Before the Federal Communications Commission
Washington, D.C.

In the Matter Of	)	
	)	
	)	
Schools and Libraries	)	CC Docket No. 02-6
Universal Service Support Mechanism	)	
	)	
Request for Review and/or Waiver	)	
By Sweetwater City Schools *et al.*	)	Application Nos. 917099, 919406,
of the Funding Decisions by the	)	945733,947375, 1012581, *et al.*
Universal Service Administrative Company	)	

Affidavit of Melanie R. Miller

I, Melanie R. Miller, swear:

BACKGROUND

1. As of July 2015, I am the Director of Schools at the Athens City School System. I operate as the Chief Executive Officer of a school system with a $14M budget that serves 1574 students in five different school buildings. With the Athens City School System, I have also served as the Supervisor of Curriculum and Instruction, which began in July 2014, when I supervised the PK-5 schools, coordinated curriculum, textbooks, and professional development, assisted in coordinating Tennessee Alliance for Progress programs and curriculum, and co-implemented RTI^2 within the curriculum.
2. Prior to my employment at Athens City School System, I was employed by the Sweetwater City School System for 14 years in a variety of capacities, including Director of Schools, principal, assistant principal, and school counselor. Prior to those positions, I was a teacher in the Monroe County School System for 10 years.

3. I earned a doctorate in philosophy in K-12 educational leadership, a master of education in counseling and guidance, a degree as an educational specialist in curriculum and instruction and administration and supervisor, and a bachelor of arts in English education.
4. I have had primary responsibility for technology in two of my roles. As a principal, I was constantly sensitive to the time-critical nature of internet services to both learning and teaching, as I will explain further below. As a director of schools, I was also sensitized to the necessity of service by our service provider to assure the existence of both the service and the quality of the service.
5. I was the Director of Schools for the Sweetwater City School System at the time of, and therefore responsible for, the procurement referred to as the Sweetwater Consortium, as further described in the Request for Proposal Number 13-1, Sweetwater City Schools, "Managed Internet Access, Voice-Over-IP and Video Conferencing" that issued on January 29, 2013.
6. The importance of technology in today's schools is self-evident but bears emphasis.

IMPORTANCE OF TECHNOLOGY

7. Prior to addressing the Sweetwater RFP, it is important to appreciate the importance of technology to school systems. Not only is it critical to learning, it is critical to teaching and administration as set forth below.
8. Internet access today is so ubiquitous that it is easy to forget how quickly this phenomena has developed, especially in Tennessee, and how tailored it must be for some users. While the home user may casually "cruise the net," business users such as schools are dependent upon an internet interface that is tailored to meet its particular needs. Business

users with multiple locations must tailor their internet interface to accommodate both the business's general needs and the particular needs of its individual locations.

9. Today, technology is "mission critical" to learning. For example:
    i. Some federal funding is dependent on testing over the internet.
    ii. Tennessee statewide testing is all done over the internet, and requires a fiber connection to get the speeds necessary to administer this testing.
    iii. Students access the internet for, among other services:
        1. Virtual field trips;
        2. Access to specific web sites as part of the classroom curriculum; and
        3. Access to the internet for research.
    iv. As a purely practical matter, our students are "connected," and educational institutions have to tailor a student's learning experience to our students' connectedness.
10. What may not be an obvious distinction to some is that technology is "mission critical" to teaching. It is important to appreciate that internet service issues impact how teachers teach.
    a. These days, teachers build their lesson plans around "distance learning." They may plan a virtual fieldtrip to "AR Sights." Mid-class, they may require unscheduled access to the Smithsonian website to illustrate a point.
    b. As with any tool, teachers need tools that work. In the case of teaching, the internet must deliver the content required to the classroom when it is required, while assuring that other content is filtered from view by students.

c. Teachers quit using tools that are unreliable. When they are frustrated in their access to those resources, they logically just quit planning on using those resources.

