

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Waiver and Review of a)	
Decision of the)	
Wireline Competition Bureau by)	
)	
Asbury Park Public Library,)	SLD File No. 229937
Asbury Park, New Jersey)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

APPLICATION FOR WAIVER AND REVIEW

Pursuant to Commission's rules, 47 C.F.R. § 1.115, the Asbury Park Public Library (hereinafter Library) hereby requests Commission review of a denial of a request for review by the Wireline Competition Bureau in an order, DA 17-796, released August 30, 2017 Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company, at page 4. This order, DA 17-796, disposed of 54 requests of various types of which 50 were filed in 2017, one each in 2016 and 2012, and our review which was filed in 2007. The extremely long time from filing until denial here is but one of the matters of concern for the Library about the handling of this request by USAC and the Wireline Competition Bureau. We wish to review the chronology of this appeal and the original Form 470 at issue, and also offer recently discovered mitigating information and documentation that we believe supports our claim that no rule violations occurred. Petitioner's identification and contact information in addition to the ECFS Filing Detail is as follows: Billed Entity No. (BEN) 122972, FCC Registration No. 001181125, telephone number (732) 774-4221, fax number (732) 988-6101.

APPLICATION AT ISSUE AND CHRONOLOGY

The document in question is the Form 470 (474750000309146) associated with Form 471 Application 229937 and Funding Request No. (FRN) 534428 providing funds to service provider Networks & More (SPIN 143004355) for service category “internal connections” in the amount originally committed of \$22,880.04, in E-Rate Year 4, 07/01/2001-06/30/2002.

Over four years later, on November 2, 2006, we received a COMAD letter (**Appendix 1** – 4 pgs.) stating, “that this funding commitment must be rescinded in full”. The reason given was:

“During the course of review it was determined that the service provider contact information appeared on the cited Form 470. When the Service Provider, Networks and More, Inc., participated in the preparation of the cited Form 470 (Application Number: 474750000309146) the Form 470 becomes tainted...If the applicant has posted a Form 470 that contains contact information for a service provider that participates in the competitive bidding process, the applicant has violated this requirement, and the FCC rules consider this Form 470 to be tainted.”

The library filed an appeal of the COMAD letter on December 21, 2006 (**Appendix 2** – 3 pgs.) categorically stating that the Form 470 (**Appendix 3** – 5 pgs.) was *prima facie* evidence that USAC’s assertion that there was a rule violation was egregiously in error, in that Block 6a of the form listed the library and its director as the contact person and recipient of bids; optional contact information can also be placed in Block 11 but is blank on this form.

The library's appeal was denied by the USAC Administrator on March 2, 2007 (**Appendix 4** – 2 pgs.). The fact that USAC's claim about service provider contact information being on the Form 470 was rebutted by the Form itself was not referred to, as other new claims were made to support a denial such as, *inter alia*:

“... it was determined that the establishing Form 470 Number 474750000309146 for this request was submitted from an IP Address that Networks and More, Inc. used to submit a service provider invoice to USAC. Networks and More, Inc. was selected as a vendor for this FRN. Additionally, it was determined that the cited establishing Form 470 displays striking similarities with the Form 470 service, Item 12 and Item 13 description, which implies service provider involvement in the bidding process.”

We were unable to get further details about the new charges made by USAC in their denial and their use of and reference to “pattern service” and their obvious use of “pattern analysis” to support the conclusions they reached about our Form 470 were, as we now know were prejudicial to our efforts.

The library then filed in April 2007 a request for review of USAC's March 2007 denial (**Appendix 5** – 5 pgs.) Please note that Appendices 1-4 *supra* were included in our April 2007 filing and are not included a second time here in this filing. This is the request that was finally denied by the WCB in their Order DA 17-796.

LIBRARY AND VENDOR RELATIONSHIP

The Asbury Park Public Library has participated in and greatly benefited from the E-Rate program from its inception to the present, and has received funding in every year. Our relationship with Networks & More (hereinafter N&M) began in 1997 when they were hired by the New Jersey Natural Gas Co., our local gas utility, to help plan and implement a technology assistance project which came to be known as “Libraries Online” whereby NJNG offered funding and technical assistance to a group of six small and medium-sized independent (i.e. not part of the county system) libraries to install computer networks to provide internet access and computer access to their clientele. Asbury Park was selected to be the first library and the prototype for the project. NJNG was aware that the new e-rate program would soon be operational and could be a source of funding for its library projects and for this reason hired N&M to assist with securing funding from the new program. Libraries Online was a collaboration between NJNG engineering and technical personnel, N&M staff, and library employees and trustees. Libraries Online was funded by e-rate funds, NJNG corporate donations, funds from a N.J. State Library Technology Bond grant program and some library budget support. N&M aided the project by coordinating the various funding sources, obtaining maximum e-rate assistance, and handling the bidding and contracting work. N&M deserves great credit for being able to negotiate the difficult application processes that characterized the early years of the e-rate program and secure funding to support NJNG’s project. New Jersey Natural Gas employees worked closely with vendor N&M as well as the library resulting in a three-way relationship that makes the situation in this case more complex than normal. The company employed N&M as a consultant to assist with the implementation of their “Libraries Online” project as described above.

In year 1 (1/1/1998 – 6/30/1999) and year 2 (7/1/1999 – 6/30/2000) our records indicate that N&M prepared and filed the 470 and 471 forms and all other paperwork associated with e-rate for the Asbury Park Public Library. They were listed as contacts on the forms for those years. N&M were at no time employed by the library as e-rate consultants, hired to handle paperwork as they were by clients such as school districts. All of the work they did as e-rate consultants, including filing forms for this library, was performed as contractors for NJNG who paid them for these services. The Asbury Park School District and library are still in the 90% discount category, and financial conditions are somewhat improved over a decade ago, but at the time the library realized that it would not be able to afford the expense of having an e-rate consultant help with e-rate matters and took steps to have staff learn how to handle applications in-house. Thus in year 3 (7/1/2000 – 6/30/2001) the library prepared Form 470 and 471 and appears as the contact for bidders on them. Also in year 4 (7/1/2001 – 6/30/2002) the year at issue in the 2007 appeal, the library is listed as contact on all forms which were prepared by the library. For part of the time during years 1-4, N&M also performed network maintenance for the library as a vendor but by year 5 the library sought less expensive maintenance services and no longer used N&M. Also as the Libraries Online project moved on to other participants NJNG no longer funded this library. Thus our four year association with N&M was characterized by a transition from them doing all e-rate work to us taking over at the end of the period. One claim made by USAC was that our forms were being filed from N&M's IP address, even though we were the contact on the forms. Since they were still working for NJNG it is possible that they filed forms we prepared and may have also separately mailed. What we believe is important is that N&M in our case was not employed by us as an e-rate consultant to fill out forms who then

also got funding as a vendor doing network maintenance. They did do network maintenance but secured the contract through proper procedures.

COMPETITIVE BIDDING ISSUES

USAC determined that the competitive bidding process was “tainted” because of vendor involvement in the preparation of the relevant Form 470. As mentioned previously the initial claim that the vendor was listed as contact on the form was shown to be mistaken. One of the other findings cited as evidence of vendor involvement were the results of a “pattern analysis”. We attempted to get more specific information about what their “pattern analysis” revealed about our application and have an opportunity to respond. We refer to what the FCC has said about this practice in *Academy of Careers and Technologies, San Antonio, TX et al.*, CC Docket No.02-6 FCC 06-55, May 19, 2006:

“...when USAC suspects that a service provider has improperly participated in an applicant’s bidding process due to the results of its “pattern analysis” procedure, it is incumbent on USAC to conduct further investigation and analysis prior to denying funding. Specifically, USAC should review these applications fully, and should not issue summary of denials requests for funding solely because applications contain similar language. If an entity is able to demonstrate that it fully complied with all program rules and did not, for example, violate the Commission’s competitive bidding rules, then USAC should not deny funding on the basis of the “pattern analysis” procedure.”

USAC did not conduct further analysis or give the library an opportunity to respond to the pattern analysis findings. We found that another neighboring library participant in Libraries Online, which N&M also assisted and was given an opportunity to provide a detailed response to

a “pattern analysis” charge. The Long Branch Public Library was provided an opportunity to complete a **Special Compliance Information Request for FY 2002** which they received from USAC December 8, 2008 and filed January 26, 2009, which submission ran to 13 pages (**Appendix 6** – 13 pgs.). We were not offered an opportunity to fill out a PAIR form (Pattern Analysis Information Request) as Long Branch was given. Our responses would likely be quite different but the PAIR form provides a way to give detailed and nuanced answers that could affect a final determination as to whether there was a rule violation or not.

