Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

In the Matter of Schools and Libraries Universal Service Support Mechanism Mansfield Independent School District FCC Form 471 Application Numbers 788976, 794118, 815691, 845493, 871961, 902395, 906722	))))))))	CC Docket No. 02-6

PETITION FOR RECONSIDERATION

Mansfield Independent School District
605 East Broad Street
Mansfield, Texas 76063
Phone: (817) 299-6300

July 30, 2015

Submitted by:

Christie Hobbs
Mike Leasor
Leasor Crass, P.C.
302 W. Broad Street
Mansfield, Texas 76063
Phone: (682) 422-0009
Email: christie@leasorcrass.com
mike@leasorcrass.com

Jane Kellogg
Deborah Sovereign
Kellogg & Sovereign® Consulting, LLC
1101 Stadium Drive
Ada, OK 74820
Phone: (580) 332-1444
Email: erate@kellogglc.com

PETITION FOR RECONSIDERATION

Mansfield Independent School District ("District") files this Petition for Reconsideration ("Petition") of the denial of the District's Request for Review or Waiver, dated June 30, 2015, regarding the District's Application Numbers 788976, 794118, 815961, 845493, 871961, 902395, and 906722. In support of this Petition, the District shows the following.

I.
Summary

Mansfield Independent School District applied for funding through the E-rate program for discounts on its phone and internet bills, as well as improvements to equipment and infrastructure for the 2011 and 2012 funding years. The District's applications were approved. The District received discounts on its phone and internet bills for those years. However, it did not go forward with the infrastructure improvements at that time. Because of state budget cuts, the District could no longer afford its share of the cost of equipment and infrastructure improvements. The District did not issue a Request for Proposals for the improvements, and no funds were received in connection with them.

On September 5, 2014, the Universal Service Administrative Company ("USAC") issued a retroactive denial of seven of the District's applications for 2011 and 2012, all of which had previously been approved and fully funded. The Administrator's Decisions on Appeal alleged that the District's 470 Forms:

(1) did not define the specific functions or services for which funding would be sought, and

(2) were not sufficiently tailored to the District's needs and technology plan goals.

USAC retroactively demanded that the District repay more than $1,060,000.00 in connection with the discounts the District received.

The District appealed that decision. On June 30, 2015, the Federal Communications Commission's Wireline Competition Bureau denied the District's appeal on the basis that there was inadequate specificity on the 470 Forms and because they found no indication of a Request for Proposals ("RFP") for the services being sought.[1] The FCC appears to have concluded that the District improperly used the term "district wide" in its 470 Forms. In this Request, the District demonstrates the following:

a. **"District wide" was an accurate and appropriate term**, as the services and improvements sought were for all campuses in the District, pursuant to the District's technology plan.

b. **The District did not err by failing to issue an RFP for Priority Two funds** for 2011-12 funds because it determined (after submitting the applications) that it could not afford its portion of the improvements, even with E-rate funding. Ultimately, the District did not contract for improvements or receive funds for them. Unlike the cases cited by the FCC in support of its decision, there was no fraud or impropriety in the District's procurement of services and improvements.

c. **The District did not err by failing to issue an independent RFP for Priority One funds** for 2011 and 2012 because it contracted with a vendor pursuant to an interlocal cooperative, the Texas Department of Information Resources ("DIR") for the procurement of the discounted services. Through DIR, the state competitively bids for the services on behalf of all public schools. The District received the same discounted rates and contract terms approved by the DIR.

d. **"District wide" is a term commonly used by E-rate applicants** to explain services they are seeking for all school sites, and its use does not indicate impropriety. The District provides an extensive analysis of the use of the term, "district wide" and similar terms by schools and libraries in the state of Texas.

e. **Any mis-step was done in good faith.** No vendors were actually disadvantaged, and no funds were misused. The District has internal controls and procedures to ensure compliance with E-rate regulations and improve communications with prospective vendors.

f. **Denial of E-rate funds will cause undue financial hardship to the District**.

---

[1] *See* Public Notice DA 15-773, June 30, 2015, p. 5 (denying "Mansfield Independent School District, Application Nos. 788976, 794118, 815691, 845493, 871961, 902395, 906722, Request for Review or Waiver, CC Docket No. 02-6 (filed Oct. 29, 2014)" because "FCC Form 470 with Inadequate Specificity and No Indication of Request for Proposal (RFP) on Services Being Sought."

II.
Request for Hearing

The District requests a hearing in connection with this Petition, pursuant to 47 C.F.R. 1.106.

III.
The District

Mansfield Independent School District is a public school district, southeast of Fort Worth, serving over 32,000 students. Over the last 15 years, the District has become one of the fastest growing school districts in Texas. It currently has five high schools, a Career Tech Academy, six middle schools, six intermediate schools, and 22 elementary campuses. Thirty-nine percent of the District's students receive free or reduced lunches because of economic disadvantages.