11. Technology is mission critical to administration: Every aspect of administration is now managed through the internet. If a child needs a parent to deposit money in their lunch account, it has to be done over the internet. Attendance records are kept on a central server. Teacher attendance records are kept on a central server at our administration. Long story short, we don't know if a teacher is missing, if a student lacks the money for lunch or whether students are where they are supposed to be unless the internet is fully functioning.

12. The use of technology in our schools has ramped up dramatically since 2012.

    a. It is no revelation to state that technology has become increasingly integral to testing; however, it bears emphasis that factors unique to Tennessee have greatly accelerated the use of technology since 2012.

    b. Technology became dramatically more important, and the service dramatically more critical, around the time of the RFP. Tennessee Governor Bill Haslam took office in 2010. Concluding that the state lagged behind other states in adopting distance learning, he announced major initiatives to improve the educational system statewide. For example, in May 2012 he signed a bill providing $37 million dollars in grants for state schools. As a consequence, the demands of the schools for timely and continuous connectivity has grown exponentially since then.

13. My experience as both a principal in, and Director of Schools for, the Sweetwater City Schools provides concrete examples of these increased demands.

    a. As a principal, part of my job was to lead the initiative to encourage our teachers to use "distance learning" through access to the internet.

    b. As a part of that task, I assured that our schools had the hardware necessary to support the teachers in this initiative. Whiteboards provide a concrete example of a piece of hardware that dramatically improves the teaching and learning experience, while requiring internet connectivity during the classroom hours when it is being used. Obviously, the more hardware that we had, the more bandwidth that we required.

    c. The hardware is, obviously, only part of the engineering required for this initiative as it is useless without an adequate – both in terms of bandwidth and content filtering - internet connection.

    d. Prior to 2012, Sweetwater City Schools had accessed the "NetTN Contract" between the State of Tennessee and AT&T for its internet connectivity. As with most school systems, Sweetwater City Schools had a very tight budget, and the NetTN Contract prices were nominally cheaper than other providers.

    e. AT&T refused to install the fiber connection necessary to deliver sufficient bandwidth to the Sweetwater City Schools.

        i. Sweetwater City Schools relied upon AT&T's T-1 Frame system. Despite request, AT&T never upgraded that system to fiber.

        ii. As a consequence, Sweetwater City Schools suffered numerous outages of service, frustrating both the learning and teaching experiences.

1. These outages routinely lasted two or three days, and sometimes even weeks.
    a. Without internet connectivity, lesson plans that assume such connectivity are useless, teachers are frustrated and the learning experience suffers.
    b. AT&T would not provide advance warning of outages, or of demands on our bandwidth that might result in an outage.
    c. Just to state the obvious, paying for service that could not be guaranteed was not cost-effective.
2. As a consequence, teachers were frustrated and students were deprived of the rich learning experience that would meet their expectations as 24/7 consumers of the internet.
3. Moreover, the school's technicians were frustrated and upset that the system's internet service provider not only failed to deliver service, but ignored entreaties to reinstate service.
    a. Technicians were frustrated at the failure of AT&T to resolve problems. Instead, they reported that lower level AT&T service personnel would often blame something outside their control for the outage, and not escalate the resolution of the problem to someone with sufficient power and responsibility to quickly restore service.

b. I must emphasize that these were not random experiences, but seemed a part of the routine. As it was clear that AT&T had the personnel to resolve these issues if they were engaged, this experience highlighted the need for us to assure that our vendors provided contact persons with the expertise and status to resolve the time sensitive problems that had plagued our connectivity.

c. In fact, during this time, the technicians reported that they often would contact ENA for help to get the most out of the bandwidth that we had, even though ENA was not our vendor.

4. Additionally, our experience with AT&T's filters highlighted the critical need for content filtering tailored to the schools' needs.

   a. With AT&T, our schools would find that some obviously educational sites, such as the Smithsonian, were being blocked.

   b. Conversely, our students proved very adept at avoiding AT&T's filters of inappropriate material, often exploiting links and websites that passed through the AT&T filter to access sites, some of which included pornographic material.

