

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

In the Matter of	)	Biblioteca Abelardo Díaz Alfaro
	)	Billed Entity Number 16052522
Requests for Review of	)	Funding Year 2014
Decisions of the	)	Form 471 Application No. 989482
Universal Service Administrator by)	
	)	Funding Requests Nos. 2699874,
Biblioteca Abelardo Díaz Alfaro	)	2699916, 2699986, 2700194, 2700262,
	)	2700302, 2700361, 2700381, 2700460,
	)	2700510, 2700529, 2700554, 2700594,
	)	2700632, 2700651, 2700716, 2700737,
	)	2700808, 2700832, 2700890, 2700909,
	)	2701010
)	
Schools and Libraries Universal Service)	
Support Mechanism	)	CC Docket No. 02-6
)	
)	

ATT: Telecommunications Access Policy Division
Wireline Competition Bureau

REQUEST FOR REVIEW AND WAIVER

Biblioteca Abelardo Díaz Alfaro of the Municipality of San Juan (hereinafter, the “Municipality”) in the Commonwealth of Puerto Rico, pursuant to Sections 54.719(c) and 54.722(a) of the Federal Communications Commission’s (“FCC” or “Commission”) rules,¹ hereby petitions the Commission’s Wireline Competition Bureau for review of adverse decisions by the Universal Service Administrative Company (“USAC”) with respect to the above-referenced Funding Request Numbers (“FRNs”) for Funding Year 2014 filed by the

¹ 47 C.F.R. §§ 54.719(c), 54.722(a).

² Michael A. Fletcher, *Puerto Rico, With At Least \$70 Billion In Debt, Confronts a Rising Economic Misery*,

Municipality. In the alternative, the Municipality seeks a waiver of the Commission's rules for good cause.

I. BACKGROUND

The “bibliotecas” – which is Spanish for “libraries” – that applied for E-Rate funding through the above-referenced FRNs are instrumentalities of the Municipality of San Juan in the Commonwealth of Puerto Rico. Puerto Rico is divided into 78 “municipalities.” Each municipality has a mayor and a legislature. San Juan is Puerto Rico's capital and most populous municipality.

The economy in Puerto Rico has been in a very serious recession for nearly eight years, driving tax revenues down and pushing the unemployment rate up to nearly 15 percent.² Almost 47 percent of residents in Puerto Rico live below the poverty line (by comparison, the poverty rate in Mississippi, the poorest state in the United States, is 23 percent). Unfortunately, a disproportionate number of those living below the poverty line are children. According to a 2013 study conducted by the Annie E. Casey Foundation and the National Council of La Raza using data from the U.S. Census American Community Survey, more than 80 percent of children in Puerto Rico live in high-poverty areas (in contrast to 11 percent of children across the United States) and 56 percent of Puerto Rican children live in poverty (compared with 22 percent for the entire United States).³ San Juan, being Puerto Rico's largest city, is home to a disproportionately large number of these impoverished children. The economic situation in Puerto Rico is so

² Michael A. Fletcher, *Puerto Rico, With At Least \$70 Billion In Debt, Confronts a Rising Economic Misery*, The Wash. Post, November 30, 2013, available at: http://www.washingtonpost.com/business/economy/puerto-rico-with-at-least-70-billion-in-debt-confronts-a-rising-economic-misery/2013/11/30/f40a22c6-5376-11e3-9fe0-fd2ca728e67c_story.html (last visited January 14, 2014).

³ Dania Alexandrino, *Study: Puerto Rico's children mired in poverty that dwarfs rest of U.S.*, CNN, August 1, 2013, available at: <http://www.cnn.com/2013/08/01/us/puerto-rico-child-poverty> (last visited January 14, 2014).

precarious that the Obama Administration recently named a team of Administration experts to work with Puerto Rico “to marshal existing federal resources” and assist Puerto Rico in “maximizing the impact of existing federal funds flowing to the Island.”⁴ If USAC’s decisions are left to stand, the results would be devastating to the Municipality and its library patrons. Specifically, the Municipality would be liable for, which it currently does not have at its disposal. In addition, given the precarious state of Puerto Rico’s economy, it is not surprising that thousands of the Municipality’s residents – including the unemployed, the elderly, students, and the economically disadvantaged – rely on public libraries for Internet access. In case of the absence of a commissions’ grant of the Request for the Review or Waiver, the Municipality would have to cease providing access to all Internet services to its library patrons. E-Rate funding is critical to Puerto Rico’s economy and to the Municipality’s public library patrons.

