

October 29, 2014

Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

Re: Mansfield Independent School District, Mansfield, Texas

Dear Appeals Processor,

Please find enclosed:

Mansfield Independent School District's Appeal of the following:

Denial of funding for reason that the establishing FCC Form 470's for the funding requests did not define the specific services or functions, including quantity and/or capacity, for which funding would be sought when the FCC Form 471 was filed for E-rate funding years 2011, 2012, and 2013.

Demand Payment Letters (COMAD) for funding requests associated with E-rate funding years 2011 and 2012.

Notification of withholding of action Pending Red Light Rule for requests associated with FCC forms filed for E-rate funding year 2014.

Respectfully submitted,



Jane Kellogg
Consultant

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

In the Matter of)
Schools and Libraries Universal Service Support)
Mechanism)
)
Appeal – Form 470’s Lack of Specific Information)
FY 2011, FY 2012, FY 2013)
Appeal – Demand Payment Letters, FY 2011, 2012)
Billed Entity # 140867, Mansfield ISD)
)

CC Docket No. 02-6

LETTER OF APPEAL

October 29, 2014

**Mansfield Independent School District
Mansfield, Texas**

Submitted by:
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Dear Appeals Processor:

We are appealing on behalf of Mansfield Independent School District, Mansfield, Texas, Billed Entity Number 140867 (“Mansfield ISD” or the “District”), the following reason for denial:

1. *The establishing FCC Form 470's for the FRNs did not define the specific services or functions, including quantity and/or capacity, for which funding would be sought when the FCC Form 471 was filed for the following applications and FRN's:*

FY	471 #	FRN	SPIN	Service Provider Name	Total Disbursement Requested
2011	788976	2134799	143008823	SBC Long Distance, LLC.	262,621.8
2011	788976	2134809	143004662	Southwestern Bell Telephone Company	9,842.76
2011	788976	2134832	143004662	Southwestern Bell Telephone Company	89,868.89
2011	788976	2134845	143004662	Southwestern Bell Telephone Company	92,587.92
2011	788976	2134863	143004662	Southwestern Bell Telephone Company	5,678.34
2011	788976	2134902	143001192	AT&T Corp.	1,787.84
2011	788976	2149062	143004662	Southwestern Bell Telephone Company	1,600.56
2011	794118	2151408	143027394	Active Internet Technologies, LLC	18,681.75
2011	815691	2217384	143004662	Southwestern Bell Telephone Company	6,691.48
2012	845493	2296260	143008823	SBC Long Distance, LLC.	6,075.24
2012	845493	2296287	143004662	Southwestern Bell Telephone Company	83,472.49
2012	845493	2296394	143004662	Southwestern Bell Telephone Company	1,778.40
2012	845493	2298647	143004662	Southwestern Bell Telephone Company	282,397.36
2012	845493	2298680	143001192	AT&T Corp.	133,904.43
2012	845493	2298698	143004662	Southwestern Bell Telephone Company	9,842.76
2012	845493	2303040	143004662	Southwestern Bell Telephone Company	7,701.84
2012	871961	2380833	143035907	COGENT COMMUNICATIONS, INC. dba PSINet, Inc.	46,482.57
				Total FY2011 and FY2012 COMAD request pending FCC appeal	1,061,016.43

FY	471#	FRN	SPIN	Service Provider Name	Original Commitment Request \$
2013	902395	2465829	143001192	AT&T Corp.	298,514.04
2013	902395	2465522	143004662	Southwestern Bell Telephone Company	99,120.00
2013	902395	2465643	143004662	Southwestern Bell Telephone Company	297,704.30
2013	904090	2465173	143027394	Active Internet Technologies, LLC	19,337.25
2013	902395	2465508	143008823	SBC Long Distance, LLC.	8,297.76
2013	902395	2465557	143004662	Southwestern Bell Telephone Company	1,840.80
2013	902395	2465727	143004662	Southwestern Bell Telephone Company	15,318.08
2013	902395	2465750	143004662	Southwestern Bell Telephone Company	7,972.08

FY	471#	FRN	SPIN	Service Provider Name	Original Commitment Request \$
2013	906722	2467867	143035907	COGENT COMMUNICATIONS, INC. dba PSINet, Inc.	45,517.32
2013	906722	2467811	143035907	COGENT COMMUNICATIONS, INC. dba PSINet, Inc.	28,320.00
Total FY2013 requests for denial pending FCC appeal					821,941.63

2. Notification of withholding of action Pending Red Light Rule for FY 2014 FRN's listed below:

FY	471 #	FRN	SPIN	Service Provider Name	Original Commitment Request \$
2014	965747	2675238	143004662	Southwestern Bell Telephone Company	128,166.26
2014	965747	2675242	143008823	SBC Long Distance, LLC.	8,253.86
2014	965747	2675247	143033845	AT&T Messaging, LLC	120.96
2014	965747	2675251	143006742	Sprint Spectrum, L.P.	1,914.70
2014	965747	2675265	143001192	AT&T Corp.	394,380.00
2014	965747	2675269	143004662	Southwestern Bell Telephone Company	332,159.04
2014	965747	2675363	143004662	Southwestern Bell Telephone Company	2,030.98
2014	965747	2676409	143035907	COGENT COMMUNICATIONS, INC. dba PSINet, Inc.	71,083.80
2014	965747	2676490	143035907	COGENT COMMUNICATIONS, INC. dba PSINet, Inc.	28,800.00
2014	965747	2680713	143035907	COGENT COMMUNICATIONS, INC. dba PSINet, Inc.	46,288.80
Total FY2014 requests on hold pending FCC appeal					1,013,198.40