5. At the time that the district was contracting with AT&T, I frankly lacked the experience to appreciate that other providers could

assure both bandwidth and content filtering that was specific to our schools' needs.

iii. My experience at Sweetwater with ENA has educated me about what services are available.

1. For example, ENA will more often than not contact the school system to alert it to potential problems with the school's demand on bandwidth before the school experiences problems.

2. ENA's content filtering has consistently assured that the educational content is available to the schools, while preventing inappropriate content from making its way to my students, regardless of which means they might develop to access that content.

THE SWEETWATER CONSORTIUM/ RFP

14. In 2013, as Director of the Sweetwater City Schools, I determined to take the lead for a consortium of schools to solicit bids for internet services.

a. Although the Greeneville City Schools had taken the lead on a prior procurement, they declined to organize another consortium.

b. Accordingly, I tasked my Supervisor of Technology Dr. Larry Stein to take the lead on this procurement.

c. As the Director of Schools, I was familiar with the procurement process.

d. As the Director of Schools, I daily relied on subject matter experts such as my IT Supervisor for specialized expertise.

e. As the Director of Schools and previously a principal, I was particularly sensitive to assuring that the internet service provider was cost effective in that:

   i. We needed affordable connectivity sufficient to handle our needs;

   ii. We needed reliable connectivity to support the learning and teaching experiences; and

   iii. We needed quality connectivity to assure that the schools received content appropriate to their needs, and filtered out content that was inappropriate.

15. Before I authorized Dr. Larry Stein to reach out to Tom Bayersdorfer, I contacted Dr. Lyle Alshie who was the Director of Schools for the Greeneville City School system when the consortium was created to seek his advice on leading this procurement. He informed me that Beverly Miller, his Supervisor of Technology had led the process. I contacted Beverly to discuss the process with her. She suggested that my Technology Supervisor contact her to discuss in depth and suggested that we consider asking Tom Bayersdorfer for assistance. Dr Larry Stein then contacted Beverly Miller and discussed how Tom could provide assistance. After he informed me of their conversation, I authorized him to reach out to Tom.

16. Accordingly, our school system developed a Request for Proposal that I would liken to a teaching "rubric" by which to analyze different service providers' offerings.

    a. Pursuant to his request, I authorized Larry Stein to reach out to Tom Bayersdorfer to assist in the procurement process.

       i. Larry Stein was technically proficient in connectivity issues.

ii. Tom Bayersdorfer was recognized as the state's leading expert in E-rate. As a consequence, Tom Bayersdorfer was very knowledgeable of the procurement process.

b. We developed "Request for Proposal Number 13-1, Sweetwater City Schools, Managed Internet Access, Voice-Over-IP and Video Conferencing" that issued on January 29, 2013, as the rubric that we would use to evaluate the offers made by competing vendors.

i. In teaching, we use testing rubrics to make a reasoned assessment of a student's progress. We do not rely upon impressions, but rather develop testing regimens that intentionally segregate different elements of the learning process in a way that allows the evaluator to develop an impartial, objective and fair assessment of the student's learning.

ii. Similarly, we developed an RFP, based obviously on prior procurements, that segregated for fair and objective evaluation the critical characteristics of the duties of an internet service provider.

17. The RFP broke out the key elements of the duties of the prospective vendors.

a. The Consortium requested a discussion of the vendor's business plan to "ensure the performance of contract deliverables" and to "identify potential risks associated with the execution of this contract." The Consortium did not request broad assurances of delivery, but requested "detail of all of the functions of your proposed solution" in order to assure that the vendor (1) understood how to deliver on its promises and (2) provided the evaluators sufficient detail to make a comparison of business plans. RFP, p.15.

i. The RFP required vendors to detail their "capacity and ability to meet scheduling requirements" and to provide "past performance and references." RFP, p. 16.

ii. Given the tailored needs of each school, it was important to the Consortium that vendors could prove their ability to meet the school's needs even if the school is in a rural or mountainous location.

