to materially reduce its operating budget for key items such as technology if it is forced to return the funds USAC awarded it for internet service for Funding Year 2014.

I declare under penalty of perjury that the foregoing is true and correct Executed on August 18, 2018.



---

Brett D. Robinson

# Exhibit 3

Project or Service  
DescriptionInternet Access  
Internet Access

Selection Criteria	Weight*
Prices/Charges	50
Understanding of Needs	20
Prior Experience	15
Personnel Qualifications	10
Financial Stability	5
Other (describe)	
Other (describe)	

Verizon	
Raw Score**	Weighted Score***
3	150
4	80
4	60
3	30
5	25
	0
	0

Windstream	
Raw Score**	Weighted Score***
4	200
5	100
5	75
5	50
4	20
	0
	0

Cogent	
Raw Score**	Weighted Score***
5	250
3	60
3	45
3	30
3	15
	0
	0

None	
Raw Score**	Weighted Score***
0	0
0	0
0	0
0	0
0	0
	0
	0

Overall Ranking

100%

345

69%

445

89%

400

80%

0

0%

Vendor Selected: Windstream  
 Approved By: Jeff Marable  
 Title: Network Manager  
 Date: 2/18/2014

Notes:

\* Percentage weights must add up to 100%. Price must be weighted the heaviest

\*\* Evaluated on scale of 1 to 5: 1=worst, 5=best

\*\*\* Weight x Raw Score

# Exhibit 4



*Brooklyn Public Library*  
*Audit ID: SL2015BE112*  
*(BEN: 123803)*

*Performance audit for the Universal Service Schools and  
Libraries Program Disbursements related to Funding  
Year 2014 as of August 31, 2015*

Prepared for: Universal Service Administrative Company

As of Date: July 27, 2016

KPMG LLP  
1601 Market Street  
Philadelphia, PA 19103

---

## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	3
BACKGROUND .....	6
Program Overview .....	6
Beneficiary Overview .....	6
OBJECTIVES, SCOPE AND METHODOLOGY .....	8
Objectives .....	8
Scope.....	8
Methodology .....	8
RESULTS .....	10
Findings, Recommendations and Beneficiary Responses.....	10
Conclusion .....	14





**KPMG LLP**  
1601 Market Street  
Philadelphia, PA 19103-2499

## EXECUTIVE SUMMARY

July 27, 2016

Mr. Wayne Scott, Vice President – Internal Audit Division  
Universal Service Administrative Company  
2000 L Street, N.W., Suite 200  
Washington, DC 20036

Dear Mr. Scott:

This report presents the results of our work conducted to address the performance audit objectives relative to the Brooklyn Public Library, Billed Entity Number (“BEN”) 123803, (“BPL” or “Beneficiary”) for disbursements, of \$1,407,355, made from the federal Universal Service Schools and Libraries Program (“SLP”) related to the twelve-month period ended June 30, 2015, as of August 31, 2015 (hereinafter “Funding Year 2014”). Our work was performed during the period from October 16, 2015 to July 27, 2016, and our results are as of July 27, 2016.

We conducted this performance audit in accordance with generally accepted government auditing standards and *American Institute of Certified Public Accountants Consulting Standards*. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objective of this performance audit was to evaluate the Beneficiary’s compliance with the applicable requirements of 47 C.F.R. Part 54 of the Federal Communications Commission’s (“FCC”) Rules as well as FCC Orders governing federal Universal Service Support for the Schools and Libraries Support Mechanism (“E-rate Program”) relative to disbursements, of \$1,407,355, made from the E-rate Program related to Funding Year 2014.

As our report further describes, KPMG identified the following as a result of the work performed:

1. **SL2015BE112-F01: Failure to Comply with Competitive Bidding Requirements – Applicant Did Not Select the Most Cost-Effective Service Offering** – While the Beneficiary had bid evaluation criteria in place to weigh price as the primary factor, they did not correctly calculate the raw pricing scores for two of three bids evaluated for Funding Request Number (“FRN”) 2596173 (Internet Access). As a result, the Beneficiary did not select the most cost effective bid.
2. **SL2015BE112-F02: Beneficiary Over-Invoiced the SLP for Ineligible Services** – The Beneficiary included ineligible charges for upgraded circuits in transition, additional directory listings and “other business” non-recurring charges in the E-rate Program reimbursement requests submitted under FRNs 2596201 and 2596059.

