

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review of a Decision of the)	Administrator Correspondence Dated
Universal Service Administrative Co. for)	August 1, 2018
LEAD Public Schools)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

**REQUEST FOR REVIEW OF DECISION OF THE UNIVERSAL SERVICE
ADMINISTRATION COMPANY, SCHOOLS AND LIBRARIES DIVISION BY THE LEAD
PUBLIC SCHOOLS**

Appellant/Organization Name	The LEAD Public Schools
Funding Year	2017
Entity Number	17002634
FCC Form 471 Number	171019309
Funding Request Number	1799038796

The LEAD Public Schools (“LPS” or “Applicant”) requests the Federal Communications Commission’s (“FCC” or “Commission”) review of a decision of the Schools and Libraries Division of the Universal Service Administrative Company (“USAC” or “Administrator”).¹ LPS requests the Commission consider the information set forth in this appeal that supports LPS’s compliance with the Commission’s competitive bidding rules and to fully reinstate the funding associated with the contract awarded under the bidding process described.

OVERVIEW

LEAD Public Schools is a network of six public charter schools in Nashville, Tennessee that operates both "fresh start" schools and "zoned-enrollment" turnaround schools. From 5th through 12th grades, our schools serve predominantly minority and low-income populations who are likely to be first-generation college attendees. We are the largest charter school provider in one of the nation's most vibrant cities.

Founded in 2007 as LEAD Academy in North Nashville, LEAD Public Schools has grown from a fifth- and sixth-grade school of 92 students to become Nashville's largest charter management organization with six schools² serving the needs of more than 2,400 students as of the 2017-2018 school year. The first five graduating classes of LEAD Academy High School -- the first in the school's history -- all earned 100 percent acceptance to college. Our academic success is rooted in the foundation of social-emotional learning programs and practices, including a commitment to Crew and our five Ethos: our students and staff members LEAD because they are COMMITTED, COURAGEOUS, DISCIPLINED, SELF-RELIANT and, above else, they always SERVE OTHERS.³ Under the Schools and Libraries Universal Service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts on eligible telecommunications services, Internet access,

¹ June 23, 2018 Administrator's Decision on Appeal

² 2 schools are co-located at the same address

³ <http://www.leadpublicschools.org/our-story>

internal connections, and basic maintenance of internal connections⁴. Under this regulatory authority, LEAD Public Schools annually submits E-rate application(s) for discounts on eligible products and services.

BACKGROUND and REQUEST FOR REVIEW

We are asking the Commission to review the Fund Administrator's decision to fully deny Funding Request Number 1799038796 due to what it perceived as competitive bidding violations in LPS' Cellular voice services agreement for E-rate eligible services. In its review, the Administrator determined

'Your appeal has brought forward persuasive information that the appeals decisions should be partially overturned. However, USAC will be unable to provide funding for your request for the following reason(s): You provided documentation to support the Contract Expiration Date of 6/30/2019, however, previously you failed to provide documentation to support that the FCC Form 470 cited included the billed entity or entities requesting services that are listed on the FCC Form 471. Program rules require that entities receiving service on the FCC Form 471 must be listed on the FCC Form 470 that established the competitive bid process for the FCC Form 471. Since this requirement was not met the FRN was previously denied. On appeal you failed to proved (sic) otherwise, therefore your appeal is denied. Your FCC Form 470, which established the competitive bidding for your funding request(s), did not include the billed entity or the entities receiving the services as submitted on your FCC Form 471. FCC rules require that, except under limited circumstances, an eligible school, library, or consortium that includes an eligible school or library, shall seek competitive bids for all services eligible for support by submitting a completed FCC Form 470 to the Administrator and waiting at least 28 days from the date on which its Description of Services is posted on the Administrator's website before making a commitment with the selection providers of service. See 47 C.F.R. sec.54.503 (b) and (c). FCC rules further require applicants to submit a complete description of the services they seek so that it may be posted for competing service providers to evaluate and this application must describe the services that the schools and libraries seek to purchase in sufficient detail to enable potential providers to formulate bids. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 87763, 9076, and 9078-79 FCC 97-157 paras.570, 575, (rel. May 8, 1997). The application posted on the website must present schools' and libraries' descriptions of service in a way that will enable providers to search among potential customers by zip code, number of students (schools) or patrons (libraries), number of buildings, and other data that the Administrator will receive in the applications. See id., para. 576. In Block 4 of the FCC Form 470, application are required to provide information about the billed entity and the entities receiving the services described in Block 2. This information is required to help service providers understand the scope and location(s) of the services sought, so that they may respond efficiently and effectively. See Schools and Libraries Universal Service, Description of Services Requested and Certification (FCC Form 470). OMB 3060-0806.'⁵

⁴ 47 C.F.R. §§ 54.502, 54.503

⁵ Revised Funding Decision Commitment Letter dated 8/01/2018

We respectfully disagree with the USAC decision that LEAD Public Schools cannot use Establishing Form 470# 5787300011180305. LEAD Public Schools is a Nashville, TN based non-profit organization running a network of charter schools. Founded in 2007 its growth has been augmented by a partnership with Metro Nashville Public Schools and the Achievement School District, which selected LEAD as the Charter operator for turnaround schools that are location in these districts (Metropolitan Nashville). The schools presently under their tutelage are:

- LEAD Academy High School
- Cameron College Prep
- Brick Church
- Neely's Bend
- LEAD Prep SE

It is critical to understand that in the state of Tennessee, Charter Schools and Charter Schools Districts are considered ***DEPENDENT*** upon their chartering Public School District Local Education Agency ("LEA") and, per multiple references in the FCC's E-Rate Modernization Order and according to USAC guidance, charter schools in Tennessee do not meet criteria that, "...[they] are not affiliated financially or operationally with a school district..."⁶ therefore, they MUST be included in the discount calculation for their authorizing Public School District(s). This requirement has caused an inordinate amount of confusion in the applicant community and frankly, within USAC's PIA Team and as a result, there has been very inconsistent treatment of 'dependent' charter schools over the last few years. This is an unfortunate circumstance for which LEAD Public Schools should not be punished or experience any denial of funding.

