

August 22, 2018

Letter of Appeal (Form 471 #1001065, FRN 2727657 - Internet_FY15)

Federal Communications Commission (FCC)
Schools and Libraries Program
CC Docket No. 02-6

To whom it may concern:

Entity name (BEN)	San Antonio Independent School District (141544)
Contact person	Patricia Holub
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Service provider	TW Telecom Holdings, Inc. (SPN: 143032782)
Funding year	2015
Application type & number	FCC Form 471 # 1001065
FRNs	2727657
Appeal reason	SAISD was denied funding based on competitive bidding and 28 Day violations. However, SAISD requests met the 28 Day requirement and were available for bidding for a meaningful period of time.

Appeal explanation:

The San Antonio Independent School District (SAISD; 141544) is requesting the full funding of FCC Form 471: 1001065, FRN: 2727657 - Internet_FY15, which was denied in relation to the FCC's 28-day program rule. SAISD is appealing the above denial decision with the following explanation:

1. **USAC:** *"After a thorough investigation, it was determined that you failed to comply with all FCC and/or state and local procurement/competitive bidding requirements. The Request for Proposal (RFP) utilized during the competitive bidding process for services requested in FRN 1699073589 was not available to all potential bidders for at least 28 days. The RFP was posted on 10/03/2014 and the due date for submission of bids was 10/30/2014, which is less than 28 days."*
 - a. **SAISD:** We posted RFP 14-055 (AT) on 10/3/2014 and established a due date of 10/30/2014. This is a 28 day period and meets the FCC's 28-day program rule.
2. **USAC:** *"However, the FCC Form 470 was posted on 10/5/2014 with an ACD of 11/2/2014. The due date for submission of bids was 10/30/2014 which is prior to the ACD of 11/2/2014. In order to ensure a fair competitive bidding process, the FCC Form 470 and the RFP must both be available for at least 28 days before considering all bids received and selecting a service provider. Since you failed to comply with FCC competitive bidding requirements, you violated the competitive bidding process."*
 - a. **SAISD:** SAISD drafted the FCC Form 470 #879060001242351 and submitted it for certification on 10/3/2014 to ensure the ACD matched the due date for submission of bids on the RFP dated, 10/30/2014. Subsequently ensuring a fair competitive bidding process, SAISD anticipated the FCC Form 470 and the RFP would both be available for at least 28 days before considering all bids received and selecting a service provider. Unfortunately, the certification of the FCC Form 470 didn't occur until 10/5/2018. This resulted in a 2 day loss in the 28 day process and this is a **minimal impact** as outlined in the attached "Aberdeen opinion, FCC 07-63". The attached document indicated the FCC accepted waivers for funding because the districts only missed the deadline by a

minimal number of days, specifically 1-3 days. SAISD highlighted the details of this decision on pages 6 and 7 of the attached "Aberdeen opinion, FCC 07-63" in an effort to draw a parallel between the SAISD and the circumstances of Petitioners in the aforementioned document. The FCC's response in the pages referenced favors SAISD's appeal; FCC states: *"Furthermore, we find that several of these Petitioners, while not waiting the full 28 days before entering into an agreement, only missed the 28-day deadline by a minimal number of days (i.e., one to three days) and therefore their requests for discounted services were subject to competitive bidding for a meaningful period of time. While we emphasize that our competitive bidding rules are important to ensure a fair bidding process, we find that denying these Petitioners requests for funding would create undue hardship and prevent these potentially otherwise eligible schools and libraries from receiving E-rate funding. We therefore find that good cause exists to grant Petitioners a waiver of section 54.504(b)(4) of our rules."*

- b. **SAISD:** In addition, the attached additional supporting documents further exemplify SAISD's due diligence. The RFP was posted and opened for the entire 28 days beginning 10/3/2014 on the Texas Purchase Group website (see attachment SAISD_POSTING_INTERNET_10.3.14.pdf), and via the San Antonio Express on 10/5/2014 and 10/12/2014 (see attachment SAISD_REQUEST_10.5.2014_10.12.2014.pdf). The Form 470 was certified on 10/5/2014 (see USAC Open Data) and evaluations for proposals did not begin until 11/7/2014, and concluded on 11/17/2014 (see attachments SAISD_BIDREVIEW_INTERNET.pdf) – this surpassed the 28 day requirement.

- 5. **USAC:** *"Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant."*

- c. **SAISD:** The explanation of timelines, FCC references and supporting documents reveal the error does not warrant a complete rejection of the services requested in the application. The procurement process met the FCC's standard for "open and fair" competitive bidding.
 - i. All bidders were treated the same. No bidder had advance knowledge of the project information. The same information was shared with all bidders. No gifts were received by service providers. Further, Having a 26-day period between the 470 certification and the bid submission deadline, while two days short of the rule, did not result in and there is no evidence of:
 - 1. waste, fraud or abuse
 - 2. SAISD benefiting from the error
 - 3. harm to any service provider or any provider interested in vying for the contract (i.e., all bids submitted were considered); or
 - 4. evidence or claim that SAISD is paying a higher price than is otherwise commercially available, nor that any service provider was rejected or denied a reasonable opportunity to submit a bid.
- d. **SAISD:** Denial of funding for the inadvertent noncompliance with the 28-day rule (by two days) will cause an undue hardship on SAISD and prevent receipt of E-rate funding for otherwise eligible schools and libraries. This is not in keeping with the FCC's intentions.

SAISD has been an E-rate applicant since the inception of the E-rate program, without issue. During that time, SAISD's 54,000 students (100% of which receive Free and Reduced Lunch) have benefited from access to digital learning at the FCC's desired thresholds.

Sincerely,



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