Based on the above results, we estimate that disbursements made to the Beneficiary from the E-rate Program related to Funding Year 2014 were \$578,271 higher than they would have been had the amounts been reported properly.

In addition, we also noted other matters that we have reported to the management of the Beneficiary in a separate letter dated July 27, 2016.



This performance audit did not constitute an audit of financial statements in accordance with *Government Auditing Standards*. KPMG was not engaged to, and did not render an opinion on the Beneficiary's internal controls over financial reporting or over financial management systems (for purposes of OMB's Circular No. A-127, *Financial Management Systems*, July 23, 1993, as revised). KPMG cautions that projecting the results of our evaluation to future periods is subject to the risks that controls may become inadequate because of changes in conditions or because compliance with controls may deteriorate.

This report is intended solely for the use of the Universal Service Administrative Company, the Beneficiary, and the FCC, and is not intended to be and should not be relied upon by anyone other than these specified parties.

Sincerely,

KPMG LLP

---

### **List of Acronyms**

<b>Acronym</b>	<b>Definition</b>
BEAR	Billed Entity Applicant Reimbursement
BEN	Billed Entity Number
BPL	Brooklyn Public Library
C.F.R.	Code of Federal Regulations
CIPA	Children's Internet Protection Act
FCC	Federal Communications Commission
FCC Form 470	Description of Services Requested and Certification Form 470
FCC Form 471	Description of Services Ordered and Certification Form 471
FCC Form 472	Billed Entity Applicant Reimbursement Form
FCC Form 474	Service Provider Invoice Form
FCC Form 479	Certification of Compliance with the Children's Internet Protection Act
FCC Form 486	Receipt of Service Confirmation and Children's Internet Protection Act and Technology Plan Certification Form
FRN	Funding Request Number
Funding Year 2014	Disbursements made from the E-rate Program related to the twelve-month period ended June 30, 2015 (as of August 31, 2015)
GAGAS	Generally Accepted Government Auditing Standards
Item 21 Attachment	Description of the products and services for which discounts are sought in the FCC Form 471
SLP	Schools and Libraries Program
SPI	Service Provider Invoice
USAC	Universal Service Administrative Company
USF	Universal Service Fund

---

## **BACKGROUND**

### **Program Overview**

USAC is an independent not-for-profit corporation that operates under the direction of the FCC pursuant to 47 C.F.R. Part 54. The purpose of USAC is to administer the USF through four support mechanisms: High Cost; Low Income; Rural Health Care; and Schools and Libraries. These four support mechanisms ensure that all people regardless of location or income level have affordable access to telecommunications and information services. USAC is the neutral administrator of the USF and may not make policy, interpret regulations or advocate regarding any matter of universal service policy.

The Schools and Libraries (E-rate) Program is one of four support mechanisms funded through a Universal Service fee charged to telecommunications companies that provide interstate and/or international telecommunications services. USAC administers the USF at the direction of the FCC; USAC's SLP administers the E-rate Program.

The E-rate Program provides discounts to assist eligible schools and libraries in the United States to obtain affordable telecommunications equipment and services and Internet access. Five service categories are funded:

- Telecommunications
- Telecommunications Services
- Internet Access
- Internal Connections Other than Basic Maintenance
- Basic Maintenance of Internal Connections

Discounts range from 20% to 90% of the costs of eligible services, depending on the level of poverty and the urban/rural status of the population served. Eligible schools, school districts and libraries may apply individually or as part of a consortium.

The E-rate Program supports connectivity – the conduit or pipeline for communications using telecommunications services and/or the Internet. The school or library is responsible for providing additional resources such as the end-user equipment (computers, telephone handsets, and modems), software, professional development, and the other elements that are necessary to fully enable such connectivity.

USAC engaged KPMG to conduct a performance audit relating to the Beneficiary's compliance with the applicable requirements of 47 C.F.R. Part 54 of the FCC's Rules as well as FCC Orders governing the E-rate Program relative to disbursements, of \$1,407,355, made for Funding Year 2014.