b. To this same end, the Consortium required vendors to include a "description of the proposed team, including key personnel and subcontractors..." and the "resumes of all managers, senior level supervisors and key personnel.... " As noted above, these were not uninformed requests as prior experience with outages had highlighted the need for informed, responsible and empowered account managers to resolve problems without finger-pointing. RFP, pp.15-16.

c. The Consortium requested compensation and cost data, which was especially important given the constituency of the consortium.

i. Our consortium consisted primarily of rural school districts.

ii. Those districts included some in east Tennessee and others in west Tennessee. The State of Tennessee runs east to west approximately 440 miles.

iii. Many of those districts shared the Sweetwater experience of being sufficiently remote that the internet service provider did not find it economically viable to pay the cost of installing fiber to the schools, thereby depriving the schools of needed bandwidth capacity.

iv. Accordingly, the RFP required an "all in" cost of both installation and services in order to assure the provision of the connectivity required by the schools.

THE EVALUATION PROCESS

18. As it seems that USAC has challenged the decision made by the team that evaluated the responses to the RFP, I will separately address the process and the grading that took place during that process.

19. The process took nine hours on March 1, 2013. During that nine hours, the evaluation panel reviewed category by category the vendors' responses to the RFP. We focused on one section at a time, individually reviewed the section, individually scored the responses and then convened to compare our responses. After discussing one category, such as a business plan, we would compare our scores and agree upon a group score for that category.

20. Tom Bayersdorfer acted as a proctor in this process. He explained the rubric prior to the panel beginning the evaluation and monitored our discussions to assure a comprehensive review of both responses but never offered any substantive advice. On three occasions, he did encourage us to look beyond the requirements of the RFP to assure that our "testing rubric" took into account both an examination of specific responses as well as information that might be useful to that evaluation, even though the vendor had not provided that information as requested; in each of these three instances, his actions benefitted AT&T.

21. The evaluation panel was perfectly constituted for this task as it included both technical expertise and user experience. I was likely the least technical of the three panelists as my

experience with technology was focused on the delivery of service. Joan Gray, of the Bedford County Schools, brought more than forty years of experience as a user of services and a director responsible for the delivery of services. Steve Johnson was an IT Director fully versed in the engineering challenges of implementing and delivering IT services.

22. We used the Consensus Score Sheet to record our "grades" of the vendors' responses. In my experience, this is the most detailed and comprehensive score sheet that I have seen used in a procurement process.

23. As a general statement, I found that ENA's Response was organized as required by the RFP to provide specific information in response to a specific request. AT&T's response, while longer, was not as responsive, and required the evaluators, eventually, to examine the entire document for information that might be responsive to a specific category.

24. As it appears that USAC questions the results of our scoring process, I will address specifically those areas in which AT&T was graded lower than ENA.

    a. Tab 1, "Demonstrate an understanding of the rules and regulations of the E-Rate program." AT&T responded with generalized statements that it "serves millions of customers around the world…" (AT&T Response, Tab II, page 1) and that it would "follow all Service Provider requirements for the USF Schools and Libraries program" (AT&T Response, page 5) without stating how it might do so. *See also* AT&T Response, page 3 (e.g., "The AT&T family … can provide a range of E-Rate eligible services.") In contrast, ENA responded with a detailed description of how the E-rate program actually operates, right down to a discussion of which forms are required and how ENA can assist in completing

those forms. (ENA Response, pages 13-16).[1] As a consequence, AT&T was awarded one point and ENA was awarded two points.

b. Tab 1, "Describe in detail all instances in which you have had to make financial restitution to your customers in the last year as it pertains to SLA's." This question was designed to use a distinct and objective fact – the payment of damages for breach of service level agreements – as a means to assess the quality of service. One would think that any such payment would be sufficiently unusual as to be easily identified. ENA answered the question, "In the last year, ENA has not had to make a financial restitution to a customer as it pertains to SLA's." ENA Response, page 20. AT&T responded, "In view of the scope of AT&T's operations, AT&T cannot possibly determine with certainty if AT&T had to make restitution to any customer in connection with an SLA." As a consequence, AT&T was awarded zero points while ENA received the full allocation of four points.