The District is implementing a "1-to-1" initiative, district wide, to provide every junior high and high school student with iPads. These iPads are replacing traditional textbooks and will be the primary curriculum delivery system for secondary students. This initiative requires adequate internet access and sufficient funds for quality curriculum and supports for students.

The District is committed to using its technology resources, such as iPads, to give students practical, "real world" training and prepare them for productive jobs after high school. For example, its high school engineering students created a prosthetic hand for a young father whose hand had been amputated.[2] Students from all five high schools may participate in this program, and others like it, at the Career Tech Academy where they gain valuable skills to go directly into the workforce or higher education. These programs and skills prepare students for jobs at

[2] "Mansfield students design, manufacture prosthetic hand", Fort Worth Star Telegram, on-line at: http://www.star-telegram.com/news/local/community/mansfield-news-mirror/mnm-news/article3862580.html.

manufacturing plants near Mansfield, including General Motors, Lockheed Martin, Bell-Textron, and Klein Tools.

Despite its accomplishments, over the last five years, the District has had to do more with less. Since 2010, the Texas Legislature has cut funding significantly to public schools and required that schools accomplish more through unfunded mandates. In the 2011-2013 biennium alone (which corresponds with funding years 2011 and 2012), state funding was reduced to the District by $26 million. These cuts have restricted the District's plans for capital improvements to its technology infrastructure. Because of these cuts, the District has sought federal assistance for Priority Two expenditures, to ensure that the District can continue to meet technology challenges head-on and prepare its students for employment after high school.

IV.
Argument and Authorities

A. "District wide" was an accurate and appropriate term, as the services and improvements were sought for all campuses in the District, pursuant to the District's technology plan.

The USAC based its denials, in part, on the grounds that the District's Forms 470 were not tailored to the District's needs and technology plan goals. Likewise, the FCC cited the Ysleta Order, which took exception to district-wide language and stated: "An applicant's FCC Form 470 must be based upon its carefully thought-out technology plan…"[3] However, the District's requests were directly in line with its technology plan. The District's Forms 470 for funding years 2011, 2012 and 2013 provided a list of specified services for which they sought discounts. Even though the list of services was broad, the District is a large school district with substantial needs. They did, in fact,

[3] *See Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District* et al., CC Docket Nos. 96-45 and 97-21, Order, p. 14.

need all services requested for all sites, “district wide.” This request is consistent with the recommendations made by the District’s outside technology consulting firms.

In 2010, the District knew that all facilities needed to be upgraded to meet the then-current technology standards. This included improvements to the entire infrastructure of all buildings, and upgrades to all technology-related equipment. The District hired two firms to provide technology assessments and recommendations: Huckabee, Inc., an architecture firm in Fort Worth, and EST Group, an IT solutions company in Arlington. Both groups recommended that the District implement upgrades across the District. It was concluded that the District needed to upgrade facilities, network equipment, voice services, and broadband services district wide. Importantly, the District did not have any campuses with complete wireless access. Only 15 sites had limited wireless access. The remaining 23 sites had no wireless access at all.

The consultants’ full reports were included in the District’s original appeal as Attachment E. For the panel’s convenience, a summary of the recommendation is attached to this Petition as Attachment A. As demonstrated, the services and improvements sought truly were for all campuses district wide. The use of the term “district wide” is an accurate reflection of the District’s needs and plans, as reflected in its technology plan. The following chart identifies specific page references to the technology plan for the requested improvements.

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

Further, the District's technology needs and requests for funding are aligned with these plans. The following chart summarizes the District's requests for services and improvements on each of its campuses.[4]

AP# 2010	**573040000783265**	**Service or Function:**	**QTY and/or Capacity:**	**Service Installed**
		Local Voice Service	51 locations	**x**
		Long Distance Service	51 locations	**x**
		High Speed End-End Transport Service	51 locations	**x**
		Point-Point T1 Lines	51 locations	**x**
		OptEman Circuits	51 locations	**x**
		GigAman Circuits	51 locations	**x**
AP# 2010	**573040000783265**	**Service or Function:**	**Quantity and/or Capacity:**	**Service Installed**

[4] For VoIP services, the District wanted to receive bids for both VoIP as a service as well as Priority Two equipment (District owned). The District used its own funds to purchase VoIP equipment. Ultimately, the District did install the VoIP solution as a Priority Two solution, instead of a Priority One service.