### **Beneficiary Overview**

Brooklyn Public Library (BEN# 123803), is a public library system located in Brooklyn, New York, that serves over 2.5 million residents of the borough of Brooklyn.

---

The following table illustrates the E-rate Program support disbursed by USAC to the Beneficiary for Funding Year 2014 by service type:

<b>Service Type</b>	<b>Amount Committed</b>	<b>Amount Disbursed</b>
Internet Access	\$ 570,675	\$ 570,426
Telecommunications Services	\$ 913,180	\$ 836,929
<b>Total</b>	<b>\$1,483,855</b>	<b>\$1,407,355</b>

*Source: USAC*

Note: The amounts committed and disbursed reflect Funding Year 2014 activity as of August 31, 2015.

The committed total represents one FCC Form 471 application with five FRNs. We selected three FRNs, which represent \$1,327,424 of the funds disbursed for the audit period, to perform the procedures enumerated below related to the Funding Year 2014 application submitted by the Beneficiary.

---

## **OBJECTIVES, SCOPE AND METHODOLOGY**

### **Objectives**

The objective of this performance audit was to evaluate the Beneficiary's compliance with the applicable requirements of 47 C.F.R. Part 54 of the FCC's Rules as well as FCC Orders governing the E-rate Program relative to disbursements of \$1,407,355 made from the E-rate Program for Funding Year 2014. See the Scope section below for a discussion of the applicable requirements of 47 C.F.R. Part 54 of the FCC's Rules that are covered by this performance audit.

### **Scope**

The scope of this performance audit includes, but is not limited to, examining on a test basis, evidence supporting the competitive bidding process undertaken to select service providers, data used to calculate the discount percentage and the type and amount of services received, invoices supporting services delivered to the Beneficiary and reimbursed via the E-rate Program, as well as performing other procedures we considered necessary to form a conclusion relative to disbursements made from the E-rate Program for Funding Year 2014.

KPMG identified the following areas of focus for this performance audit:

1. Application Process
2. Competitive Bid Process
3. Calculation of the Discount Percentage
4. Invoicing Process
5. Reimbursement Process
6. Record Keeping
7. Final Risk Assessment

### **Methodology**

This performance audit includes procedures related to the E-rate Program for which funds were received by the Beneficiary for Funding Year 2014. The procedures conducted during this performance audit include the following:

#### **1. Application Process**

We obtained an understanding of the Beneficiary's processes relating to the application and use of E-rate Program funds. Specifically, for the FRNs audited, we examined documentation to support the Beneficiary's effective use of funding and that adequate controls exist to determine whether funds were used in accordance with the FCC's Rules. We used inquiry to determine whether the Beneficiary was eligible to receive funds and had the necessary resources to support the services for which funding was requested. We also used inquiry to determine if any individual schools or entities related to the Beneficiary are receiving USAC funded services through separate FCC Forms 471 and FRNs.

We obtained and examined documentation to determine whether the Beneficiary complied with the FCC's CIPA requirements. Specifically, we obtained and evaluated the Beneficiary's Internet Safety

---

Policy, and obtained an understanding of the process by which the Beneficiary communicated and administered the policy.

## **2. Competitive Bid Process**

For the FRNs audited, we obtained and examined documentation to determine whether all bids received were properly evaluated and that price of the eligible services was the primary factor considered. We also obtained and examined evidence that the Beneficiary waited the required 28 days from the date the FCC Form 470 was posted on USAC's website before signing contracts or executing month-to-month agreements with the selected service providers. We reviewed the service provider contracts to determine whether they were properly executed. We evaluated the services requested and purchased for cost effectiveness as well.

## **3. Calculation of the Discount Percentage**

For the FRNs audited, we obtained and examined documentation to understand the methodology used by the Beneficiary to calculate the discount percentage. We also obtained and examined documentation supporting the discount percentage calculation and determined if the calculations were accurate.

