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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

97-21

RE: MASTERMIND INTERNET SERVICES
Requests for Review
CC Docket No. ~~96-45~~
CC Docket No. 97-21

Dear Ms. Salas:

Enclosed for filing please find original plus four (4) copies of letter/brief for MasterMind Internet Services in connection with the above referenced docket numbers.

Thank you.

Very truly yours,

Chris Webber/pa

Chris Webber

CW/pa
enc.

cc w/ encl.: Ellen Wolfhagen

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MAR 0 8 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 7th, 2000

Magalie Roman Salas
Federal Communications Commission

MasterMind Internet Services, Inc. ("MasterMind") requests leave to file this letter to supplement the record for the Commission concerning MasterMind's three Requests for Review, filed November 24th, 1999; December 16th, 1999; and January 13th, 2000. Because the Commission has found that these requests for review present "new and complex issues" (FCC 00-64), we would like to take this opportunity to provide some additional information concerning these Requests for Review that we believe would be helpful to the Commission in undertaking that review.

MasterMind, since its inception in 1992 has provided technology solutions to school districts in Oklahoma. MasterMind, has also, since 1994, assisted in writing grants for technology solutions for school districts in Oklahoma. MasterMind began providing Internet Access to school districts in Oklahoma in 1995. Because many of MasterMind's customers are small, rural school districts without Federal Programs Directors or Technology Directors on staff, MasterMind began providing such services to the school districts as a way to better serve its customers.

MasterMind, as a logical extension of its normal course of business, decided to pursue E-rate program (program) opportunities. MasterMind, and our customers, were encouraged by the additional technology funding possibilities that were presented through the program. MasterMind participated in the program, obtained a spin number and underwent competitive bidding procedures for year one requests for discounts. MasterMind was awarded contracts for services or products to be delivered to roughly 85 school districts in Oklahoma. Because the program was new and a requisite amount of technical knowledge (knowledge about the services and products that are described in the eligibility list, and how they interface with school districts' current networks; as well as knowledge of program rules) was necessary, MasterMind decided to pursue its normal course of business, by providing assistance to school districts in the application process.

1. MasterMind requests that the Schools and Libraries Division's (SLD) decision to deny funding to the Oklahoma applicants listed within our appeals be reversed. SLD's denial letters state only that the "intent" of the competitive bidding process had been violated. As shown in MasterMind's Requests for Review, even if MasterMind violated the "intent" of the competitive bidding rules, which it denies, such a violation is not grounds for denial of funding. More importantly, the uncontroverted facts are that a full and fair competitive bidding took place, and that the Commission's competitive bidding process was complied with.

In a document provided to Senator James Inhofe's office, dated November 19th, 1999, titled "Facts concerning MasterMind applications,"(EXHIBIT A) the SLD indicates that "Forms requesting competitive bids (the competitive bidding process is a cornerstone of

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the program) submitted from over 90 schools in Oklahoma [sic] and were all signed by MasterMind, an Internet Service Provider." This statement is factually incorrect. MasterMind did not sign over 90 Form 470s. *None of the applications included in MasterMind's Requests for Review were signed by a representative of MasterMind.* Additionally, this document indicates that "MasterMind was designated as the winner on all of the requests." This statement is also factually incorrect. MasterMind did not win "all of the requests." The SLD was working from a flawed factual assumption; in their attempts to review the situation, the SLD ignores all Form 470s in which MasterMind provided assistance and listed an employee, Chris Webber, as the contact person, and submitted bids to the applicant. The SLD instead focuses on the pool of applications that had progressed to the Form 471 stage. MasterMind understands that it would look curious to the SLD from the perspective of looking backwards in the process, starting with only the Form 471s in which MasterMind did win a contract.

MasterMind would like to present the Commission with specific examples of competitive bidding. Butler Indep. School District 46 (Butler), 470 Application number 330050000132732; (471 Application numbers: 148043, 139926) is a prime example of competitive bidding that did occur, but was denied funding by SLD staff. In this case, MasterMind assisted in the completion of the Form 470, and listed Chris Webber as the contact person. MasterMind submitted bids to Butler for Internal Connections, Internet Access and Distance Learning services. MasterMind was awarded only the Internal Connection contract. Butler awarded the contract for Internet Access to One Net (a competing Oklahoma Provider) and to the best of our knowledge, chose not to award a distance learning contract. The SLD in this instance chose to award One Net funding for Internet access, but denied MasterMind funding for the internal connection contract.