3. Demand Payment Letters – FY 2011 and FY 2012 for funding requests listed below:

FY	471 #	FRN	SPIN	Service Provider Name	Total Disbursement Requested
2011	788976	2134799	143008823	SBC Long Distance, LLC.	262,621.8
2011	788976	2134809	143004662	Southwestern Bell Telephone Company	9,842.76
2011	788976	2134832	143004662	Southwestern Bell Telephone Company	89,868.89
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2011	788976	2134863	143004662	Southwestern Bell Telephone Company	5,678.34
2011	788976	2134902	143001192	AT&T Corp.	1,787.84
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2011	794118	2151408	143027394	Active Internet Technologies, LLC	18,681.75
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2012	845493	2296260	143008823	SBC Long Distance, LLC.	6,075.24
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2012	845493	2296394	143004662	Southwestern Bell Telephone Company	1,778.40
2012	845493	2298647	143004662	Southwestern Bell Telephone Company	282,397.36
2012	845493	2298680	143001192	AT&T Corp.	133,904.43
2012	845493	2298698	143004662	Southwestern Bell Telephone Company	9,842.76
2012	845493	2303040	143004662	Southwestern Bell Telephone Company	7,701.84
2012	871961	2380833	143035907	COGENT COMMUNICATIONS, INC. dba PSINet, Inc.	46,482.57

ACRONYMS AND REFERENCES

Acronyms and references used in this appeal are as follows:

- “USAC” – Universal Services Administrative Company, Schools and Libraries Division
- “Mansfield ISD” or “the district” – Mansfield Independent School District, Mansfield, Texas
- “Universal Service Program” or “E-Rate Program” – Universal Service Discount Mechanism for Schools and Libraries
- “FY” – E-rate Funding Year
- “DIR” – Texas Department of Information Resources
(<http://www.dir.state.tx.us/Pages/Home.aspx>)

SUMMARY

During the selective review and USAC appeal stages of this process, the district successfully refuted that it engaged in uncompetitive bidding practices and that their Forms 470 for the affected years were “encyclopedic.” These allegations were resolved and dropped from subsequent USAC correspondence.

USAC appears to only continue to assert that a competitive violation occurred in providing sufficient detail of services resulting in potential denial of over \$1,8 million in funding. This remaining violation per USAC is USAC’s determination that Mansfield ISD did not “define the specific services or functions, including quantity or capacity, for which funding would be sought.” The district disputes the remaining charge that “the establishing FCC Form 470’s for the FRNs did not define the specific services or functions, including quantity and/or capacity, for which funding would be sought when the FCC Form 471 was filed.”

Mansfield ISD made a good faith effort to define the specific services or functions, including quantity and capacity, for which funding was sought. As previous correspondence with USAC illustrates, the district used the term “District-Wide” to describe the scope of services needed because this was what was recommended in two separate assessments conducted by contracted third parties over the course

of two years. In fact, the services were provided to each and every building in the entire District. It must be noted that Mansfield ISD is a fast-growth district that continues to rapidly expand. USAC's records will reflect that the District has expanded from 44 buildings in 2007 to 57 buildings in 2013, and is at 61 buildings in 2014-15. Thus the District has a constant need to expand services which are, indeed, provided district-wide.

Even if the Commission agrees with USAC's finding that the description of services needed did not meet its standard for specificity, Mansfield ISD requests that the FCC waive this requirement because (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.¹

Special circumstances warrant a deviation from the general rule

Special Circumstance #1: There is no evidence of waste, fraud or abuse.

Through extensive correspondence, Mansfield ISD has demonstrated that the record includes no evidence of waste, fraud or abuse. As a result, the grounds originally cited by USAC in denying funding have narrowed at each stage of the process.

First, USAC initiated a selective review process based on the assertion that Mansfield ISD was engaging in uncompetitive bidding practices. The district provided extensive documentation to demonstrate that its selection of Priority 1 services complied with program rules. Subsequent correspondence from USAC indicates that the claim by USAC that the district employed uncompetitive bidding processes has been dropped.

Next, USAC denied funding to Mansfield ISD claiming that it had issued an "encyclopedic or generic" Form 470. In its appeal of this decision, Mansfield ISD provided extensive documentation to demonstrate that the district's Forms 470 did in fact include bona fide requests for services based on its technology plan and a series of assessments that it had commissioned over several years in order to determine its needs. The district also demonstrated that its requests were bona fide because it had implemented, or remained engaged in the process of implementing, each of the services that it had requested. The argument that the district "relied on an encyclopedic Form 470" was dropped from subsequent USAC correspondence.

Special Circumstance #2: There was no damage to the competitive bidding process.

In previous decisions, the Commission has stated that it focuses on promoting the competitive bidding process because "bidding is a key component of the Commission's effort to ensure that universal service

¹ 47 C.F.R. Sec. 1.3; WAIT Radio v. FCC, 135 U.S. App. D.C. 317, 418 F. 2d 1153,1159 (D.C. Cir. 1969); Northeast Cellular v. FCC, 897 F.2d 1164,1166 (D.C. Cir. 1990) writ denied 525 U.S. 813 (1998); Hill v. FCC, 496 Fed. Appx.396, 403 -405 (5th Cir. 2012)

funds support services that satisfy the precise needs of an institution, and that the services are provided at the lowest possible rates.”²

Mansfield ISD received funding exclusively for Priority 1 services during E-rate funding years 2011 and 2012, and selected solutions for only Priority 1 services in FY 2013. The district opted not to make selections for Priority 2 services because of financial shortfalls. All of Mansfield ISD’s requests were bona fide. The district has completed, or is in the process of completing, the projects that were related to its Priority 2 requests without the support of Universal Services funds.

Special Circumstance #3: The district can demonstrate that the Priority 1 services that it has received satisfied its precise needs and were provided at the lowest cost.