On February 13, 2014, the Municipality filed FCC Form 470 Application Number 838040001220193, for Funding Year 2014.⁵ In response to its Form 470, the Municipality considered the complete bids for Internet access from the following three entities: Educational Services Network (“EdNet”), Smart Technologies, and A New Vision in Educational Services & Materials (“Nevesem”), through a Selection Committee established by the Municipality to evaluate these bids.⁶ After the Committee carefully considered the three bids, and after the required 28 days from the date the FCC Form 470 was posted on USAC’s website; the

⁴ *Supporting Puerto Rico’s Economic Development Progress*, The White House, President Obama and the Hispanic Community, Nov. 21, 2013, available at: <http://www.whitehouse.gov/blog/2013/11/21/supporting-puerto-rico-s-economic-development-progress> (last visited January 14, 2014).

⁵ Biblioteca Abelardo Díaz Alfaro, FCC Form 470 Application Number 838040001220193, filed February 13, 2014.

⁶ Only complete bids were considered. The Municipality also received three incomplete bids from Sharpschool, Cyberschool and Gabbart Communications, which were deemed ineligible for said reason.

Committee recommended and the Municipality selected Nevesem as the most cost-effective bid, with price being the primary factor considered.

Pursuant to a FY2014 Selective Review Information Request (SRIR), on March 5, 2015 the Municipality responded to a finding by USAC that "upon review we find that the RFP was not available for service providers to review for 28 days (from release date to due date)... [b]ased on this documentation [as per the email dated 03/18/2014, vendors were asked to provide quote on specific bandwidth for specific locations and response was due on 03/19/2014] the all the FRNs under application# 989482 will be denied."

The Municipality of San Juan replied disagreeing with USAC's finding that an RFP was not available for service providers to review for 28 days (from release date to due date). The email dated 03/18/2014, was sent to vendors as a follow-up to FCC Form 470 of **February 13, 2014**. It was thereby clarified that this communication **was not a new RFP**. This was done because some vendors had questions regarding the specifications for the bids for FCC Form 470. The Municipality understood that a communication via email to all bidders clarifying individual questions presented was the most efficient and fair method to answer them, instead of doing so in an individual basis. As stated, **this was not a new RFP**. Accordingly, not only the Municipality granted **28 days** before vendor evaluation/selection was performed. It granted **34 days** before selecting the winning bid. See table below:

Event	Date
USAC 470 application 838040001220193	February 12, 2014
FCC FORM 470 838040001220193	February 13, 2014
Email sent to FCC 470 FY 2014	February 13, 2014
E-mail sent to all bidders of follow-up re: Broadband Specifications (not RFP)	March 18, 2014
Answers from Bidders due	March 19, 2014

Request for Approval from Bid Board	March 25, 2014
Vendor Approval by Bid Board	March 26, 2014

On April 9, 2015 and as a result of the Selective Review, USAC issued a Notification of Commitment Adjustment Letters (“COMAD Notifications”).⁷ The COMAD Notification referencing FCC Form 471 No. 989482 and it denied funding commitments for 22 FRNs and states that USAC rejected funds from the applicant.⁸ The COMAD Notifications state:

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 the course of selective review the documentation provided with regards to vendor selection did not list price as the highest weighted factor. FCC rules require that applicants select the most cost-effective product and/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 of any improperly disbursed funds from the applicant.

The Municipality appealed the COMAD Notifications impacting the above-captions FRNs associated with FCC Form 471 Application Number 989482 with a Letter of Appeal dated June 8, 2015.⁹ Because the deadline for filing said appeal was looming, on June 9, 2015 the Municipality filed the Letter of Appeal electronically **and** sent it via priority certified mail.¹⁰

⁷ Please see Waiver Request for Filing Deadline, *infra*.