Yet another example is the case of Chelsea Independent School District 3 (Chelsea) (470 Application Number: 976730000118165, 471 Application Numbers: 152653, 147394). In this instance, MasterMind again assisted in the filing of the Form 470. Chris Webber was listed as the contact person on this application. MasterMind submitted bids for Internal Connections, Internet Access, and Distance Learning. Chelsea chose MasterMind for its Internet Access contract. Chelsea also decided to go with two different vendors for their Internal Connection needs, awarding a MasterMind contract, and a Southwestern Bell contract. All Funding Requests listed on this application were funded, except those that had MasterMind's Service Provider Identification Number (SPIN).

While these two individual instances point out specific flaws in the SLD's limited findings that the intent of competitive bidding was violated, MasterMind would like to bring to the Commission's attention other Form 470s, in which MasterMind assisted the applicant in filing, that were posted with Chris Webber listed as the contact person, in which MasterMind did not win any bid. In each example provided below, MasterMind was not awarded a contract for Internet Access, Distance Learning or Internal Connections.

Applicant Name	470 Application Number
BOWRING SCHOOL DISTRICT 7	550910000121596
COLCORD INDEP SCHOOL DIST 4	550650000118292
COTTONWOOD SCHOOL DISTRICT 4	237800000120924
ELGIN INDEP SCHOOL DISTRICT 16	539550000161282
FOYIL INDEP SCHOOL DISTRICT 7	460100000128853
KELLYVILLE INDEP SCH DIST 31	806300000116263
MILL CREEK INDEP SCHOOL DIST 2	665130000130870
MOSELEY SCHOOL DISTRICT	672370000118299
SEQUOYAH INDEP SCHOOL DIST 16	452850000128871
SKELLY SCHOOL DISTRICT 1	842080000149971
THOMAS INDEP SCHOOL DISTRICT 6	283820000240014
TURKEY FORD SCHOOL DISTRICT 10	794710000118097
VARNUM SCHOOL DISTRICT	567580000119146

The above listed applications represent only those in which Chris Webber was listed as the contact person. MasterMind estimates that we had reached out to at least an additional 35 applicants who did not award any MasterMind contract.

In a letter dated November 19th, 1999 (EXHIBIT B) Ellen Wolfhagen, legal counsel for SLD, attempts to justify SLD's unfounded denial. Her first point is that MasterMind supplied the Request for Proposals used by many of the school districts. As shown in our original November 24th request for review, however, there was (and continues to be) no rule prohibiting this action. MasterMind did follow the requirement that an RFP be available upon request. MasterMind disseminated approximately 135 individual RFPs to vendors, at their request.

Ms. Wolfhagen's second point in her November 19th, 1999 letter is that "MasterMind, as the signer of some of the Forms 470 received the bids from other vendors." This statement is factually incorrect in two ways. First, no Form 470 or 471 that was denied funding was signed by MasterMind. Second, MasterMind never received any bid from other vendors.

Ms. Wolfhagen's third point in her November 19th, 1999 letter is that "MasterMind provided identical Request for Proposal (RFP) documents, which were flawed on their face." MasterMind did not provide identical RFPs. The commission has previously determined that: "The only requirement set forth in the instructions with respect to the RFP is that it be available upon request from the contact person listed in Item 6." (See In the Matter of Request for Review of the Decision of the Universal Service Administrator by Objective Communications, Inc. and Williams Communications Solutions, DA 99-2408; EXHIBIT C). Clearly, the only requirement for a RFP under program rules is that it be available upon request, if the applicant indicates on the Form 470 that it has prepared one.

MasterMind wishes to identify other flaws in the SLD's after-the-fact rationalizations denying funding. In the document provided to Senator Inhofe's office, titled "Facts concerning MasterMind applications", (EXHIBIT A) dated November 19th, 1999 the SLD indicates that "Decisions on these applications were based on the documented failure in each case to follow procedures for a sound competitive bidding process."

For most, if not all, of the applications presented to the Commission for review by MasterMind, the SLD PIA team requested evidence of competitive bidding from applicants. This was done in a standardized format in a document (EXHIBIT D) titled "Schools and Libraries Division Information Request Form" (Information Request). This Information Request asked the applicant to provide the following information for all contracts listed on their Form(s) 471:

1. Copies of Requests for Proposals (RFPs), **or** other documentation (notices requesting bids; Board minutes documenting the bid selection process, etc.) of the bidding process (other than posting to the SLD website) for services and/or products. (Emphasis added)
2. Copy(ies) of the chosen bid(s) submitted by vendor
3. Copy(ies) of contracts for the above services.