As to the actual facts surrounding the competitive bidding process related to the Form 470 in question we are able to state: (1) the library was listed as the contact on the Form and no prospective bidder could have ascertained whether or not there was any assistance or involvement of a third party in the preparation of the form (if we accept USAC’s claim that there was); (2) there were no inquiries by prospective bidders and no contacts with the library about the item being offered for bid; (3) the library unsuccessfully solicited bids in an attempt to obtain a lower price for the service; (4) it was at that time a common problem that no bids would be placed for items on our 470’s, especially for network maintenance; (5) many vendors told us they did not want to go to the trouble to obtain SPIN numbers and register with USAC; (6) many vendors would not participate when told that they would have to file for the 90% share of the invoice from e-rate, who at that time were very slow to process payments; (7) the Forms were posted in full compliance of the rules. Thus, in fact, the competitive bidding process was open, fair, and certainly not tainted even if the charge of service provider involvement was true. In addition the library states the following with regard to the competitive bidding process as it relates to the Form 470 at issue:

- (1) Library complied with all FCC competitive bidding rules and requirements

- (2) Form 470 was timely filed and remained posted a minimum of 28 days
- (3) Any inquiries from potential bidders would have been received by the director, as contact person, at the library address
- (4) The evaluation of bids and awarding of contracts was completely in the control of, and in the hands of, the library who solely made these decisions
- (5) The library did not delegate any competitive evaluation role to any other person or agency
- (6) The library did not abdicate control over any aspect of the application process to any other person or agency
- (7) The relationship that existed between the vendor and applicant did not unfairly influence the outcome of the competitive bidding process
- (8) Cognizant of the existing involvement with a vendor the library made a special effort to establish and maintain an arms-length relationship with said vendor to insure a fair, open, and competitive bidding process.

WAIVER REQUEST

The City of Asbury Park remains one of the poorest municipalities in New Jersey and the library, being totally funded by municipal budget appropriations, is affected by the financial hardships of the municipality, and consequently depends greatly on funding assistance such as e-rate. In the 20-years of participation in the program all of the funds received have been expended responsibly and have been essential to providing residents of

the city with internet access and other computer based services. If USAC prevails and the library is forced to refund money that was spent properly for the purposes received it will be a great hardship to the library and perhaps lead to the termination of services to a population that has a large percentage of residents that look to the library for their access to the internet.

Thus if USAC insists that there was a rule violation despite the complicating and mitigating circumstances cited we request a waiver of the rule in the interest of fairness and to prevent unnecessary hardship on behalf of the patrons of the Asbury Park Public Library. To that effect we quote from the Bishop Perry Order:

“... we note that our waiver standard allows us to consider hardship when analyzing whether particular facts meet the standard. We find here that denial of funding in this case would inflict undue hardship on the applicant. Notably, at this time, there is no evidence of waste, fraud or abuse, misuse of funds or a failure to adhere to core program requirements.

Furthermore, we find that in this case, the applicant has demonstrated that rigid compliance with USAC’s application procedure does not further the purposes of section 245(h) or serve the public interest... The Commission may waive any provision of its rules on its own motion and for good cause shown. (47 C.F.R. §1.3) A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. (*Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular))

In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. (*WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) In sum, waiver is appropriate if special

circumstances warrant a deviation from the general rule, and such deviation would better

serve the public interest than strict adherence to the general rule. (*Northeast Cellular*, 897 F.2d at 1166)”

RELIEF SOUGHT BY LIBRARY

The most direct and satisfying relief would be to have the FCC reconsider the first appeal we filed in 2006, wherein we refuted the claim by USAC that service provider contact information appeared in Blocks 6a and 11 on the Form 470 at issue by simply providing a copy of the Form, accept our explanation and reverse USAC’s denial of funding for FRN 534428.

If the additional circumstantial and incidental information that USAC cited to support its claim of service provider involvement in the bidding process is found to be persuasive, we would ask that information provided herein about the library’s complex and nuanced relationship with vendor N & M, and the clear and compelling evidence that the competitive bidding process was in no way compromised or “tainted” , be considered sufficiently mitigating to support a waiver of the rule and a reversal of the denial of funding.

September 25, 2017

APPENDECIES

Appendix 1



Schools & Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2001: 7/01/2001 - 6/30/2002

November 2, 2006

**Robert Stewart
ASBURY PARK FREE PUB LIBRARY
500 1ST AVE
ASBURY PARK, NJ 07712 6117**

**Re: Form 471 Application Number: 229937
Funding Year: 2001
Applicant's Form Identifier: 301
Billed Entity Number: 122972
FCC Registration Number: 0011811254
SPIN Name: Networks & More, Inc.
Service Provider Contact Person: James Punderson IV**

Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the adjustments to your funding commitment required by program rules, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the program rule violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of the Demand Payment Letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." Please see the "Informational Notice to All Universal Service Fund Contributors, Beneficiaries, and Service Providers" at <http://www.universalservice.org/fund-administration/tools/latest-news.aspx#083104> for more information regarding the consequences of not paying the debt in a timely manner.

TO APPEAL THIS DECISION:

If you wish to appeal the Commitment Adjustment Decision indicated in this letter, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Numbers you are appealing. Your letter of appeal must include the Billed Entity Name, the Form 471 Application Number, Billed Entity Number, and FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow the SLD to more readily understand your appeal and respond appropriately. Please keep your letter specific and brief, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal electronically, please send your appeal to appeals@sl.universalservice.org using your organization's e-mail. If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Dept. 125 - Correspondence Unit, 100 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Appeals Area of the SLD section of the USAC web site or by contacting the Client Service Bureau at 1-888-203-8100. We strongly recommend that you use the electronic appeals options.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. 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 in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC web site, or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. Immediately preceding the Report, you will find a guide that defines each line of the Report.

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The SLD is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on these Funding Request Numbers, a separate letter will be sent to the service provider detailing the necessary service provider action.

Please note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Please note the Funding Commitment Adjustment Explanation in the attached Report. It explains why the funding commitment is being reduced. Please ensure that any invoices that you or your service provider submit to USAC are consistent with program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: James Punderson IV
Networks & More, Inc.

~~44~~

**Funding Commitment Adjustment Report
Form 471 Application Number: 229937**

Funding Request Number:	534428
Services Ordered:	INTERNAL CONNECTIONS
SPIN:	143004355
Service Provider Name:	Networks & More, Inc.
Contract Number:	C
Billing Account Number:	
Site Identifier:	122972
Original Funding Commitment:	\$22,880.04
Commitment Adjustment Amount:	\$22,880.04
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$21,296.00
Funds to be Recovered from Applicant:	\$21,296.00
Funding Commitment Adjustment Explanation:	

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of review it was determined that service provider contact information appeared on the cited Form 470. When the Service Provider, Networks & More, Inc., participated in the preparation of the cited Form 470 (Application Number: 474750000309146), the Form 470 becomes tainted. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. If the applicant has posted a Form 470 that contains contact information for a service provider that participates in the competitive bidding process, the applicant has violated this requirement, and FCC rules consider this Form 470 to be tainted. All Funding Requests that relate to this Form 470 are required to be denied because the Form 470 is tainted. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds. USAC has determined that both the applicant and the service provider are responsible for this rule violation; if any funds were disbursed, USAC will seek recovery of the improperly disbursed funds from both the applicant and the service provider.

**PLEASE SEND A COPY OF THIS PAGE WITH YOUR
CHECK TO ENSURE TIMELY PROCESSING**

Appendix 2

**AN APPEAL OF A NOTIFICATION OF
COMMITMENT ADJUSTMENT LETTER
DATED NOVEMBER 2, 2006
FUNDING YEAR 2001: 7/01/2001 – 6/30/2002**

APPELLANT: Asbury Park Public Library
500 First Avenue
Asbury Park, NJ 07712-6193
Contact Person: Robert W. Stewart
Phone: 732-774-4221
Fax: 732-988-6101
E-Mail: rstewart@asburyparklibrary.org

Billed Entity Number: 122972
Billed Entity FCC RN: 001181125

RESPONDENT: Universal Service Administrative Company
Schools & Libraries Division
Box 125 – Correspondence Unit
100 South Jefferson Road
Whippany, NJ 07981

**SUBJECT
OF APPEAL:** Form 471 Application 229937
As Described Here:

Funding Request Number: 534428
Category of Service: Internal Connections
Form 470 Application Number: 474750000309146
Applicant's Form Identifier: 301
SPIN: 143004355
Service Provider Name: Networks & More, Inc.
Contract Number: C
Billing Account Number: N/A
Site Identifier: 122972
Original Funding Commitment: \$22,880.04
Funds Disbursed to Date: \$21,296.00
Funding Commitment Adjustment Explanation: Tainted
Form 470.

