

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

In the Matter of

Request for Review of Decisions of the
Universal Service Administrator and Waiver
of the Commission's Rules

By Encinitas Union School District

)
) WC Docket No. 13-184

) CC Docket No. 02-6

) File Nos. SLD 852780, 892138, 947306

) FRNs 2362453, 2370143, 2424823, 2424833,
) 2609913 and 2609918
)
)

To: Chief, Wireline Competition Bureau

CONSOLIDATED REQUEST FOR REVIEW AND WAIVER

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Dated: January 23, 2015

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SUMMARY

On behalf of the Encinitas Union School District ("EUSD" or "District"), this is a consolidated request for review and waiver ("Request") concerning decisions of the Administrator of the Universal Service Administrative Company ("Administrator") (a) seeking rescission and recovery of Funding Year ("FY") 2012 and 2013 E-Rate Program ("Program") support for telecommunications services and Internet access and (b) denying such support for FY2014 as well. All of these USAC actions are based on alleged violations of the E-Rate Program rules relating to assigning price the greatest weight in the original bidding evaluation process for a three-year contract awarded for FY 2012.

More specifically, for FY 2012 the District chose Cox California Telecom, LLC ("Cox") (over AT&T Corp ("AT&T")) to provide eligible Priority 1 telecommunications services and internet access as the lowest priced bidder. The FY 2013 COMAD and FY 2014 FCDL are based on the premise that the alleged violations in the original FY 2012 competitive bidding process infected the subsequent FY 2013-2104 requests for Program support, each of which cited the FCC Form 470 (#9451900008973278) pursuant to which the FY 2012 competitive bidding process was conducted and the multi-year contract was awarded. Thus, in the case of each USAC action, the substance of the Funding Commitment Adjustment/Decision Explanation is the same. Therefore, EUSD files this Request on a consolidated basis.

The District respectfully submits that for FY 2012 it conducted a fair and open competitive bidding process as required by the Program rules. The relevant Form 470 was posted for the requisite 28 days and an RFP was released ("RFP Bid #2152"). Bids for the services in question were received from Cox and AT&T and evaluated. As reflected on the Evaluation Matrix for EUSD RFP Bid 2152 ("Evaluation Matrix"), Cox received the highest ranking in the separate "Pricing" category indicating that "Vendor 2 pricing structure was favorable." EUSD subsequently stipulated

to USAC that the District's regular practice was to assign the greatest weight to price as a factor in evaluating proposals to provide E-Rate supported services. The fact is that even if AT&T had received the maximum rating in other non-price categories, Cox, because of its superior price offering would have received the award.

However, to the extent, as USAC suggests, that there was ambiguity in whether price was given the greatest weight in this evaluation, the Commission has seen fit, where the lowest price offer was accepted and there are no other factors indicating violation of the E-Rate Program rules, to waive any technical violations of the relevant FCC rules. EUSD respectfully submits that such a waiver is totally justified under these circumstances and requests that the Commission promptly do so and instruct USAC to reverse the denial of FY 2014 support and rescind the COMADs. Such a waiver is in the public interest and would serve the goals of the Program.

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On behalf of the Encinitas Union School District ("EUSD" or "District"), this is a consolidated request for review and waiver ("Request") concerning decisions of the Administrator of the Universal Service Administrative Company ("Administrator")¹ (a) seeking rescission and recovery of Funding Year ("FY") 2012 and 2013 E-Rate Program ("Program") support for telecommunications services and Internet access² and (b) denying such support for FY2014 as well.³ All of these USAC actions are based on alleged violations of the E-Rate Program rules relating to

¹ The Administrator, the Universal Service Administrative Company and the Schools and Libraries Division ("SLD") thereof will be collectively referred to herein as "USAC."

² On December 22, 2014, USAC issued two Notification Of Commitment Adjustment Letters ("COMAD") seeking to rescind and recover Program support for FYs 2012 (the original contract year) and 2013 (the second year of the 3 year contract). Copies of the COMADs are at Exhibit 1.

³ A copy of the relevant Funding Commitment Decision Letter, dated November 26, 2014 ("FCDL") is at Exhibit 2. The Request is timely filed. Section 54.720(a) of the Commission's E-Rate Program rules requires such a filing be made "within sixty (60) days from the date the Administrator issues a decision." The FCDL is dated November 26, 2014, and sixty (60) days thereafter is January 25, 2015. This date is also well within the 60-day time limit applied to the December 22, 2014 COMADs.

assigning price the greatest weight in the original bidding evaluation process for a three-year contract awarded for FY 2012.

