**Before the**

**Federal Communications Commission**

**Washington DC 20554**

**In the Matter of:**

)

Request for Review of a decision )

by the Schools and Libraries Division ) Administrator Correspondence Dated

for Clarksdale Municipal School District, ) March 15, 2017

Mississippi )

)

)

Schools and Libraries Universal Service ) CC Docket No. 02-6

Support Mechanism )

**Request for Review or Waiver**

Requestor: Clarksdale Municipal School District

Billed Entity Number: 128534

FCC Registration Number: 0011926615

Funding Request Numbers: 2481614, 2481642

Form 471 Number: 911024

In accordance with Sections 54.719 through 54.721 of the Commission’s Rules, Clarksdale Municipal School District (Clarksdale) requests Federal Communications Commission (Commission) review a decision of the Schools and Libraries Division of the Universal Service Administrative Company (Administrator). The Administrator filed an internal appeal for the above referenced FRN and issued a denial letter on March 15, 2017.

Consistent with precedent in the Sweetwater decision,[[1]](#footnote-1) Saint Augustine School,[[2]](#footnote-2) and Administrator procedure at the time, Clarksdale requests that the Commission overturn this denial and restore funding to this impoverished, remote Mississippi school district. In Sweetwater, the Commission acknowledged difficulties consortia face when issuing bids and awarding contracts under E-Rate rules. Saint Augustine allowed additional entities added to the consortium Form 470. The issues here mirror those of Sweetwater, Saint Augustine and many other consortium and large applicants.

Alternatively, and in the public interest, Clarksdale asks the Commission to waive any minor rule violations in this case and provide desperately needed funding for Clarksdale’s 2013 funding request.

**Background**

On January 20, 2011the Southern-Regional Educational Service Agency of Mississippi (S-RESA), issued a bid for statewide broadband service and filed Form 470 number 260740000891683 for eligible E-Rate services. S-RESA is authorized by Mississippi statute to negotiate and enter into contracts on behalf of member entities.[[3]](#footnote-3) (Attachment A). The Form 470 indicated an RFP was available and gave detail of requested services on the Form 470, including all manner of telecommunications services at “Considerable Quantities, statewide.” The form listed 32 Mississippi school districts from all geographic areas of the state, including two counties adjacent to Coahoma County, the home county for Clarksdale.[[4]](#footnote-4)

After the bid closed and contracts awarded, Clarksdale wished to secure services under the consortium master contract using the S-RESA consortium Form 470. Clarksdale joined the S-RESA consortium and signed a Letter of Agency with the consortium on March 4, 2011. On March 22, 2011 Clarksdale awarded contracts to Contact Network and Telepak Networks citing the S-RESA Form 470. During application review questions were raised about the absence of Clarksdale on the consortium Form 470. After communication with senior Administrator officials, Clarksdale was added to the S-RESA Form 470 and the application funded. Redacted emails are included here as Attachment B.

Because the S-RESA master contract was multi-year, Clarksdale cited the original Form 470 in subsequent years. The Fund Year 2012 application was funded. However, the Fund Year 2013 application was held for protracted review. Beginning in November 2014 through September 2016, Clarksdale contacted the Administrator numerous times seeking assistance with the application. Clarksdale noted:

This is a follow up email  to my email that I sent on November 6, 2014 concerning the **Clarksdale Municipal School District entity # 128534**.  My district  was funded for their 2012 application # 867719 and their 2014 application # 982887.  At this point I still have not been funded for my **2013 application # 911024**.  I have cleared a very thorough PIA review all 3 years providing the same information about his application process in obtaining the contract.  I emailed and called and talked several times to the reviewer and their supervisor trying to find out why my 2013 application has not been funded. The response I am getting is that it’s under review still and no additional information is needed and no time line has been decided.[[5]](#footnote-5)

On September 26, 2016, almost two years after the initial communication, the Administrator informed Clarksdale the 2013 application would be denied because “The FCC Form 470 cited does not include the billed entity or entities requesting services that are listed on the FCC Form 471.”[[6]](#footnote-6)

On appeal, the Administrator again denied funding, stating “On March 15, 2016 the FCC confirmed that it is a rule violation if the BEN was not part of the consortium before the

consortium filed the FCC Form 470 and the same entity cited that consortium

FCC Form 470 in an FRN.”[[7]](#footnote-7) (Attachment C).

**Discussion**

Since the inception of the E-Rate program the Commission has allowed and even encouraged the formation of consortia:

“The Commission encouraged eligible entities, however, to participate in consortia with other eligible schools, libraries, and health care providers and public sector (governmental) entities, because such participation should enable them to secure telecommunications and information services and facilities under more favorable terms and conditions than they could negotiate alone.”[[8]](#footnote-8)

Throughout the E-Rate program consortia have evolved to three distinct categories: state purchasing entities, state and regional purchasing cooperatives under state statute, and ad-hoc groups of applicants leveraging purchasing power.

State purchasing entities may post Form 470s for all entities in a given state simply by checking one or several boxes on the Form 470. Resulting contracts are automatically available to the universe of entities included in the checked boxes, including entities that did not exist when the Form 470 was posted.

All other consortia, including S-RESA must manually list consortium members on each posted Form 470. State and regional purchasing cooperatives often post RFPs and Forms 470 for statewide services but may not list every school district, school, library or other eligible entity on the original Form 470. The Administrator had a procedure in place to evaluate competitive bidding and could add entities to the Form 470 after contracts had been awarded, such as the case with Clarksdale in Fund Years 2011 and 2012.