COPY: A copy of the "Funding Commitment Adjustment Report"
for the Form 471 at issue is attached and marked
Appendix-A

Asbury Park Public Library
December 21, 2006

**Appellant's Response to USAC's Findings and Determination as
Stated in Funding Commitment Adjustment Explanation**

1. Appellant states that applicant library's contact information including address, telephone number, fax number, and library director's name appears on the Form 470.
2. Appellant denies that any service provider contact information appears on the Form 470.
3. Appellant denies that there was any service provider involvement or participation in the preparation of the Form 470.
4. Appellant states that the applicant contact person received and responded to any and all inquiries by potential vendors and other interested parties concerning the Form 470.
5. Appellant states that, with respect to the Form 470, it initiated and conducted a fair, thorough, and open, competitive bidding process.
6. Appellant denies violating any FCC rules relating to the handling and processing of the Form 470.
7. Appellant denies that funds related to the Form 470 were improperly disbursed by USAC to applicant library.
8. Appellant states that USAC has erroneously, wrongfully, and prejudicially, rescinded the disbursement of funds, related to this Form 470, to applicant library.

Asbury Park Public Library
December 21, 2006

Action Requested

On behalf of the applicant, the Asbury Park Public Library, I respectfully request that the Schools & Libraries Division of USAC review, reconsider, and then reverse, its erroneous, wrongful, and prejudicial decision in this matter; rescind its demand that certain funds previously disbursed to and properly expended by applicant library be repaid; and cease and desist from seeking recovery of said funds.

Authorized Signature

Robert W. Stewart
Library Director
December 21, 2006

APPENDIX-A

C-4

**Funding Commitment Adjustment Report for
Form 471 Application Number: 229937**

Funding Request Number:	534428
Services Ordered:	INTERNAL CONNECTIONS
SPIN:	143004355
Service Provider Name:	Networks & More, Inc.
Contract Number:	C
Billing Account Number:	
Site Identifier:	122972
Original Funding Commitment:	\$22,880.04
Commitment Adjustment Amount:	\$22,880.04
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$21,296.00
Funds to be Recovered from Applicant:	\$21,296.00
Funding Commitment Adjustment Explanation:	

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of review it **was** determined that service provider contact information appeared on the cited Form 470. When the Service Provider, Networks & More, Inc., participated in the preparation of the cited Form 470 (Application Number: 474750000309146), the Form 470 becomes tainted. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. If the applicant has posted a Form 470 that contains contact information for a service provider that participates in the competitive bidding process, the applicant has violated this requirement, and FCC rules consider this Form 470 to be tainted. All Funding Requests that relate to this Form 470 are required to be denied because the Form 470 is tainted. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds. USAC has determined that both the applicant and the service provider **are** responsible for this rule violation; if any funds were disbursed, USAC will **seek** recovery of the improperly disbursed funds from both the applicant and the service provider.

Appendix 3

470

Schools and Libraries Universal Service Description of Services Requested and Certification Form

Estimated Average Burden Hours Per Response: 4.0 hours

This form is designed to help you describe the eligible telecommunications-related services you seek so that this data can be posted on the Fund Administrator website and interested service providers can identify you as a potential customer and compete to serve you.

Please read instructions before beginning this application.

(To be completed by entity that will negotiate with providers.)

Block 1: Applicant Address and Identifications

Form 470 Application Number: 474750000309146		
Applicant's Form Identifier: 301		
Application Status: CERTIFIED		
Posting Date: 12/07/2000		
Allowable Contract Date: 01/04/2001		
Certification Received Date: 12/11/2000		
1. Name of Applicant: ASBURY PARK FREE PUB LIBRARY		
2. Funding Year: 07/01/2001 - 06/30/2002		3. Your Entity Number 122972
4a. Applicant's Street Address, P.O.Box, or Route Number 500 1ST AVE		
City ASBURY PARK	State NJ	Zip Code 07712 - 6117
b. Telephone number (732) 774- 4221		c. Fax number 0 -
d. E-mail Address		
5. Type Of Applicant		
<input type="checkbox"/> Individual School (individual public or non-public school) <input type="checkbox"/> School District (LEA; public or non-public [e.g., diocesan] local district representing multiple schools) <input type="checkbox"/> Library (including library system, library branch, or library consortium applying as a library) <input type="checkbox"/> Consortium (intermediate service agencies, states, state networks, special consortia)		
6a. Contact Person's Name: Robert Stewart		
First, fill in <i>every</i> item of the Contact Person's information below <i>that is different from Item 4, above</i> . Then check the box next to the preferred mode of contact. (At least one box MUST be checked.)		
6b. Street Address, P.O.Box, or Route Number 500 1ST AVE		
City ASBURY PARK	State NJ	Zip Code 07712 - 6117
<input checked="" type="checkbox"/> 6c. Telephone Number (732) 774- 4221		
<input type="checkbox"/> 6d. Fax Number (732) 988- 6101		
<input type="checkbox"/> 6e. E-mail Address		

Block 2: Summary Description of Needs or Services Requested

7 This Form 470 describes (check all that apply):
a. <input checked="" type="checkbox"/> Tariffed services - telecommunications services, purchased at regulated prices, for which the applicant has no signed, written contract. A new Form 470 must be filed for tariffed services for each funding year.
b. <input type="checkbox"/> Month-to-month services for which the applicant has no signed, written contract. A new Form 470 must be filed for these services for each funding year.
c. <input checked="" type="checkbox"/> Services for which a new written contract is sought for the funding year in Item 2.
d. <input type="checkbox"/> A multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous program year.
NOTE: Services that are covered by a signed, written contract executed pursuant to posting of a Form 470 in a previous program year OR a contract signed on/before 7/10/97 and reported on a

Form 470 in a previous year as an existing contract do NOT require filing of a Form 470.

What kinds of service are you seeking: Telecommunications Services, Internet Access, or Internal Connections? Refer to the Eligible Services List at www.sl.universalservice.org for examples. Check the relevant category or categories (8, 9, and/or 10 below), and answer the questions in each category you select.

8 ☒ Telecommunications Services

Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?

a ☒ YES, I have an RFP. It is available on the Web at or via (check one):
☐ the Contact Person in Item 6 or ☐ the contact listed in Item 11.

b ☒ NO, I do not have an RFP for these services.

If you answered NO, you must list below the Telecommunications Services you seek. Specify each service or function (e.g., local voice service) and quantity and/or capacity (e.g., 20 existing lines plus 10 new ones). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications Services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Add additional lines if needed.

Service or Function:	Quantity and/or Capacity:
Local Telephone service, POTS	Existing: 8
Inter and intra LATA long distance service	Existing: 8
Full and/or fractional T-1 using SMDS, frame relay and/or PTP and/or ADSL, ISDN BRI custoflex.	Existing: 1

9 ☒ Internet Access

Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?

a ☒ YES, I have an RFP. It is available on the Web at or via (check one):
☐ the Contact Person in Item 6 or ☐ the contact listed in Item 11.

b ☒ NO, I do not have an RFP for these services.

If you answered NO, you must list below the Internet Access Services you seek. Specify each service or function (e.g., monthly Internet service) and quantity and/or capacity (e.g., for 500 users). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Internet Access services. Add additional lines if needed.

Service or Function:	Quantity and/or Capacity:
Monthly Internet Service	Existing: 1

10 ☒ Internal Connections

Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?

a ☒ YES, I have an RFP. It is available on the Web at or via (check one):
☐ the Contact Person in Item 6 or ☐ the contact listed in Item 11.

b ☒ NO, I do not have an RFP for these services.

If you answered NO, you must list below the Internal Connections Services you seek. Specify each service or function (e.g., local area network) and quantity and/or capacity (e.g., connecting 10 rooms and 300 computers at 56kbps or better). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Internal Connections services. Add additional lines if needed.

Service or Function:	Quantity and/or Capacity:
Additional CAT5/6 and/or fiber optic cabling desired along with network infrastructure electronics.	1 Building
Network infrastructure improvements including hubs, switches, routers, servers, network software, network installation and maintenance services.	1 Building
Improvements to phone system, phone cabling and phone installation and maintenance services.	1 Building

11 (Optional) Please name the person on your staff or project who can provide additional technical details or answer specific questions from service providers about the services you are seeking. This need not be the contact person listed in Item 6 nor the signer of this form.

Name: _____ Title: _____

Telephone number

0 -

Fax number

0 -

E-mail Address

12. ☒ Check here if there are any restrictions imposed by state or local laws or regulations on how or when providers may contact you or on other bidding procedures. Please describe below any such restrictions or procedures, and/or provide Web address where they are posted and a contact name and telephone number for service providers without Internet access.

We are subject to NJ State purchasing laws N.J.S.A. 18A:18A-3 etc. We will/can only purchase goods and services through open public bids, from vendors having approved, existing NJ state contracts or via purchases that qualify.

13. If you intend to enter into a multi-year contract based on this posting or a contract featuring an option for voluntary extensions you may provide that information below. If you have plans to purchase additional services in future years, or expect to seek new contracts for existing services, summarize below (including the likely timeframes).

We plan to purchase more of our current as well as additional types of telecom services, increased amounts of internet access as well as continue to make necessary upgrades to our voice and data network infrastructure together with purchasing the necessary installation and maintenance services required for the operation of the networks.

Block 3: Technology Assessment

14. ☐ **Basic telephone service only:** If your application is for basic local and long distance telephone service (wireline or wireless) only, check this box and skip to Item 16.