⁶ FCC 14-1-99A1 (para 79)

The following document from the Tennessee School Boards Association further explains the Charter Schools' relationship(s) with their chartering Public School District(s):

<https://www.tn.gov/education/school-options/charter-schools/charter-school-faq.html>

The Tennessee Public Charter Schools Act is contained in Tennessee Code Annotated (T.C.A.). Title 49, Chapter 13. (Attached for review) 49-3 States:

Charter schools are public schools operated by independent, non-profit governing bodies that must include parents. In Tennessee, charter schools are still part of the LEA in which they operate (in some states, charter schools function as their own LEA).

The purposes of the Public Charter Schools Act, including providing “options relative to the governance and improvement of high priority schools, the delivery of instruction for those students with special needs, improv[ing] learning for all students and clos[ing] the achievement gap[s],” can be accomplished in any LEA school. T.C.A. § 49-13-102. However, chartered schools “provide [one] alternative means within the public school system for ensuring accomplishment of the necessary outcomes of education by allowing the establishment and maintenance of public charter schools that operate **within a school district structure** but are allowed maximum flexibility to achieve their goals.”

- Data from Tennessee charter schools approved or overseen by a LEA is included with LEA level data (the charter schools, of course, must provide the data to the LEA).
- Local boards of education are the authorizers of public charter schools. They decide which charter school applications are approved or denied.
- Tennessee law requires local boards of education to "allocate to the charter school an amount equal to the per student state and local funds received by the LEA and all appropriate allocations under federal law or regulation, including, but not limited to, Title I and ESEA funds." T.C.A. 49-13-112(a). All local and State funds generated for

education, “excluding the proceeds of debt obligations and associated debt service,” are paid to the charter schools, on a per pupil basis.

See attached document:

TENNESSEE CODE UNANNOTATED CUI_ PAW Document Page_49-13.pdf

Over 50 years ago Metropolitan Nashville Public Schools officially formed with the unification of Nashville and Davidson County schools. The district today includes 139 schools. The TN State School Directory, shows all of the LEAD Public Schools have been included in Metropolitan Nashville (Davidson County) Public Schools predating the procurement of the Mobility Contract in question. There is no need for a Letter of Agency considering Metropolitan Nashville Public Schools is the governing LEA for these schools, per State law⁷.

Lastly, see additional supporting documents that establish the LEAD Public Schools are indeed (and have been since before the original Form 470 posting and procurement were conducted) under the umbrella of the Metropolitan Nashville Public Schools/Davidson County Schools district and can participate in the procurement established by FCC Form 470# 578730001118305.

1. State Department of Education Explanation letter. See document:

Charter Explanation –LEAD Public Schools_092517.pdf

2. See Tennessee School Boards Association FAQs-particularly those for authorizing local boards of education, are answered in TSBA’s FAQ document. (Attached for review). See document titled:

Charter_School_FAQs_2014_2.pdf

⁷ https://k-12.education.tn.gov/SDE/CreateSchoolList.asp?district_bu_id=2807®ion_bu_id=NULL&sql_id=NULL&status=A&schtype=

3. See attached directory of Davidson County/Metropolitan Nashville Public Schools. See:
SDE Directory Davidson County Schools.pdf.
4. Attached document titled: **data_2016-17_membership_school.xlsx for the Profile and Demographic Information 2016/17.xlsx (See Rows 312-473).**

FCC Form 470 #5787300011180305 was filed by Metropolitan Nashville Public Schools specifying Billed Entities # 128258 (Metro Nash Public Schools) and # 128407 (Knox County Schools) as direct Recipients of Services. At the outset Metropolitan Nashville Public Schools (MNPS) Purchasing Department considered these schools to form part of Billed Entity # 128258. In its Introduction/Overview **Procurement #13-4 Cellular/Wireless Service** details:

MNPS is a vast and diverse school system, serving students from more than 80 different countries, speaking more than 70 different languages. MNPS has evolved over the years into one of the most racially, ethnically, and socio-economically diverse school districts in the country. The district is comprised of 139 schools, including 72 elementary schools, 34 middle schools, 21 high schools, three alternative schools, four special education schools, and five charter schools. MNPS is also proud to have the region's first Big Picture High School, as well as 12 high schools implementing themed-based academies and a Middle College High School that offers dual high school and college enrollment.⁸

REQUEST FOR WAIVER

The evidence presented throughout this request indicates a compliant competitive bidding process. There is no indication that LEAD Public Schools committed waste, fraud or abuse of the E-rate program and denial of these funding requests has placed undue hardship upon the students served by LEAD Public Schools. Furthermore, we completely disagree with the Fund Administrator's Post Commitment Rationale '....**you failed to provide documentation to support that the FCC Form 470**

⁸ Request for Proposal (RFP) Number 13-4. Cellular/Wireless Service. Metropolitan Nashville Public Schools on behalf of The Metropolitan Nashville Board of Public Education. Posted 2/6/2013, Section 1, B. Background. Pg. 2/37

cited included a billed entity or entities requesting services that are listed on the FCC Form 471.'

Ample evidence that the 5 entities in question are indeed under the control of the Metropolitan Nashville Public School District were provided during previous reviews however, it appears there is a lack of understanding of the relationship of charter schools to their Public School District within USAC and our argument(s) were not accepted. We appreciate your consideration of our respectfully requested review of this Funding Decision and look forward to successful resolution.

Regards

/s/

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