More specifically, for FY 2012 the District chose Cox California Telecom, LLC (“Cox”) (over AT&T Corp (“AT&T”)) to provide eligible Priority 1 telecommunications services and internet access as the lowest priced bidder. The FY 2013 COMAD and FY 2014 FCDL are based on the premise that the alleged violations in the original FY 2012 competitive bidding process infected the subsequent FY 2013-2104 requests for Program support, each of which cited the FCC Form 470 (#9451900008973278) pursuant to which the FY 2012 competitive bidding process was conducted and the multi-year contract was awarded. Thus, in the case of each USAC action, the substance of the Funding Commitment Adjustment/Decision Explanation is the same. Therefore, EUSD files this Request on a consolidated basis.⁴

I. INTRODUCTION

The District respectfully submits that for FY 2012 it conducted a fair and open competitive bidding process as required by the Program rules. The relevant Form 470 was posted for the requisite 28 days and an RFP was released (“RFP Bid #2152”). Bids for the services in question were received from Cox and AT&T and evaluated. As reflected on the Evaluation Matrix for EUSD RFP Bid 2152 (“Evaluation Matrix”), Cox received the highest ranking in the separate “Pricing” category indicating that “Vendor 2 pricing structure was favorable.” EUSD subsequently stipulated to USAC that the District’s regular practice was to assign the greatest weight to price as a factor in evaluating proposals to provide E-Rate supported services. The fact is that even if AT&T had

⁴ Exhibit 3 is a chart showing the relevant data with respect to each of the two (2) COMADs and the FCDL involved, showing the funding support approved and disbursed and now sought to be recovered and rescinded as well as the funding support denied in the FCDL.

received the maximum rating in other non-price categories, Cox, because of its superior price offering would have received the award.

However, to the extent, as USAC suggests, that there was ambiguity in whether price was given the greatest weight in this evaluation, the Commission has seen fit, where the lowest price offer was accepted and there are no other factors indicating violation of the E-Rate Program rules, to waive any technical violations of the relevant FCC rules. EUSD respectfully submits that such a waiver is totally justified under these circumstances and requests that the Commission promptly do so and instruct USAC to reverse the denial of FY 2014 support and rescind the COMADs. Such a waiver is in the public interest and would serve the goals of the Program.

II. STATEMENT OF THE DISTRICT'S INTERESTS IN THE REQUEST

The District has standing to file this Request because Section 54.719(c) of the Commission's rules provides the rights of parties to seek review of Administrator decisions⁵ In this case, the District is directly aggrieved by the COMADs and USAC's effort to recover previously-approved Program funds properly expended in accordance with that approval. The District has a specific right to initially seek either an appeal to the Administrator or to come directly to the Commission where waiver of the rules is sought.⁶

III. KEY BACKGROUND FACTS

A. The District

For FY 2014 the District serves approximately 5,435 students in Kindergarten through 6th grade in the City of Encinitas and the La Costa area of Carlsbad in North San Diego County, California.⁷ The District is consistently highly ranked in the state and county for its student test

⁵ 47 C.F.R. § 54.719.

⁶ *Id.*

⁷ For FY 2012 and FY 2013, according to the relevant FCC Form 471s the figures were 5473 and 5447, respectively.

scores and academic and supplemental programs. The District contains nine schools, which are recognized as California Distinguished Schools.⁸ La Costa Heights, Mission Estancia, Olivenhain Pioneer and Park Dale Lane Schools have been recognized as National Blue Ribbon Schools.

The District serves a diverse and varied community. The current student population is approximately 19% Hispanic, 5% Asian, 69% Caucasian, and 7% other minorities. The District's teachers and students work collaboratively with parents and community members in the areas of Science, Technology, Engineering, Mathematics, and the Arts.

The District has participated in the E-Rate Program since 1998. Throughout that participation, E-Rate Program matters have been handled on a part-time basis by District personnel and, more recently, with the assistance of an outside E-Rate Program consultant. In the past few years, the District has had a complete turnover of its staff that handles E-Rate Program matters. The District's E-Rate Program consultant was also replaced during this same time period covered by the COMADs.