In FY 2011, Mansfield ISD changed the way they were preparing the Form 470’s for the district. Previously, they had only been requesting Priority 1 funding. Since this funding was requested on behalf of the entire district and all services fell within the Telecommunications or Internet Access categories, they requested the services using the commonly accepted terms for each of the services requested, Voice lines, Long Distance, Circuits of various types – T-1, Opteman, Gigaman, Internet Access, E-mail, and specified the number of sites.

In E-rate funding years 2011, 2012, and 2013, the district purchased Priority 1 services just as it had since the first year of its participation in the program from the only vendor in the district’s service area that was legally bound to provide those services to schools at rates available only through Texas House Bill 2128 (74th Legis. 1995), the Public Utility Regulatory Act of 1995 (Texas Utility Code, chapters 58 and 59). Circuits and bandwidth purchased from this vendor maintain a high level of use and provide essential services for students and teachers throughout the district, in compliance with the intent of the Universal Service program.

The district has previously demonstrated that it selected not only the most cost-effective solution for Priority 1 services but also the only solution that was not cost-prohibitive. Under the terms of Texas House Bill 2128, the district has access to a discount on telecommunications services by utilizing Texas Agency Network Next Generation TEX-AN NG contracts between AT&T and DIR. One of the stipulations of these contracts is that early termination requires the district to pay half of the value of the remaining service on the contract. In FY 2011, Mansfield ISD had 44 contracts with a total of 3 years of service remaining. In addition to higher transmission costs, and costs for construction, transitioning to a different provider would have incurred a significant increase in fees for the district over the course of three years. Utilizing the Texas Agency Network Next Generation TEX-AN NG contract has continued to meet the district’s precise needs at the lowest possible rates.

²Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5425-26, para. 185 (1997)

Special Circumstance #4: The District will suffer undue financial hardship.

We believe that during the previous fourteen months, August, 2013-October, 2014 working with multiple reviewers, the applicant has demonstrated beyond a doubt that the district has followed every rule for the previous years when they received funding for 21st Century resources and the years in question.

At no time did the district demonstrate that they had did not have the best interest of the 32,777 students attending the schools in Mansfield in mind as they sought to receive discounts on essential services that were required for the delivery of educational resources to every building.

Total amount of COMAD requests for FY 2011 and FY 2012 pending FCC appeal	\$1,061,016.43
Funding requested for FY2013 that is scheduled for denial pending FCC appeal	821,941.63
Funding requested for FY2014 on hold due to pending FCC appeal on 2011 and 2012 COMAD	1,013,198.40
Total Financial Burden	\$2,896,156.50

The cost to the district is substantial. Based on enrollment of 32,777 students, cost per student is \$86.36 and is the equivalent of approximately 58 teacher's salaries. With this type of financial burden, the district will need to cancel the associated classes for the 58 teachers which would directly negatively impact over 8,700 students.

If the student in the classroom is to have access to the most current curriculum resources they must have broadband circuits connecting every classroom to the Internet. The importance of these connections is illustrated by FCC Chairman Wheeler's remarks at the Second Ed Tech Summit: Empowering Educators to Enhance Student Learning in the Digital Era September 29, 2014, included the following statement regarding the importance of having access to broadband:

"The rapid evolution of digital education curriculum, the growth of 1-to-1 learning initiatives, and the wealth of educational tools available online all create wonderful opportunities for students and educators. Technology also has transformed our libraries, creating unique spaces for public engagement with the digital world, from the smallest rural one-room libraries to our grandest, busiest urban libraries.

Over the last year I have made it a point to visit schools and libraries to observe how they are, or are not, using new technology. From urban areas, to Tribal lands, to the remotest of the remote areas in Alaska, I have witnessed the transformative power of digital education technology. For those communities with schools and libraries connected to high-capacity broadband, the opportunities are boundless. But for those who remain tethered to connectivity of the 20th century, the future is not nearly as bright.

Internet connectivity has made possible remarkable developments in educational technology. As the adoption of digital learning tools increases in schools and libraries so does the need for high-speed broadband to and within those institutions."

Mansfield ISD personnel have the highest standards and have begun 1-1 initiatives and other initiatives that depend on a robust Wide Area Network that connects all buildings, classrooms, and learning spaces to high speed broadband.

To deny the district access to the resources requested over the past three years would cause the district financial hardship in continuing to maintain the existing network much less fund new educational initiatives.

Deviation from the general rule will serve the public interest

Mansfield ISD disputes that it failed to comply with program rules. However, if the Commission agrees with USAC that it did, there is also justification for waiving the rule because doing so serves the public interest.

DISTRICT WIDE MEANS ALL SCHOOL SITES

The district listed the number of entities in the district at the beginning sections of each FCC Form 470 as follows:

FY	FCC Form 470 #	Location	Qty of Sites
2011	970210000876801	16c	53
2012	595840000980192	5c	55
2013	764940001074497	5c	57

For FY2011 and FY2012, the district had enlisted the services of independent companies to assess the technology needs of the district. The independent assessments used the term "district-wide" for the quantity and capacity of the services needed for the district.

The applicant, therefore, changed the terminology on their Form 470 beginning in FY2011 to use the term "district-wide" which they intended to mean at all sites in the district. Since they had already listed on the Form 470 the quantity of sites/locations in the district, they did not see a reason to state the number of sites again in the detailed sections of the Form 470 where services were listed.

In using the term "District Wide" the district was using the commonly used term to designate all buildings in a district. All of these services are utilized in all district buildings. Consequently, in designating that the services were for "district wide services", they meant all sites in the district.

Below are the results of an online search conducted 10/23/2014 for the meaning of the term “district-wide, district wide, or districtwide.”

