



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2006-2007

July 22, 2016

Linda Schreckinger Sadler, Esq.
Attorney at Law
26010 Hendon Road
Beachwood, OH 44122

Re: Applicant Name: CHINLE UNIFIED SCHOOL DIST 24
Billed Entity Number: 143224
Form 471 Application Number: 531261
Funding Request Number(s): 1470185, 1470257
Your Correspondence Dated: January 03, 2011

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2006 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1470185, 1470257
Decision on Appeal: **Partially Approved, Funding Denied**
Explanation:

- Your appeal has brought persuasive information that your appeal should be partially approved. Funding is denied for the reasons cited below.

Based on our review of these FRNs, we have determined that no contract was in place when the FCC Form 471 Certification was filed. FCC Rules for FY 2006 require that a contract be signed and dated prior to the filing of the FCC Form 471 Certification for the products and services requested. E-rate Program rules permits applicants to use Purchase Orders in lieu of a contract. Purchase Orders are legally binding agreements when the Purchase Orders meets all of the state's requirements. If the state procurement laws require signatures by the applicant and service provider to consider Purchase Order a

legally binding document; then FCC rules also require that the agreement covering services requested be signed by both parties prior to the filing of the FCC Form 471 Certification. You provided the following Purchase Requisitions and Purchase Orders for these FRNs: the Purchase Requisition and Purchase Order# 143612 for FRN 1470257 and Purchase Requisition and Purchase Order# 143613 for FRN 1470185. These documents were signed on February 14, 2006 by the applicant, Chinle Unified School District (CUSD). The documents were not signed by the respective service providers for these services and equipment. Arizona's School District Procurement Code (section R7-2-1001(70) (2011)) defines "a "purchase requisition" as a "document, or electronic transmission, whereby a school district requests that a contract be entered into for a specific need, and may include, but is not limited to, the description of the requested item, delivery schedule, transportation data, criteria for evaluation, suggested source of supply and information supplied for the making of any written determination required by this Article." By definition, a purchase requisition is a mere request to enter a contract, but not a contract itself. To be legally binding, there needs to be some indication that the service provider accepted the terms of the purchase requisition form, such as a quote, a signed acknowledgment form, or performance (i.e., delivery of the requested services and/or equipment). The purchase orders that CUSD provided to USAC for the above-referenced FRNs state "[a]cceptance of this purchase order binds the vendor to the terms and conditions on the reverse side." In addition, the Arizona courts have held that acceptance is required to form a legally binding contract. See, e.g., *K-Line Builders, Inc. v. First Fed. Sav. & Loan Ass'n*, 677 P.2d 1317, 1320 (Ariz. Ct. App. 1983) ("For an enforceable contract to exist, there must be an offer, an acceptance, consideration, and sufficient specification of terms so that obligations involved can be ascertained."). Therefore, the purchase orders would not become legally binding contracts until the service provider accepted the purchase orders (such as by the service provider signature, service provider acknowledgement of the purchase orders, or performance (i.e., service provider delivery of the services pursuant to the purchase orders). CUSD has not provided any evidence to show that the service provider accepted the terms of the purchase requisition form or accepted the terms of the related purchase orders prior to the FCC Form 471 certification. As a result, the purchase requisitions and purchase orders for these FRNs cannot be considered valid contracts under Arizona law because there is no evidence that the offer was accepted by the service provider. Therefore, because there was no legally binding agreement or contract in place with the service provider prior to the certification of the FCC Form 471, these FRNs are denied.

- USAC has determined that, at the time you submitted your Form 471 application, you did not have a signed and dated contract for services in place with your service provider(s) for services other than tariffed or month-to-month services. FCC Rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." 47 C.F.R. sec. 54.504(c). The FCC Rules further require that both beneficiaries and service providers must retain executed contracts, signed and dated by both parties. See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15824-26, FCC 04-190 para. 48 (rel. Aug. 13, 2004). The FCC has consistently upheld USAC's denial of funding when there is no contract in place for the funding request. See *Request for Review by Waldwick School District, Schools and Libraries Universal Service Support*

Mechanism, File No. SLD-256981, CC Docket No. 02-6, Order, 18 FCC Rcd. 22994, DA 03-3526 (rel. Nov. 5, 2003). The FCC Form 471 instructions under Block 5 clearly state that you MUST sign a contract for all services that you order on your Form 471 except tariffed services and month-to-month services. See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) at page 23.

Since your appeal was partially approved but funding was denied, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Victor Trejo