		PRI ISDN DID SmartTrunk	51 locations	**x**
		High Speed Internet Access	51 locations	**x**
		VoIP Services	51 locations	**P2 Option**
		Interconnected VoIP Lines	51 locations	**P2 Option**
		Parent Calling System	51 locations	**x**
AP# 2011	**970210000876801**	**Service or Function:**	**Quantity and/or Capacity:**	**Service Installed**
		Local Voice Services	District Wide	**x**
		Long Distance Phone Service	District Wide	**x**
		High Speed End-End Transport	District Wide	**x**
		Point-Point T1 Lines	District Wide	**x**
		Opteman Circuits	District Wide	**x**
		Gigaman Circuits	District Wide	**x**
		PRI ISDN DID Smart Trunks	District Wide	**x**
		High Speed Internet Access	District Wide	**x**
		VoIP Services	District Wide	**P2 Option**
		Interconnected VoIP Lines	District Wide	**P2 Option**
		Parent Calling System	District Wide	**x**
		911 Trunks	District Wide	**x**
		Voice/Video Conferencing Service	District Wide	**x**
		Wireless WAN	District Wide	**x**
		Cellular Services-Aircards	District Wide	**x**
		Fiber Optics	District Wide	**x**
		Distance Learning/Video Conference	District Wide	**x**
AP# 2012	**595840000980192**	**Service**	**Quantity and/or Capacity**	**Service Installed**
		Local Voice Services	District Wide	**x**
		Long Distance Phone Service	District Wide	**x**
		Point-Point T1 Lines	District Wide	**x**
		Opteman Circuits	District Wide	**x**
		Gigaman Circuits	District Wide	**x**
		PRI ISDN DID Smart Trunks	District Wide	**x**
		High Speed Internet Access	District Wide	**x**
		High Speed End-End Transport	District Wide	**x**
		VoIP Services	District Wide	**P2 Option**
		Interconnected VoIP Lines	District Wide	**P2 Option**
		Parent Calling System	District Wide	**x**
		911 Trunks	District Wide	**x**
		Voice Video Conferencing Service	District Wide	**x**
		Wireless WAN	District Wide	**x**
		Cellular Services-Aircards	District Wide	**x**
		Fiber Optics	District Wide	**x**
		Distance Learning/Video Conference	District Wide	**x**
AP# 2013	**764940001074497**	**Service**	**Quantity and/or Capacity**	**Service Installed**
		Local Voice Services	District Wide	**x**
		Long Distance Voice Services	District Wide	**x**

		Gigaman Circuits	District Wide	**x**
		PRI ISDN Smart Trunks	District Wide	**x**
		High Speed Interent Access	District Wide	**x**
		High Speed End-End Transport	District Wide	**x**
		VoIP Services	District Wide	**P2 Option**
		Parent Calling System	District Wide	**x**
		911 Trunks	District Wide	**x**
		Voice Video Conferencing	District Wide	**x**
		Wireless WAN	District Wide	**x**
		Cellular Services-Aircards	District Wide	**x**
		Fiber optics	District Wide	**x**
		Distance Learning/Video Conference	District Wide	**x**
		Opteman Circuits	District Wide	**x**
		Point to Point T-1 Lines	District Wide	**x**

B. The District did not err by failing to issue an RFP for Priority Two funds because, ultimately, it did not purchase the requested improvements or accept any funds for Priority Two items.

The FCC denial of the District's appeal cited the Ysleta Order for the proposition that adequate specificity must be on an applicant's Form 470 or a subsequent RFP. However, the District was unable to complete the RFP process, under the special circumstances present at the time. The District did not have an opportunity to submit a subsequent RFP because state funding cuts made it impossible for the District to continue with its plans to make the improvements to infrastructure and equipment at that time—with or without E-rate funding.

At or near the time the District would have engaged in the bidding process for the improvements sought in the applications at issue, the District suffered significant funding cuts from the state. The District determined that it would not be able to afford the non-discounted share of Priority Two requests. Accordingly, no bids were selected for Priority Two improvements. The recommendation that an applicant submit an RFP was superseded by the District's budget

constraints. The District did indeed need the Priority Two services it requested, but it could not afford them at the time of the E-rate application filing.

Importantly, the District did not receive funding for the Priority Two requests. Those items remained unfulfilled. Unfortunately, the District's discount rate has averaged 57% over the past 8 years, while the funding floor, with the exception of 2010, has averaged 84%. No funding was issued for Priority Two funding at all in funding years 2013 and 2014.

The District's decision to change course was done in good faith. The determination of whether to file a Priority Two application is traditionally made once a district receives the Low Income Report results from the state. The "go, no go"' decision is based on two issues: (1) the likelihood that the district would have a chance to get Priority Two funding if they applied, and (2) whether the district budget will be sufficient to pay its share. The District genuinely requested only those services and equipment that they fully intended to implement.

Further, the District still seeks E-rate funding for the same services and equipment they sought in 2011-12. They still need the improvements because, like many schools that have a discount rate of 60%, they have not received Priority Two funding since 2010. The following services were requested by the District in funding years 2014 and 2015.