## **4. Invoicing Process**

For the FRNs audited, we obtained and examined invoices for which payment was disbursed by USAC to determine that the services claimed on the FCC Form 472 (BEARs) and corresponding service provider bills were consistent with the terms and specifications of the service provider agreements. We also examined documentation to determine whether the Beneficiary paid its non-discounted share in a timely manner. KPMG utilized a statistical sampling methodology to select a sample of invoices for review.

## **5. Reimbursement Process**

For the FRNs audited, we obtained and examined invoices submitted for reimbursement for the services delivered to the Beneficiary and performed procedures to determine whether USAC was invoiced properly. Specifically, we reviewed invoices associated with the BEAR forms for services provided to the Beneficiary. We verified that the services claimed on the BEAR forms and corresponding service provider bills were consistent with the terms and specifications of the service provider agreements and eligible in accordance with the E-rate Program Eligible Services List.

## **6. Record Keeping**

We determined whether the Beneficiary's record retention policies and procedures are consistent with the E-rate Program rules. Specifically, we determined whether the Beneficiary was able to provide the documentation requested in the audit notification, for the FRNs audited, as well as retained and provided the documentation requested in our other audit procedures.

## **7. Final Risk Assessment**

Based on the performance of the above audit procedures for the sampled FRNs, we considered any non-compliance detected during the audit and its effect on the FRNs excluded from the initial sample. We also considered whether any significant risks identified during the audit that may not have resulted in exceptions on the FRNs audited could affect other FRNs. Based on the coverage of

---

disbursements with the selected FRNs, KPMG concluded that expansion of the scope of the audit was not warranted.

## RESULTS

KPMG's performance audit results include a listing of findings, recommendations, Beneficiary's responses and USAC management's responses with respect to the Beneficiary's compliance with FCC requirements, and an estimate of the monetary impact of such findings relative to 47 C.F.R. Part 54 applicable to disbursements made from the E-rate Program for Funding Year 2014.

### **Findings, Recommendations and Beneficiary Responses**

KPMG's performance audit procedures identified two findings. The findings, including the condition, cause, effect, recommendation, Beneficiary response, Service Provider response, USAC management response and criteria are as follows:

**Finding No.**                    **SL2015BE112-F01: Failure to Comply with Competitive Bidding Requirements – Applicant Did Not Select the Most Cost-Effective Service Offering**

**Condition**                    While the Beneficiary had bid evaluation criteria in place to weight price as the primary factor, they did not correctly calculate the raw pricing scores for two of three bids evaluated for FRN 2596173 (Internet Access). As a result, the Beneficiary did not select the most cost effective bid.

Table 1 below shows the price included in each bid and the raw pricing scores that the Beneficiary assigned to each bid. As shown, the Beneficiary inverted the raw scores for Bids 1 and 2. Based on the prices included in each bid, the raw scores should have matched what is shown in the recalculated raw score column of Table 1.

**Table 1: Raw Pricing Scores**

<b>Bid #</b>	<b>Bid Price</b>	<b>Original Raw Score</b>	<b>Recalculated Raw Score</b>
Bid 1	\$ 21,865	3	4
Bid 2	\$ 55,298	4	3
Bid 3	\$ 5,298 to 8,956	5	5

Table 2 below shows the Beneficiary's original bid evaluation which resulted in the selection of Bid 2. Table 3 shows the Recalculation of the bid evaluation with the correct raw pricing scores, and the winner would have been Bid 3.



**Table 2: Original Bid Evaluation**

Selection Criteria	Weight	Bid 1		Bid 2 (Winner)		Bid 3	
		Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score
Price	50	3	150	4	200	5	250
Understanding of Needs	20	4	80	5	100	3	60
Prior Experience	15	4	60	5	75	3	45
Personnel Qualifications	10	3	30	5	50	3	30
Financial Stability	5	5	25	4	20	3	15
<b>Total</b>			345		445		400

**Table 3: Recalculated Bid Evaluation**

Selection Criteria	Weight	Bid 1		Bid 2		Bid 3 (Winner)	
		Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score
Price	50	4	200	3	150	5	250
Understanding of Needs	20	4	80	5	100	3	60
Prior Experience	15	4	60	5	75	3	45
Personnel Qualifications	10	3	30	5	50	3	30
Financial Stability	5	5	25	4	20	3	15
<b>Total</b>			395		395		400

**Cause**

The Beneficiary did not have an adequate review process in place to verify that the raw pricing scores were calculated correctly.

