

September 25, 2018

**APPEAL TO UNIVERSAL SERVICE ADMINISTRATIVE COMPANY**

VIA ELECTRONIC COMMENT FILING SYSTEM (EPC)

Universal Service Administrative Company  
ATTN: Schools and Libraries Program  
700 12th Street, NW, Suite 900  
Washington, D.C. 20005

**IN THE MATTER OF REQUEST FOR REVIEW BY JEFFERSON COUNTY PUBLIC  
SCHOOL DISTRICT R-1 OF DECISION OF UNIVERSAL SERVICE  
ADMINISTRATOR**

**Billed Entity:** Jefferson County Public School District R-1

**Billed Entity No.:** 145710

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Notification from USAC	Funding Year	471 Number	FRN	Amount Denied
07/27/2018	2017	181025955	1899047674	<b>\$67,596.00</b>

**I. INTRODUCTION & SUMMARY OF ISSUE**

Jefferson County Public School District R-1 (“Jeffco” or the “District”) hereby appeals the decision of the administrator of the Universal Service Administrative Company (“USAC”) pursuant to 47 C.F.R. § 54.719(a) and seeks reconsideration and reversal of USAC’s decision to deny from the District much-needed funding to update its broadband network.

Like many (if not most) school districts in the country, Jeffco is racing to improve its technology infrastructure to provide fast, reliable, and robust broadband access critical for classroom learning and data management. To this end, Jeffco sought bids to improve its aging operational switches at its schools and other facilities.

The District closely evaluated each bid in a detailed and multi-tiered process, first eliminating technically non-compliant bids and then selecting the most cost-effective bid. In

doing so, the District followed the law and adhered to the bidding process and criteria set forth in the District's Bid.

For this reason, the District respectfully requests that USAC reconsider and reverse its denial of **\$67,590** in funds.

## **II. BACKGROUND**

### **A. The District**

Jeffco serves over 86,000 students in grades K-12 at 155 school sites and facilities covering approximately 800 square miles along Colorado's Front Range. Jeffco is the second largest school district in Colorado and one of the most diverse districts in the state: over a third of our students identify as people of color and nearly a third come from low-income households.<sup>1</sup>

### **B. Preparing Our Students for the Digital Age**

Jeffco's mission is to provide a quality education that prepares all children for a successful future. Today, that means preparing our students to thrive in the Digital Age, which will require them to learn from and use technology with ease.

To accomplish this, Jeffco is using technology to create classrooms that support the needs of the 21st century learner by, among other things, providing students with iPads and tablets and integrating online content with teacher-guided instruction.<sup>2</sup> Jeffco has also developed a Technology Plan to help ensure that all Jeffco schools have access to safe and reliable technology and that our students can be successful members of the digital world.<sup>3</sup>

### **C. Need for High-Speed Internet**

The District cannot adequately integrate these platforms, and thus prepare our students for the Digital Age, without fast and reliable internet access.<sup>4</sup> Most of the technology our students use in the classroom (like iPads, tablets, and online content) require fast and reliable internet access to even function. Indeed, the FCC itself has noted that "[a]ccess to high-speed

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<sup>1</sup> See 2016 Annual Report, Jefferson County Public Schools, *available at* [http://www.jeffcopublicschools.org/UserFiles/Servers/Server\\_627881/File/Jeffco%20PS/About%20Jeffco/Publications/Annual%20Reports/2015-16\\_annual\\_report.pdf](http://www.jeffcopublicschools.org/UserFiles/Servers/Server_627881/File/Jeffco%20PS/About%20Jeffco/Publications/Annual%20Reports/2015-16_annual_report.pdf).

<sup>2</sup> See <http://jeffcopublicschools.org/cms/One.aspx?portalId=627965&pageId=926825>.

<sup>3</sup> See Jefferson County Public Schools 2016-2019 Technology Plan, *available at* <https://docs.google.com/a/jeffcoschools.us/viewer?a=v&pid=sites&srcid=amVmZmNvc2Nob29scy51c3xpbmZvcmlhdGlvbi10ZWNObm9sb2d5fGd4OjJkOGY2YWE2OTMyM2M4YTY>.

<sup>4</sup> Indeed, the Commission created the E-Rate program (the nation's largest educational technology program) specifically to connect districts like Jeffco with fast and reliable broadband internet access. See <https://www.fcc.gov/general/universal-service-program-schools-and-libraries-e-rate>.

broadband is crucial to improving educational experiences and expanding opportunities for all of our nation's students, teachers, parents, and communities.”<sup>5</sup>

Given the importance of classroom technology and the fast, reliable internet it requires, the District has prioritized implementing high-speed broadband in every classroom.

#### **D. The District's High-Speed Internet System**

The District uses a “hub and spoke” model. Under this model, all data usage flows through two “hubs” (here the District's Educational Services Center in Golden, Colorado and its Disaster Recovery data center in Lakewood, Colorado) out to the “spokes” (here, schools or other remote facilities). There are 155 hub-and-spoke sites in all.