AP# 2014	**717790001209847**	**Service**	**Qty and/or Capacity**	**Service Installed**
		Telephone Service approx. 605 local access lines, PRI, DID# and calling features.	See RFP for details.	**x**
		Primary Rate Interface (PRI) 6 lines.	See RFP for details.	**x**
		Long Distance Service (TOLL) for all voice lines for district.	See RFP for details.	**x**
		Centrex Service for district.	See RFP for details.	**x**
		Digital Transmission Services High capacity circuits for district.	See RFP for details.	**x**
		Internet Access Service High Bandwith Internet Access for district.	See RFP for details.	**x**
AP# 2015	**319720001273406**	**Service**	**Quantity and/or Capacity**	**Service Installed**
		Voice Service - POTS approx. 617 lines.	See RFP for details.	**x**

		Voice Service-Centrex Service 1 district. approx. 641 stations.	See RFP for details.	x
		Voice Service-Long Distance (TOLL) for all voice lines for district.	See RFP for details.	x
		Voice Services-SIP Trunking 1 district.	See RFP for details.	x
		Broadband Data Connections-WAN Broadband data connections for district.	See RFP for details.	x
		Broadband Internet Access Service High Broadband Access for district.	See RFP for details.	x
		Internet Maintenance Service Internet maintenance to support access for district.	See RFP for details.	x
		Voice Services-PRI 6 for district.	See RFP for details.	x

Notably, no vendors were disadvantaged as a result of the failed RFP process because no such improvements were purchased from any vendor. Further, there could not have been any misuse of E-rate funds because none were received. Accordingly, there was no practical harm resulting from the fact that the District did not issue an RFP for the Priority Two requests at issue. In the unlikely event that the FCC concludes that this amounted to a procedural error, it should be noted that no actual harm resulted from any such error.

C. The District did not err by failing to issue an independent RFP for Priority One funds because it contracted with a vendor pursuant to a state cooperative.

The only E-rate benefits the District received in connection with these applications were discounts on the District's phone and internet bills. Although the FCC seems to take exception to the fact that there was not a subsequent RFP for these discounted services, the District procured these services through an interlocal cooperative, the Texas Department of Information Resources, in compliance with Texas procurement law.

Texas Education Code § 44.031 requires that purchases exceeding $50,000 be purchased through one of six methods providing "the best value for the District." An interlocal contract is one of these methods. The Texas Department of Information Resources ("DIR") is a subdivision of the State of Texas which competitively bids and negotiates rates for cooperative contracts for a variety of technological resources, including telephone, voice and data services, wireless internet

services, hardware, and software. Essentially, individual school districts do not have to competitively bid for these goods and services because the DIR has already done the competitive bidding on behalf of the entire state, and those competitively-bid contracts are made available for the individual school districts. The DIR provides public schools a legal means of getting the best value for these resources, in full compliance with state purchasing requirements.

The District selected a vendor approved through the DIR interlocal cooperative for phone and internet services. The District's contract was under the same terms and same rates provided under the DIR interlocal cooperative. The District's procurement of these services was within the letter of Texas procurement law. The District also complied with the purpose of E-rate regulations, as the District received competitively-bid rates for the services it procured.

Notably, the District did not receive any funds directly from E-rate for these services. The District received discounts on its phone and internet bills. The District elected to receive discounts off the top, rather than rebates or reimbursements later. The District did not misuse or misappropriate any E-rate funds. No vendors were disadvantaged by this process.

The present case can be distinguished from the Ysleta case, in which Ysleta ISD used a procurement method which did not rely on price as the primary factor in selecting vendors, and the FCC disapproved that method.[5] Here, the District did not procure services as a professional service, outside of the competitive bidding process. Rather, the District selected a vendor which had competitively bid for contracts through the state cooperative. In the interlocal cooperative used by the District, price was a primary factor. Unlike Ysleta, the District's procurement method

[5] *See Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District* et al., CC Docket Nos. 96-45 and 97-21, Order, p. 29.

was the result of competitive bidding, which was done on a statewide level and, as a result, was even more competitive than the District could have achieved on its own. Price was the District's motivating factor in using this procurement method. As a result, the District received the best value for the District and ensured prudent use of E-rate resources.

The present case is more analogous to the Baltimore City School District order than to the Ysleta order.[6] There, the Baltimore City School District used a different procurement method than simple competitive bidding; it used a tiered system, in which price was the deciding factor between qualifying vendors. The FCC approved that system and reversed USAC's retroactive denial of funding because it was satisfied that price was the deciding factor in selecting the vendor. Likewise, in the present case, the District used a procurement method slightly different than simple competitive bidding when it engaged the interlocal cooperative. However, just as in Baltimore, ultimately the interlocal cooperative and the District relied on price as the deciding factor. Accordingly, the District's funding should be restored, just as it was in Baltimore. In the unlikely event that the FCC concludes that this amounted to a procedural error, it should be noted that no actual harm resulted from any such error.