To the best of MasterMind's knowledge, this information was provided by all applicants, in a timely manner, to the SLD. Specifically, please note the case of Bluejacket Public Schools (Bluejacket). Bluejacket provided a copy of the RFP, a copy of the chosen bid, and a copy of the contract – as specified by the Information Request. Bluejacket was not required to provide any additional information, consistent with the instructions of the Information Request. Despite this compliance with the Information Request, Bluejacket was denied funding for MasterMind services or products, and awarded funding for all other requests on their application.

A lack of response to the web site posting does not indicate a lack of competitive bidding. Many small, rural school districts are not contacted about the services listed on the Form 470, and others may only be contacted by one vendor. In other instances, there may be only one service provider who can actually perform the service, such as providing basic telephone service (which is required to undergo the competitive bidding procedures). The applicant is not required to take additional steps to solicit bids, beyond the posting of the request to the SLD's web site. (See In the Matter of Federal-State Joint Board on Universal Service, DA 99-1773; EXHIBIT E).

The SLD seems to recognize this in their Information Request, by not requiring evidence of non-awarded bids or contracts. MasterMind understands that these non-awarded bids or contracts can provide additional documentation of the competitive bidding process, but this information is not required.

2. MasterMind further contends that the rules in question, the competitive bidding requirements, clearly permitted the actions that led to SLD's denial of funding – namely, that Chris Webber, an employee of MasterMind, was listed as a contact person on the

Form 470. To the extent that that SLD was considering a new policy prohibiting such a practice, that policy was neither established nor defined well enough to provide any notice to MasterMind that such a practice was prohibited. Indeed, the SLD could state only that "the intent" of the competitive bidding process, not any specific rule or requirement was violated. We contend that MasterMind found itself trapped by a policy that was being considered and developed as MasterMind assisted in the filing of the Form 470 and was applied retroactively to MasterMind.

The competitive bidding process is a process that is governed by the plain terms of the Commission's rules, not by ad hoc "adjudicatory" decisions carried out in the context of individual funding decisions. If the Commission wishes to change those rules to prohibit the practice at issue here prospectively, MasterMind has no objection to such a change and will adhere to whatever procedures the Commission adopts. However, the retroactive application of unwritten and half-formed policies that were under development, and which were not at all publicized at the time of the filing of the Forms 470 is manifestly contrary to the public interest . Indeed, the result of this retroactive application of the SLD's nebulous and unformed policy is the denial of funding to 120 school districts across Oklahoma – schools that are being needlessly penalized and needlessly denied the benefits of the important Schools and Libraries program. Even if the Commission determines that some "rule" has been violated, MasterMind contends that these specific circumstances warrant a waiver of such rules, as evidenced by ongoing correspondence with the SLD and their legal Counsel. See 47 C.F.R. § 1.3

As MasterMind showed in its Requests for Review, the rules that existed at the time of the filing of the Form 470 were adhered to. MasterMind had hired a former National Computer Systems (NCS) employee (Chris Webber), whose responsibilities at NCS included answering the SLD's Customer Service Bureau's help line and providing application guidance to applicants. Because of his former workings with the program, and because the contact person listed on the Form 470 would be called by the SLD if there were any problems with the application, many school districts listed Chris Webber as the contact person on the Form 470. As evidenced in our original Request for Review, received November 24th, 1999 by the Commission (Section C), the instructions for who should be listed as the contact person only requires the applicant to "Provide the name of the person who should be contacted with questions about the application" and that person "should be able to answer questions regarding the information included on the form, including how to obtain a copy of your request for proposal (RFP), if you have prepared one."

Additionally, instructions for the Form 470, II, A "Who Must File", state: "The entity that will negotiate with potential service providers should complete Form 470." Individual school districts and libraries did complete the form. For each application covered by the Requests for Review, MasterMind did not at any time sign or certify any Form 470. Service providers, according to these instructions, should have been aware that the person who had completed the application (in most cases, Superintendents) would be the entity that would negotiate with service providers.

The specific circumstances, as evidenced by correspondence with the SLD, also speaks to the fact that any rules prohibiting service provider participation in the assistance of the Form 470 did not exist at the time the Forms 470 were filed, or at best were beginning to be developed. On February 9th, 1999 Guy LoPresti, Associate Manager at the SLD/USAC sent MasterMind a response to an email from Chris Webber (EXHIBIT F) dated February 2nd, 1999. In his response, (EXHIBIT G) Mr. LoPresti stated: "After reviewing the marketing material that MasterMind is offering to applicants who post Form 470 requests for services, a couple of points need to be made. MasterMind ***is offering to assist schools and libraries in the completion of their Forms 470,*** 471 and 486" (emphasis added). It is clear from the text of this email that Mr. LoPresti understood that we were offering our assistance in completing the Form 470. Mr. LoPresti in his February 9th email also states "If there is a charge for these services, please do not include it in your fee for Internet Access..." Mr. LoPresti also clearly understood that MasterMind was (and continues to be) a service provider participating in the program. The only admonition offered by Mr. LoPresti is that MasterMind should not include fees related to consulting services in their Internet Access charges, which MasterMind did not. Mr. LoPresti also indicates that he had "taken the opportunity to confer with Debra Kriete, General Counsel of the Schools and Libraries Division." Ms. Kriete provided guidance about free services that may be offered to schools and libraries under the program, but did not admonish MasterMind to stop its assistance in filing Forms 470. Ms. Kriete's response also indicates that she had reviewed our marketing material as well. No potential problems were identified by Ms. Kriete concerning the competitive bidding process and MasterMind's assistance in completing the Forms 470.