**Effect**

The monetary effect for this finding is \$570,426. This amount represents the total disbursement for FRN 2596173.

**Recommendation**

KPMG recommends that the Beneficiary enhance its review process to verify that bid evaluation scoring sheets are accurate in light of the content of bids and to ensure that the most cost effective bid is selected.

**Beneficiary Response**

As stated in the Condition section above, "the Beneficiary had bid evaluation criteria in place to weigh price as the primary factor." Specifically, as shown in Table 2, the Library created a separate selection criteria for Price and gave Price 50 percent of the total evaluation weighting. And for the criteria of Price, the Library appropriately gave the most points (5 points) to Bid 3 because it had the lowest price.

Unfortunately, for Funding Year 2014, after the Library's network manager and two of the Library's managers had discussed the raw scores to be awarded to each vendor for each selection criteria, the Library's network manager made a clerical error and inverted the raw Price scores for Bids 1 and 2 when he was typing the raw scores into a summary evaluating scoring matrix on his computer. This is shown in Tables 1 and 2 above. This clerical error resulted in an incorrect calculation of the final scores. Nevertheless, with regard to three of the four other selection criteria (Understanding of Needs, Prior Experience, and Financial Stability), Bid 3 had the lowest scores, reflecting the Library's opinion at the time

---

of bid evaluation that, on these non-price criteria, Bid 3 was less qualified than the other two Bids.

Once the Library was made aware of this clerical error, it enhanced its review process to verify that its bid evaluation scoring sheets are accurate and to ensure that a similar clerical error does not occur again. Specifically, following the evaluation discussion among the Library's network manager and the two Library managers, (1) the network manager will enter the scores from the network manager's and the two Library managers' individual bid evaluation scoring sheets into the summary evaluation scoring matrix, (2) the network manager will review the summary evaluation scoring matrix against the individual bid evaluation scoring sheets and notes from the evaluation discussion for accuracy; (3) when the network manager completes his/her review, copies of the summary evaluation scoring matrix, individual bid evaluation scoring sheets, and notes from the evaluation discussion will be forwarded to the two Library managers on the evaluation team, who will each thoroughly review the data for accuracy; and (4) once the two reviews have been conducted and any necessary corrections are made, the winning bidder will be selected based on the final scores in the summary evaluation scoring matrix. As was the case in Funding Year 2014, Price will continue to be the primary factor in the Library's selection process (*i.e.*, Price will be given the highest percentage in the total evaluation weighting).

**USAC  
Management  
Response**

The auditors reviewed the Beneficiary's bid evaluation to determine if it selected the most cost effective bid with price being the primary factor. The Beneficiary had bid evaluation criteria in place to weigh price as the primary factor, however the raw pricing score for two of three bids evaluated for FRN 2596173 was miscalculated.

Going forward, the Beneficiary should implement a review process to verify the accuracy of its bid evaluation scores to ensure that the most cost effective bid with price as the primary factor is selected. USAC Management will conduct outreach to the Beneficiary to address the areas of deficiency that are identified in the audit report.

USAC Management concurs with the finding and recommendation. USAC will seek recovery of the Schools and Libraries Program support consistent with the Rules.

**Criteria**

Per 47 C.F.R. Section 54.511(a) (2014), "*Selecting a provider of eligible services.* Except as exempted in §54.503(e), in selecting a provider of eligible services, schools, libraries, library consortia, and consortia including any of those entities shall carefully consider all bids submitted and must select the most cost-effective service offering. In 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."