15. Although the following services and facilities are ineligible for support, they are usually necessary to make effective use of the eligible services requested in this application. Unless you indicated in Item 14 that your application is ONLY for basic telephone service, you must check at least one box in (a) through (e). You may provide details for purchases being sought.

a. Desktop communications software: Software required ☒ has been purchased; and/or ☐ is being sought.

b. Electrical systems: ☒ adequate electrical capacity is in place or has already been arranged; and/or ☐ upgrading for additional electrical capacity is being sought.

c. Computers: a sufficient quantity of computers ☒ has been purchased; and/or ☐ is being sought.

d. Computer hardware maintenance: adequate arrangements ☒ have been made; and/or ☐ are being sought.

e. Staff development: ☒ all staff have had an appropriate level of training /additional training has already been scheduled; and/or ☐ training is being sought.

f. Additional details: Use this space to provide additional details to help providers to identify the services you desire.

Block 4: Recipients of Service

16. **Eligible Entities That Will Receive Services:**

Check the ONE choice (a,b or c) that best describes this application and the eligible entities that will receive the services described in this application. You will then list in Item 17 the entity/entities that will pay the bills for these services.

a. ☒ **Individual school or single-site library.**

b. ☒ **Statewide application for (enter 2-letter state code) representing (check all that apply):**

☐ All public schools/districts in the state:

☐ All non-public schools in the state:

☐ All libraries in the state:

If your statewide application includes INELIGIBLE entities, check here. ☐ **If checked, complete Item 18.**

c. ☒ **School district, library system, or consortium application to serve multiple eligible entities:**

Number of eligible entities	
<i>For these eligible sites, please provide the following</i>	
Area Codes (list each unique area code)	Prefixes associated with each area code (first 3 digits of phone number) separate with commas, leave no spaces
If your application includes INELIGIBLE entities, check here. <input type="checkbox"/> If checked,	

complete Item 18.

17. Billed Entities

List the entity/entities that will be paying the bills directly to the provider for the services requested in this application. These are known as Billed Entities. At least one line of this item must be completed. Attach additional sheets if necessary.

Entity Number	Entity
122972	ASBURY PARK FREE PUB LIBRARY

18. Ineligible Participating Entities

Does your application also seek bids on services to entities that are not eligible for the Universal Service Program? If so, list those entities here (attach pages if needed):

Ineligible Participating Entity	Area Code	Prefix
---------------------------------	-----------	--------

Block 5: Certification

19. The applicant includes:(Check one or both)

- a. ☒ schools under the statutory definitions of elementary and secondary schools found in the No Child Left Behind Act of 2001, 20 U.S.C. Secs. 7801(18) and (38), that do not operate as for-profit businesses, and do not have endowments exceeding \$50 million; and/or
- b. ☒ libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 that do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to elementary and secondary schools, colleges and universities).

20. All of the individual schools, libraries, and library consortia receiving services under this application are covered by:

- a. ☒ individual technology plans for using the services requested in the application, and/or
- b. ☒ higher-level technology plans for using the services requested in the application, or
- c. ☒ no technology plan needed; application requests basic local and/or long distance telephone service only.

21. Status of technology plans (if representing multiple entities with mixed technology plan status, check both a and b):

- a. ☒ technology plan(s) has/have been approved by a state or other authorized body.
- b. ☒ technology plan(s) will be approved by a state or other authorized body.
- c. ☒ no technology plan needed; application requests basic local and long distance telephone service only.

22. ☒ I certify that the services the applicant purchases at discounts provided by 47 U.S.C. Sec. 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value.

23. ☒ I recognize that support under this support mechanism is conditional upon the school(s) or library(ies) I represent securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services purchased effectively.

24. ☒ I certify that I am authorized to submit this request on behalf of the above-named entities, that I have examined this request, and to the best of my knowledge, information, and belief, all statements of fact contained herein are true.

25. Signature of authorized person: ☒

26. Date (mm/dd/yyyy): 12/07/2000

27. Printed name of authorized person: Robert W. Stewart

28. Title or position of authorized person: Library Director

29a. Address of authorized person:
City: State: Zip:

29b. Telephone number of authorized person: (732) 774 - 4221

29c. Fax number of authorized person: ()

29d. E-mail address number of authorized person:

Persons willfully making false statements on this form can be punished by fine or forfeiture, under the Communications Act, 47 U.S.C. Secs. 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001.

Service provider involvement with preparation or certification of a Form 470 can taint the competitive bidding process and result in the denial of funding requests. For more information, refer to the "Service Provider Role in Assisting Customers" at www.sl.universalservice.org/vendor/manual/chapter5.doc or call the Client Service Bureau at 1-888-203-8100.

NOTICE: Section 54.504 of the Federal Communications Commission's rules requires all schools and libraries ordering services that are eligible for and seeking universal service discounts to file this Description of Services Requested and Certification Form (FCC Form 470) with the Universal Service Administrator. 47 C.F.R. § 54.504. The collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended. 47 U.S.C. § 254. The data in the report will be used to ensure that schools and libraries comply with the competitive bidding requirement contained in 47 C.F.R. § 54.504. All schools and libraries planning to order services eligible for universal service discounts must file this form themselves or as part of a consortium.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The FCC is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information you provide to determine whether approving this application is in the public interest. If we believe there may be a violation or a potential violation of a FCC statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party of a proceeding before the body or has an interest in the proceeding. In addition, information provided in or submitted with this form or in response to subsequent inquiries may also be subject to disclosure consistent with the Communications Act of 1934, FCC regulations, the Freedom of Information Act, 5 U.S.C. § 552, or other applicable law.

If you owe a past due debt to the federal government, the information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide the information to these agencies through the matching of computer records when authorized.

If you do not provide the information we request on the form, the FCC may delay processing of your application or may return your application without action.

The foregoing Notice is required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. § 3501, et seq.

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Performance Evaluation and Records Management, Washington, DC 20554.

Please submit this form to:

**SLD-Form 470
P.O. Box 7026
Lawrence, Kansas 66044-7026
1-888-203-8100**

For express delivery services or U.S. Postal Service, Return Receipt Requested, mail this form to:

**SLD-Form 470
c/o Ms. Smith
3833 Greenway Drive
Lawrence, Kansas 66046
1-888-203-8100**

FCC Form 470
September 1999

New Search

Return To Search Results

Appendix 4

D-1



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2001-2002

March 2, 2007

Robert W. Stewart
Asbury Park Public Library
500 First Avenue
Asbury Park, NJ 07712-6193

Re:	Applicant Name:	Asbury Park Free Pub. Library
	Billed Entity Number:	122972
	Form 471 Application Number:	229937
	Funding Request Number(s):	534428
	Your Correspondence Received:	December 26, 2006

After thorough review and investigation of all relevant facts, the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2001 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 to the Federal Communications Commission (FCC). 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: 534428
Decision on Appeal: Denied
Explanation:

- Upon review of the appeal letter, the relevant facts and documentation, it was determined that the establishing Form 470 Number 474750000309146 for this request was submitted from an IP Address that Networks and More, Inc. used to submit a service provider invoice to USAC. Networks and More, Inc. was selected as a vendor for this FRN. Additionally, it was determined that the cited establishing Form 470 displays striking similarities with the Form 470 service, Item 12 and Item 13 descriptions of other applicants who selected Networks and More, Inc. as their service provider. The Form 470 exhibits a pattern service, Item 12 and Item 13 description, which implies service provider involvement in the bidding process. During the review, the service provider, Networks and More, Inc., stated that they did perform electronic data entry work on the Form 470s and that they submitted the Form 470s from their office. In accordance with the rules of the Support Mechanism, this is considered to be a conflict of interest and is in violation of the competitive bidding guidelines.

100 South Jefferson Road, P.O. Box 902, Whippany, New Jersey 07981
Visit us online at: www.usac.org

- As is noted on the USAC website, applicants may not delegate the competitive evaluation role to anyone associated with a service provider. A "Fair and Open Bidding Process" has "all bidders are treated the same and that no bidder has advance knowledge of the project information." Applicants and service providers should not have a relationship prior to competitive bidding "that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way." A service provider, who will participate in the competitive process as a bidder, cannot complete the Form 470. The Form 470 warns applicants that "service provider involvement with preparation or certification of a Form 470 can taint the competitive bidding process and result in the denial of funding requests." Applicants cannot abdicate control over the application process to a service provider that is associated with the FCC Form 471 for that applicant. The above findings indicate that the vendor was improperly involved in the competitive bidding process, which is a violation of the rules of the Support Mechanism. You have failed to provide evidence on appeal that USAC erred in its original decision. Consequently, your appeal is denied.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. 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 in the "Appeals Procedure" posted in the Rules and Regulations Area of the SLD section of the USAC website or by contacting the Client Service Unit. We strongly recommend that you use the electronic filing options.