D. "District wide" is a term commonly used by E-rate applicants and it does not indicate impropriety.

Applicants in the E-rate program commonly use the term "district wide" to indicate to service providers that they are seeking services for all school sites or library locations. The use of this term does provide service providers with the information they need to know that the services requested are requested for all sites. Use of the term "district wide" is not in and of itself a

[6] *In the Matter of Requests for Review of a Decision of the Universal Service Administrator by Baltimore City School District, et al.*, CC Docket No. 02-6, File No. SLD-553330, released August 8, 2011.

violation of program rules. If a district truly needs services at all school sites, this is the appropriate term to use to explain that services are requested for all school sites.

Applicants, service providers, and even the FCC use the term "district wide" to represent all school sites in a district. In the FCC's E-rate Modernization Order, adopted in July, 2014,[7] The FCC used the term "district wide" to describe combining the student count for all school sites in a "district wide" discount rate. The term "district wide" was used 42 times in the *E-rate Modernization Order* to discuss the new discount rate methodology. In this *Modernization Order*, the FCC also used the term "district wide" in explaining Los Angeles Unified School District's one-to-one initiative that was implemented across the district.[8] This "one-to-one" iPad initiative is currently ongoing, and expanding, in the District.

Analysis of Texas Applications

The District has analyzed the use of "district wide" in applications across the state, using USAC's Form 470 download tool. Although this tool was no longer available for the funding years associated with this Petition for Reconsideration, our analysis used the download tool for all FCC Forms 470 for funding years 2014 and 2015 for the state of Texas.

The analysis shows that in FCC Forms 470 for Texas applicants filed in funding year 2014, the words "district wide" were used on 944 forms. The term was used on 361 Forms 470 where there was no associated RFP. The same year, the term "district wide" (or something similar) was used 1,524 times for all Forms 470, and 596 times where there was no associated RFP.

---

[7] *See Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870 (2014) (*E-rate Modernization Order* or *E-rate Modernization FNPRM*).

[8] *See id.* at ¶ 35.

For funding year 2015, applicants used the term “district wide” (or something similar) a total of 945 times. For funding year 2015 where there was no associated RFP, applicants used the term “district wide” (or something similar) 590 times. The following table summarizes these findings.

Analysis of FCC Forms 470 - Texas
Downloaded 7/28/2015
http://www.slforms.universalservice.org/Form470DownloadTool/

FY 2014 Forms 470 posted 7/1/2013 - 5/1/2014

2014 Texas	All	No RFP
Number of Rows	2471	859
Number of Instances:		
District Wide	944	361
districtwide	86	23
district-wide	129	42
Complete School District	18	15
Entire District	217	58
Entire School	130	97
Total Instances	1524	596

FY 2015 Forms 470 posted 7/1/2014 - 5/1/2015

2015 Texas	All	No RFP
Number of Rows	2100	1346
Number of Instances:		
District Wide	565	343
districtwide	61	17
district-wide	45	24
Complete School District	4	4
Entire District	178	137
Entire School	92	65
Total instances:	945	590

The source data for the above analysis is included in Attachment D. All instances of “district wide” or similar wording, where there was no RFP, are highlighted orange in the printouts of FCC Forms 470 for funding years 2014 and 2015 in Attachment D. An analysis was also conducted on a wide range of individual applicants for funding years 2011, 2012, 2013, and 2014. Various examples of

applicants using the term “district wide” or a similar term for funding years 2011, 2012, 2013, and 2014 are included in Attachment B.

No Prohibition on This Term

Program rules do not prohibit the use of the term “district wide.” The term is effectively used to notify service providers that the district is in need of services for all of their school sites within the district. The use of the request for services “district wide” that was utilized by the District, therefore, should not result in the denial of funding. While the District listed an extensive list of services on their Forms 470, it actually needed all of the services requested on each of its campuses.

In the Allendale County School District decision,[9] the FCC approved the appeal submitted by Whittier City School District (“Whittier”) regarding consideration of all bids submitted. Even though it was apparently not a consideration of the appeal, Whittier requested services district wide on their FCC Forms 470. Allendale was not questioned by USAC or the FCC. The district-wide issue was not even mentioned by the FCC in the 2011 appeal decision. The following excerpt is from Whittier’s FCC Form 470:

c ○ Check this box if you prefer discounts on your bill.	○ Check this box if you prefer reimbursement after paying your bill in full.	○ Check this box if you do not have a preference.

Service or Function:	Quantity and/or Capacity:
Internet Access	Districtwide
Wireless Internet Access	Districtwide
Taxes,surcharges and other similar charges	Districtwide

[9]*Request for Review of Decisions of the Universal Service Administrator by Allendale County School District Cedar Mountain, North Carolina*, *et al.* File Nos SLD-415662, *et al*., CC Docket No. 02-6, DA 11-723, April 21, 2011.