Iowa Guidelines for K-12 ELL Participation: “Districtwide means all attendance centers within a school district or accredited nonpublic school.”

https://www.aea267.k12.ia.us/system/assets/uploads/files/472/iowaellguidelines03-16-2012_%281%29.pdf

[last accessed 10/23/2014]

<https://www.wordnik.com/words/districtwide>: from Wiktionary, Creative Commons Attribution/Share-Alike License [last accessed 10/23/2014]

- adj. Across an entire district.
- adv. Across an entire district.

Districtwide Safety Plan - Ossining Union Free School District

<http://www.ossiningufsd.org/www/ossiningufsd/site/hosting/Districtwide%20Safety%20Plan%20.pdf> [Last accessed 10/23/2014]

Ossining Union Free School District

The districtwide plans are responsive to the needs of all schools within the District and ... with the development of and maintenance of the District Safety Plan.

Diagram 1 below shows how all the requested services come into the district at a central location and then are distributed to all sites within the district thus the term ‘district wide’ means to all locations. This is a typical Wide Area Network (WAN) in any school district since the majority of services are delivered using high speed Broadband circuits which in this case includes the Opteman, Gigaman, and T-1 circuits.

The definition of a Wide Area Network is: “A wide area network (WAN) is a network that covers a broad area (i.e., any telecommunications network that links across metropolitan, regional, national or international boundaries) using leased telecommunication lines. Business and government entities utilize WANs to relay data among employees, clients, buyers, and suppliers from various geographical locations. In essence, this mode of telecommunication allows a business to effectively carry out its daily function regardless of location.”³

Every network has one demarcation point at which all broadband circuits are delivered by the telecommunications provider. At that demarcation point, the Customer Premises Equipment aggregates the services and electronically delivers them seamlessly to every building distributing the information required by the users to provide access to the Internet and to each other.

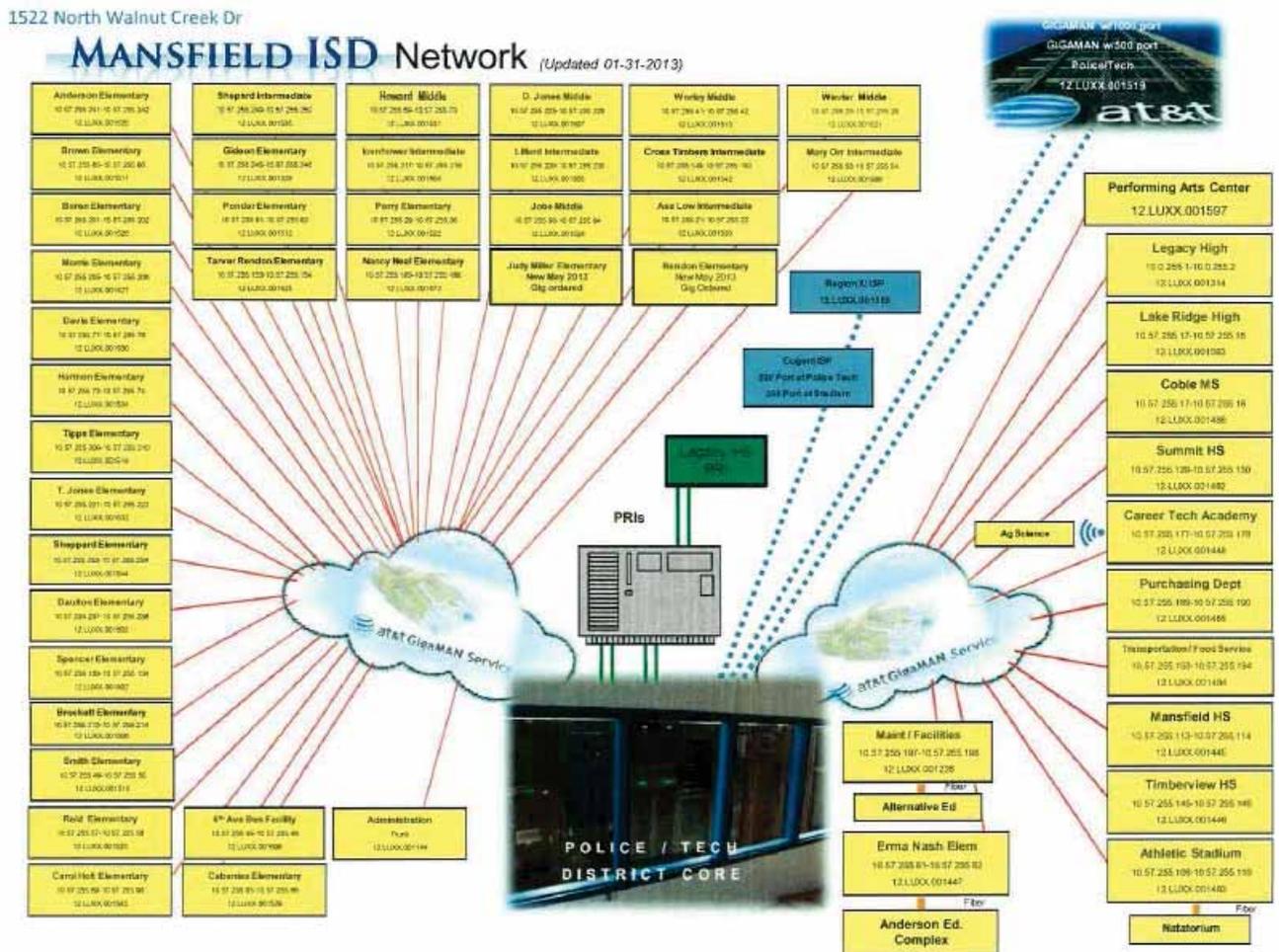
For Mansfield ISD (see Diagram 1, below) The Police/Technology building is the demarcation point

³ http://en.wikipedia.org/wiki/Wide_area_network [last accessed 10/23/2014]

“demarc” for the Mansfield ISD wide area network. The “demarc” is where the high bandwidth connections from the schools district-wide come together and connect with the equipment that will distribute the broadband services district wide. Every site is connected to every other site via this broadband network.