The District uses Metropolitan Optical Ethernet circuits provided by CenturyLink that terminate at each “spoke.” (*See* Req. for Prop., Ex. A, at 2.) Pertinent here, the District uses operational switches at each of its hub-and-spoke sites to provide connectivity to teacher devices, lab computers and printers, among other things. The District uses Cisco brand switches because they are cost-effective, are under lifetime warranty, and connect well with the District's network.

Over the past decade, the District's internet and data-storage needs have increased dramatically, due largely to the fact that the District was integrating, and continues to integrate, technology into its classrooms and other facilities. As a result, the District has been upgrading its technology systems to increase internet and data-storage capacity, in part by replacing its aging operational switches.

#### **E. Invitation to Bid**

On January 19, 2017, the District issued a public Invitation to Bid to solicit bids to upgrade the District's operational switches at all its 155 hub-and-spoke sites, including all schools, the District's main voice and data hub and its disaster recovery center hub, and other facilities. (*See* Invitation to Bid, Ex. 2, at 2-5.) That day, the District also filed its Form 470 with USAC to formally initiate the competitive-bidding process.<sup>6</sup> (*See* Form 470 Screen Shot, Ex. B; Aff. of Vera Kennedy ¶ 5.)

The Bid documents specified bid requirements, service needs and preferences, and the selection process, schedule, and criteria. (*See* BID, Ex. A, at 2-5, 8-11.) For instance, the Bid:

- specified that Offeror must be “Cisco Gold Reseller” or equivalent if offering other manufacturer's equipment, with a separate list of requirements for “equivalent” equipment, including plans for implementation and training related to that equipment (*see id.* at 3, 8);

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<sup>5</sup> *See* Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Modernizing the E-Rate Program for Schools and Libraries*, W.C. Docket No. 13-184, at 8872 (F.C.C. July 23, 2014), available at <https://www.fcc.gov/document/fcc-releases-e-rate-modernization-order>.

<sup>6</sup> The BID notes that it was published in conjunction with the Commission's E-Rate Form 470 schedule. (*See* Req. for Prop., Ex. 2, at 2.)

- listed specific technical requirements for any and all equipment to be installed in connection with a bid (*see id.* at 6-7); and
- criteria for each stage of review, including, for stage 1, that bids must include “proof of a current E-Rate form 473,” qualifications of the service provider to provide Cisco products or equivalent, and that “must meet all the technical requirements” set forth in the Bid (BID, Ex. A, at 9; Kennedy Aff. ¶ 6.)

The Bid also emphasized that Jeffco could reject any proposals that were inadequate, incomplete, or failed to meet minimum or technical requirements specified in the BID. (BID, Ex. A, at 4; Kennedy Aff. ¶ 7.)

#### **F. Bid-Selection Process**

Bids were due on February 17, 2017. On that date, the District received nine bids, one each from CDW Government LLC (CDW-G or CDWG), GovConnections, Inc. dba Connection Public Sector Solutions, CounterTrade Products, Inc., Dice Communications, Presidio Networked Solutions Group, LLC, Sentinel Technologies, Tek-Hut Inc., Advanced Network Management, Inc. (ANM), and New Tech Solutions, Inc. The District then initiated the first stage of its review process, which was designed – per the Bid – to weed out bids that did not comply with or meet the technical requirements detailed in the Bid. (Kennedy Aff. ¶ 8-9.)

To accomplish this review, the District assembled a group of technical experts (all internal employees) in the fields of information technology and network engineering to review the bids. (Kennedy Aff. ¶ 10.) The review team determined that six of the bids failed to comply with technical requirements listed in the Bid and, as such, eliminated those bids. For instance:

- Bids from Countertrade and Tek-Hut were eliminated because they each failed to include a Form 473. (Review Spreadsheet, Ex. C, at “Req. Stage 1” Tab; Spreadsheet “Switch Responses Ranked,” Ex. D; Kennedy Aff. ¶ 11.a.)
- The bid from New Tech Solutions was eliminated because it could not provide proof of being a Cisco Gold reseller. This company is a Premier Certified Partner which is a lower grade of Cisco reseller than Gold. (*See id.*; Kennedy Aff. ¶ 11.b.)
- The bid from Dice was eliminated because it failed to include a Form 473 and did not adequately describe whether the company is a Cisco Gold reseller. They also failed to provide training documentation. Dice failed to provide explanation that their product is a quality switch or equivalent that would be compatible with the District’s existing network architecture. (*See id.*; Kennedy Aff. ¶ 11.c.)
- The bids from CDWG and Connection were eliminated because they failed to include critical training and implementation plans for integrating their products into the District’s network architecture. (*See id.*; Kennedy Aff. ¶ 11.d.)