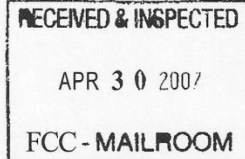
We thank you for your continued support, patience and cooperation during the appeal process.

Universal Service Administrative Company

Appendix 5

NOT THE COPY ORIGINAL

Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)
)

A Request for Review of a
Decision of the Universal
Service Administrator by

Asbury Park Free Public Library)	CC Docket No. 02-6
Asbury Park, New Jersey)	
Schools and Libraries Universal Service)	
Support Mechanism)	

APPELLANT IDENTIFICATION AND CONTACT INFORMATION

This request for review is being filed by:

Asbury Park Public Library
500 First Avenue
Asbury Park, NJ 07712-6193
Contact Person: Robert W. Stewart
Phone: 732-774-4221
Fax: 732-988-6101
E-Mail: rstewart@asburyparklibrary.org
Billed Entity Number : 122972
Billed Entity FCC RN: 001181125

NATURE OF APPELLANT'S REQUEST

Appellant library seeks FCC review of the denial of an appeal of a "Notification of Commitment Adjustment Letter" by the Administrator of the Universal Service Administrative Company, Schools and Libraries Division.

SUBJECT APPLICATION IDENTIFICATION

The application that is the subject of this request for FCC review and of our preceding appeal to USAC is described as follows:

Form 471 Application 229937
Funding Request Number: 534428
Category of Service: Internal Connections
Form 470 Application Number: 474750000309146
Applicant's Form Identifier: 301
SPIN: 143004355
Service Provider Name: Networks & More, Inc.
Contract Number: C
Billing Account Number: N/A
Site identifier: 122972
Original Funding Commitment: \$22,880.04
Funds Disbursed to Date: \$21,296.00
Funding Year 07/01/2001 - 06/30/2002
ERATE Year 4

PAGE 1

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DOCUMENTATION AND BACKGROUND

The library received a Notification of Commitment Adjustment Letter dated November 2, 2006 a copy of which is appended as Appendix pages A-1 to A-4 and is printed on pink colored paper. A Demand for Payment Letter dated January 4, 2007 followed a copy of which is appended as Appendix pages B-1 to B-3 and is printed on green colored paper. On December 21, 2006 the library filed an Appeal of the COMAD letter with USAC Schools & Libraries Division, a copy of which is appended as Appendix pages C-1 to C-4 and is printed on yellow colored paper. The library received a Denial of Appeal dated March 2, 2007 from the Administrator of USAC & Schools & Libraries Division a copy of which is appended as Appendix pages D-1 and D-2 and is printed on blue colored paper. Finally the Form 470 which is at the heart of this matter is also included herein as Appendix pages E-1 to E-6 and is printed on lilac colored paper.

NOTIFICATION OF COMMITMENT ADJUSTMENT LETTER

In the COMAD letter dated November 2, 2006 sent to the library and vendor, Networks & More, Inc., USAC stated that funding for the FRN was rescinded because "service provider contact information appeared on the cited Form 470." In our appeal of the COMAD letter to USAC and in the vendor's appeal, dated January 2, 2007, to the FCC, we both stated that the Form 470 itself was prima *facie* evidence that USAC's claim was erroneous and untrue because the library director is listed as the contact person and the contact information provided is the library's contact information.

USAC ADMINISTRATORS DECISION ON APPEAL

Our appeal to USAC was denied in a letter from the Administrator dated March 2, 2007. In the letter USAC made no further reference to its erroneous claim that vendor contact information appeared on the Form 470. On page 2 of the letter the last sentence states, "You have failed to provide evidence on appeal that USAC erred in its original decision." USAC's original decision was based on its claim that vendor contact information appeared on the Form 470. In our appeal we did provide evidence of error which USAC ignored.

The denial letter however cited other new reasons for determining, "that the vendor was improperly involved in the competitive bidding process." The additional reasons were presumably known to USAC when the COMAD letter was sent. It would have saved time for USAC and e-rate clients and have been more client-friendly if all the reasons for denial were stated up-front instead of in stages in what appears to be an ambush of appellants who did not submit or accede to USAC's demands in the original COMAD letters.

The new and additional points or charges made in the denial letter are:

1. the Form 470 was filed online from the service provider's IP address
2. language in Item 12 and 13 descriptions on the Form 470 "display striking similarities" to many other Form 470's of clients of the same service provider
3. "...applicants may not delegate the competitive evaluation role to anyone associated with a service provider."
4. "...applicants can not abdicate control over the application process to a service provider that is associated with the Form 471 for that applicant."

5. USAC claims that the service provider admitted to performing electronic data entry work on Form 470s for clients and submitted same from their office.
6. Applicant and service provider had a relationship prior to competitive bidding that unfairly influenced the outcome of competition and furnished "inside" information.
7. A service provider who participates in the competitive bidding process is not allowed to complete the Form 470 for that service.

Based on the findings above USAC determined, "that the vendor was improperly involved in the competitive bidding process, which is a violation of the rules of this Support Mechanism." Following that determination our appeal was denied.

RELATIONSHIP WITH VENDOR

The Asbury Park Public Library and Networks & More Inc. had a client-vendor relationship from 1998-2001. In the first three years Networks served as a consultant on e-rate matters and was compensated for those services by a corporate donor to the library. In that capacity NBM assisted with filing forms and handling paperwork. This library has participated in the e-rate program from the start; we are now handling forms for Year 10. It is difficult now to impart the feelings of frustration and confusion of many applicants in the early years of this program. As a library in the 90% category we are by definition among the neediest applicants and are in fact still one of the poorest urban areas in New Jersey. We benefit greatly from the program and have from the start; and the funding we receive is absolutely essential to our being able to maintain and offer modern technology to our customers. Even though we were very motivated and committed to participate in the program we could never have negotiated the paperwork and bureaucracy without the consultant's expert help. We saw many colleagues working on their own fail to get funding for very trivial errors and problems in the application process.

Realizing the importance of the program we set out from the start to become proficient and self-sufficient with regard to filing applications and managing all aspects of the e-rate program. We reached the point of being able to do everything on our own in Year 5, funding year 2002. We erroneously stated in our appeal of the COMAD letter that there was no service provider involvement in our Form 470 filing because we believed from our notes that funding Year 2001 was the year we became fully independent of any outside assistance.

During the four years that Networks performed data entry work on Form 470s for us their participation was clerical or ministerial in nature. Library staff provided input, directed the process, and made all substantive decisions as to what information to provide.

Also during the entire relationship the library, as well as the vendor, was cognizant of the need to follow all New Jersey public bidding statutes and regulations and of the absolute necessity of complying with FCC regulations concerning the requirements for conducting a fair, open, and competitive bidding process; and at no time did either party do otherwise or give the appearance of doing otherwise.

FORM 470 AND SERVICE PROVIDER INVOLVEMENT

In our comments above about the Administrator's denial letter enumerated items 1, 5, and 7 refer to the fact that the service provider assisted with the online filing of Form 470. However the competitive bidding requirements of the FCC at 47 C.F.R. Sect. 54.504 and Sect. 54.511 (a) do not prohibit this activity and several FCC Orders have allowed this practice under certain conditions. As early as 2000 the Commission in the *MasterMind* Order (1) at paragraph 14 determined that although a vendor had assisted with the filing of the Form 470 there was no violation of the competitive bidding process because neither the vendor nor any of its employees signed the forms nor were they listed as contact persons. The Commission affirmed this holding in the Approach Learning and Assessment Center Order adopted and released on March 23, 2007 (2) and at paragraph 15 notes that, "the Commission has determined that a competitive bidding violation occurs when a service provider that is listed on the Form also participates...as a bidder." This situation did not obtain in our case.

COMPETITIVE BIDDING PROCESS

With regard to the Form 470 in question the library states:

- (1) Library complied with all FCC competitive bidding rules and requirements
- (2) Form 470 was timely filed and remain posted a minimum of 28 days
- (3) All inquiries from potential bidders were received by the director, as contact person, at the library address
- (4) The evaluation of bids and awarding of contracts was solely in the control of and in the hands of the library who solely made these decisions
- (5) The library did not delegate its competitive evaluation role to any other person or agency
- (6) The library did not abdicate control over any aspect of the application process to any other person or agency
- (7) The relationship that existed between the vendor and applicant did not unfairly influence the outcome of the competitive bidding process
- (8) Cognizant of the existing involvement with a vendor the library made a special effort to establish and maintain an arms-length relationship with said vendor to insure a fair, open, and competitive bidding process

In its letter of denial of our appeal USAC concludes that the competitive bidding process was violated and tainted and bases its judgment solely on the fact that a service provider assisted in the filing on the Form 470. Their conclusion is based on assumptions and inferences not supported by facts. USAC offered no evidence to indicate that any of our statements above regarding the bidding process are not accurate and truthful.