This was an email response sent to MasterMind in an especially critical time period, while the filing of Forms 470 was ongoing. Had MasterMind been informed of any concerns on the part of the SLD, time would have been available to refile any Form 470 that may have been deficient. Despite the fact that a senior Program Integrity Assurance team member, and the General Counsel for the SLD had reviewed our marketing materials acknowledged that we were a service provider participating in the program, and understood that we were assisting in the filing of the Form 470, no warning was given to MasterMind. The last day to file a Form 470, and still have one day to complete the Form 471 was March 9th, 1999 – exactly one month to the day of Mr. LoPresti's email. Applicants, as stated in our original appeal letter, received 470 Receipt Acknowledgement Letters for each of the Forms 470 in question, indicating that the SLD had received "your properly completed" Form 470. This letter provided additional assurances that applicants' Forms 470 were filled out correctly.

On July 26th, 1999 Chris Webber sent an email (EXHIBIT H) to Matt Harcourt, Manager for Service Provider Outreach at the SLD/USAC. In this email, Mr. Webber requested a meeting with Mr. Harcourt "to clarify procedures and rules outlined by the SLD." On August 10th, 1999 Chris Webber, and another employee of MasterMind, David Butler flew to Washington D.C. to meet with Matt Harcourt. We were informed upon arriving at the meeting that the SLD's counsel, Ellen Wolfhagen would be attending as well. During the meeting Chris Webber explained the fact that MasterMind assisted in filing the Forms 470 and 471, and planned on doing so for year three applications as well. Chris Webber

also indicated to Ms. Wolfhagen that MasterMind was in the process of developing a "Letter of Agency," (LOA) which applicants would sign to authorize MasterMind's assistance in the filing of the forms. Ms. Wolfhagen did indicate that she had concerns with MasterMind listing an employee as the contact person on the Form 470. Ms. Wolfhagen offered to review both the 470 LOA and the 471 LOA that MasterMind was in the process of developing. This August 10th meeting was the first time that any concern was expressed to MasterMind about the Form 470 process.

On September 10th, 1999 Chris Webber sent, via email, the 470 and 471 LOA to Ms. Wolfhagen (EXHIBIT I). In Ms. Wolfhagen's response (EXHIBIT J) she dismisses reviewing the 470 LOA, because "it is inappropriate for MasterMind to file Forms 470 on behalf of school and library applicants, as it gives the appearance that the applicant has a pre-existing relationship with MasterMind." Ms. Wolfhagen had previously offered to review this 470 LOA. Ms. Wolfhagen indicated that the 471 LOA "looked fine."

On September 17th, 1999, representatives from MasterMind attended the SLD sponsored "Train the Trainer" session in Chicago, IL. At this conference, the SLD disseminated what appears to be a draft version of a form entitled "Form 470 Pitfalls" (EXHIBIT K) This form includes a paragraph entitled "Completing FCC Form 470" that provides an admonition disallowing vendors to sign Form 470. This was the first document that had been issued by the SLD publicly that provides any limitation on service provider involvement in the filing of Form 470. Please remember, MasterMind did not sign any of the Forms 470 presented to the Commission in its Requests for Review.

On September 27th, 1999, Chris Webber sent an email (EXHIBIT L) to Ellen Wolfhagen seeking clarification on the new policy statement entitled "Form 470 Pitfalls" and how these fit with MasterMind's future plans. Mr. Webber specifically asked in the email "I just want to be sure that I am reading the instructions correctly, that the only disallowed action by vendors, that will result in the rejection of the Form 470, is the signing of the Form 470 by a vendor representative, as per the SLD's new instructions distributed at the 'Train the Trainer' session in Chicago."