The District relies heavily on E-Rate Program funding to help reduce the cost of its telecommunications services. The District's funding from the State of California and the local community has decreased by more than \$10 million over the last five (5) years. There are no funds available or budgeted to make repayment of the COMADs if this Request is denied. Rather, the District will be forced to reallocate funding that would otherwise be used to support student services to the repayment of Program funds that were properly expended in accordance with USAC approval. Further, there are no funds to replace the support denied for FY 2014.

⁸ The Distinguished Schools program recognizes approximately 225 elementary schools every other year that are doing an exemplary job of educating students.

B. FY 2012 FCC Form 470 And Request For Proposals

The District's FCC Form 470 requesting funding for voice telecommunications services and internet access was posted on December 12, 2011. In the FCC Form 470, the District requested bids for a multi-year contract to provide WAN high speed data and Internet access services district wide.⁹

The District also indicated therein that it would release a request for proposals. RFP Bid #2152 was available upon request and was provided to at least two potential bidders: Cox and AT&T.¹⁰ The RFP provided that submissions would be evaluated on cost and certain other factors.

C. The District's FY 2012 Competitive Bidding Process

The District received two bids, one from Cox and one from AT&T. EUSD completed the Evaluation Matrix to evaluate the bids.¹¹ It concluded that Cox's bid was the most favorable in terms of pricing and certain other criteria. By letter dated March 12, 2012, EUSD notified AT&T that Cox had been selected.¹² The District and Cox entered into an agreement dated effective March 14, 2012.¹³

D. The FY 2012 FCC Form 471

On March 19, 2012, the District submitted an FCC Form 471 (#852780), seeking FY 2012 E-Rate Program support for telecommunications services and Internet access from Cox.¹⁴ USAC issued a Funding Commitment Decision Letter on October 30, 2012 providing a total of \$183,189.60 in funding support under FRNs 2362453 and 2370143, collectively, for FY 2012. Of

⁹ FCC Form 470, Form 470 Application No. 945190000973278, is at Exhibit 4.

¹⁰ A copy of the RFP is at Exhibit 5.

¹¹ The Evaluation Matrix is at Exhibit 6, along with copies of the Cox contract and the relevant portion of the AT&T bid. The Cox contract offer was \$23,700 in monthly recurring charges. The comparable AT&T bid, based on a combination of options 2 and 3, was \$25,386 in such charges.

¹² Cox was notified by letter of the same date. *See* Exhibit 7

¹³ *See* Exhibit 6.

¹⁴ The FCC Form 471 for FY 2012 is at Exhibit 8.

that total amount, \$126,409.09 was subsequently disbursed and expended for the purposes for which it was approved.¹⁵

E. The FYs 2013-2014 FCC Form 471s

In each of the subsequent FYs during which the District planned to continue to receive service under the contract first entered into pursuant to the FY 2012 competitive bidding process (i.e., FYs 2013-2014), the District was not required to “re-compete” for the services by filing an FCC Form 470.¹⁶ It simply filed an FCC Form 471 which included the request for services and cited the original FY 2012 FCC Form 470. USAC fully funded the amounts requested by the District in FY 2013 and, as further explained below, denied the funding request for FY 2014 in its entirety for the Cox services.¹⁷

F. The USAC Selective Review, FCDL Denial and COMADs

USAC initiated a Selective Review for certain FRNs for FY 2014 for Form 471 No. 947306, including FRNs 2609913 and 2609918 relating to the request for E-Rate for the third year of the Cox services. The District fully cooperated with the review and provided all of the requested documents to the best of its abilities.

One of the Selective Review inquiries related to the vendor evaluation for the FY 2012 bidding process, to which EUSD responded as follows:

¹⁵ See COMAD for FY 2012 at Exhibit 1.

¹⁶ The E-Rate Program rules and precedent provide that if the applicant properly competes a permitted multi-year contract for eligible services, then it need not post a new FCC Form 470 and re-compete provision of the same services in subsequent years under the contract. The applicant submits a new FCC Form 471, citing back to the FCC Form 470 under which the multi-year contract originally was competed. That is, of course, what happened in this case. See *Request for Review of Decisions of the Universal Service Administrator by Consorcio de Escuelas y Bibliotecas de Puerto Rico, Order*, 28 FCC Rcd 64, 69, ¶ 11, n.46 (Telecom. Access Pol. Div. 2013) (“*Consorcio Order*”).

¹⁷ The relevant FCC Forms 471 for FYs 2013-2014 are at Exhibit 9. The approved funding for FY 2013 and the amounts disbursed under the relevant FRNs are reflected on Exhibit 3. The requested funding for FY 2014 is also reflected thereon.

