



1629 K STREET, N.W. SUITE 300  
WASHINGTON, DC 20006

December 7, 2017

**SUBMITTED ELECTRONICALLY VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: **MEETING SUMMARY PER SECTION 1.1208 OF THE FCC'S RULES**  
Schools and Libraries Universal Service Support Mechanism,  
Docket No. 02-6

Dear Ms. Dortch:

On behalf of the Mansfield (Texas) Independent School District (Mansfield ISD), this *ex parte* memorializes meetings between representatives of Mansfield ISD and Commission staff. On December 5, 2017, Dr. Sean Scott, assistant superintendent, curriculum and instruction; Jeff Brogden, associate superintendent, facilities and bond programs; and Dr. Karen Wiesman, associate superintendent of business and finance, all of Mansfield ISD; along with the undersigned, met with D'wana Terry, Ryan Palmer, Elizabeth Drogula, and Kate Dumouchel of the Wireline Competition Bureau (WCB) regarding two petitions for reconsideration filed on behalf of Mansfield Independent School District.<sup>1</sup>

Our discussions focused on two petitions for reconsideration filed on behalf of Mansfield Independent School District, one of which has been pending for nearly 2½ years.<sup>2</sup> As described in those petitions and our prior *ex parte* meetings, Mansfield met the Commission's requirements regarding the sufficiency of its FCC Forms 470 for the three funding years at

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<sup>1</sup> Petition for Reconsideration, *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Mansfield Independent School District FCC Form 471 Application Numbers 788976, 794118, 815691, 845493, 871961, 902395, 906722 (filed July 30, 2015); Petition for Reconsideration, *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Mansfield Independent School District FCC Form 471 Application Number 904090 (filed Aug. 25, 2016).

<sup>2</sup> Petition for Reconsideration, *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Mansfield Independent School District FCC Form 471 Application Numbers 788976, 794118, 815691, 845493, 871961, 902395, 906722 (filed July 30, 2015); Petition for Reconsideration, *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Mansfield Independent School District FCC Form 471 Application Number 904090 (filed Aug. 25, 2016) (Petitions).

issue.<sup>3</sup> We respectfully request the Bureau grant Mansfield's petitions for reconsideration.

Attached please find a summary of the presentation. In addition, for your convenience, we are also attaching a summary from a previous meeting with the Bureau that contains information on Bureau precedent that we hope is helpful.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, an electronic copy of this letter is being filed for inclusion in the above-referenced docket and sent to the attendees listed above. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

*/s/ Gina Spade*

Gina Spade  
Counsel for Mansfield ISD

cc: D'wana Terry (via email)  
Ryan Palmer (via email)  
Elizabeth Drogula (via email)  
Kate Dumouchel (via email)  
Dr. Sean Scott (via email)  
Jeff Brogden (via email)  
Dr. Karen Wiesman (via email)

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<sup>3</sup> *Id.*

**Mansfield ISD Petition for Reconsideration**  
**December 5, 2017**

**Issue:** USAC alleges that Mansfield did not provide enough specificity on its FCC Forms 470 when it bid for telecommunications and Internet access services. Because Mansfield used that same format on its Forms 470 for FYs 2011, 2012 and 2013, Mansfield's funding requests for all three years have been rejected.

**Mansfield's 470 Contained "Sufficient Information"**

- Mansfield's Forms 470 for FYs 2011, 2012 and 2013 represented a *bona fide* request for P1 services.<sup>1</sup>
  - The Commission's rules state that the "FCC Form 470 and any request for proposal cited in the FCC Form 470 shall include, at a minimum, the following information, to the extent applicable with respect to the services requested: (i) A list of specified services for which the school, library, or consortia including such entities, anticipates they are likely to seek discounts; and (ii) Sufficient information to enable bidders to reasonably determine the needs of the applicant."<sup>2</sup> An RFP was not required.<sup>3</sup>
  - No Commission order defined what constitutes "sufficient information."
  - Mansfield's Forms 470 were not overbroad. They included a list of all of the P1 services for which it was seeking bids.
  - Based on PIA inquires, USAC seemed to take issue with Mansfield's use of the term "district-wide."
    - If a service provider wanted to bid and was confused by the use of "district-wide" as a term, it could have asked Mansfield for clarification or more information, or simply looked up the locations of the district's buildings on its website.
  - *Ramirez*, DA 11-1039 (2011): Applicant failed to indicate that it intended to issue an RFP. WCB found that the 470 "contained enough detail for the services providers to identify the desired services and to formulate bids" such that all bidders were on a level playing field.
    - Ramirez's FCC Form 470 also uses term district-wide when identifying scope of the services.
  - WCB also did not explain in the denial of the initial appeals what exactly Mansfield failed to do properly with respect to its FCC Form 470. The cases cited by WCB in the denial are not as directly on point with Mansfield's facts as *Ramirez*.

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<sup>1</sup> 47 U.S.C. § 254(h)(1)(B).

<sup>2</sup> 47 C.R.F. § 54.503 (2011).

<sup>3</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, at 9077-80, paras. 572-579 (1997); *see also Washington Unified School District* ("The applicant may describe the services it is seeking on its FCC Form 470 or indicate on the form that it has an RFP available providing detail about the requested services.")

### **There Was No Harm to the Competitive Bidding Process – Waiver Standard**

- Even if the Commission believes the rule was violated, it should grant a waiver. In determining whether a waiver should be granted, prior WCB orders establish that the Bureau should analyze whether the outcome of the competitive bidding process was consistent with the policy goals underlying the rules.<sup>4</sup>
  - Even if Mansfield had written its FCC Form 470 in greater detail, it is likely the outcome of the competitive bidding process would have been the same; therefore, there was no harm to the competitive bidding process or the USF.
  - No service provider had any information that another provider did not have; no provider was disadvantaged.
  - Because no bids were received, Mansfield selected the best service from the state-negotiated contract. That state contract was posted and bid in accordance with E-rate rules.