---

<b>Finding No.</b>	<b><u>SL2015BE112-F02: Beneficiary Over-Invoiced SLP for Ineligible Services</u></b>
<b>Condition</b>	<p>Ineligible charges for upgraded circuits in transition, additional directory listings and “other business” non-recurring charges were included in the Beneficiary’s E-rate Program reimbursement request.</p> <p>a) FRN 2596201: The Beneficiary included ineligible prorated charges totaling \$8,260 related to circuit upgrades in BEAR #2218513 submitted to SLP. The Beneficiary requested circuit upgrades in the Item 21 Attachment for Form 471 #954303, however in the BEAR identified above, the Beneficiary submitted the prorated cost of the upgraded circuits in transition (\$8,260) in addition to the full monthly cost of the old circuits which had not yet been cut off from service. (Criteria 1, 4 and 5)</p> <p>b) FRN 2596059: The Beneficiary included ineligible charges totaling \$862 for additional directory listings and “other business” non-recurring charges in BEAR #'s 2146540, 2181863 and 2218543 submitted to SLP. The total of \$862 represents \$62.50 in monthly additional directory listing charges multiplied by twelve months plus two \$56 instances of “other business” non-recurring charges. (Criteria 1 to 3 and 5)</p>
<b>Cause</b>	The Beneficiary did not have an effective review and reconciliation process over Service Provider bills to validate that only eligible costs were submitted for reimbursement from the E-rate Program.
<b>Effect</b>	<p>The total monetary impact for this finding is an over disbursement of \$7,845.</p> <p>The monetary impact for FRN 2596201 is \$7,104 which represents the total ineligible circuit charges of \$8,260 multiplied by the 86% discount rate.</p> <p>The monetary impact for FRN 2596059 is \$741, which represents the sum of \$750 (additional directory listings) and \$112 (“other business” non-recurring charges) multiplied by the 86% discount rate.</p>
<b>Recommendation</b>	KPMG recommends that the Beneficiary enhance its review process of Service Provider bills to ensure that all ineligible services are identified and removed from E-rate Program reimbursement requests.
<b>Beneficiary Response</b>	<p>a) These prorated charges were submitted after consulting the USAC Hotline for advice.</p> <p>b) The Beneficiary revised its telecommunications provider bills review process to include Verizon’s Web portal review which provides additional billing details. The Verizon’s Web portal review that KPMG conducted provided additional levels of details than that of hard copy bills sent by the service provider each month.</p>
<b>KPMG Response</b>	KPMG acknowledges the Beneficiary’s response that they received guidance from the USAC hotline related to the pro-rated charges, however we received no documentation of this guidance. Additionally, we noted that the Beneficiary included and excluded the pro-rated charges inconsistently from month to month.

---

**USAC  
Management  
Response**

The auditors examined the Beneficiary's FCC Forms 472 (BEAR) and determined that the Beneficiary submitted the prorated cost of the upgraded circuits in transition in addition to the full monthly cost of the old circuits which had not yet been cut off from service. Additionally, the Beneficiary included ineligible directory assistance charges and non-reoccurring charges that the Beneficiary did not request in its contact with the Service Provider.

Going forward, the Beneficiary should subtract the ineligible charges prior to completing and submitting FCC Form 472. USAC Management will conduct outreach to the Beneficiary to address the areas of deficiency that are identified in the audit report.

USAC Management concurs with the audit finding and recommendation. USAC will seek recovery of the Schools and Libraries Program support consistent with the Rules.

**Criteria**

(1) Per 47 C.F.R. Section 54.502(a) (2014), "*Supported services*. Supported services are listed in the Eligible Services List as updated annually in accordance with paragraph (b) of this section."

(2) Per the 2014 Eligible Services List, page 6: "The following charges are not eligible for E-rate support:...Extra costs for directory listings."

(3) Per the 2014 Eligible Services List, page 6: "The following charges are not eligible for E-rate support: ...Services that are not related to voice services."

(4) Per the 2014 Eligible Services List, page 21: "In addition to items indicated in other sections of this Eligible Services List, the following items are not eligible for discount: ... Any product or service that is duplicative of a service for which funding has already been requested."

(5) Per FCC Form 472 Universal Service for Schools and Libraries Billed Entity Applicant Reimbursement Form Instructions, OMB 3060-0856 (July 2013) at 5: "Column (12) - Total (Undiscounted) Amount for Service per FRN. The total undiscounted amount represents the total amount paid per FRN for which you are seeking reimbursement of the discount on this BEAR. This total undiscounted amount should reflect the charges for services actually received and should not be an estimated amount. The total undiscounted amount should also not be the total annual amount for the FRN, unless you are making an annual filing or are contractually obligated to pay the entire cost of services. You must deduct charges for any ineligible services, or for eligible services delivered for ineligible recipients or used for ineligible purposes. You should gather your customer bills and any other documentation you need to support your calculations."