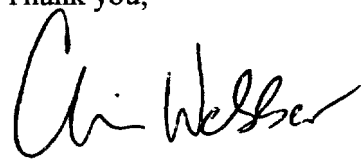
Ms. Wolfhagen's reply (EXHIBIT M) (in an email dated October 13th, 1999) states that "I think you are generally on the right track, however, it is not just the signing of the Form 470 we check. We are also looking to be sure that the RFP and responses to the posting are not being funneled through a vendor." This was the first admonition given to MasterMind (these warnings still have not been disseminated publicly by the SLD) about service provider involvement in the RFP process.

On November 22nd, 1999, Ms. Wolfhagen sent Chris Webber a response (EXHIBIT N) to several questions Mr. Webber had posed to Ms. Wolfhagen. In her response, Ms. Wolfhagen states: "As I [sic] sure you understand, Chris, through our various communications, it is necessary for MasterMind to have its Letter of Agency on file BEFORE filing [sic] out the Form 470." ***This is a complete reversal of policy for Ms. Wolfhagen. In her September 10th email, she refuses to review the 470 LOA because service providers should not be involved in the 470 process and give the appearance of***

a pre-existing relationship. She now states that it is mandatory for us to have our LOA on file, and basically to document that "pre-existing relationship." Obviously, limitations on service provider involvement in the 470 process were not clear or fully developed, even 9 months after most Forms 470 in question were signed by applicants.

MasterMind understands that the competitive bidding process is complex, and as the Commission gains experience with that process it may wish to modify some of its specific procedures. As noted earlier, MasterMind is willing to abide by any procedures the Commission chooses to adopt on a prospective basis. Application of this unstated and still-unformed policy to MasterMind on a retroactive basis, however, is contrary to the Commission's existing rules and would be fundamentally unfair under the circumstances described above. It is our hope that these facts provide some help to the Commission in resolving this matter.

Thank you,



Chris Webber
Director of Educational Services
MasterMind Internet Services

EXHIBIT A

Facts concerning MasterMind applications

1. Forms requesting competitive bids (the competitive bidding process is a cornerstone of the program) submitted from over 90 schools in Oklahoma and were all signed by MasterMind, an Internet service provider.

2. Results from the forms seeking competitive bids were that MasterMind was designated as the winner on all of the requests. This was indicated on the more than 90 funding requests submitted on FCC Forms 471.

3. **Automated** program integrity checks of the Forms 471 triggered follow-up inquiries on applications where MasterMind happened to be the vendor. As a result of these automated checks, Program Integrity Assurance staff reached out to applicants to obtain supporting documentation, in order to review it for compliance with program rules for competitive bidding.

4. Review of the supporting documentation provided through the follow-up inquiries indicated inconsistencies and flaws in the competitive bidding process.

5. Decisions on these applications were based on the documented failure in each case to follow procedures for a sound competitive bidding process, which is a necessity for complying with FCC program rules.

provided required documentation

USAC/SLD November 19, 1999

EXHIBIT B

USAC
UNIVERSAL SERVICE ADMINISTRATIVE CO.

2120 L Street, N.W., Suite 600
Washington, D.C. 20037
Voice: (202) 776-0200 Fax: (202) 776-0080

SCHOOLS & LIBRARIES DIVISION

Ellen Wolfhagen
Counsel
ewolfhagen@universalservice.org

November 19, 1999

Mr. Chris Webber
MasterMind
1217 East 48th Street
Tulsa, Oklahoma 74105

Dear Mr. Webber:

The purpose of this letter is to provide some clarification and further explanation, at the request of Senator Inhofe, of the recent denials that were issued for Schools and Libraries Program applications filed by Oklahoma schools which indicated MasterMind as a service provider.

The denial reason provided in your letter stated: "The circumstances of the filing of the Form 470 violated the intent of the bidding process." I would like to amplify those circumstances, which led to the denial.

- MasterMind supplied the Request for Proposal used by many of the schools.
  This violates the competitive bidding rules because it gives the appearance that MasterMind had a pre-existing relationship with the applicants. Such appearance compromises the open and fair nature of the competitive bidding process.
- MasterMind, as the signer of some of the Forms 470 received the bids from other vendors.
  This violates the competitive bidding rules because some vendors may alter their bids or refrain from bidding at all if they have reservations about submitting their bids (which usually contain proprietary pricing information) to a competitor (or even a vendor in a different line of business). Again, this compromises the competitive bidding process.
- MasterMind provided identical Request for Proposal (RFP) documents, which were flawed on their face.
  This violates the competitive bidding rules because the lack of tailoring of the RFP made it insufficiently specific to allow bidders to understand what exactly would be required. This, as well as other deficiencies, such as lack of a required response date or sufficient indication about who was requesting the services, resulted in a flawed document.

I hope this further information is helpful to you. Please feel free to contact me directly if you have any additional questions.