In the discussion below we note that the original USAC denials and the new USAC denials are not exactly the same and discuss the reason why the district believes that they should not have been denied funding for essential services that were already installed in all buildings throughout the district under existing AT&T ILEC Intrastate Tariff Network Services Agreements for Texas HB2128 Eligible Customers.

Diagram 1



DISCUSSION:

COMAD Letters dated 5/29/2014 and 9/5/2014.

FY	FRN	TYPE	COMAD Date	First Demand Date	Disbursed Amount
2011	2134799	COMAD	5/29/2014	9/5/2014	\$5,678.34
2011	2134809	COMAD	5/29/2014	9/5/2014	\$89,868.89
2011	2134832	COMAD	5/29/2014	9/5/2014	\$1,787.84
2011	2134845	COMAD	5/29/2014	9/5/2014	\$1,600.56
2011	2134863	COMAD	5/29/2014	9/5/2014	\$262,621.80
2011	2134902	COMAD	5/29/2014	9/5/2014	\$92,587.92
2011	2149062	COMAD	5/29/2014	9/5/2014	\$9,842.76
2011	2151408	COMAD	5/29/2014	9/5/2014	\$18,681.75
2011	2217384	COMAD	5/29/2014	9/5/2014	\$6,691.48
2012	2296260	COMAD	5/29/2014	9/5/2014	\$6,075.24
2012	2296287	COMAD	5/29/2014	9/5/2014	\$83,472.49
2012	2296394	COMAD	5/29/2014	9/5/2014	\$1,778.40
2012	2298647	COMAD	5/29/2014	9/5/2014	\$282,397.36
2012	2298680	COMAD	5/29/2014	9/5/2014	\$133,904.43
2012	2298698	COMAD	5/29/2014	9/5/2014	\$9,842.76
2012	2303040	COMAD	5/29/2014	9/5/2014	\$7,701.84
2012	2380833	COMAD	5/29/2014	9/5/2014	\$46,482.57
TOTAL COMAD AMOUNT					\$1,061,016.43

The following is the explanation on the denial letter dated September 5, 2014:

- Your establishing FCC Form 470 for the above-mentioned FRNs did not define the specific services or functions, including quantity and/or capacity, for which funding would be sought when the FCC Form 471 was filed. Therefore, the potential bidders were unable to determine your entity's specific needs based on technology plan goals and formulate their bids accordingly. In your appeal, you have not shown that USAC's determination was incorrect. Consequently, your appeal is denied.*

When filing an FCC Form 470, applicants are required to include, at a minimum, information on the technologies they have in place at the time of filing, as well as to provide a list of specified services for which the school, library or consortia including such entities, anticipate they are likely to seek discounts. See 47 C.F.R. sec 54.503(c)(1)(i-ii). Accordingly, an applicant's FCC Form 470 should be tailored to the applicant's needs and technology plan goals. FCC rules require that the applicants FCC Form 470 describe the supported services with sufficient specificity to enable interested service providers to determine the needs of the applicant and submit responsive bids.

The denial of funding for these telecommunications services was stated as being due to the lack of specific services or functions, including quantity and/or capacity, for which funding would be sought.

The USAC original denial stated the following:

After multiple requests for documentation and application review, it has been determined that this funding commitment must be rescinded in full. During the course of a review it was determined that the FCC Form 470 does not comply with the statutory mandate that applicants submit bona fide requests for services. Per the FCC's Ysleta Order, an applicant's FCC Form 470 must be based upon its carefully thought-out technology plan and must detail specific services sought in a manner that would allow bidders to understand the specific technologies that the applicant is seeking. Thus, a FCC Form 470 that sets out virtually all elements that are on the eligible services list would not allow a bidder to determine what specific services the applicant was seeking. A FCC Form 470 should not be a general, open-ended solicitation for all services available on the eligible services list, with the hope that bidders will present more concrete proposals. We find that the FCC Form 470 that established the bidding for this FRN is encyclopedic and does not list only those services for which funding was actually sought. Furthermore, a Request for Proposal was not issued to narrow the scope of the desired services to only those that you actually applied for in this funding request. Because you relied on an encyclopedic FCC Form 470, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

In the new denial, the comment below was removed:

"Because you relied on an encyclopedic FCC Form 470, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant".

We conclude from this change that USAC accepted the documentation we submitted with the original appeal, that the districts requests,

"were based on Technology Plans for each of those years that were approved by the Texas Education Agency. Each plan was developed in conjunction with the district Technology Leadership Team (TLT) and encompassed recommendations made by outside firms, two of which were hired with district funding, to provide recommendations on the direction the district should go with their technology implementation." (See Attachment A, USAC Letter of Appeal.)

All services requested on the applications that have been denied, were for normal telecommunications services as stated above.

Priority 1 services were requested on the Form 470's each year of the E-rate program. The Form 470's that apply to the denials include those listed below:

FY 2011 Form 470# 970210000876801 – Rescinded

FY 2012 Form 470# 595840000980192 – Rescinded

FY 2013 Form 470# 764940001074497 – Denied

We have included FY 2010 Form 470 # 573040000783265 in this discussion as this Form 470 is the establishing Form 470 for FY 2010 when the majority of the services requested for the three years under review were selected.

