



*Diócesis de Fajardo - Humacao
Vicaría de Educación
Superintendencia de Escuelas Católicas
Fajardo, Puerto Rico*

Date: June 25, 2015

VIA EMAIL: appeals@sl.universalservice.org

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
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RE: APPEAL

This is an Appeal by the Consorcio Colegios Católicos Diócesis Fajardo y Humacao ("Consortium") on behalf of five member applicants who had their Funding Year 2014 funding commitments for Priority One services rescinded via Notification of Commitment Adjustment Letters ("COMADs") issued by the Universal Service Administrative Company ("USAC") on May 4, 2015. As demonstrated in this Appeal, the Consortium did not file a generic or encyclopedic Form 470. Furthermore, the denial of approximately \$141,453 in requested E-rate funds – of which \$41,400 had already been disbursed and would have to be returned – is nothing more than the result of a misunderstanding generated because Consortium personnel who prepared the responses are native Spanish speakers reading and responding to USAC questions in English.

Below is the name, address, telephone number, fax number, and email address of the person who can most readily discuss this Appeal with USAC:

Name: Inocencio Cruz/Gilberto Pérez
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If USAC desires to discuss this Appeal, the undersigned respectfully requests that USAC make available a person who speaks Spanish or, if the discussion is to occur via email, that the correspondence be in Spanish.

The COMADs that are the subject of this Appeal are dated May 4, 2015, thus establishing an appeal deadline of July 3, 2015. The chart below contains the billed entity name, the billed entity number ("BEN"), the FCC Form 470 application number, the FCC Form 471 application number, the Funding Request Numbers ("FRNs"), and the FCC Registration Number.

"Pensar, Querer y Actuar según el Evangelio"

Billed Entity Name	BEN	470 #	471 #	FRNs	FCC Registration #
Colegio Nuestra Señora del Pilar	199874	686570001107248	942769	2568588, 2642125	0014103659
Colegio San Benito	159938	686570001107248	942755	2568589, 2643055	0013457916
Colegio Nuestra Señora del Perpetuo Socorro de Humacao	200273	686570001107248	985436	2687565, 2687677	0014341853
Colegio Nuestra Señora del Carmen	159108	686570001107248	987380	2693672	0014095574
Colegio Santiago Apóstol	200062	686570001107248	986857	2691858, 2691874	0014341929

I. Background

The Superintendence of Catholic Schools of Fajardo Humacao created the Consortium in an effort to assist their schools apply for E-rate funds, lower costs, increase efficiency and facilitate compliance with the E-rate program's rules. There are five members in the Consortium with a combined enrollment of approximately 2,142 students in grades K through 12.

As discussed below, USAC sent letters to most – but not all – of the Consortium's members asking for information as to who prepared the Form 470 and whether any service provider assisted with the completion and/or posting of the Form 470. USAC also alleged that the service descriptions listed on the Form 470 appeared to be "generic" or "encyclopedic" and asked some – but not all – Consortium members for an explanation about how they determined the services that were listed on the Form 470.

The responses by members of the Consortium stated the following: (1) Gilberto Perez Ortiz, contact person for Consortium, and Inocencio Cruz, Superintendent of the Superintendence of Catholic Schools Diocese of Fajardo-Humacao, were responsible for preparing and filing FCC Form 470 # 686570001107248; (2) no service provider employee assisted with the completion and/or posting of Form 470; and (3) the services listed in the Form 470 were all eligible services and "*Because of, it is necessary to complete a list with the eligible services due to the 470 form is completed for a Consortium where various institutions participate and the services and necessities are different and individual in each school.*" The Consortium further stated that "*This is done with the objective at the moment to complete 471 and 472 forms the schools may be able to select without limits its services.*"

USAC's questions were provided only in English. The Form 470 and its Instructions are available only in English. Consortium personnel who prepared the responses are native Spanish speakers and are not fluent in English. Oddly, despite the obvious lack of clarity in the above quoted response, USAC did not attempt to clarify the response by means of any follow up questions in either English or Spanish.

On May 4, 2015, and with respect to FCC Form 470 # 686570001107248, USAC issued COMADs rescinding *all* of the funding commitments for Priority One services for *all* member applicants of the Consortium. USAC stated the following reason for the rescission:

After multiple requests for documentation and application review, it has been determined that this funding commitment must be rescinded in full. The FCC Form 470# 686570001107248 that established the bidding for this FRN is encyclopedic.

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. FCC rules require that applicants submit "bona fide requests for services" by conducting an internal assessment of the components necessary to use effectively the discounted services ordered and submitting a complete description of services requested so that it may be posted for competing providers to evaluate. During our review, you were asked why the service descriptions listed on your FCC Form 470 appeared to be "generic" or "encyclopedic". Specifically you were asked to explain how you determined the services to request on your FCC Form 470. You responded that the services listed in the FCC Form 470 were obtained from the Schools and Libraries Division (SLD) s Eligible Services List available on USACs website at:

<http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx>.

