



May 10, 2016

FCC
USAC Schools and Libraries Division

Re: **Petition for Waiver of Deadline to Appeal**
Funding Request No.: 2367063
Billed Entity Name: Las Vegas West School District
Form 471 Application No.: 867535
Billed Entity No.: 143288
FCC Registration No.: None provided in Letter
Service Provider: Total Network Solutions, LLC
SPIN: 143035210

Dear Madam or Sir:

This firm represents the Total Network Solutions, LLC (the “Service Provider”). In December, 2014, pursuant to the above referenced requests for funding submitted by West Las Vegas School District (the “Billing Entity”), USAC paid to the Service Provider ninety percent (90%) of the amount the Billing Entity owed to the Service Provider for a contract executed in March of 2012. Several months after the payment to the Service Provider, USAC determined that the amount paid was not eligible for E-Rate funding and decided to seek reimbursement from the Service Provider.

USAC apparently sent to the Service Provider a Demand Payment Letter, dated October 22, 2015. A copy of the letter is attached as **Exhibit 1**. The Service Provider never received this letter until the Billing entity provided it to the Service Provider on March 9, 2016. *See* Affidavit of Benjamin Martinez, attached as **Exhibit 2**. Nor did the Service Provider receive any Notification of Commitment Adjustment resulting in this reimbursement demand. *See* **Exhibit 2**. This is not a case where the Service Provider stuck its head in the sand hoping the issue would go away. As explained below, the Service Provider has a very valid appeal that will likely succeed. Given the compelling reasons the Service Provider will prevail on appeal, demanding reimbursement from this small company without allowing an appeal would result in a manifest injustice and a likely closure of the Service provider’s business.

First, the Service Provider believes that the services it provided were eligible for reimbursement. The Service Provider submitted to USAC in November, 2014, a very detailed maintenance log. But for the maintenance contracted for, the Billing Entity’s systems would not function and serve their intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services without E-rate discounts. The Service Provider is



a very small, two-person business without sophisticated procedures. It does not have a ticket system, or any other system that delineates each visit and each activity it performed. The Service Provider was on-call twenty four hours, routinely visited the Billed Entity and responded when needed. Seeking reimbursement from the Service Provider only penalizes it for being a small, unsophisticated business.

Second, if the services provided were not eligible for reimbursement, the Billed Entity, not the Service Provider, should be responsible for the reimbursement. During the time period covering the contracts at issue, the Billed Entity engaged an E-Rate Specialist, Telcom Solutions, Inc. (the “Specialist”). On March 1, 2012, the Specialist solicited bids from the Service Provider and others for services to be funded through the E-Rate program. *See* E-mail string, p. 1 (attached as **Exhibit 3**). These were the services the Billed Entity described in its FCC Form 470 (attached as **Exhibit 4**). Services identified in **Exhibit 4** was the service at issue here. The Billed Entity approved the contract entered into with the Service Provider. *See* Minutes, West Las Vegas Board of Education, special Board Meeting, August 16, 2012 (attached as **Exhibit 5**); *see also* **Exhibit 3**, p. 4. The Specialist certified that, in the event any of the services contracted for were ineligible for E-Rate funding, the Billed Entity had considered what financial resources were available to cover the cost. **Exhibit 4**, p. 6/7

On March 19, 2012, the Billed Entity submitted FCC Form 471 (relevant portions of which are attached as **Exhibit 6**). In form 471, the Billed Entity’s Specialist requested funding for the contract at issue (FRN 2369978). The Specialist stated that none of the requested amount was ineligible. *See* **Exhibit 6**, p. 4/24. The Specialist certified that the Billed Entity had a signed contract for the services to be funded. **Exhibit 6**, p. 22/24. The Specialist certified that the Billed Entity accurately allocated eligible and ineligible components of the requested funds. **Exhibit 6**, p. 23/24.

At some time after the beginning of the contract (probably December, 2013), the Specialist submitted to USAC FCC Form 486 (attached as **Exhibit 7**). The funding request at issue was identified in **Exhibit 7**, p. 3 of 7. The Specialist certified that the services subject to the funding request “have been, are planned to be, or are being provided,” and that “there are signed contracts covering all of the services listed.” **Exhibit 7**, p. 4 of 7.

“In determining to which party recovery should be directed, USAC shall consider which party was in a better position to prevent the statutory or rule violation, and which party committed the act or omission that forms the basis for the statutory or rule violation.” *FCC Order 04-181*, ¶15. The bids the Service Provider submitted pursuant to the Billed Entity’s request for bids were the first bids the Service Provider ever submitted for E-Rate funded contracts. The Billing Entity, on the other hand, had an E-rate specialist consulting for it. The E-Rate specialist submitted **Exhibits 4, 6, and 7**. The E-Rate specialist certified that the services were eligible for reimbursement. The E-Rate specialist requested the funding disbursed. The E-Rate specialist



certified that the Billed Entity had resources to pay costs that turned out not to be eligible. The Billed Entity was the party in the better position to prevent any rule violations. If, in fact, the services provided were not eligible for E-Rate reimbursement, USAC should seek recovery from the Billed Entity, not the Service Provider.

For all of the reasons above, USAC should seek reimbursement, if at all, from the Billed Entity. The Service Provider would have timely appealed had it received the Notification of Commitment Adjustment, or if it had timely received the October 22, 2015, Demand Payment Letter. The Service Provider respectfully requests that the FCC waive the deadline for appealing this matter and allow the Service Provider its due process, which will likely result in a reversal of USAC's determination.

Sincerely,

BUSINESS LAW SOUTHWEST LLC

A handwritten signature in black ink that reads 'Timothy R. Mortimer'.

Timothy R. Mortimer

Encl.