Further USAC's mention in our denial letter that, "The Form 470 exhibits a pattern service, Item 12 and Item 13 description, which implies service provider involvement in the bidding process," is another example of an unsubstantiated charge that bidding rules were violated. The Commission in the *Academy of Careers and Technologies* Order adopted and released May 19, 2006 (3) at paragraph 3 comments on, "This procedure, described by USAC as

"pattern analysis," contemplates the possibility that a group of applicants, all with the same service provider, violated the competitive bidding rules." We believe that our library together with a number of other clients of Networks were pulled in by USACs "pattern analysis" dragnet and summarily accused of competitive bidding violations because USAC did not follow the directive at paragraph 7 of the Academy of Careers and Technologies *Order* (3) which states "...we find that when a service provider has improperly participated in an applicants bidding process due to the results of its "pattern analysis" procedure, it is incumbent on USAC to conduct further investigation and analysis prior to denying funding." In our case USAC did not do further investigation or analysis.

APPELLANT'S REQUEST FOR RELIEF

The Asbury Park Public Library respectfully requests that the Commission review the USAC Administrator's Decision on Appeal dated March 2, 2007, denying our appeal of USAC's COMAD Letter of November 2, 2006; that the Commission consider appellant's factual statements and descriptions of actions taken and procedures followed; and that the Commission reverse the action of USAC Schools & Libraries Division in this matter and restore funding to Funding Request Number 534428. Thank you for your help with this matter.

CASE NOTES

- (1) Request for Review by *MasterMind* Internet Services, *Inc.*, CC Docket No. 96 -45, SPIN - 143006149. (2000)
- (2) Request for Review by Approach Learning and Assessment Center, File Nos SLD-140957 et al, CC Docket 02 -6. (2007)
- (3) Request for Review by Academy of Career and Technologies, CC Docket No. 02 -6, File Nos. SLD -418938 et al. (2006)

CERTIFICATION AND SIGNATURE

I certify that I am authorized to submit this appeal on behalf of the Board of Trustees of the Asbury Park Free Public Library of the City of Asbury Park, New Jersey:

x 

Robert W. Stewart
Library Director

Appendix 6



Universal Service Administrative Company

Schools & Libraries Division

Date: December 8, 2008
To: Ingrid Bruck
Entity: Long Branch Free Public Library
Fax #: 732.222.3799
Sender: Jennifer Cerciello
Phone: 973.581.6747
Fax: 973.599.6552
E-mail: jcercie@sl.universalservice.org
Subject: Special Compliance Information Request for FY 2002

This Pattern Analysis Information Request (PAIR) is related to your Funding Year 2002 Form 471 application # 329836, FRN 890306. Our Special Compliance review revealed Forms 470 and 471 citing Networks & More as a service provider share similarities with other billed entities' Forms 470 and 471 and/or other documents submitted to SLD. These similarities suggest that the following violations may have occurred: competitive bidding violations. **Your appeal regarding the aforementioned funding request may be denied if these violations are found to have occurred.** Therefore, we must seek additional information regarding the completion and posting of your Form 470, your competitive bidding process, and / or your Selective Review responses to determine whether there has been compliance with Program rules.

Enclosed please find a certification which must be signed by a person authorized to represent your entity and who is most knowledgeable about the information set forth in the responses to the PAIR. Submit the certification back to me, Jennifer Cerciello, with your responses to the PAIR.

You have **15 days** to respond to this request. Your response is due by the close of business December 23, 2008. Please provide complete responses and documentation to the questions listed below. If the question(s) is not applicable, please explain why. **It is important that you provide complete responses to ensure the timely review of your application. If you do not respond or provide incomplete responses, your funding request (FRNs) may be reduced or denied.**

If your entity's authorized representative completed the information in this document, please attach a *copy of the letter of agency or other agreement* between the applicant and the consultant authorizing them to act on the school or library's behalf. If your entity received assistance from outside of your organization in responding to this request, please indicate this in your reply. Because service providers may not participate in the competitive bidding process except as bidders, Networks & More, or any other service provider, should not be consulted in this matter.

Please note: Program rules require you to demonstrate that a fair and open competitive bidding process occurred. If you are unable to do so, funding may be rescinded or denied.

Should you wish to cancel your appeal of FRN 890306, please clearly indicate in your response that it is your intention to cancel the funding request. Include in any cancellation request the Form 471 application number(s) and/or funding request number(s), and the complete name, title and signature of the authorized individual.

Program rules prohibit service providers from participating in developing, filling out, completing and posting the Form 470.

During the course of a Special Compliance review, Networks & More was contacted because patterns were found between FCC Forms 470 of their clients - in fact, the description of services on these forms was found to be identical; because there were exact IP address matches between Networks & More's invoice IP addresses and applicant FCC Form 470 IP addresses in multiple funding years; and because information captured from the Networks & More web site offered Schools and Libraries Program consulting to applicants, while the company was also acting as a service provider.

Networks & More responded to Special Compliance that they filled out and submitted many FCC Forms 470 for their clients, which was the reason for the patterns and the IP address matches. Networks & More provided to USAC a list of applications for which they performed those tasks. Funding Year 2002 Form 471 application # 329836, FRN 890306 was one of the FCC Forms 471 that, according to Networks & More and consistent with USAC pattern analysis findings, relied upon FCC Forms 470 that were filled out and submitted by Networks & More, the chosen service provider for the aforementioned FRN.

Special Compliance determined that a competitive bidding violation occurred in relation to FRN 890306.

First, in filling out the FCC Forms 470, Networks & More helped the Long Branch Free Public Library to determine what types of services to seek. In so doing, the Long Branch Free Public Library necessarily revealed information to Networks & More that it did not reveal to any other prospective bidder.

Second, Networks & More told USAC they filled out and submitted the FCC Form 470 and submitted the form from their office, which constitutes a violation of the prohibition against service providers filling out forms that require an applicant's certification, as well as a violation of the mandate that the FCC Form 470 be completed by the entity that will negotiate with prospective bidders. Networks & More assisted in completing the FCC Form 470 even though the Long Branch Free Public Library was the entity that would negotiate with prospective bidders.

Third, Networks & More performed many of the competitive bidding tasks that would ordinarily have been performed by the Long Branch Free Public Library. For example, the Long Branch Free Public Library did not have to prepare a list of services to bid out, fill out the FCC Form 470, or submit the FCC Form 470 to USAC. Therefore, the assistance that Networks & More provided to the Long Branch Free Public Library may have caused the library to look more favorably on Network's & More's bid as opposed to bids from companies who did not provide such assistance.

A) In your letter of appeal to the Commission, you do not deny that the service provider was involved in the competitive bid process but rather state that not all such involvement equates to a competitive bid violation. The Letter of Appeal seems to indicate that because the Long Branch Free Public Library chose the service provider, the library maintained control of the competitive bid process. However, for the reasons noted above, Special Compliance determined that a competitive bid violation did occur. As such, please provide a response to the statements above. Please provide specific information to indicate why

you believe that a violation did not occur in this instance. Please provide any available documentation in support of your response.

B) If you disagree with USAC's determination that Networks & More developed, filled out, completed and posted the FCC Form 470 175230000404666, please answer the questions below.

I. Please provide the name, title and employer of the individual(s) who

- developed the content of the Form 470

Ingrid Bruck, Library Director, Long Branch Free Public Library

Jamie Punderson, Owner and Consultant, Networks & More! Inc.

James M. Walsh, Managing Director, Field Operations, Networks & More! Inc.

Suzanne Bertolino, Assistant , Networks & More! Inc.

- filled out/completed the Form 470

Ingrid Bruck, Library Director, Long Branch Free Public Library

Suzanne Bertolino, E-Rates Preparer, Networks & More! Inc.

- certified the Form 470

Ingrid Bruck, Library Director, Long Branch Free Public Library

- posted the Form 470 to the USAC website

Suzanne Bertolino, E-Rates Preparer, Networks & More! Inc.

- submitted or mailed the Form 470

Ingrid Bruck, Library Director, Long Branch Free Public Library

For each of the individuals listed above, please:

- Provide individual contact information (address, telephone, fax and email)

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Long Branch Free Public Library
328 Broadway
Long Branch NJ 07740
Voice: 732-222-3948
Fax: 732-222-3799 Email: ibruck@lmxac.org Webpage: www.lmxac.org/longbranch

Jamie Punderson, Owner, Consultant, Networks & More! Inc.
James M. Walsh, Senior Networks Engineer, Managing Director, Field Operations, Networks & More! Inc.
Jim Walsh Email: jimwalsh@andmore.com Cell: 732-208-7381, Networks & More! Inc.
Suzanne Bertolino, Assistant, Erates Preparation, Networks & More! Inc.
Suzanne Bertolino Email: Suzanne@andmore.com
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- Indicate if the individual is an employee of your entity. Yes _____ or No X _____.

If no:

- Explain how are they affiliated with your entity and why were they selected to prepare or complete the 470.