Notably, this decision was issued around the same time as the District was completing its forms. At the time the District used the district-wide language, it could have reasonably concluded that that was appropriate and proper.

USAC News Briefs on Competitive Bidding

Further, a review of USAC training slides from funding years 2010, 2011, 2012, and 2013 resulted in no discovery of USAC guidance related to the use of the term "district wide" or similar terms. The first mention of "district wide" in USAC guidance that we could find in USAC's competitive bidding guidance is in the New Brief dated February 17, 2012[10] which states the following:

> **How much detail should I provide about the services sought?**
>
> You should provide sufficient detail for a potential bidder to understand the size and scope of your project and the services you are requesting so that he or she can submit a responsive bid. You may want to include a website address or other mechanism so that your answers to questions posed by one service provider are available to all other potential bidders.
>
> Be careful not to limit yourself unnecessarily in the description of the services. For example, "high-speed Internet access" gives you more flexibility than "Internet access not to exceed 10 Mbps." If you specify an upper limit, you cannot increase your speed – even if the cost does not increase – during the funding year or for the life of the contract, if you sign one, without posting a new FCC Form 470 and opening a new competitive bidding process.
>
> **Am I required to respond to every email or phone call from a service provider?**
>
> You should be prepared to respond to requests for the information necessary for a service provider to submit a responsive bid. For example, if you indicated "district-wide telephone service," that is probably not enough information for a service provider to understand the scope of your needs.
>
> You may have to evaluate whether an email or telephone call is generic in nature – for example, if it references services you did not request or does not acknowledge the existence of an RFP you issued – before you decide not to respond.

This guidance tells applicants to "be careful not to limit yourself unnecessarily in the description of the services." This guidance seems to encourage more flexibility in the bidding process. The discussion regarding using the term "district wide" shows that this term may be used

[10] http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=411 (last accessed 7/28/2015)

but the applicant should be "prepared to respond to requests for the information necessary for a service provider to submit a responsive bid." There is no mention that the use of the words "district wide" are not allowed, and there is no suggestion that the words are somehow suspect.

Additionally, the USAC News Brief dated January 10, 2014, which discusses the same issues regarding detail in the FCC Form 470, does not mention "district wide" at all. The following information was provided, with no mention of "district wide" language.

> **Responding to questions from potential bidders**
>
> When completing the FCC Form 470, applicants must provide sufficient detail for a service provider to be able to formulate bids. This allows potential bidders to determine whether they provide the types and quantities of services that applicants are looking for. However, service providers may need additional detail about the services in order to submit a responsive bid.
>
> - For example, if an applicant posts for "local and long distance telephone service on 10 existing landlines," a service provider would probably not need more information in order to craft a responsive bid.
> - On the other hand, if an applicant posts for "local and long distance telephone service for 10 new cell phones," the service provider would probably need information on the number of minutes that might be used, the likelihood that roaming charges would occur, and other information to craft a responsive bid.
>
> Applicants – and consultants that act on behalf of applicants – should respond to bidder inquiries in a timely manner so that competitive bidding deadlines can be met. Not responding to a potential bidder can result in a compromised competitive bidding process which can result in funding denial.

The District used a detailed RFP associated with their FCC Forms 470 beginning with FY2014. Therefore, the District was in full compliance with the best practices recommended by USAC in the News Brief dated February 6, 2015.

The second mention of "district wide" in USAC guidance that we could find was in USAC's competitive bidding guidance in the News Brief, dated February 6, 2015.[11] It advises applicants:

> **Provide sufficient detail on your FCC Form 470 for bidders to submit responsive bids.**
>
> On your FCC Form 470, you must clearly describe the products and services you are requesting, so that potential bidders understand the size and scope of the project and the services being requested

[11] http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=597 (last accessed 7/28/2015)

> and are able to submit responsive bids. Remember that there is a text field in Item 13 on the form that you can use to provide additional details.
>
> For example, "as needed" and "district-wide" are not sufficient descriptions of the quantity and/or capacity of the products and services you list on the FCC Form 470 unless you are also issuing a request for proposal (RFP) where sufficient detail is provided.
>
> In fact, for requests that are large and/or complex, you should consider issuing an RFP. Remember that, if you issue an RFP, you must note that fact on your FCC Form 470 and provide information on where to obtain a copy of the RFP.

The 2015 News Brief is more specific than the earlier versions in recommending that applicants who use the term "district wide" should also issue an RFP with sufficient detail. Notably, USAC's guidance is simply that: *guidance*. It is not a rule. Importantly, penalizing a school district in 2015 for actions it took five years ago *before this guidance was even available* violates the most basic, fundamental sense of fairness and justice. This information was not available to the District when it completed the Forms 470 for funding years 2011, 2012, and 2013. The District should not be held to a standard that did not exist at that time.