Services requested in 2011 and 2012 include: Local Voice, Long Distance, High Speed End-End Transport, Point-Point T1 Lines, Opteman Circuits, Gigaman Circuits, PRI ISDN DID Smart Trunks, High Speed Internet Access, VOIP Services, Interconnected VOIP Lines, Parent Calling System, 911 Trunks, Voice/Video Conferencing, Wireless WAN, Cellular Services-Aircards, Fiber Optics, and Distance Learning Video Conference, the majority of which had been requested and funded in the past.

Below we have inserted the detail of the services requested and the correlation to the Technology Plan details. The relevant Technology Plans are attached. (See Attachment B.)

Service Requested on the FY 2011 and FY 2012 Form 470's	Technology Plan Page and Strategies that Correlate to the Services Requested
Local Voice Services	P 17, 3.2.3, P 19, 4.1.6
Long Distance Phone Service	P 17, 3.2.3
High Speed End-End Transport	P 17, 3.2.3
Point-Point T1 Lines: Required for accessing online resources with Education Service Center	P 10, 1.2.16, 1.2.15, 1.2.16, 2.1.4, 2.2.4, 3.2.5, Cisco* P.6, c
OptEman Circuits	P 17, 3.2.3
Gigaman Circuits	P 17, 3.2.3 Cisco P.6, c
PRI ISDN DID Smart Trunks	P 17, 3.2.3
High Speed Internet Access	P7, Strategies 1.1.8, 1.1.9, 3.1.2, 3.1.3, P21, 4.4.2,
VoIP Services	P 19, Strategies 4.1.5
Interconnected VoIP Lines	P 19, Strategies 4.1.5
Parent Calling System	P9, Strategies 1.2.11, 1.2.11
911 Trunks	Required for Security – See Cisco P.6, b
Voice/Video Conferencing Service	P8, Strategies 1.2.2
Wireless WAN	P 17, 3.2.3, P 20, 4.2.2
Cellular Services-Aircards	P 7 Strategies: 1.1.6, 1.2.4, 1.2.5, 4.2.3
Fiber Optics	P 17, 3.2.3
Distance Learning/Video Conference	P 8, Strategies 1.2.2
Internet Access E-mail & Web Hosting	P 6, Strategies 1.1.1, 1.1.2,1.1.3; P 9 Strategy 1.2.8, p 11, 1.2.21, 1.3.3

The request 'titles' in the grid above are the names of the specific services on the copies of bills that were included in the Item 21 Attachments for the Form 471 Applications that were submitted to USAC. (See Attachment B.)

In FY 2010-2011 when the district made their decisions, they chose services available through contracts negotiated by the Texas Department of Information Resources (DIR) on the Tex-AN NG Contract: DIR-TEX-AN-NG-CTSA-005. When they filed applications in FY 2011 and FY 2012 when new sites were added, the multi-year agreements were extended.

The only services requested on the Form 471's in any of the years in question are renewals for telecommunications services for the following as detailed on the grid that follows. In the case of 'contracted' services with a multi-year agreement, the district could have relied on the establishing Form 470 posted in 2010 or earlier years. However, the agreements with the service providers are actually Service Agreements so the district filed these services as "tariffed" services or "Internet Access."

- Voice Services
- Long Distance
- Broadband Circuits – Opteman
- Broadband Circuits -Gigaman
- T-1 Circuits
- Internet Access

FY	FRN	TYPE	COMAD Date	First Demand Date	Disbursed Amount	SVC	Category of Service	DIR CONTRACT	SP
2011	2134799	COMAD	5/29/2014	9/5/2014	\$5,678.34	Long Distance	T	Y	SBC
2011	2134809	COMAD	5/29/2014	9/5/2014	\$89,868.89	Voice Lines	T	Y	SWBT
2011	2134832	COMAD	5/29/2014	9/5/2014	\$1,787.84	T-1 Circuits	T	Y	SWBT
2011	2134845	COMAD	5/29/2014	9/5/2014	\$1,600.56	Opteman Broadband Circuits	T	Y	SWBT
2011	2134863	COMAD	5/29/2014	9/5/2014	\$262,621.80	Gigaman Broadband Circuits	IA	Y	SWBT
2011	2134902	COMAD	5/29/2014	9/5/2014	\$92,587.92	Internet Access	IA	Y	AT&T
2011	2149062	COMAD	5/29/2014	9/5/2014	\$9,842.76	Gigaman Broadband Circuits	IA	Y	SWBT
2011	2151408	COMAD	5/29/2014	9/5/2014	\$18,681.75	E-mail	IA	N	Gaggle
2011	2217384	COMAD	5/29/2014	9/5/2014	\$6,691.48	Internet Access	IA	Y	SWBT
2012	2296260	COMAD	5/29/2014	9/5/2014	\$6,075.24	Long Distance	T	Y	SBC
2012	2296287	COMAD	5/29/2014	9/5/2014	\$83,472.49	Voice Lines	T	Y	SWBT
2012	2296394	COMAD	5/29/2014	9/5/2014	\$1,778.40	T-1 Broadband Circuits	T	Y	SWBT
2012	2298647	COMAD	5/29/2014	9/5/2014	\$282,397.36	Gigaman Broadband Circuits	T	Y	SWBT
2012	2298680	COMAD	5/29/2014	9/5/2014	\$133,904.43	Gigaman Connection Internet Access	IA	Y	SWBT
2012	2298698	COMAD	5/29/2014	9/5/2014	\$9,842.76	Gigaman Circuit	IA	Y	SWBT

FY	FRN	TYPE	COMAD Date	First Demand Date	Disbursed Amount	SVC	Category of Service	DIR CONTRACT	SP
2012	2303040	COMAD	5/29/2014	9/5/2014	\$7,701.84	Internet Access	IA	Y	SWBT
2012	2380833	COMAD	5/29/2014	9/5/2014	\$46,482.57	Internet Access to ESC	IA	N	COGEN T

Previous Form 470's

Upon review of the previous Form 470 filings, one can see that the only difference between the 470s filed prior to 2011 and the 470s filed in 2011, 2012 and 2013 was the change from listing the number of school sites (school locations) to using the wording "district-wide." The applicant apparently changed the wording to agree with the technology needs studies conducted by third parties who used the term "district-wide" in their recommendations on what the district should be requesting in order to meet the educational needs of the district.