Furthermore, you indicated that you referenced a complete list of eligible services so that schools may select services without limits. Per the FCCs Ysleta Order, an applicants 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. An 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. 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. 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.

For the reasons discussed below, USAC erroneously rescinded the funding commitments for Priority One services. The Consortium and the members it represents respectfully request that USAC grant this Appeal and that the COMADs be rescinded.

II. The Consortium did not file a generic or encyclopedic Form 470.

The Consortium *did not* list all of the Priority One (Telecommunications and/or Internet Access) services listed in the Eligible Services List ("ESL"). This is obvious by conducting a comparison of the Consortium's Form 470 and the ESL for Funding Year 2014. As the Form 470 indicates, the Consortium sought bids for the following Priority One services: distance learning circuits and services; long distance telephone service; local measured telephone service; cellular service; conferencing services; maintenance services; fax machine line; interactive TV; frame relay service; wireless WAN; installation services; T1 or fractional T1 lines; basic telephone service; and metropolitan area network.

In terms of basic conduit access to the Internet, the Consortium limited itself to requesting bids for access using T1/fractional T1 lines or wireless technologies. Either one of these technologies represented a feasible technical solution to our schools. Thus, the Consortium limited its request for bids only two technologies while, at the same time, providing its member

schools with flexibility to select the particular solution that best fits their individual needs. The other Priority One services listed in the Form 470 are the basic services that one would expect schools to request under the E-rate program: distance learning circuits, local and long distance telephone service, cellular service, conferencing services, and installation and maintenance of those services. In contrast, listed below are the eligible services that the Consortium *did not* include in its Form 470:

- A. The Consortium *did not* seek bids for conduit access to the Internet through DSL, fiber/dark fiber, broadband over power lines (BPL), cable modem, satellite service, or telephone dial-up service, all of which were eligible service under the ESL for Funding Year 2014. Some of these technologies are simply not appropriate for our members. For instance, satellite-based Internet service is not as reliable as other technologies for a tropical island like Puerto Rico because of frequent periods of heavy rainfall, tropical storms and hurricanes. Telephone dial-up service does not provide the bandwidth necessary for our schools. BPL technology is not even available in Puerto Rico. In fact, the only entity that could possibly offer this service would be the Puerto Rico Electric Power Company, which is currently on the brink of financial collapse.¹
- B. The Consortium sought bids for Basic Telephone Services under the category “Telephone Service” in the ELS, but *did not* seek bids for 800 service (e.g., a toll-free telephone number for students to contact school regarding questions about homework), Centrex, Radio Loop or satellite service.
- C. The Consortium *did not* seek bids for Interconnected Voice Over Internet Protocol (VoIP), or Internet access features such as Domain Name Service or Dynamic Host Configuration, all of which are included as eligible services in the ESL.
- D. The Consortium *did not* seek bids for web hosting, firewall service, basic installation instruction training, mobile hotspot service, or paging service.
- E. The Consortium *did not* seek bids for video components such as: Master Control Unit, PVBX, Video Amplifier, Video Channel Modulator, Enhanced Multimedia Interface.

Therefore, it was an error for USAC to have categorized the Consortium’s Form 470 as “encyclopedic” or “generic” and the COMADs must be rescinded.

III. Because the Consortium represents different schools with different technology needs, the Form 470 had to include a reasonable number of eligible Priority One services that were responsive to the needs of each of its members.

In the Form 470, the Consortium sought bids for 5 separate schools. Each school is different and the technology needs of one member will not necessarily represent the needs of another. For instance, at the time the Form 470 was submitted, Colegio Nuestra Señora del Pilar

¹ See *Power Problems: Puerto Rico's Electric Utility Faces Crippling Debt*, available at: <http://www.npr.org/2015/05/07/403291009/power-problems-puerto-ricos-electric-utility-faces-crippling-debt> (May 7, 2015).

has almost 1,000 students, while Colegio Nuestra Señora del Carmen barely had 200 students. A technology solution that might work for a school with an enrollment of 200 students might not work for a school with an enrollment of 1,000 students. As is the case with every consortium, it was the Consortium's responsibility to include sufficient eligible services in the Form 470 to meet the needs of all of its member schools while at the same time ensuring that the Form 470 is not a general, open-ended solicitation for all services available on the ESL. This is precisely what the Consortium did and nothing in the FCC's Ysleta Order prohibits consortia from acting in this manner. ***Furthermore, the Consortium selected the lowest priced bid in compliance with the FCC's rules and at no point has USAC alleged the contrary.***

If the Consortium fails to include in the Form 470 a particular service that may reasonably represent the most cost-effective solution for one school consistent with the technology plan, that school will either be prohibited from seeking support for that service in its Form 471 or the Consortium will be required to amend the Form 470. This careful balancing act is unique to consortia trying to facilitate the application process for a group of applicants with diverse technology needs and student population. The Consortium's members attempted to explain this in their responses to USAC but, as explained below, this was literally lost in translation.