The simple fact is that the District needed services and improvements district wide, and its applications reflected that, in good faith. Accordingly, the District's applications should not be retroactively denied simply because, in 2015, USAC recommended a best practice to provide greater detail in an RFP when the term "district wide" is used. These are best practices recommended by USAC, but it is not program rule.

E. Any mis-step was done in good faith, and the District has taken concrete steps to ensure its compliance with E-rate regulations.

The District's actions were made in good faith, and no actual harm resulted in connection with any perceived mis-steps of the District. To the best of its knowledge, neither the District nor its officers or employees have engaged in any impropriety or unethical acts or omissions in

connection with these applications. The District did not receive any funds that were improperly applied, and no vendors were either disadvantaged or favored.

At the time the assessments were provided to the District, the staff member who was filing the E-rate applications was directed to include both Priority One and Priority Two services on the Form 470 in 2011 for the first time since 2007. She was also expected to request services "district wide," consistent with the recommendations made by the architect firm and technology consultants who determined that the District needed to upgrade all of its technology and services district wide. The decision to include requests for Priority Two services was based on the results of these studies and the District's technology plan. The District's E-rate filer, in good faith: (1) reviewed Forms 470 filed by other schools in Texas, (2) incorporated vendor-neutral information for needed equipment, as indicated by the manufacturer, Cisco, and (3) included "district wide" requests, consistent with the results of studies provided by Huckabee, Inc. and the EST Group. As explained above, the District's actions subsequent to filing the applications were also taken in good faith. The District should not be retroactively penalized for these good-faith actions, particularly when neither USAC nor the FCC have alleged that any actual harm resulted from these actions.

Nevertheless, the District has reviewed its E-rate practices and procedures since that time. It has taken concrete steps to ensure that its E-rate procedures exceed those required by law. For example, the District's current practices include the following:

1. The District employed Kellogg & Sovereign, a consultant to oversee and advise it during the E-rate process.

2. The District has transferred the responsibility for E-rate filings from a paraprofessional to high-level administrators.

3. The District has trained four staff members in E-rate and related issues: the Assistant Superintendent of Technology, the Director of Purchasing, the Telecommunications Paraprofessional, and a Technician.

4. The District lists improvements and services by site in its Forms 470.

5. The District solicits bids only for projects that it is highly likely and able to pursue.

6. The District conducts its own RFP's and no longer relies on interlocal cooperatives for projects involving E-rate funds.

7. The District takes minutes of all meetings with potential vendors.

8. The District requires that all questions from vendors regarding RFP's be submitted in writing, and it sends responses promptly to all registered vendors.

9. The District maintains a single portal for all documentation, including a backup on its server.

These actions demonstrate the District's commitment to complying with E-rate rules and regulations and reducing the likelihood of any errors occurring in the future.

If the FCC concludes that the District committed any errors relating to the funding years in question, the District asserts that it should not be penalized for such good-faith errors, consistent with this agency's order regarding Queen of Peace High School.[12] In the Queen of Peace Order, the FCC concluded that the applicant erred in the competitive bidding process by including a service provider's name on its Form 470.[13] Like the Mansfield case, USAC initially approved Queen of Peace's request for funding, and then retroactively rescinded the funding commitments one year later.[14] On appeal, the FCC concluded that "the errant description did not undermine the

---

[12] *In the Matter of Request for Review of a Decision of the Universal Service Administrator by Queen of Peace High School*, File No. SLD-667006, CC Docket No. 02-6, released December 7, 2011.

[13] *See id*., p. 4, ¶ 7.

[14] *See id*., p. 4, ¶ 6.

competitive bidding process" and declined to penalize Queen of Peace.[15] Likewise, the District's actions in this case did not undermine or compromise the competitive bidding process. The District properly followed state law when it used the DIR to purchase the services. The District respectfully requests that the FCC reach a similar conclusion here and decline to penalize the District.

The District further requests that this agency adopt the reasoning it applied in the Bishop Perry Middle School order.[16] There, the FCC concluded that funding should not be denied due to clerical or ministerial errors in the application.[17] This agency reasoned:

> "In these circumstances, applicants committed minor errors in filling out their application forms. . . . We do not believe that such minor mistakes warrant the complete rejection of each of these applicants' E-rate applications, especially given the requirements of the program and the thousands of applications filed each year. Importantly, applicants' errors could not have resulted in an advantage for them in the processing of their application. That is, the applicants' mistakes, if not caught by USAC, could have resulted in the applicant receiving more funding than it was entitled to. In addition, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. Furthermore, we find that the denial of funding requests inflicts undue hardship on the applicants. In these cases, we find that the applicants have demonstrated that rigid compliance with the application procedures does not further the purposes of section 254(g) or serve the public interest."[18]

Likewise, in the present case, if the FCC concludes that the District made any errors, the District asserts that these errors should not result in the denial of funds to the District. Here, there is no fraud, waste, abuse, misuse of funds, or material failure to comply with program

---

[15] *See id*., p. 4, ¶ 7.

