Memorandum

To: FCC, Office of the Secretary

From: Gary Rawson, Federal Programs, State E-rate Coordinator

Mississippi Department of Information Technology Services

Date: September 13, 2017

Re: Appeal of Schools and Libraries Decision, CC Docket No. 02-6

Waiver to the extent necessary to overturn USAC Decision

On behalf of the Mississippi State Department of Education, I am filing an Appeal of the COMAD and Appeal decisions as determined by the Schools and Libraries Division of USAC. The basis for the COMAD was for a Document Retention Violation when two losing bids had been destroyed 6 years after the State Procurement process had been completed, but before the FCC’s 5-year Document Retention period had expired.

Applicant Name: Mississippi State Department of Education

Billed Entity Number: 128642

Form 471 Application Number: 981438, Funding Year 2014

Funding Request Number 2694877

Sequence of events leading up to this Appeal:

Performance Audit by KPMG September 12, 2016

COMAD issued by USAC December 30, 2016

Appeal filed with USAC March 1, 2017 (Filed Late)

USAC Denied Appeal March 9, 2017 (Due to late filing of Appeal)

Waiver filed with FCC March 28, 2017 (Appealed late filing)

Waiver granted by FCC May 31, 2017 (DA 17-505)

USAC Denied Appeal July 28, 2017

**Basis for Appeal**

The Mississippi Department of Information Technology Services (ITS) performed a procurement process to establish State Master Contract (s) following all State Procurement Rules and all FCC Procurement rules:

Form 470 posted and RFP made available June 24th, 2005

Vendor Responses Due August 9th, 2005

Katrina struck Mississippi (delayed the review process) August 29th, 2005

Evaluations completed and presented to ITS Board October 14th, 2005

Contract executed November 30th, 2005

In an open and fair competitive process, ITS awarded a contract to the incumbent service provider, BellSouth, using price as the Primary Determining Factor.

As part of all of Mississippi’s State Level Procurements a Governor’s Appointed Board must approve any state level contract award for technology. The Board is made up of IT professionals from across the state such as a University Professor, a Bank President, a Lawyer and two members of the State Legislature (current board). The Board Meeting is a public meeting with all interested parties in attendance, including service providers. If a vendor or anyone else is in disagreement with any information that is being presented, he or she has an opportunity to voice a challenge or to file an official Protest.

The Board Presentation is a Formal and Official Document, signed by the State CIO. The Document (attached “RFP 4000 Board Write Up”) is provided to the Board by the ITS Procurement Team to provide justifications for selecting the winning vendor and for rejecting any other vendors. The Document includes a recap of the vendor responses, the Evaluation results and the ITS Procurement Team’s Recommendations. The scoring sheets are included which provide a detailed discussion of how the scoring was determined and how each provider ranked. Pricing is included with the scoring sheets. The attached document shows that the State of Mississippi carefully considered all bids submitted and that the bid selected was the most cost-effective, with price as the Primary Determining Factor, and the bid selected offers the best technical solutions for the State, including K-12 schools and libraries.

It should be pointed out that during the Board Meeting of October 14th, 2005 no one, including the losing vendors that were in attendance, challenged any part of the presentation. There were no Protests filed by any of the losing vendors post-award, which would lead one to believe they all agreed with every phase of the Competitive Bidding Process and the Award.

In the Fifth Report and Order (FCC 04-190), dated August 13, 2004, paragraph 21, we find, “Competitive Bidding Requirements: We conclude that we should recover the full amount disbursed for any funding requests in which the beneficiary failed to comply with the Commission’s competitive bidding requirements as set forth in Section 54.504 and 54.511”.

In the Report and Order (FCC 07-150), dated August 29, 2007, paragraph 30, we find, “Consistent with our conclusion regarding the schools and libraries program, funds disbursed from the high-cost, low-income, and rural health care support mechanisms in violation of a Commission rule that implements the statute or a substantive program goal should be recovered. Sanctions, including enforcement action, are appropriate in cases of waste, fraud, and abuse, but not in cases of clerical or ministerial errors.”

As detailed in the Appeal to USAC (attached “Appeal Letter 2-16-17”), a Clerical Error was committed by the State Agency (Mississippi Archives and History) responsible for retaining all State documents, including losing bids. State Document Retention policies call for a 5-year record retention from the date the document was submitted to the agency. Also, there has been no evidence of a Competitive Bidding Violation. There has been no evidence of a Statutory Rule Violation. There is no evidence of any Waste, Fraud or Abuse of the program, but there is ample proof that all State and FCC Procurement Rules were followed.

It should also be pointed out that the State of Mississippi has adopted new Document Retention Policies that now require all documents involving e-rate contracts to be designated as “Keep Forever” (attached “ITS Project Route Slip, January 2017” and “ITS Procedures for Keeping ERATE project files, January 2017”). These new policies were adopted to ensure that this will never happen again.

If after reviewing this Appeal, the FCC still feels a Document Retention Rule has been violated, I would respectfully request a Waiver of that Rule based upon the supplemental documentation provided.

Appeal filed by:

Gary Rawson

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Federal Programs Coordinator/State E-rate Coordinator

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