**Conclusion**

KPMG's evaluation of the Beneficiary's compliance with the applicable requirements of 47 C.F.R. Part 54 identified two findings, Failure to Comply with Competitive Bidding Requirements – Applicant Did Not Select the Most Cost-Effective Service Offering and Beneficiary Over-Invoiced SLP for Ineligible Services, relative to the disbursements made from the E-rate Program for Funding Year 2014. Detailed information relative to the findings is described in the Findings, Recommendations and Beneficiary Responses section above.

---

The combined estimated monetary impact of these findings is as follows:

<b>Service Type</b>	<b>Monetary Impact Overpayment (Underpayment)</b>
Telecommunications Services	\$ 7,845
Internet Access	\$570,426
<b>Total Impact</b>	<b>\$578,271</b>

KPMG recommends that the Beneficiary enhance its competitive bidding review process to verify that bid evaluation scoring sheets are accurate in light of the content of bids and to ensure that the most cost-effective bid is selected. Additionally, we recommend that the Beneficiary enhance the review of Service Provider bills to verify that all ineligible services are excluded before submitting reimbursement requests to SLP.

# Exhibit 5

Selvon Smith  
BROOKLYN PUBLIC LIBRARY  
10 GRAND ARMY PLZ  
BROOKLYN, NY 11238



Notification of Commitment Adjustment Letter

Funding Year 2014: July 1, 2014 - June 30, 2015

March 24, 2017

Selvon Smith  
BROOKLYN PUBLIC LIBRARY  
10 GRAND ARMY PLZ  
BROOKLYN, NY 11238

Re: Form 471 Application Number: 954303  
Funding Year: 2014  
Applicant's Form Identifier: Brooklyn14 Telco/Internet  
Billed Entity Number: 123803  
FCC Registration Number: 0009743519  
SPIN: 143030766  
Service Provider Name: Windstream Communications, LLC  
Service Provider Contact Person: William Elliott

Our routine review of Schools and Libraries Program (SLP) funding commitments has revealed certain applications where funds were committed in violation of SLP rules.

In order to be sure that no funds are used in violation of SLP rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see <https://www.fcc.gov/encyclopedia/red-light-frequently-asked-questions>.



TO APPEAL THIS DECISION:

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRNs) you are appealing. Your letter of appeal must include the
  - Billed Entity Name,
  - Form 471 Application Number,
  - Billed Entity Number, and
  - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

We strongly recommend that you use one of the electronic filing options. To submit your appeal to USAC by email, email your appeal to [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org) or submit your appeal electronically by using the "Submit a Question" feature on the USAC website. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal  
Schools and Libraries Program - Correspondence Unit  
30 Lanidex Plaza West  
PO Box 685  
Parsippany, NJ 07054-0685

For more information on submitting an appeal to USAC, see "Appeals" in the "Schools and Libraries" section of the USAC website.

## FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letters" posted at <http://www.usac.org/sl/tools/samples.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with SLP rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Program  
Universal Services Administrative Company

cc: William Elliott  
Windstream Communications, LLC

Funding Commitment Adjustment Report for  
Form 471 Application Number: 954303

Funding Request Number:	2596173
Services Ordered:	INTERNET ACCESS
SPIN:	143030766
Service Provider Name:	Windstream Communications, LLC
Contract Number:	1059034
Billing Account Number:	61139640
Site Identifier:	123803
Original Funding Commitment:	\$570,675.36
Commitment Adjustment Amount:	\$570,675.36
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$570,425.53
Funds to be Recovered from Applicant:	\$570,425.53
Funding Commitment Adjustment Explanation:	

As result of a audit, it has been determined that this funding commitment must be rescinded in full. The price of eligible products and services was not the primary factor in the vendor selection process. The applicant incorrectly inverted the scores of the bidders on the bid evaluation worksheet which resulted in the most cost effective vendor not being selected. FCC rules require that applicants select the most cost-effective product and/or service offering with price being the primary factor in the vendor selection process. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.