[16] *In the Matter of Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School*, et al., CC Docket No. 02-6, File Nos. SLD-487170, released May 19, 2006.

[17] *See id*., p. 1, ¶ 1.

[18] *See id*., p. 6, ¶ 11.

requirements. As demonstrated below, denial of funds will cause undue financial hardship to the District. As in the Bishop Perry order, the District respectfully requests that the FCC conclude that the District's errors, if any were committed, were made in good faith and did not result in harm to the program, vendors, or program funds. Accordingly, the FCC should grant the District's appeal and restore all funding to the District, without penalty.

F. Denial of E-rate funds will cause undue financial hardship to the District.

Denying funds and requiring the District to retroactively repay amounts of discounted services will cause an undue financial hardship to the District. Since 2010, the Texas Legislature has cut funding significantly to public schools and required that schools accomplish more through unfunded mandates. In the 2011 and 2012 funding years alone, state funding was reduced to the District by $26 million. Even though the state cut funding, it has not reduced any requirements that the District must fulfill. In fact, statutory requirements have increased. Moreover, the state is not sending any fewer students to the District to educate. Simply put, the District must do more with less.

These cuts have restricted the District's plans for capital improvements to its technology infrastructure. Because of these cuts, the District has sought federal assistance for Priority Two expenditures, to ensure that the District can continue to meet technology challenges head-on and prepare its students for jobs after high school.

The District's access to technology funding is even more crucial, now that the District has begun implementing a "1-to-1" initiative to provide iPads for every student, district wide, from sixth through twelfth grade. As part of that initiative, the District no longer purchases paper textbooks for students. These iPads are the primary curriculum delivery system for junior high and

high school students. The District's goal is not merely to place an iPad in each secondary student's hands; rather, the District is committed to using these tools to effectively supplement classroom instruction and student learning. Doing that requires adequate internet access and sufficient funds for quality curriculum and supports for students. If the District's Priority Two funds are cut, and it does not receive funds for applications which are pending and/or red-lighted, the District will not be able to adequately implement this program, and student learning will suffer, district wide. The District relies on E-rate funds, and it needs them to meet the constantly changing needs of its students in an increasingly technological world. These funds are crucial for educating the District's students and preparing them for jobs after high school.

V.
CONCLUSION

This Petition for Reconsideration demonstrates that when the District filed its applications for services, it truly needed these services "district wide." The District did this in the same way thousands of other E-rate program applicants have done without challenge. The District made a good-faith effort to define the specific services and functions, including quantity and capacity, for which it sought funding. The District patterned its applications the same way many other schools did—schools which were funded by USAC during all years of the E-rate program. As previous correspondence with USAC illustrates, the district used the term "district wide" to accurately describe the scope of services needed. Further, the District's applications conform to its technology plan and the recommendations of two firms who analyzed the District's technology needs.

The District did indeed need services and equipment district wide and subsequently installed or received services for the items requested in their FCC Forms 470. Although the District needed the equipment requested in the Priority Two categories of services on the FCC Forms 470, the district did not submit FCC Form 471 "E-rate applications" for Priority two requests during funding years 2011, 2012, and 2013 as their budget was not sufficient to cover their non-discounted share due to reduced state funding. Finally, special circumstances exist wherein the District will face undue financial hardship if these years of funding must be returned.

VI.
RELIEF REQUESTED

The District respectfully requests that the FCC:

1. reverse the Administrator's Decisions on the appeals and applications cited above;

2. withdraw the demand for repayment of the funds already disbursed in connection with these applications;

3. remove the "red light" designation of the District's pending funding requests and disburse funding for applications filed after 2011;

4. waive any relevant Commissioner's rules necessary to grant appropriate relief; and

5. issue any other relief to which the District may be entitled.

In the alternative, in the unlikely event that the FCC does not withdraw the demand for repayment of funds in connection with these applications, the District would request that the FCC:

1. reach an equitable compromise settlement with the District on the funds which are the subject of this appeal;

2. remove the "red light" designation of the District's pending funding requests and disburse funding for applications filed after 2011;

3. waive any relevant Commissioner's rules necessary to grant appropriate relief; and

4. issue any other relief to which the District may be entitled.

Respectfully submitted,

Christie Hobbs
Texas Bar No. 25059961
Mike Leasor
Texas Bar No. 00791087

Leasor Crass, P.C.
302 W. Broad Street
Mansfield, Texas 76063
Phone: (682) 422-0009
Email: christie@leasorcrass.com
mike@leasorcrass.com

Jane Kellogg
Consultant

Kellogg & Sovereign® Consulting, LLC
1101 Stadium Drive
Ada, Oklahoma 74820
Phone: (580) 332-1444
Email: erate@kellogglc.com