c. Tab 1, "Describe in detail the timeline for installation…" ENA, which was currently providing services to the Consortium, obviously could reply to this inquiry with the assurance that it had engineered, installed and priced the services required by every member of the Consortium; accordingly, the panel was very interested in how AT&T would undertake these tasks, especially so since AT&T had bid on the Greeneville RFP that included most of the same schools two years previous, as well as the NetTN Contract, both of which provided an opportunity to engineer and price these connections. Instead of supplying the detail necessary

[1] "Our team is led by Rex Miller, ENA's Chief Financial Officer and prominent E-Rate speaker, who also conducts training sessions locally and nationally." "Our team focuses on assessing ongoing policy guidance provided by the … FCC and SLD…." "ENA will work with you to determine the best SLD-invoicing methodology."

to assure the panel of timely installation of these new service connections, AT&T chose throughout its response to provide generalized responses that were not useful to this assessment. "Installation intervals for new service requests vary depending on the service offering." AT&T Response, p. 10.[2] In response to a question about delivery concerns, to which ENA responded "no delivery concerns,"[3] AT&T responded with a clarification that "AT&T will endeavor to meet all delivery dates" and then listed all of the issues for which "it shall not be liable," which issues included "delays due to … problems from causes beyond the reasonable control of AT&T."[4] As a consequence, AT&T was awarded 1.5 points as compared to ENA's 3 points.

d. Tab II, "Describe in detail all network failures affecting customers in the last year." I have explained above the necessity of reliable service and the Sweetwater experience with AT&T; accordingly, the importance of this question is obvious. ENA responded to the question[5]; AT&T did not.

e. Tab II, "Describe your expansion, scalability capability during the term of the contract." This question obviously had two elements. First, the Consortium needed assurance that there was fiber installed to the schools and, second, that the vendor had the capacity to increase bandwidth as required by the demands of the school. AT&T provided little detail to assure the rural schools of the consortium.

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[2] "Assuming adequate facilities are available inclusive of site readiness requirements (conduit, power, etc.), the installation interval from receipt of an order to completion is 75 -95 days." It should be noted that an order cannot issue until the service provider has engineered and priced the circuit.

[3] ENA response at pp. 131,132.

[4] AT&T Response, Tab IV, p. 3.

[5] ENA Response, pp. 97-8.

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AT&T Response, Tab IV, page 5. Accordingly, AT&T was awarded one point and ENA was awarded two points.

f. Tab IV, "Provide a listing of Previous Customers ...that purchased your services/product that were of similar size and scope." The members of the Consortium were generally small, rural districts somewhat remote from the sort of internet service generally available in major metropolitan areas. ENA responded to the question with relevant references, while AT&T listed the Los Angeles Unified School District (640,000 students), Rutherford and Williamson County schools, all counties being urban and suburban counties with existing fiber infrastructure.[6] Since these counties had little relevance to the needs of the Consortium members, AT&T received six of ten points for this obviously important category.

g. Tab VI, "Did Vendor sign contract, are proposed changes acceptable (sic)." ENA not only signed the Sweetwater contract as is, but also offered as an option another form contract, the Metropolitan Nashville Public Schools form contract, which was already familiar to the Consortium members. In contrast, we were unsure what contract AT&T was offering since it materially modified the proposed form contract while simultaneously stating that it was bound by the terms of the NetTN Contract.[7] Accordingly, AT&T received five of ten points available for this category.

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[6] AT&T Response, Tab IV. AT&T also listed the NetTN Contract from which Sweetwater had previously purchased services.

[7] AT&T Response, p. 12; AT&T response, Tab VI, p.1.