### **Denial of the Petition Would Undermine Program and Commission Goals**

#### **Amount at issue:**

| Funding Year  | Denial Amount       | Recovery Amount       | Total                 |
|---------------|---------------------|-----------------------|-----------------------|
| 2011          | -                   | \$489,361.34          | \$489,361.34          |
| 2012          | -                   | \$571,655.09          | \$571,655.09          |
| 2013          | \$821,941.63        | -                     | \$821,941.63          |
| <b>Totals</b> | <b>\$821,941.63</b> | <b>\$1,061,016.43</b> | <b>\$1,882,958.06</b> |

- Harm to Mansfield would be significant. These costs for telecommunications and Internet access, which Mansfield would have to bear without USF help, equal the salaries of 58 teachers.
- USAC's delay in identifying the issue increased the harm to Mansfield. USAC did not tell Mansfield its 2011 Form 470 was incorrect until more than three years after it was filed. Had USAC acted more quickly, Mansfield could have revised its forms' format.
  - Mansfield changed its procurement in FYs 2014 and 2015 to issue more detailed RFPs.
  - USAC was holding FY 2014 funding, which USAC released March 2016, with the Bureau's assistance.
- Numerous applicants have used and continue to use this level of specificity in their bidding. (See Petition for Recon at 13-19.) If the Commission denies only Mansfield, then it appears to be applying the rule arbitrarily. If, on the other hand, the Commission denies funding for all of the school districts, then many other schools would suffer the same harm as Mansfield, without any benefit to the program.
  - The Commission has remedied this issue with its adoption of the new FCC Form 470. Additionally, the Commission could emphasize the correct amount of information for an RFP via additional training or by providing an example of a sufficient RFP.

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<sup>4</sup> See *Euclid City School District*, Order, CC Docket No. 02-6, DA 12-1843 ("Given that Euclid and Shannon ultimately selected the least expensive responsive service offerings, despite failing to assign the highest weight to price in their vendor evaluation processes, we find that the outcomes of their vendor selection processes were consistent with the policy goals underlying the Commissions' competitive bidding rules").

## **Mansfield ISD Petition for Reconsideration**

### **February 16, 2017**

**Issue:** USAC alleges that Mansfield did not provide enough specificity on its FCC Forms 470 when it bid for telecommunications and Internet access services. Because Mansfield used that same format on its Forms 470 for FYs 2011, 2012 and 2013, Mansfield's funding requests for all three years have been rejected.

**Background:**

- Mansfield Independent School District
- The procurements
  - District conducted technology assessments.
  - District posted Forms 470 each funding year, which listed services sought in connection with assessments.
  - No bids were received.
  - The district selected service off the state contract, which had been competitively bid.
- Procedural Status

**Mansfield's 470 Contained "Sufficient Information"**

- Mansfield's Forms 470 for FYs 2011, 2012 and 2013 represented a *bona fide* request for P1 services.<sup>1</sup>
  - The Commission's rules state that the "FCC Form 470 and any request for proposal cited in the FCC Form 470 shall include, at a minimum, the following information, to the extent applicable with respect to the services requested: (i) A list of specified services for which the school, library, or consortia including such entities, anticipates they are likely to seek discounts; and (ii) Sufficient information to enable bidders to reasonably determine the needs of the applicant."<sup>2</sup> An RFP was not required.<sup>3</sup>
  - No Commission order defined what constitutes "sufficient information" for the FCC Form 470; there was no way for Mansfield to know that USAC or the FCC would believe its level of detail was not sufficient.
  - Mansfield's Forms 470 were not overbroad. They included a list of all of the P1 services for which it was seeking bids.
  - Based on PIA inquires, USAC seemed to take issue with Mansfield's use of the term "district-wide." If a service provider wanted to bid and was confused by the use of "district-wide" as a term, it could have asked Mansfield for clarification or more information, or simply looked up the locations of the district's buildings on its website.

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<sup>1</sup> 47 U.S.C. § 254(h)(1)(B). Mansfield also sought bids for P2 services but then subsequently determined it did not have the resources to support P2 services. As such, Mansfield did not apply for P2 services. Mansfield includes a discussion of its P2 Form 470 issues in its appeal and petition for reconsideration because PIA reviewers had asked numerous questions about P2, even though there was not an application for those services to be reviewed by USAC.

<sup>2</sup> 47 C.R.F. § 54.503 (2011).

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- *Ramirez*, DA 11-1039 (2011): Applicant failed to indicate that it intended to issue an RFP. WCB found that the 470 “contained enough detail for the services providers to identify the desired services and to formulate bids” such that all bidders were on a level playing field.
  - *Ramirez*’s FCC Form 470 also uses term district-wide when identifying scope of the services.
- WCB also did not explain in the denial of the initial appeals what exactly Mansfield failed to do properly with respect to its FCC Form 470. The cases cited by WCB in the denial are not as directly on point with Mansfield’s facts as *Ramirez*.
  - *Chicago*, DA 10-1084 (2014): Chicago did not seek bids for internal connections at all; that is, internal connections services were completely omitted from its 470.
  - *Washington USD*, DA 13-1946 (2013): District issued RFP with much greater detail than its 470, didn’t note that it would have an RFP on its 470, and did not provide the RFP to all of the bidders.
  - *Ysleta*, FCC 03-313 (2003): District sought bids for “systems integrator,” not E-rate eligible services.

#### **There Was No Harm to the Competitive Bidding Process – Waiver Standard**

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