Sincerely,

Ellen Wolfhagen

Ellen Wolfhagen
Counsel
USAC/Schools and Libraries Division

Cc: Senator Inhofe

EXHIBIT C

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Request for Review	)	
of the Decision of	)	
the Universal Service Administrator by	)	
	)	
Objective Communications, Inc.	)	File No. SLD-1143454
	)	
Williams Communications Solutions)	File No. SLD-1143454	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)		

ORDER

Adopted: November 2, 1999 **Released: November 2, 1999**

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Letter of Appeal filed by Objective Communications, Inc. (Objective), dated June 1, 1999, and a Letter of Appeal filed by Williams Communications Solutions (Williams), dated June 3, 1999 (the Letters of Appeal). These letters contest the funding request made by the Los Angeles Unified School District (Los Angeles) in an FCC Form 470, Universal Service Control Number 930890000208654, dated February 25, 1999, and filed with the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator).[1] The Letters of Appeal take issue with the fact that "there was never a bid via a public RFP" for the services listed on the FCC Form 470 at issue.[2] As discussed below, because a publicly posted Request for Proposal (RFP) is not required under the Commission's rules, and because Objective and

[1] Because Objective and Williams raise the same issue -- indeed, in identical letters of appeal concerning the same applicant -- we are issuing a single order responding to both letters of appeal.

[2] Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

Williams fail to argue that they were denied an RFP upon request, we deny the Letters of Appeal.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.[3] The Commission's rules provide that, with one limited exception, an eligible school, library, or consortium must seek competitive bids for all services eligible for support.[4]

3. To comply with this competitive bid requirement, the Commission's rules require that an applicant submit to the Administrator a completed FCC Form 470, in which the applicant lists the eligible services for which it seeks discounts.[5] The Administrator must post the FCC Form 470 on its website and the applicant is required to wait 28 days before making a commitment with a selected service provider.[6] The rules also require that the Administrator send confirmation to each applicant that its FCC Form 470 has been received and posted (Receipt Acknowledgment Letter). After the FCC Form 470 has been posted for 28 days, and the applicant has selected a service provider, the applicant must submit to the Administrator an FCC Form 471, which lists the services that have been ordered.[7] Approval of the application is contingent upon the filing of an FCC Form 471.

4. The Commission's rules provide a limited exemption from the 28-day competitive bid requirement for applicants that have "pre-existing contracts," as defined by the Commission's rules.[8] Block 3, Item 10 of the FCC Form 470 directs the applicant to check the box "if applicant seeks discounts only for eligible services based on one or more existing, binding contract(s)." Item 11 directs the applicant to check the box "if you have a Request for Proposal (RFP) available" and that if the "RFP is posted on a website, provide the website address." Instructions for Item 11 further state that "[i]f the RFP is not posted, your contact person (Item (6)) must be able to provide it to service providers."

5. In the Letters of Appeal, Objective and Williams assert that the FCC Form 470 referred to above must be denied funding because "[b]lock #3, item #10 was not checked," "therefore there are no existing, binding contracts in place," and "there was never a bid via a

[3] 47 C.F.R. §§ 54.502, 54.503.

[4] 47 C.F.R. § 54.504.

[5] 47 C.F.R. § 54.504(b)(1), (b)(3). In submitting FCC Form 470, an applicant is required to provide only general information about the services for which it seeks discounts, *e.g.*, number of phones that require service, number of dial-up connections necessary, as well as an assessment of the applicant's existing technology that may be necessary for the effective use of eligible services.

[6] 47 C.F.R. § 54.504(b)(3) and (b)(4); 47 C.F.R. § 54.511.

[7] 47 C.F.R.§ 54.504(c).

[8] *See* 47 C.F.R. § 54.511(c)(1)(i) and (ii); 47 C.F.R. § 54.511(d).

public RFP."[9]

6. As described above, the Commission has established specific rules and procedures related to fulfilling its competitive bid requirement. Under these rules, and pursuant to the FCC Form 470, if an applicant seeks discounts for eligible services based on an existing, binding contract, that applicant should check Item 10 and wait 28 days before entering into a contract with a service provider; if not, the applicant should not check the box, the Administrator is required to post the FCC Form 470 on its website, and the applicant must wait 28 days before making a commitment with a selected service provider. Although Item 11 provides an opportunity for an applicant to indicate that an RFP is available on a website, nowhere in the Commission's rules or in the FCC Form 470 or accompanying instructions is an applicant required to make available an RFP, except upon the specific request of service providers.