⁸ Notification of Commitment Adjustment Letter from Schools and Libraries Division, Universal Services Administrative Company, to Sara I. Benítez, Biblioteca Abelardo Díaz Alfaro, Funding Year 2014, Form 471 Application Number 989482, dated April 9, 2015 (“COMAD Notification re Form 471 No. 989482”) (**Exhibit 1**). This COMAD letter received by the Municipality of San Juan on April 14, 2015.

⁹ Letter of Appeal for FY 2014 by the Municipality dated June 8, 2015 (**Exhibit 2**).

¹⁰ USPS receipts re: Letter of Appeal for FY 2014 dated June 8, 2015 (**Exhibit 3**).

This was a good decision as the electronic filing included the wrong attachment and after being notified by USAC's Kelly Miller, the correct attachment was sent on June 10, 2015.¹¹

On July 7, 2015 the Municipality of San Juan received the *Administrator's Decision on Appeal - Funding Year 2014-2015*, to Sara I. Benítez, Director of the "Departamento para el Desarrollo Comunitario" in the municipality. It is stated therein that "[o]ur records show that your appeal was postmarked more than 60 days after the date your Administrator's Decision was issued, as shown above." It set forth above that the "**Date Appeal Postmarked: June 10, 2015**". And the Decision Letter date as April 09, 2015.¹² On July 8, 2015 the Municipality filed another Letter of Appeal, submitting that this determination was in error, as our appeal was postmarked on **June 09, 2015**.¹³

Referencing the Letter of Appeal for FY2014 dated June 8, 2015 and stating (incorrectly) that it was filed on June 10, 2015, USAC issued on August 18, 2015 an *Administrator's Decision on Appeal - Funding Year 2014-2015*, stating the same decision as the issued on July 1, 2015. It did not reference our Letter of Appeal filed on July 8, 2015.¹⁴ Our Letter of Appeal of July 8, 2015 was ruled upon by USAC on October 6, 2015 when another *Administrator's Decision on Appeal - Funding Year 2014-2015*, was issued denying our appeal, which was received by the Municipality on October 14, 2015.¹⁵

The Municipality requests that the denial and rescissions of the FRNs at issue be reversed and that the underlying applications be remanded to USAC for further processing. In addition, and in the alternative, the Municipality requests a waiver of the Commission's rules.

¹¹ See Email correspondence between Kelly Miller and Sara I. Benítez, dated June 10, 2015 (**Exhibit 4**).

¹² USAC Letter dated July 1, 2015 received on July 7, 2015 (**Exhibit 5**).

¹³ Letter of Appeal by the Municipality dated July 8, 2015 (**Exhibit 6**).

¹⁴ USAC Letter dated August 18, 2015 received on August 25, 2015 (**Exhibit 7**).

¹⁵ USAC Letter dated October 6, 2015 received on October 14, 2015 (**Exhibit 8**).

II. THE MUNICIPALITY FILED ITS LETTER OF APPEAL FOR FY2014 IN A TIMELY MANNER.

For this reason alone, the Commission must grant this appeal and instruct USAC to continue to consider our appeal in its merits, and process the FRNs at issue. On July 7, 2015 the Municipality of San Juan, received the *Administrator's Decision on Appeal - Funding Year 2014-2015*, to Sara I. Benítez, Director of the "Departamento para el Desarrollo Comunitario" in the municipality. It is stated therein that "[o]ur records show that your appeal was postmarked more than 60 days after the date your Administrator's Decision was issued, as shown above." It stated above that the "**Date Appeal Postmarked: June 10, 2015**". And the Decision Letter date as April 09, 2015. As stated in our July 8, 2015 Letter of Appeal, it is respectfully submitted that this determination is in error. Our appeal was postmarked on **June 09, 2015**, and this was done following the computation of time set forth in Title 47 C.F.R. Part 1, Subpart A §1.4, which states:

Title 47: Telecommunication
PART 1—PRACTICE AND PROCEDURE
Subpart A—General Rules of Practice and Procedure

1.4 Computation of time.

(a) *Purpose*. The purpose of this rule section is to detail the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission. It also applies to computation of time for seeking both reconsideration and judicial review of Commission decisions. In addition, this rule section prescribes the method for computing the amount of time within which the Commission must act in response to deadlines established by statute, a Commission rule, or Commission order.