As part of an initiative to expand the range of technology services available through libraries to underserved New Jersey residents, New Jersey Natural Gas Company hired Networks & More! Inc to be the technology consultant and E-rate application preparer for the libraries in their service area selected to be NJR Libraries Online sites.

Long Branch Free Public Library was the second public library in Monmouth County selected by NJ Natural Gas to participate in their Libraries Online Program. The goal of this program was to provide the community with free high-speed internet connectivity on public computers, thereby diminishing the "digital divide" that exists for people of color and those living in poverty. The public libraries selected for Libraries Online sites lacked technology themselves and served a disadvantaged, diverse population that was considered to be behind the digital divide. When NJ Natural Gas evaluated Long Branch PL in 1997 for Libraries Online, the library had a total of six computers on a peer-to-peer network, including four staff computers and two public computers donated to the library by NJR. The public computers had 4 -6 public internet uses each week and the library was not automated.

Participation in the Libraries Online program was contingent upon applying for E-rate discounts on eligible services, in order to leverage the public and private funds that were building up our technology base. When our library was selected to be a NJR Libraries Online site, The Library Board agreed to have the consultant hired by New Jersey Natural Gas, Networks & More! Inc., assist us in the development of a technology plan for our library and to assist us in the application process for the E-rate program. The implementation of the technology plan was contingent on the receipt of E-rate support. The Library Board agreed that if the library received E-rate support, New Jersey Natural Gas sponsorship would include

paying Networks & More! for technology consulting fees and for their assistance in the preparation of the E-rate application for Long Branch PL. New Jersey Natural Gas would also pay the undiscounted portion of the total cost for E-rate supported services in order to establish the library network, and NJR would provide funds to purchase five more public computers and \$5,000 for public computer furniture. Through 2008, New Jersey Natural Gas provided about \$60,000 to Long Branch Free Public Library for the support of free public internet access.

Long Branch Public Library received its final funding commitment for Network Maintenance from the E-rate Program in FY2002 (FRN 890306, the subject of this Special Compliance Review). In early 2003, the library and City of Long Branch hired a shared computer technology assistant to help with computer network maintenance at the library and in the city. The library's IT assistant, Jerry Carroll, shadowed and observed the Networks & More consultant during the three months during which Networks & More performed maintenance at the library. Mr. Carroll learned what he could about the configuration of the library network and what Networks & More had been doing with the upgrade of the network so that the Library could internalize the network maintenance. The transition wasn't easy, but Mr. Carroll took over library network maintenance effective July 1, 2003, and continues to work for the library and city in this shared capacity through 2009.

Our library's public computer use in 2008 has increased significantly (likely as a result of the recession). A record number of people from the community are coming into the library to use our public internet services. In 2008, we had 123,081 visits (up 19.6% from 2007), 29,007 people used public computers (up 8.7% from 2007), and 3,830 people used the Gates Computer Lab (up 86.9% from 2007). In 2008 the library offered 35 public internet computers. The E-rate program has been a vital component of Long Branch Public Library's success in offering technology services, and in particular in our ability to establish a viable source of free public internet service to the community. We view this as a testimony to the success of the E-rate program in providing support for public libraries, including Long Branch PL.

In response to the first allegation, Long Branch PL does not deny that Networks & More helped the Long Branch Free Public Library to determine what types of services to seek and to fill out the Form 470. But in so doing, the Long Branch Free Public Library did not reveal information to Networks & More that it did not/would not reveal to any other prospective bidder.

1- The only E-rate work listed on Form 470 that Networks & More bid on was the maintenance of the library network. The library was the contact on Form 470 (as required under the MasterMind order), and as such, received all vendor requests for information and bids. Unfortunately, the library received no bids for network maintenance for FRN 890306 except for the bid from Networks & More. Thus, while it might generally be true that a vendor who has otherwise assisted an applicant with the E-rate procurement process would have access to more information than other prospective bidders, this is not the case with the FRN at issue. Indeed, Long Branch Public Library was ready and willing to provide any and all information necessary to other bidders, had there been any.

2- Networks & More was the only technology network support provider that the library knew about that was willing and capable of performing network maintenance contingent upon receiving E-rate funding. Given the financial conditions facing the library at the time, Long Branch would not have been able to use the BEAR reimbursement process, and required vendors to submit SPIs for services that were not otherwise fully budgeted.

3- NJR hired Networks & More to be the library's technology consultant because they were highly respected and competent at their work. Prior to making the award to Networks & More, Long Branch staff sought recommendations of two libraries using Networks & More- Central Jersey Regional Cooperative (CJRLC) and Red Bank Catholic High School. Both gave Networks & More high marks. In fact, to this day, CJRLC continues to use Networks & More for network support and maintenance.

4- The rate charged by Networks & More for network maintenance to these libraries not participating in the E-rate program were equivalent to what we were quoted, and therefore we judged Network & More's hourly rate to be in the acceptable and competitive.

We believe that there is no reason in this case to assume that Networks & More was provided an unfair advantage over other vendors or that the bid process was tainted in any way. Had the guidelines made available in the SEND decision been available in late 2001/early 2002, we would likely have done things differently. However, given the information and rulings that were available at the time (in particular the MasterMind decision), we made a good faith effort to comply with the rules as we understood them at the time.

The second allegation is that Networks & More filled out and submitted the FCC Form 470 and submitted the form from their office, constituting a violation of the prohibition against service providers filling out forms that require an applicant's certification, as well as a violation of the mandate that the FCC Form 470 be completed by the entity that will negotiate with prospective bidders. We do not deny this allegation; however, there are several mitigating factors.

1-The program rules were unclear in 2002. The SEND Decision, which clarified the roles of consultants and service providers (and to whose standards we are being held), was not released until 2008 – almost 7 years after the procurement process in question was started. The library was not aware of that there was a conflict of interest in 2001/2002 – and, based on the SEND decision, many other applicants were not aware that this arrangement was a violation of program rules, either. In applying these standards retroactively almost 7 years after the fact, we believe that an unreasonable standard is being applied. The FCC has said repeatedly that information provided by the SLD is not binding and that the FCC, not the SLD, is the appropriate entity to determine the rules of the program. However, in the SEND decision, the Commission seems to be reversing that, arguing that a single presentation made by the SLD (which was never proactively distributed to applicants or state coordinators) was sufficient notice that the rules had changed, even though the FCC did not affirm the contents of that presentation until 7 years later.

2-In the FY2002 procurement process, Long Branch Free Public Library was the entity that negotiated with any and all prospective bidders. The perspective of vendors, there was no way they could know Networks & More had been involved in the Form 470 process because there was no impact on which bids were considered or how bids were considered. The library (not Networks & More) is the contact listed on Form 470, handled all vendor inquiries (for all the services listed on the Form 471), and actively solicited bids for desired services. Throughout all the years it has participated in the E-rate program, Long Branch PL has served as the entity that negotiated with prospective bidders for listing on Form 471; that responsibility has never been handed over to any consultant.

3-In FY2003, Networks & More explained that due to changes in the program rules, Networks & More declined to bid on the provision of network maintenance for Long Branch PL. Note that they indicated to us that this was due to a change in the rules, and did not indicate that there had been any wrongdoing with respect to the FY2002 application. We believe that, if there was indeed wrongdoing with respect to the FRN in question, then the vendor who acted improperly as both consultant and service provider should be held culpable, rather than the applicant who acted in good faith.

4-Since FY2004, the library has internalized the capacity to manage the E-rate application process, and has completed its own applications each year since. continues to do so through the present.

The third allegation is that Networks & More performed many of the competitive bidding tasks that would ordinarily have been performed by the Long Branch Free Public Library. For example, the Long Branch Free Public Library did not have to prepare a list of services to bid out, fill out the FCC Form 470, or

submit the FCC Form 470 to USAC. Therefore, the assistance that Networks & More provided to the Long Branch Free Public Library may have caused the library to look more favorably on Network's & More's bid as opposed to bids from companies who did not provide such assistance.

1-At its core, this argument is at best academic – and moot. There were no other bidders for the network maintenance service included in FRN 890306. Networks & More was not unfairly advantaged in the bid evaluation process, since there were no other bids which we could evaluate them against. Since the bid was cost-effective (based on our analysis of what was being charged to other libraries), we awarded the bid to the sole vendor who bid on the FRN. The fact that this vendor had also assisted in the completion of the Form 470 is effectively moot, since there were no other vendors who sought to provide the service.

2-While Networks & More did assist in the preparation of the Form 470, the services listed were sufficiently generic and open-ended in nature that it did not exclude any particular service providers that would have an interest in being selected as the library's service provider on Form 471. The language of the Form 470 was so general that any vendor interested in Long Branch's business could have bid on it. Thus, the language in the Form 470 did not preclude other vendors from bidding; the simple fact is that other vendors were not interested in bidding.

3-The library was the stated contact on Form 470, and had exclusive control over the vendor bid evaluation and selection process. The library would be aware if there had been any other vendors who had expressed an interest in bidding on the network maintenance service. We are willing to attest under oath that no vendor other than Networks & More expressed interest in performing network maintenance for the library.