7. Review of the FCC Form 470 referred to in the Letters of Appeal, as well as SLD's records, reveals that Los Angeles did not check Item 10, and therefore the Administrator was required to post the Form 470 on its website, which it did. This is the only "posting" necessary to fulfill the Commission's competitive bidding requirement. Under the Commission's rules, neither Los Angeles nor the Administrator was required to publish or post an RFP on a website. The only requirement set forth in the instructions with respect to the RFP is that it be available upon request from the contact person listed in Item 6. Neither Objective nor Williams argue that they requested an RFP from the contact person Los Angeles listed in Item 6 of its FCC Form 471 and that they were refused the RFP. While Objective and Williams contend that their corporations have been denied "rights to due process to bid on this equipment as stated by the regulations that guide the E-Rate application process," they fail to cite to any Commission rules or regulations that would support their argument that the application is invalid because no RFP was posted to the public, or that otherwise support their position that Los Angeles violated Commission rules with respect to the RFP. We are unaware of any such regulations. In light of these findings, we find no basis for invalidating Los Angeles' application and denying funding for otherwise eligible services.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Letters of Appeal filed by Objective Communications, Inc. and Williams Communications Solutions IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Lisa M. Zaina
Deputy Chief, Common Carrier Bureau

[9] Letters of Appeal at 1.

EXHIBIT D.

Schools and Libraries Division Information Request Form

Applicant: Bluejacket Indep Sch Dist 1020

Form 471 application number (s): 146660

Contact Name: Duane Thomas

Contact Phone Number: (918) 784-2365

Service Provider	Contract #	Start Date	Amount
FOR ALL CONTRACTS LISTED ON ABOVE 471s			

For each contract listed above please send the following information via mail or Fax (973-384-8066):

1. copies of Requests For Proposals (RFPs) or other documentation (notices requesting bids; Board minutes documenting the bid selection process, etc.) of the bidding process (other than posting to the SLD website) for services and/or products.
2. copy (ies) of the chosen bid (s) submitted by vendor
3. copy (ies) of contracts for the above services.

If the services/products listed on the Form 471 were not competitively bid, please indicate so and explain. Thank you.

Bluejacket Public Schools

EXHIBIT D

3rd & CENTER ST. • P.O. BOX 29 • BLUEJACKET, OKLAHOMA 74333 • (918) 784-2365

October 7th, 1999

Schools and Libraries Division
Program Integrity Assurance
Selective Review Team

To Whom It May Concern:

This letter is in response to a fax received on October 4th, 1999 from the Schools and Libraries Division, Selective Review Team. As per your request, we have included (1) A copy of the Request for Proposal, (2) A copy of the chosen bid(s) (when applicable) and (3) copy(ies) of the awarded contracts.

The last question listed on the fax asks the applicant to explain if any of the services *were not* competitively bid (emphasis added). As per the FCC's Form 470 Instructions – December 1998 page two, Section I that states:

> **The filing of this form with the Universal Service Administrator will fulfill the competitive bidding requirement and school and and libraries may sign contracts for services eligible for discounts 28 days after the descriptions set forth in Form 470 are posted to the SLC web site, www.slcfund.org.**

Our response is that ***all services and products were competitively bid, as they were posted to the SLD's web site, as per the FCC's instructions.*** Any services or products that are not documented by a signed contract or quote have still fulfilled the competitive bidding requirements according to the above instructions. Please note that some services or products, listed on Form 471, may or may not have generated a response from a potential service provider. If you have any further questions regarding this matter, please submit them to me in writing via facsimile or mail.

Thank you,

Duane Thomas
Superintendent

EXHIBIT D

Request for Proposal

Substitute equipment will not be accepted.

**** Switches ****
1. Baynetworks 350-T
2. Baynetworks 350-F
3. Dlink DES-3208

**** Hubs ****
1. Dlink DFE-2616
2. Dlink DE824-TP
3. Dlink DE-812TP

**** Routers ****
1. ACC Danube Router D-SBU-ES1
2. 8MB DRAM Option D-ORD8
3. V.35 Interface Card N-ICV35
4. V.35 Cable N-CA-V35

1. ACC Colorado Rapid Router w/ 2 Ethernet, 3 WAN Ports C-2E-R-2
2. 4MB Flash / 9MB RAM Option C-OFM4-ODR9
UWAN to V.35 Cables CAV35U-MM10

**** CSU/DSU ****
Motorola FT100S CSU/DSU

**** Wiring Drops ****
1. Category 5 wiring twisted pair UTP drops certified to 100 MB. (150 ft. average drop)
2. Category 5 patch cables 10 foot certified to 100 MB.