IV. The COMADs are the result of a misunderstanding generated because Consortium personnel who prepared the responses are native Spanish speakers reading and responding to USAC questions in English.

USAC's questions were provided in English. The Consortium personnel who prepared the responses are native Spanish speakers. They prepared the responses in Spanish, then translated those responses to English, and included both the Spanish and English versions in the responses to USAC. This resulted in a misunderstanding. Specifically, USAC asked: "Please explain **how** you determined the services to request on your FCC Form 470" (emphasis added). In response, four of the schools responded:

The services listed in the 470 form are obtained and verified from the "list of eligible services" that SLD offers in the following address:
<http://www.universalservice.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx>.
Because of, it is necessary to complete a list with the eligible services due to the 470 form is completed for a Consortium where various institutions participate and the services and necessities are different and individual in each school. This is done with the objective at the moment to complete 471 and 472 forms the schools may be able to select without limits its services."

There are several problems with this response. First, the response indicates that the services in the Form 470 are eligible pursuant to the information on the SLD's website, but USAC was not questioning the eligibility of the services listed in the Form 470. This demonstrates that Consortium personnel did not understand the question posed by USAC.

Second, the response indicates that the goal in selecting eligible services that are responsive to all of the members' needs is to ensure that "schools can obtain their services." This is accurately conveyed in the Spanish sentence that reads: "Esto se hace con el objetivo de

que al momento de completar la forma 471 y 472 las escuelas puedan obtener sus servicios.” However, the English version of this sentence included in the response reads: “This is done with the objective at the moment to complete 471 and 472 forms the schools may be able to select without limits.” As is evident, there is a significant difference between the Spanish and English meanings. The English translation’s reference to selecting services “without limits” almost suggests that the applicants want to obtain E-rate support for every conceivable eligible service regardless of their need for such services. This is not what the Consortium members meant to say. The members meant to say that a consortium’s Form 470 must include a reasonable number of eligible services that are responsive to the needs of each member to permit them to select the services that best meet their technology needs. This misunderstanding is due solely to the fact that the people who prepared the responses are native Spanish speakers attempting a response in English.

The E-rate program is complex. The various forms and their instructions, the FCC rules and relevant orders, and USAC’s guidance on its website are extremely difficult to navigate for people whose first language is not English. More particularly for this case, none of these resources are available in Spanish. Schools and libraries in Puerto Rico are at a serious disadvantage vis-à-vis the vast majority of applicants in the continental United States. Puerto Rico applicants, including the Consortium and its members, struggle to file successful applications while avoiding numerous land mines throughout the E-rate application process that, unfortunately, are not well understood due to the fact that there is a lack of information and resources in the Spanish language. This is not an insignificant consideration for Puerto Rico because its citizens contribute millions of dollars every year to the Universal Service Fund, which funds the E-rate program, and Puerto Rico contains many of the poorest students in the United States. The Consortium believes that the rescission of all the applications filed by all of its members is a draconian step that could have been avoided if USAC, cognizant of the fact that most people in Puerto Rico speak Spanish rather than English, had only reached out to the Consortium through a Spanish-speaking USAC reviewer.

V. Conclusion

The Consortium, on behalf of its members and the students they educate in Puerto Rico, respectfully asks USAC to grant this Appeal. The Consortium did not include all of the eligible services in the Form 470. The Consortium certainly could have included a significantly larger number of eligible services, but it did not. The Consortium believes that the rescission of the funding commitments is the result of a misunderstanding, and that the reason for such a misunderstanding is a language barrier that applicants from Puerto Rico face when participating in the E-rate program. However, such misunderstanding does not change the fact that the Consortium’s Form 470 was not an “open-ended solicitation for all services.”

The Consortium's members have received good and valuable services throughout the entire Funding Year 2014, and requiring its members to return funds would threaten their ability to continue to participate in the E-rate program. In total, USAC rejected \$141,453 in requested E-rate funds for Funding Year 2014, of which \$41,400 had already been disbursed. This would be particularly draconian since: (i) there has been no intent to deceive USAC nor have there been any allegations of waste, fraud or abuse in this case; and, (ii) if any U.S. schools and students need the E-rate program, it is those schools and students located in Puerto Rico, which are among the poorest of any in the United States.

Respectfully submitted,

**CONSORCIO COLEGIOS CATÓLICOS
DIOCESIS FAJARDO Y HUMACAO**

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Date: June 25, 2015

cc: Mel Blackwell