The following Forms 470 included numbers of sites/locations in the detail services requested section of the Forms 470:

2007: 44 Location and adding 3 New Ones
 2008: 47 Locations and Adding 1 New
 2009: 48 Location plus 3 New
 2010: For Internet – 35,000+ Users
 Telecom – 51 Locations
 DNS, Web, and Email – District Wide

Starting in 2011, the district simply stated that these telecommunications and Internet Access services were to be installed 'district wide' which was accurate. Every site received services requested on the form 470's. (See Network Topology above and Attached.)

Below, we have listed the actual number of sites that received service:

2011: District Wide (Actual Building Count = 53 Locations)
 2012: District Wide (Actual Building Count = 55 Locations)
 2013: District Wide (Actual Building Count = 55 School Sites and 2 NIF's)

According to the establishing Form 470's for the FRN's each of the years in question were:

- Were installed at every site district wide (all buildings)
 - 2011 – Form 470 said district-wide, there were 53 sites
 - 2012 – Form 470 said district-wide, and this time there were 55 sites
- Were for normal telecommunications and Internet Access services
- Were for services purchased from contracts awarded by the Texas Department of Information Resources (DIR) under Texas HB 2128. The following information is extracted from a Public

Policy brief posted by TCEA, the Texas Computer Education Association that explains HB 2128 discounts⁴:

HB 2128, the state telecommunications deregulation bill, was passed by the 74th Texas Legislature and enacted on September 1, 1995 as the Public Utility Regulatory Act of 1995. The bill was a part of the nationwide trend in state telecommunications deregulation. Lawmakers envisioned three goals for HB 2128: a) allow for a competitive telecommunications market, b) encourage investment in the state, and c) provide a world-class telecommunications infrastructure in Texas.

Provisions implementing the primary goal of HB 2128 in Texas were designed to open competition for local service in order to both keep rates down and generate new services, such as high-speed Internet access. The legislature took special care to ensure that a telecommunications infrastructure that connects public entities such as schools, libraries, institutions of higher education, non-profit telemedicine centers, and public hospitals was established at a reasonable rate.

To that end, several discounts were established under Chapters 58, and 59, of the Texas Utilities Code for the benefit of these entities. In particular, a discount on contracts for private network services (i.e. customer specific contracts that include T1, T2, and T3 lines/trunks) was set to expire in 2005, but SB 5 (second called Session of the 79th Regular Session) extended these discounts through January, 2012. SB 773, in the 82d Regular Legislative Session, extended these discounts again until January, 2016. These discounts allow libraries, schools, and hospitals to purchase high-speed services from local exchange carriers at 110% of long run incremental costs (LRIC).

Based on the discussion above, we conclude that USAC reviewers determined that the absence of a specific number of sites was the reason that they thought that this missing number may have resulted in potential bidders of existing telecommunications services having insufficient information on which to place their bids.

We believe that this conclusion is in error since the district was indeed requesting services for all sites, "district-wide." To list the number of sites should not be necessary since all sites were requested for the services requested on the Forms 470.

COMPETITIVE BIDDING

During the review process that validated that the district had selected the most cost-effective services from companies 'required' to provide the discounts referenced above, the following information was submitted by the applicant in responses to the USAC reviewer. The email and attachments are attached:

⁴ <http://www.tcea.org/advocacy/resources/public-policy-issues/telecommunications-discount> [last accessed 10/23/2014]

All bids by DIR were definitely considered by Mansfield ISD before the first contract was awarded many years ago. There are a number of factors that make up the most cost effective service with price being the highest consideration when choosing a service provider. In this case, with price a major consideration, the first consideration was whether the telecommunications carrier could provide all the services Mansfield was requesting and that they were required to apply all the discounts approved under HB 2128 as has been discussed previously.

Under HB 2128, the only telecommunications companies required to provide the special HB 2128 discounts are those on the approved list shown in the *TCEA INNOVATE TEACHING AND LEARNING ADVOCACY* document excerpted in the original response and listed below:

Central Telephone Company (Centel) d/b/a CenturyLink f/k/a Embarq CenturyTel of San Marcos CenturyTel of Port Aransas CenturyTel of Lake Dallas Consolidated Communications f/k/a TXU Communications Consolidated Communications f/k/a Fort Bend Telephone Southwestern Bell Telephone Company d/b/a AT&T Texas United d/b/a CenturyLink f/k/a Embarg Verizon TXC – (Continental Telephone) Verizon TXG – GTE Southwest, Inc. Texas Windstream f/k/a Texas Alltel	Windstream Sugar Land, formerly Sugar Land Telephone Company Windstream Comm. SW f/k/a Valor Telecom Windstream Kerrville f/k/a Kerrville Telephone Co. (KTC) Verizon TXG – GTE Southwest, Inc. Texas Windstream f/k/a Texas Alltel Windstream Sugar Land, formerly Sugar Land Telephone Company Windstream Comm. SW f/k/a Valor Telecom Windstream Kerrville f/k/a Kerrville Telephone Co. (KTC)
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Of these only Southwestern Bell Telephone Company d/b/a AT&T Texas has the necessary infrastructure to provide high capacity broadband circuits in the Mansfield ISD geographic area.