(b) *General Rule—Computation of Beginning Date When Action is Initiated by Commission or Staff*. Unless otherwise provided, the first day to be counted when a period of time begins with an action taken by the Commission, an Administrative Law Judge or by members of the Commission or its staff pursuant to delegated authority **is the day *after the day on which public notice of that action is given***. See §1.4(b) (1)-(5) of this section. Unless otherwise provided, all

Rules measuring time from the date of the issuance of a Commission document entitled “Public Notice” shall be calculated in accordance with this section. *See* §1.4(b)(4) of this section for a description of the “Public Notice” document. Unless otherwise provided in §1.4 (g) and (h) of this section, it is immaterial whether the first day is a “holiday.” For purposes of this section, the term *public notice* means the date of any of the following events: *See* §1.4(e)(1) of this section for definition of “holiday.”

In the same manner as per Rule 6 (a) of the Federal Rules of Civil Procedure, which exclude the day of the event that triggers the period; the Municipality of San Juan filed its appeal on the last day to do so, which was **June 9, 2015**, not June 10, 2015. The error could be attributed to technical problems, which were not resolved until June 10, 2015 when the correct document could be filed. Notwithstanding, and because it was done right on the deadline, the Municipality of San Juan **also sent the appeal by certified mail on June 9, 2015.** See Exhibit 3, attached. Therefore, it is respectfully submitted that our appeal was postmarked within the 60-day deadline, from the date our Administrator's Decision on Appeal Letter was issued. As such, it is also respectfully requested that our original appeal be remanded and reviewed on its merits.

III. WAIVER REQUEST FOR FILING DEADLINE

As previously stated, it is respectfully submitted that the Municipality of San Juan filed its appeal in a timely manner, on the last day to do so, which was **June 9, 2015** following the computation of time set forth in Title 47 C.F.R. Part 1, Subpart A §1.4. However, if for any reason, it is determined that June 9, 2015 was not the correct date for filing our appeal, a waiver is respectfully requested for good cause, as it was founded in a good faith belief that this was the correct deadline for filing our appeal.

The Municipality has timely appealed COMADs for other funding years, and there was no reason for the Municipality to purposely miss a deadline and further jeopardize its

participation in the E-rate program. Any delay, would consist of one day completely unintentional, and previously explained; it believed that such an appeal was not due until June 9, 2015. The Municipality respectfully submits that these reasons constitute good cause of a waiver of the 60-day deadline in section 54.720 of the Commission's rules.

IV. WAIVER REQUEST FOR SECTIONS 54.503 AND 54.511 OF THE COMMISSION'S RULES

It is also respectfully submitted that the Municipality has presented clear evidence that USAC's decision to deny and deny E-Rate funds for 2014, was in error. However, if the Commission still finds that the Municipality's evaluation procedures and/or evaluation criteria fall short of the requirements in Sections 54.504(c) and 54.511(a), as well as any other relevant section of the Commission's rules, the Municipality hereby requests a waiver of the Commission's rules.

Under the FCC's competitive bidding rules, applicants must submit for posting on USAC's website an FCC Form 470 requesting discounts for E-rate eligible services or any services for which the applicant is seeking a new contract. In its Form 470, the applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services; and provide this description on its FCC Form 470 or indicate on the form that it has an RFP available providing detail about the requested services. According to the aforementioned rules, the RFP must be available to all potential bidders for the duration of the bidding process. And, after submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers. *See* 47 C.F.R. § 54.504 (2006); *see also* 47 C.F.R. § 54.503 (2011); *see also* Form 470.