Clarksdale relied on this procedure to its detriment when filing Fund Year 2012 and 2013 Forms 471. Had Clarksdale known there would be a severe policy change, Clarksdale could have filed a local Form 470 and used the master contract as a bid response and possibly confirmed the existing contract. However, with assurance from senior Administrator management that Clarksdale had been added to the S-RESA Form 470, there was no need to rebid the master contract.

Prior to the Administrator decision in this case, the Commission has allowed consortia to add members to Forms 470. Saint Augustine was part of the Rhode Island Department of Education state master contract but was inadvertently omitted from the state Form 470 and RFP. The Commission concluded this was a ministerial error and allowed Saint Augustine School to be added to the Form 470 after a contract had been awarded.

In Sweetwater the Commission overturned a funding denial for improper bidding. Sweetwater issued an RFP to potentially serve all schools in the state. The Sweetwater Form 470 included an extensive list of school districts. Even with the extensive list, at least two schools were added to the Form 470 and funded using the Sweetwater Form 470 in Fund Year 2015.[[9]](#footnote-9)

The Commission agreed with Sweetwater and ENA that the evaluation method used complied with program rules.

Like Saint Augustine and Sweetwater, the S-RESA was authorized by statute to procure services on behalf of member entities. Clarksdale joined the S-RESA consortium before filing its Form 471.

Further, there is absolutely no regulation requiring all entities to be listed on the Form 470. According to Title 47 CFR § 54.503(c)(i) and (ii), the posted Form 470 must include: “(i) A list of specified services for which the school, library, or consortia including such entities, anticipates they are likely to seek discounts; and (ii) Sufficient information to enable bidders to reasonably determine the needs of the applicant.”

The S-RESA Form 470 and RFP made clear that the services requested were intended to potentially serve all schools in the state of Mississippi. Listed on the Form 470 were two school districts adjacent to Clarksdale. Tunicia and Quitman schools are located immediately east and northeast of Coahoma county, Clarksdale’s home county. Any potential service provider considering submission of a bid for services would have sufficient information to determine the needs of Clarksdale by virtue of Clarksdale’s proximity to Tunicia and Quitman schools.

In Fund Year 2013, the third year of the master contract, the Administrator delayed a funding decision for over three years before denying the application based on an FCC “clarification” issued on March 15, 2016. There is absolutely no record of this clarification and the Administrator stated that no information could be provided about the clarification other than the previous Administrator procedure of adding entities to the Form 470 was overturned with the clarification.[[10]](#footnote-10)

It is unprecedented that a major policy decision concerning funding for Clarksdale and potentially hundreds of applicants and millions of dollars was made under cloak of darkness, without public notice and cannot be disclosed over a year later. Additionally, FCC Orders are typically prospective in nature and do not penalize applications prior to the decision. In this case, the decision was retroactively applied three years earlier.

**Conclusion**

Clarksdale is an impoverished school district in rural Mississippi with approximately 95 percent of the student population eligible for the National School Lunch Program. E-Rate funding is vital to provide Internet Access to students, teachers and administrators. In Fund Year 2011 Clarksdale secured services from a master contract and was added to the consortium Form 470 by the Administrator.

Clarksdale secured services through a master contract negotiated by a regional educational service agency authorized by statue to negotiate and enter into contracts statewide.

Clarksdale relied on advice from senior Administrator officials who assured Clarksdale it had been added to the S-RESA consortium Form 470.

The Clarksdale 2013 fund request was under review for over three years.

The Clarksdale 2013 fund request was denied based on a secret communication between the Commission and Administrator that cannot be disclosed even in preparation for this appeal.

The secret communication between the Commission and the Administrator was retroactively applied three years prior.

Alternatively, and in the public interest, Clarksdale requests waiver of any minor rule violation.

Respectfully Submitted,

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Confirmation

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1. Sweetwater City Schools et al. DA 16-1465, rel. December 30, 2016, CC Docket Number 02-6. [↑](#footnote-ref-1)
2. Streamlined Process for Resolving Requests for Review of Decisions by the Universal Service Administrative Company, DA 14-1330, Rel. September 15, 2014. [↑](#footnote-ref-2)
3. Mississippi Code, Title 37, Chapter 7, § 37-7-345,(b) Provide for economy, efficiency and cost effectiveness in the cooperative delivery and purchase or lease of educational services, materials and products (services may include, but are not limited to, purchasing cooperatives, insurance cooperatives, business manager services, auditing and accounting services, school safety/risk prevention, and data processing and student records). [↑](#footnote-ref-3)
4. S-RESA Form 470, Block 4, Item 17 listing Tunicia and Quitman schools. [↑](#footnote-ref-4)
5. Email to USAC from Clarksdale sent December 1, 2014. [↑](#footnote-ref-5)
6. Email from USAC to Clarksdale sent September 26, 2016. [↑](#footnote-ref-6)
7. USAC appeal denial dated March 15, 2017. [↑](#footnote-ref-7)
8. Fourth Order on Reconsideration, FCC 97-420, Rel. Dec. 30, 1997. [↑](#footnote-ref-8)
9. Administrator 2015 Data Retrieval Tool, Grad Academy Memphis and Libertas Charter Memphis. [↑](#footnote-ref-9)
10. Email from Tracey Beaver, Schools and Libraries Director of Compliance to Greg Weisiger appeal consultant to Clarksdale dated April 28, 2017 in response to a request for the March 15 2016 document: “In addition, please note the (March 15, 2016) guidance referenced in this decision was based on internal discussions between USAC and the FCC and cannot be shared.” [↑](#footnote-ref-10)