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25. Pricing. The last category evaluated was pricing, and here again AT&T failed to provide the information necessary to evaluate its response. Nevertheless, we attempted to work with the information supplied.

a. AT&T failed to give us any information about the cost of installation, expressly noting that there would be a separate charge for installation as opposed to managed services.

b. Even then, AT&T repeatedly referred to the NetTN Contract as establishing the minimum pricing that was available.

c. It was impossible for the panel to assess the cost of filtering, and we asked Tom Bayersdorfer to call AT&T in an effort to bring some certainty to that element of the calculation.

d. AT&T's pricing included a note that "NetTN services will include an additional 2% administrative fee billed on behalf of the State of Tennessee that is not E-Rate eligible." The panel was at a loss as to how that should impact the comparison of costs between the two vendors.

e. It was impossible to assess from AT&T's response what the cost of services might be, but we were tasked to make some comparison of the pricing. Despite these uncertainties, we concluded that the only comparison available, while knowingly not comparing the pricing of ENA with AT&T on terms we referred to as "apples to apples," was to ask Tom Bayersdorfer to plug the hard numbers into a spreadsheet in an effort to generate something that could be compared. We then allocated the points available on the basis of the ratio of AT&T's aggregate costs as compared to ENA's aggregate costs.

f. We knew when we allocated 25 points to AT&T and 16.2 points to ENA that AT&T's numbers materially understated actual costs because they either did not include installation costs and/or they were materially less than the NetTN Contract costs.

26. On at least three occasions in this review process, we gave AT&T every benefit of a doubt.

a. First, we had Tom Bayersdorfer make a call to AT&T during the evaluation process in an effort to quantify its filtering costs for comparison pricing. I do not recall another procurement where we gave a bidder the opportunity to explain a defect in its bid to the detriment of competing vendors.

b. Second, we compared the raw numbers provided for pricing when we knew that AT&T's numbers did not include costs that were included in ENA's numbers, <u>even though our RFP had required AT&T to give us its all-in costs.</u>

c. Third, we searched the AT&T Response for information that was relevant to our evaluation rubric even when AT&T had failed to include that information in response to a specific inquiry.

i. Tom Bayersdorfer was particularly helpful in ferreting out information that was relevant to a specific inquiry even though AT&T had failed to respond to that inquiry with that information.

ii. Indeed, AT&T's response was so poorly organized – it appeared to me to be a generic cut-and-paste from a number of other documents – that, after we had finished grading the individual categories, we revisited the entire AT&T response in an effort to assure that our grading included all of the

information in the Response, and adjusted upward several of AT&T's grades as a result.

1. As ENA's response was organized as required by the RFP to respond completely to specific inquiries, the panel did not need to conduct a post hoc review of the ENA response.
2. Still, the net effect of this review was to disadvantage ENA.

27. As noted previously, even after giving AT&T every benefit of a doubt, we awarded AT&T 75.5 points and ENA 90.2 points.

USAC REVIEW OF THE AWARD

28. We issued our award on March 1, 2013, more than three years ago. Given the uncertainty created by this review process, I am compelled to comment on it as it appears to second guess our work in picking a provider in a way that damages my school system, and undermines the operation of the E-rate program.

29. As it appears that the USAC is challenging our award solely on the basis of price, I want to emphasize again that we gave AT&T every benefit of the doubt throughout this evaluation process.

    a. As I understand the standard, we were to make a choice of the most "cost-effective" provider.

    b. Accordingly, we evaluated both the quality of the services offered and the price of those services.

30. The suggestion that we would choose a vendor who was not cost-effective ignores the reality of operating a school district, as no school district, and especially those in rural areas, has the luxury of spending more money than is required for any service.

35. The Sweetwater Consortium chose ENA as its vendor on the basis of a thorough, objective and fair review of the responses to the RFP. The process was valid, and our decision made on the merits. The decision on the merits was the right decision and identified, after considering both cost and effectiveness, ENA as the most cost-effective provider.

I certify under penalty of perjury that the foregoing is true and correct.

Melanie Miller

Melanie R. Miller, Ph.D.
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Subscribed and sworn to before me this 3rd day of May, 2016.

Teresa A Kuviram

Notary Public

[Seal]

TERESA A. KUVIRAM
STATE OF TENNESSEE NOTARY PUBLIC
McMINN COUNTY