FRN 2609913 and FRN 2609918

a. Vendor Evaluation:

The copy of bid selection documentation you provided for FRN 2609913 indicates that several criteria were used in determining the successful vendor. However, weighting of the each factor is not indicated. Please provide copy of bid evaluation worksheet that indicates the weighting of those factors in percentages identifying which criterion was the primary factor for the selection of the winning bids.

Encinitas' regular practice is to provide greatest weight to price in evaluating proposals to provide E-Rate supported services. That practice was followed here, where the ultimate selectee, Cox Business, received the maximum score on pricing because it was the more favorable (i.e., lowest, of the two bids). Even if the competing vendor had received maximum scores for "Response Compliance" and "Design", Cox would have been the victor, indicating that price was the decisive factor in the evaluation.¹⁸

Thereafter, on November 26, 2014 USAC issued the FCDL which denies \$121,029.48 in FY 2014 Program support, and subsequently, on December 22, 2014, issued the COMADs which rescind or seek recovery of a total of \$298,306.80 in Program support for FYs 2012 and 2013 (recovery sought = \$241,526.29) under the captioned FCC Form 471 applications/FRNs.¹⁹

The Funding Commitment Decision Explanation with respect to the FY 2014 FCDL denial is as follows:

"Based on the documentation you provided during the Selective Review, this FRN is denied because the vendor selection documentation you provided during the review did not demonstrate that price of the eligible goods and services was the primary factor. Specifically, your evaluation process assigned points for each of the evaluation criteria. However, the weighting for each of the evaluation criteria was not taken into consideration when determining the total score. Applicants must select the most cost-effective provider of the desired products or services eligible for support, with price of the eligible goods and services being the primary evaluating factor."

¹⁸ Letter, dated June 16, 2014, from Sher Hoff, Purchasing Supervisor, EUSD, to Dhara Patel, Associate Manager, Selective Reviewer, USAC. *See* Exhibit 10.

¹⁹ *See* Exhibit 3.

The Funding Commitment Adjustment Explanation for the COMADs is similar, as follows:

After multiple requests for documentation and application review, it has been determined that this funding commitment must be rescinded in full. The price of eligible products and services was not the primary factor in the vendor selection process. During a review of funding year 2014 FRNs 2609913 and 2609918 it was determined that the vendor evaluation factors did not have any weighting to determine if price was the primary factor. Since the contract originated in FT 2012 FRNs for FY 2012 and 2013 covered by this contract are also in violation of FCC rules. FCC rules require that applicants select the most cost effective product or service offering with price being the primary factor in the vendor selection process. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.

IV. STANDARD OF REVIEW

By rule, the Commission's review of USAC decisions is *de novo*, without being bound by any of USAC's findings and conclusions.²⁰

USAC's authority to administer the E-Rate Program is limited. USAC is authorized to implement and apply the Commission's rules and the Commission's interpretations of those rules as found in Commission decisions and orders.²¹

USAC is not empowered to make policy, interpret any unclear provisions of the governing statute or the rules promulgated by the Commission,²² or create the equivalent of new guidelines.²³ USAC is responsible for "administering the universal support mechanisms in an efficient, effective,

²⁰ 47 C.F.R. § 54.723.

²¹ 47 C.F.R. § 54.702(c).

²² *Id.*

²³ *Changes to the Board of Directors of the Nat'l Exchange Carrier Ass'n, Inc.*, Third Report and Order, 13 FCC Rcd 25058, 25066-67, ¶¶ 15-16 (1998) ("*Third Report and Order*").

and competitively neutral manner.”²⁴ In connection with efforts to recover previously approved E-Rate support, USAC has the burden of acting in a timely manner to recover and demonstrate that there has been a statutory or substantive rule violation.²⁵

USAC is charged with measuring the conduct at issue against the FCC rules and policies in effect at the time that the conduct took place, not using subsequent rules and applying them retroactively.²⁶

Finally, the Commission, for good cause shown, may waive violations of its rules where it deems it in the public interest to do so. As set forth below, there is ample precedent for doing so here and the Commission should grant the Request.