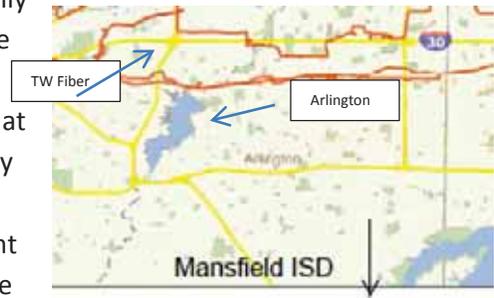
While they are not listed on the HB 2128 list above there was one company on the DIR list, TW Telecom that states that they offer all services that MISD was seeking so the district looked to see if this was a viable option.

Vendor Name	Contract No.	Product Sub-Type
AT&T Corporation	DIR-TEX-AN-NG-CTSA-005	Internet, Data, Long Distance, Small Office/Home Office (SOHO), Local Voice, Metro Ethernet, Voice Over IP (VOIP)
Hughes Network Systems, LLC	DIR-TEX-AN-NG-CTSA-002	Small Office/Home Office (SOHO), Satellite
Level 3 Communications, LLC	DIR-TEX-AN-NG-CTSA-007	Internet, Data, Metro Ethernet
Windstream Corporation (formerly PAETEC Communications, Inc.)	DIR-TEX-AN-NG-CTSA-009	Local Voice, Wireless Broadband, Internet
Proactive Communications	DIR-TEX-AN-NG-CTSA-001	Satellite
Qwest Communications Company, LLC, dba CenturyLink	DIR-TEX-AN-NG-CTSA-004	Long Distance, Internet, Voice Over IP (VOIP)
Skyfiber, Inc.	DIR-TEX-AN-NG-CTSA-003	Wireless Broadband
Time Warner Entertainment - Advance/Newhouse Partner dba Time Warner Cable through its Texas Region	DIR-TEX-AN-NG-CTSA-008	Metro Ethernet, Small Office/Home Office (SOHO), Internet
TW Telecom of Texas, LLC	DIR-TEX-AN-NG-CTSA-006	Long Distance, Data, Internet, Small Office/Home Office (SOHO), Metro Ethernet, Voice Over IP (VOIP), Local Voice
Verizon Business Network Services, Inc.	DIR-TEX-AN-NG-CTSA-010	Internet, Small Office/Home Office (SOHO), Voice Over IP (VOIP)

The next consideration was whether TW Telecom could actually deliver all these services to the Mansfield district at affordable prices when the HB 2128 discounts would not be available.

When reviewing whether TW Telecom could provide services at affordable prices in the Mansfield geographic area or not, they found that they could not. The reason being that the TW Telecom Fiber Network, which is required to deliver equivalent high capacity rates, is not 'built-out' in the Mansfield area. The snapshot inserted above shows that TW Telecom's nearest

fiber is north of Arlington Texas which is more than 18 miles from the northernmost border of the Mansfield ISD district boundaries. See maps in the attachment set.



As can be seen on the Mansfield district map, to go completely across the district is considerably farther than that. This fact means that Mansfield would be forced to pay not only for "off-site" services which make them more costly than the AT&T circuits but would likely have construction costs as well. These circuits constitute the largest cost item for the district.

The TW pricing sheet states the following:

"Prices assume that facilities exist. If facilities have to be created, the monthly price can either increase or a one-time special construction charge can be applied. DIR or DIR Customer will have the option to accept the price or cancel the order."

Particular bandwidths will require the bonding of multiple T1 or DS3 circuits to accommodate; multiply the Off-net local loop charges accordingly, e.g., 2xT1 = 3mb, 4xT1 = 6m." The rates are also distance sensitive.

An additional factor that had to be considered is that if Mansfield were to make a change from AT&T to TW Telecom for any of the Gigaman circuits that are under the 2 year minimum, they would incur early termination penalties of 50% of the monthly recurring charges if the commitment time period is not met. (See Attachment G-b - AT&T Network Service Agreement"

CONCLUSION:

At issue in this appeal is that USAC determined that Mansfield ISD did not “define the specific services or functions, including quantity or capacity, for which funding would be sought.”

During the selective review and USAC appeal stages of this process, the district successfully refuted that it engaged in uncompetitive bidding practices and that its Forms 470 for the affected years were “encyclopedic.” These allegations were dropped from subsequent USAC correspondence.

We respectfully request that the Commission review the record in the case to see that the district’s intent in using the wording “district-wide” provided the information needed for service providers to place bids for the services requested for all school sites in the district. The fact that the district listed the number of school sites in one section of the Form 470, but not in the detailed section that provided detail of services should not result in denial of over \$1.8 million in funding for the district’s essential telecommunications and Internet Access services requested for funding years 2011, 2012 and 2013. Mansfield ISD made a good faith effort to define the specific services or functions, including quantity and capacity, for which funding was sought. As previous correspondence with USAC illustrates, the district used the term “District-Wide” to describe the scope of services needed because this was the terminology that was included in the recommendations in two separate assessments conducted over the course of two years.

As discussed above, even if the Commission agrees with USAC’s finding that the description of services needed did not meet its standard for specificity, it is important that the FCC waive this requirement due to (i) special circumstances that warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.

Respectfully submitted,



Jane Kellogg
Consultant

Attachments:

- A. Commitment Adjustment Letters FY2011 and FY2012; FCDL for FY2013
- B. USAC Appeal for Erate FY 2011-13 including Technology Plans 2010-13
- C. Selective Review Responses
- D. Form 470’s 2010, 2011, 2012 and 2013
- E. Third party technology assessments that use term “district wide”
- F. Listing of Gigamon and Plexar agreements
- G. Texas DIR TEX-AN agreement and AT&T Network services sample
- H. Letter of Agency