In its April 9, 2015 letter, USAC informed the Municipality of San Juan of its decision in regard to our appeal of USAC's Funding Year 2014 Funding Commitment Decision Letter for the Application Number above. The basis for USAC's denial of said funding was a finding to the effect that the Municipality's FCC Form 470 was "encyclopedic" and did not list only those services for which funding was actually sought, and thus, potential bidders "would not be able to compose a responsive bid without seeking additional information". The fact that several potential bidders required additional information and the Municipality provided specifications not included in its FCC Form 470 in a subsequent e-mail was cited as grounds for this finding. Thus, USAC found that said subsequent email re-started the bidding process and the bidders should have been given 28 days from such date to provide a bid responsive to the specifications as stated in the email.

The Municipality of San Juan respectfully submits that the email dated 03/18/2014, was sent to vendors as a follow-up to FCC Form 470 of **February 13, 2014**. It is hereby again clarified that this communication **was not a new RFP**. This was done because some vendors had questions regarding the specifications for the bids for FCC Form 470. The Municipality understood that a communication via email to all bidders clarifying individual questions presented was the most efficient and fair method to answer them, instead of doing so in an individual basis.

This is another example of the limited availability of eligible, qualified potential vendors for these services in the Island. The Municipality's FCC Form 470 was done in the same manner as previous years, 2010, 2011, 2012 and 2013. These forms had been reviewed and audited by USAC and there had never been a finding that they were "encyclopedic" or insufficient in their

content. It is respectfully submitted that the questions that arose during the bidding process stem from the inadequate expertise in this area from the potential bidders, not from a deficient FCC Form 470 for FY2014.

Furthermore, the follow-up email was the Municipality's effort to observe a fair and open competitive bidding process, which is fundamental to the integrity of the E-rate program. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9076-80, paras. 570-80 (1997) (*Universal Service First Report and Order*) (subsequent history omitted) (requiring applicants to conduct a fair and open competitive bidding process when seeking support for eligible products and services); *Federal-State Joint Board on Universal Service; Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5425-26, para. 185 (1997) (*Schools and Libraries Fourth Order on Reconsideration*)(stating that competitive bidding is a key component of the Commission's effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the services are provided at the lowest possible rates).

The bidding was competitive and was clearly done to avoid any waste or misuse of the limited funds available and with the acknowledgment of the importance of the competitive bidding process to the program. The Municipality fully complied with FCC's requirement that all bidders be treated equally and that no bidders receive an unfair advantage. *See, e.g., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26939, para. 66 (2003)

(stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources).

In order to be fair to all bidders, all questions were answered at the same time. However, this action did not involve a new RFP. All potential bidders were treated equally, even when they were clearly ineligible to provide the services as requested in our FCC Form 470. Accordingly, not only the Municipality granted **28 days** before vendor evaluation/selection was performed. It granted **34 days** before selecting the winning bid. See table below and attached documentation:

Event	Date
USAC 470 application 838040001220193	February 12, 2014
FCC FORM 470 838040001220193	February 13, 2014
Email sent to FCC 470 FY 2014	February 13, 2014
E-mail sent to all bidders of follow-up re: Broadband Specifications (not RFP)	March 18, 2014
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Thus, it is respectfully requested that this Commission should overturn the denial and restore full funding of these FRN's. Given the circumstances here, failure to reconsider its denial would be most unfortunate because the Municipality selected the lowest cost bid and that it did not engage in fraud, waste, abuse or misuse of funds. The monies have been earmarked received from USAC for good and valuable services received from a service provider who was selected through a fair and unbiased competitive bidding process and who, as an undisputed fact, offered the lowest cost proposal. This is a good use of E-rate funds.

Under these facts, the Commission should exercise its discretion to waive its rules because strict compliance would be completely inconsistent with the public interest.¹⁶

V. CONCLUSION

For the reasons set forth above, the Municipality respectfully requests grant of the instant Petition for Review and Waiver with respect to its E-Rate applications for Funding Year 2014.

Respectfully submitted,

BIBLIOTECA ALBELARDO DIAZ ALFARO

By: */s/ Sara I. Benítez Delgado*

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DATE: October 16, 2015

Via the FCC's Electronic Comment
Filing System (ECFS)

¹⁶ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