V. ARGUMENT

A. The District Made A Good Faith Effort To Comply With All FCC Competitive Bidding Requirements

The District made a good faith effort here to comply with all applicable competitive bidding requirements. It conducted a thorough bid evaluation process, which included a separate assessment for price, while also considering other acceptable evaluation factors. Cox, the bidder with the highest ranking on price in that evaluation, was selected as the winning bidder. And Cox offered the more favorable pricing (i.e., lowest, of the two bids) between the two offerings. During the Selective Review on this issue, EUSD stated that it was its practice to give price the greatest weight in awarding contracts supported by E-Rate funding.²⁷

²⁴ 47 C.F.R. § 54.701(a).

²⁵ See *Schools and Libraries Universal Service Support Mechanism*, Fifth Report and Order, 19 FCC Rcd 15808, 15813-14, 15818-19, ¶¶ 15, 32 (2004) (“*Fifth Report and Order*”).

²⁶ See e.g., *Request for Review of a Decision of the Universal Service Administrator by Fort Worth Independent School District*, Order, 27 FCC Rcd 14995, 14996, ¶ 4, n.12 (Telecom Access Pol. Div. 2012).

²⁷ See Exhibit 11.

Again, the bottom line is whether it can be determined that any bids were in fact appropriately evaluated before contract entry and the posting of an FCC Form 471. Here the District was able to provide USAC with evidence that it conducted a fair and open competitive bidding process in which it used price as the highest weighted factor because it chose the lowest price bidder.²⁸

B. A Waiver Of Any Technical Violations Is Fully Justified

Nevertheless, EUSD concedes that it might be ambiguous whether price was given the greatest weight as part of the FY 2012 bid evaluation process. However, the Commission has on a number of occasions waived such a technical violation of Sections 54.503 and 54.511 of the Program rules under these circumstances. A waiver is fully appropriate in this case.

The Commission's rules allow waiver of a Commission rule "for good cause shown."²⁹ In addition the Commission has adopted the following standard for granting waivers:

A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. 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.³⁰

²⁸ See *Requests for Review of a Decision of the Universal Service Administrator by Riverdale Unified School District*, Order, 26 FCC Rcd 11207, 11211, ¶ 9 (Telecom Access Pol. Div. 2011) (all bidders on level competitive playing field meant no finding of violation of competitive bidding rules not warranted); see also *Requests for Review of Decisions of the Universal Service Administrator by Net56, Inc.*, Order, 27 FCC Rcd 13606, 13618, ¶ 14 (Telecom Access Pol. Div. 2012).

²⁹ 47 C.F.R. § 1.3.

³⁰ *Requests for Review by Richmond County School District*, Order, 21 FCC Rcd 6570, 6572, ¶ 5 (Wireline Compet. Bur. 2006) (internal references omitted) (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972)).

In the *Midlothian School District 143* decision, the Commission was faced with a similar and perhaps *even more ambiguous* set of facts.³¹ There were actually two bid evaluation sheets.³² The Commission held that:

Upon review of the record, we agree with USAC's determination that Midlothian's vendor selection documentation did not clearly demonstrate that price was given the highest weight or value during the bid evaluation process. However, the record shows that Midlothian selected the lowest priced bid for the funding request at issue. Given that Midlothian ultimately selected the least expensive service offering, despite the ambiguity as to whether it assigned the highest weight or value to price in its vendor evaluation process, we find that the outcome of Midlothian's vendor selection process was consistent with the policy goals underlying the Commission's competitive bidding rules. Therefore, we find that it is in the public interest to waive sections 54.503 and 54.511 of the Commission's rules, which require applicants to use price as the primary factor in the vendor selection process, with respect to the funding request identified herein. This finding is consistent with precedent finding good cause for waivers in comparable circumstances. Further, at this time, there is no evidence of waste, fraud and abuse in the record.³³

Even in cases where it is unambiguous that the applicant *failed* to use price as the primary factor in the bidding decision, the Commission has waived the applicable rules where the lowest price offer was selected. Thus, in the *Euclid City School District* decision,³⁴ the Commission held:

USAC initiated recovery actions against Euclid for funding already disbursed pursuant to Euclid's funding year 2009 and 2010 FCC Form 471 applications on the basis that Euclid violated sections 54.503 and 54.511 of the Commission's competitive bidding rules by failing to use price as the primary factor in its vendor selection

³¹ *Request for Review of a Decision of the Universal Service Administrator by Midlothian School District 143*, Order, 28 FCC Rcd 8970 (Telecom. Access Pol. Div. 2013) ("*Midlothian*").