2. Did a service provider's employee(s) assist your entity with the completion and/or posting Form 470 175230000404666 Yes X or No _____.

If yes:

- Provide the name, title, contact information (address, telephone, fax and email) of the service provider's employee(s).

Suzanne Bertolino, Assistant, Erates Preparation, Networks & More! Inc.

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Fax: 732-506-6797

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Website: www.andmore.com <http://www.k12usa.com/>

- Describe the assistance they provided, (i.e., did they fill out any portion of the form, provide you with information for you to add to the form, post the form to the USAC website etc.)

Acting as our paid consultant for E-rate application assistance, Suzanne Bertolino at Networks & More! Inc. consulted with Ingrid Bruck, Library Director to prepare the Form 470 Application. She asked the library director what POTS services and internal connections services we wanted for the library, asked the library to assist by giving her copies of AT&T & Verizon bills for local phone service for the libraries,

copies of AT&T & Verizon bills for long distance phone service for the libraries, T-1 bills for Main Library and the ISDN Line bill for Elberon Branch Suzanne Bertolino took the information I provided her with and translated it into appropriate technology neutral language for the Form 470, inserted that language into the Form for the library, and sent the library a copy of the Form 470 to review. Once we had approved the language, she filed the Form 470 for the Library, and instructed the library sign and mail in the Form 470 certification page.

- Explain why you selected your service provider's employee(s) to assist your entity with completing or posting your Form 470.

See #1. New Jersey Natural Gas Company paid for Networks & More! Inc to be our library's E-rate application consultant. They acted in what we thought was an appropriate manner for an E-rate consultant

As we indicated in our our letter of appeal to the Commission, Long Branch PL does not deny that the service provider Networks & More was involved in the competitive bidding process but rather states that such involvement does not equate to a surrender of control of the competitive bidding process and thus is not a competitive bidding violation. We maintain that this is true.

3. Please provide the specific location from which the Form 470 175230000404666 was filled in, completed, and/or submitted to USAC.

Suzanne Bertolino, Networks & More! Inc., acting as our paid E-rate consultant, filed the form on our behalf. We assume she did so from the N&M office at 24 Highlands Bend, Island Heights NJ 08732. However, as outlined above and in our earlier appeal, our library never surrendered control of the bidding process that followed the submission of the Form 470..

If the Form 470 was not filed in, completed, and/or submitted from your entity's location, please explain why.

See #1. New Jersey Natural Gas Company paid for Networks & More to be our library's E-rate consultant and to assist us in the preparation of our E-rate forms.

4. The Forms 470 Block 2: *Summary Description of Needs or Services Requested* from applicants that selected services from Networks & More contain identical statements as noted below:

In multiple funding years, FCC Forms 470 contained no Applicant Form Identifier, and the services requested were identical for each category, as quoted below:

"Telecom-local phone service, POTS, centrex, Long distance services, paging services, Cellular services, Full and/or fractional T-1 using SMDS, frame relay and/or PTP and/or ADSL, ISDL BRU custoflex.

Internet Access- monthly Internet access.

Internal Connections: Additional Cat 5/6 and /or fiber optic cabling desired along with network infrastructure electronics, network Infrastructure Improvements, Improvements to phone system, phone cabling and phone installation and maintenance services."

Additionally, each FCC Form 470 also had box 12 checked, which stated, "We are subject to NJ State Purchasing Laws."

Further, FCC Forms 470 from FY 2001 and FY 2002 also had identical languages in box 12 and box 13, respectively:

"We are subject to NJ State purchasing laws. N.J.S.A. 18A:18A-3 etc. which mean we can only purchase goods and services through open public bids, from vendors having approved, existing NJ state contracts or from vendors or via purchases that qualify for an exception or exemption from these laws and regulations

We plan to purchase more of our current as well as additional types of telecom services, increased amounts of internet access as well as continue to make necessary upgrades to our voice and data network infrastructure together with purchasing the necessary installation and maintenance services required for the operation of the networks."

5. These patterns suggest that the service provider may have participated in development, filling out, completion and/or posting of the Form 470. A service provider's participation in competitive bidding process except as a bidder is a program rule violation.

To the best of your knowledge, explain why your Form(s) 470 contain statements that are identical to the Form(s) 470 of other applicants who selected Networks & More.

We have not seen the Form 470 that Networks & More prepared for other clients. However, the language above is clearly generic and open-ended in nature, providing any and all interested vendors the opportunity to bid on the services included therein. In fact, since not all N&M clients hired N&M to assist them with the network maintenance, the language included was clearly open-ended enough to allow other vendors to bid. Unfortunately, in our case, we received no competing bids.

6. Did a service provider employee(s) help your entity determine what types of services your entity sought on your Form 470? Yes X or No .

If yes:

1. Provide a full description of what assistance was provided, including an explanation of why you selected them to assist your entity

See#2. Long Branch provided information to N&M on the kinds of services it was interested in receiving, and N&M, acting as our paid E-rate consultant, helped us complete the application based on the services we had indicated we wanted to receive.

2. Provide documentation, if available, that will support your responses above (e.g., meeting notes, sign in sheets, staff recommendations, board meeting minutes, etc).

See attachments for Board Minutes of all Library Board Resolutions related to the FY2002 E-rate procurements. Also attached is a copy of a memo from Networks & More requesting the library to solicit quotes for services listed on Form 470

3. Provide the name, title, contact information (address, telephone, fax and email) of the service provider's employee(s) who assisted your entity

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Website: www.andmore.com <http://www.k12usa.com/>

7. Did other service providers have an opportunity to help your entity determine what types of services you would seek (i.e., Walk-thru, Open House, Information session) Yes X or No

If yes:

- Provide a full description of what assistance was provided.

See #1. Any vendor that expressed interest in bidding on our services would have had the opportunity to speak with library representatives further to determine what solutions they might offer to the library. As discussed above, there were no other bidders for the network maintenance service sought on the Form 470.

- Provide documentation, if available, that will support your responses above (e.g., meeting notes, sign in sheets, staff recommendations, board meeting minutes, etc).

See #1, above, and attached.

- Provide the name, title, contact information (address, telephone, fax and email) of the service provider's employee(s) of the individuals.

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8. Did service provider employee(s) assist your entity with developing or filing in the services or needs description on the Form 470? Yes X or No .

If yes:

- Provide a full description of what assistance was provided, including an explanation of why you selected them to assist your entity.

See #1, above.

- Provide documentation, if available, that will support your responses above (e.g., meeting notes, staff recommendations, board meeting minutes, etc).

See #1, above

- Provide the name, title, contact information (address, telephone, fax and email) of the service provider's employee(s).

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9. Did any other person help your entity develop, fill out, complete, certify, and/or submit your Form 470? Yes X or No .

If yes:

- Provide a full explanation of the actions that they undertook to help develop, fill out, complete, certify or submit the Form 470.

See #1, above.

- Provide the name, affiliation, title, contact information (address, telephone, fax and email

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If you have any questions, please contact me at (973)581-6747 or via email at jercie@sl.universalservice.org.

Jennifer Cerciello

Manager – Special Compliance Review

If you have any additional questions, we would welcome the opportunity to respond. As stated above, Long Branch Public Library acted in good faith at every juncture in this process, and worked diligently to comply with the rules as we understood them at the time. While it appears that there may have been some rules violations under the rules as clarified in the SEND decision, the information pertaining to this decision was not approved by the FCC and made available until almost 7 years after the procurement in question.

If there was any wrongdoing with respect to this FRN, we believe it would be on the part of the consultant/service provider, who was hired and paid to provide the library with information and advice that would assist the library in complying with program rules. Instead, it would appear that the consultant/service provider provided advice to the Library that was contrary to program rules. In this instance, if the SLD determines that a recovery must be made, we believe the recovery should be made from the service provider, since it was their dual role as service provider and consultant which violated program rules.

SPECIAL COMPLIANCE CERTIFICATION	
<p>I certify that I am authorized to make the representations set forth in the responses to the Special Compliance Information Request on behalf of the <i>Long Branch Free Public Library</i>, the entity represented on and responding to the Pattern Analysis Information Request, and am the most knowledgeable person with regard to the information set forth therein. I certify that the responses and supporting documentation to the Pattern Analysis Information Request are true and correct to the best of my knowledge, information and belief. I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I acknowledge that false statements can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001 and civil violations of the False Claims Act.</p> <p>I declare under penalty of perjury that the foregoing is true and correct. Executed on <u>26</u> day of <u>January</u>, 2008 at <u>Long Branch</u> [city], <u>New Jersey</u> [state].</p>	
Signature	Date 1/26/09
Print Name Ingrid Bruck	Title Library Director
Employer Long Branch Free Public Library	
Telephone Number 732-222-3948	Fax Number 732-222-3799
Email Address ibruck@lmxac.org	
Address 328 Broadway	
Long Branch NJ 07740	