The bids from Presidio, Sentinel, and ANM advanced to the second and final review stage, where they were compared based on price and other factors. (*See* Review Spreadsheet, Ex. C, at “Cisco Pricing” Tab; Spreadsheet “Switch Responses Ranked,” Ex. D.)<sup>7</sup> Consistent with FCC rules, price was the primary factor considered during the second review stage. (*See id.*; *see also* Kennedy Aff. ¶ 12.) As a result of that review, the District awarded the project to ANM. (Kennedy Aff. ¶ 13.)

### **G. Audit Process**

In mid-April 2018, USAC notified the District that it was conducting an audit of the District’s reimbursement application (Form 471 Number 181025955, Funding Request Number 1899047674). The District complied fully with the audit and provided USAC with any documents it requested, including documents showing how the District evaluated bids.

On July 27, 2018, USAC notified the District through a Funding Commitment Decision Letter that it had denied E-Rate funding in the amount of \$67,590 related to Funding Request Number 1899047674.<sup>8</sup> (*See* Letter, Ex. E, and Excel Attachment, Ex. D.)

In its letter, USAC stated: “The winning vendor was not selected in accordance with the vendor evaluation process described in the vendor selection documentation provided by you during the Selective Review. You did not adhere to your own criteria in the vendor selection process – Stage 1 – Mandatory Bid Requirements (Binary). Therefore, this FRN is denied.” (*See* Letter, Ex. E, at 5.)

## **III. ARGUMENT ON APPEAL**

The District respectfully requests, pursuant to 47 C.F.R. § 54.719, that USAC reconsider and reverse its denial of \$67,590 to the District, which represents much-needed funding for replacing its aging operational switches.

USAC’s sole reason for denying the District’s reimbursement request is based on the perception that Jeffco failed to apply its own criteria during the first stage of the vendor-selection process. The District respectfully disagrees with this conclusion.

The District eliminated bids in the first stage for failing to comply with certain technical requirements described in the Bid, including mandatory requirements (a) failure to include a Form 473, (b) failure to provide Cisco Gold certification or equivalent, (c) failure to bid equipment that would be compatible with the District’s existing network architecture, and (d) failure to including critical training and implementation plans for integrating products into the District’s network. (*See* Background § II.F., *supra*.) These requirements were very clearly listed in the Bid and vendors were told expressly that failure to comply with the technical requirements

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<sup>7</sup> After stage one, only Cisco products were left to compare. Hence, the “Cisco Pricing” tab.

<sup>8</sup> The denial of \$67,590 reflects a 50% discount on a total eligible one-time charge of \$135,192.

in the Bid could result in denial of the bid. (Background § II.E., *supra*.) Thus, in eliminating those bids in the first review stage, the District applied the criteria set forth in the Bid.<sup>9</sup>

The District acknowledges that it may have created some confusion during the audit process in a response to USAC. (*See* “eRate Switch Bid Response,” Ex. F, at 1-2.) In that response, the District explained that it eliminated bids in the first review stage based on binary criteria in the Bid, but also stated (confusingly) that the first stage was broken down into two “rounds.” (*See id.* at 2-3.) To be clear, there were only two stages, the first of which eliminated bids based solely on non-compliance with technical requirements listed in the Bid.<sup>10</sup>

To the extent USAC’s Decision Letter suggests the District failed to conduct a fair and open bidding process (*see* Letter, Ex. E, at 5), Jeffco respectfully disagrees with this suggestion and believes it carefully considered each bid in accordance with FCC rules. The FCC’s competitive-bidding rules require applicants to “carefully consider[]” each bid in a “fair and open” bidding process. *See* 47 C.F.R. § 54.503(a). The rules spell out the list of activities or behaviors that would not result in a fair and open process. *See id.* None of these activities or behaviors occurred or is alleged to have occurred here.

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<sup>9</sup> The FCC allows school districts to eliminate bids based on technical criteria before comparing technically compliant bids based on price and other factors. *See, e.g., In the Matter of Reqs. for Review of a Decision of the Univ. Serv. Admin. by Baltimore City Sch. Dist. et al.*, 26 FCC Rcd. 11193, 2011 WL 3470610, ¶¶ 11-12 (F.C.C. Aug. 8, 2011).

<sup>10</sup> That is also true for the document entitled “Switch Responses Ranked” provided with the Response. (*See* Ex. D.) While that spreadsheet separates “mandatory bid requirements” and “other requirements”, every such “requirement” in column A is in fact a technical requirement listed in the Bid, and the failure to meet those requirements would (and did) result in an unqualified bid.

#### **IV. CONCLUSION**

The District respectfully requests that USAC reconsider and reverse its decision to deny funding to the District for improving its technology infrastructure to ensure fast, reliable, and robust internet access in its schools and hub facilities. The District followed the law and adhered to the criteria listed in its BID in selecting a vendor. Thank you for your consideration.

Sincerely,

*/s/ Brett Miller*

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