³² *Id.*, ¶2, n.5

³³ *Id.*, ¶2 (citations omitted). Same circumstances are found in *Requests for Review and Waiver of Decisions of the Universal Service Administrator by Colorado Springs School District*, Order, 27 FCC Rcd 7022, ¶1 (Telecom. Access Pol. Div. 2012) (Vendor selection documentation did not clearly demonstrate that price was the primary factor; waiver granted where lowest price vendor selected).

³⁴ *Requests for Review of Decisions of the Universal Service Administrator by Euclid City School District*, Order, 27 FCC Rcd 14169 (Telecom. Access Pol. Div. 2012)

process. USAC also denied Euclid's and Shannon's funding year 2011 FCC Form 471 applications on the same ground.

Upon review of the record, we agree that USAC's determinations that Euclid and Shannon both violated the Commission's rules by failing to assign the highest weight to price when evaluating bids for E-rate supported services. However, the record shows that for each of the vendor selection processes at issue, the applicant selected the lowest priced responsive bid. 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 Commission's competitive bidding rules. Therefore we find that it is in the public interest to waive Sections 54.503(c)(2)(vii) and 54.511(a) of the Commission's rules, which require applicants to use price as the primary factor in the vendor selection process, with respect to the funding requests identified herein. This finding is consistent with precedent finding good cause for waivers in comparable circumstances. Further, at this time, there is no evidence of waste, fraud and abuse in the record.³⁵

Other decisions have granted waivers in similar circumstances where price has not been given the greatest weight in the evaluation process yet the lowest price offeror has been selected to provide the services.³⁶

The competitive bidding process was not compromised here by a technical violation of the competitive bidding rules and the outcome of the vendor selection process was otherwise consistent with those rules.³⁷ All bidders were on a level playing field here, despite any technical violation. Under such circumstances the Commission has seen fit to grant a waiver as in the public interest and

³⁵ *Id.*, ¶¶ 1, 2 (citations omitted).

³⁶ *Petition for Reconsideration by Fall River Public School District*, Order On Reconsideration, 28 FCC Rcd 14650 (Telecom. Access Pol. Div. 2013); *Requests for Review of Decisions of the Universal Administrator by Allendale County School District*, Order, 26 FCC Rcd 6109 (Telecom Access Pol. Div. 2011).

³⁷ *See Requests for Review of Decisions of the Universal Service Administrator by Central Islip Union Free School District*, Order, 29 FCC Rcd 2715 (Telecom. Access Pol. Div. 2014) (Good cause for waiver of Sections 54.503 and 54.511 of Commission's rules); *see also Requests for Waiver and Review of Decisions of the Universal Service Administrator by Aberdeen School District*, Order, 27 FCC Rcd 1941 (Telecom Access Pol. Div. 2012)

supporting a more effective implementation of Commission policy on competitive bidding.³⁸ The outcome of the vendor selection process here was “consistent with the policy goals underlying the Commission’s competitive bidding rules” and therefore a waiver is appropriate.³⁹ There was no deterrence of any bidders.⁴⁰

There is absolutely no evidence here of any activity by the District intended to defraud or abuse the E-Rate Program.⁴¹ Nor is there any evidence of any waste, fraud

or abuse or misuse of funds.⁴² All funds were used for the purposes for which they were provided.

Furthermore, the imposition of a requirement to reimburse the requested funds under these circumstances after they were originally approved and expended would impose an undue financial hardship on the District.⁴³ There is no evidence that the District acted in other than good faith.⁴⁴ Requiring repayment would not further the purpose of preserving and advancing access to universal

³⁸ *Request for Review of a Decision of the Universal Service by Ramirez Common School District*, Order, 26 FCC Rcd 8430, 8432-33, ¶ 7 (Telecom Access Pol. Div. 2011).

³⁹ *Requests for Review of Decision of the Universal Service Administrator by Euclid City School District, Euclid, OH, et al.*, Order, 27 FCC Rcd 14169, 14170, ¶ 2 (Telecom Access Pol. Div. 2012).

⁴⁰ *See Consorcio Order, supra*, ¶ 13.

⁴¹ *See Request for Review of the Decision of the Universal Service Administrator by New Haven Free Public Library*, Order, 23 FCC Rcd 15446, 15449, ¶ 7 (Telecom Access Pol. Div. 2008); *Requests for Review of the Decision of the Universal Service Administrator by the District of Columbia Public Schools*, Order, 23 FCC Rcd 15585, 15588 ¶ 5 (Telecom Access Pol. Div. 2008); *Request for Review of the Decision of the Universal Service Administrator by Tekeoa Academy of Accelerated Studies*, Order, 23 FCC Rcd 15456, 15458-59, ¶ 6 (Telecom Access Pol. Div. 2008).

⁴² *See Requests for Review of Decisions of the Universal Service Administrator by Broaddus Independent School District et al.*, Order, 23 FCC Rcd 15547, 15551-52, ¶ 12 (Telecom Access Pol. Div. 2008).

⁴³ *See Request for Review of a Decision by the Universal Service Administrator by Radford City Schools*, Order, 23 FCC Rcd 15451, 15453, ¶ 4 (Telecom Access Pol. Div. 2008); *Request for Review of a Decision of the Universal Service Administrator by Grand Rapids Public Schools*, Order, 23 FCC Rcd 15413, 15416, ¶ 6 (Telecom Access Pol. Div. 2008).

⁴⁴ *See Request for Waiver of the Decision by the Universal Service Administrator by Great Rivers Education Cooperative*, Order, 21 FCC Rcd 14115, 14119, ¶ 9 (Wireline Compet. Bur. 2006).

service support for schools and libraries.⁴⁵ Under such circumstances, it would be inequitable to uphold the COMADs.⁴⁶ A waiver is appropriate in these special circumstances.

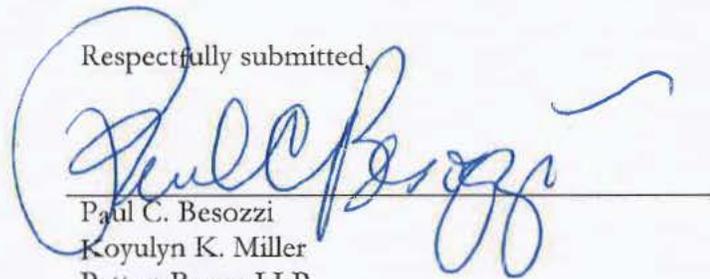
VI. CONCLUSION AND REQUEST FOR RELIEF

EUSD conducted a fair and open competitive bidding process and properly evaluated the two bids that it received, giving the highest ranking to and selecting the lowest price bid. To the extent that there was ambiguity as to whether price was the highest weighted evaluation factor and that ambiguity constitutes a technical violation

of the Program rules, that transgression should be waived. There is ample Commission precedent involving such circumstances for doing so.

Dated: January 23, 2015

Respectfully submitted,



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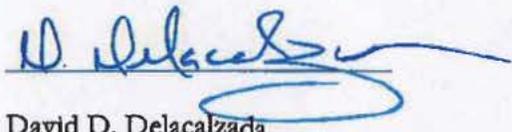
⁴⁵ See *Requests for Waiver of the Decision by the Universal Service Administrator by Adams County School District 14*, Order, 22 FCC Rcd 6019, 6022, ¶ 8 (2007).

⁴⁶ See *Request for Waiver and Review of Decisions of the Universal Service Administrator by Approach Learning and Assessment Center*, Order, 23 FCC Rcd 15510, 15513, ¶ 8 (Telecom Access Pol. Div. 2012).

DECLARATION

I, David D. Delacalzada, am the Director, Information Technology for Encinitas Unified School District ("District"). I have served in this position since December 8, 2009. As such I am responsible for the general oversight over the District's participation in the Schools and Libraries Support Mechanism ("E-Rate Program"). I have reviewed the Funding Commitment Decision Letter, dated November 26, 2014 (denying certain Funding Year ("FY") 2014 E-Rate Program support), and the Notification of Commitment Adjustment Letters, dated December 22, 2014 (seeking rescission and return of certain FY 2012 and 2013 E-Rate Program support).

I have also reviewed the foregoing Consolidated Request For Review And Waiver ("Request"), which was prepared at my request and under my supervision and control. I declare under penalty of perjury that the factual statements and representations concerning the District and the conduct of the competitive bidding process for FYs 2012-2014 set forth in the Request are true and correct to the best of my knowledge, information and belief.



David D. Delacalzada

Dated: January 23, 2015

CERTIFICATE OF SERVICE

I, Paul C. Besozzi, certify on this 23rd day of January, 2015, a copy of the foregoing "Consolidated Request For Review And Waiver" has been served via electronic mail or first class mail, postage pre-paid, to the following:

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