**** Equipment Rack ****
1. 19 inch brushed aluminimum equipment rack.
2. Shelf for equipment rack.

****Internet Access****
1. Internet Setup Fee for T-1 access
2. Interent Access Fees for T-1 circuit

EXHIBIT D

BlueJacket Public Schools
P.O. Box 29
Center & 3rd Streets
Bluejacket OK 74333-0029
Acct # 5042 Date 04-06-1999
Attention: Duane Thomas
Phone: 918-784-2365
Contract # 200069
Contract Signed Date 04/06/1999 Contract Expire Date 06/30/2000
Project: Internet Access

Contract

MasterMind
1217 East 48 th St.
Tulsa, OK 74105
918-743-6161
Fax 918-743-0204
sales@mmind.net

Description	Supplier/Model	Qty	Price Each	Ext Price
Internet Access Fee T-1 (bundled)	MASTERMIND	1	$53,250.00	$53,250.00

Bundled Items included in this package

Description	Quantity
Internet Access T-1	12/months
Internet Access Setup	1
Electronic Mail Service (unlimited email)	12/months
Electronic Mail Service Setup Fee	1
Internet Maintenance Agreement	Annual
Internet Caching Service	12/months
Internet Caching Service Setup Fee	1

Total Price $53,250.00

Authorized Signature: Duane Thomas

This contract is contingent upon SLD funding for 1999-2000.

EXHIBIT D

BlueJacket Public Schools
P.O. Box 29
Center & 3rd Streets
Bluejacket OK 74333-0029
Acct # 5042 **Date** 4-6-1999
Attention: Duane Thomas
Phone: 918-784-2365
Contract # 200072
Contract Signed Date 04/06/1999 **Contract Expire Date** 06/30/2000
Project: Telecommunication Services

Contract

MasterMind™
1217 East 48 th St.
Tulsa, OK 74105
918-743-6161
Fax 918-743-0204
sales@mmind.net

Description	Supplier/Model	Qty	Price Each	Ext Price
Distance Learning Service incl Setup	MASTERMIND	1	$38,419.80	$38,419.80

Distance Learning: Service that utilizes Video and Audio technologies. This service allows students located at the school (not at home) that are remotely located from other students, or the lecturer, to participate interactively with the class. This does not include any sale of equipment.

Bundled into the Distance Learning Package is:

Distance Learning Setup
Distance Learning Maintenance & Support

Scheduling is the responsibility of the districts involved.

Total Price $38,419.80

Authorized Signature: Duane Thomas

This contract is contingent upon SLD funding for 1999-2000.

EXHIBIT 12

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board	)	
on Universal Service	)	CC Docket No. 96-45
	)	

ORDER

Adopted: September 1, 1999 Released: September 1, 1999

By the Acting Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In May 1998, the Florida Department of Management Services ("Florida DMS") filed a Motion for Declaratory Ruling or, Alternatively, a Petition for Waiver, of the Commission's rule regarding the application of the Commission's universal service schools and libraries support mechanism rules to voluntary extensions of contracts.[1] For the reasons explained below, in this Order, we confirm the two interpretations of our rules that Florida DMS seeks. Specifically, we first clarify that schools and libraries that have signed contracts based on service requests that have been posted on the School and Library Division (SLD)[2] website may exercise renewal terms in the original contract without any further posting. Second, schools and libraries that are considering renewal provisions of contracts that were not based on service requests previously posted on the SLD website must submit service requests for posting before renewing those existing contracts, but we do not require that schools and libraries undertake a fresh new bidding process if they find renewal of the existing contracts to be in their best interests after considering the results of that posting.

II. BACKGROUND

A. Section 254 and the Commission's Rules

2. The Telecommunications Act of 1996 added section 254 to the Communications Act of 1934, as amended. Section 254 establishes, among other things, that schools and libraries

[1] *See* Florida Department of Management Services, Motion for Declaratory Ruling or, Alternatively, Petition for Waiver, filed May 11, 1998 at 1 (*Florida DMS Motion*).

[2] SLD was formerly known as the Schools and Libraries Corporation (SLC), before it merged into the Universal Service Administrative Company (USAC).

receive telecommunications and information services at discounted rates.[3] In the *Universal Service Order*,[4] the Commission sought to ensure that schools and libraries benefit from the development of competition by encouraging providers to approach schools and libraries with competing offers for meeting their telecommunications and information service needs.[5] The Commission recognized that such competition would result in more efficient pricing for telecommunications and information services purchased by schools and libraries, thus minimizing the amount of support needed.

3. The Commission concluded that enabling schools and libraries to post relatively simple requests on a website would provide a minimally burdensome means for them to get competing providers to approach them, so that schools and libraries could then select the best service packages subject to their state and local rules.[6] The Commission, therefore, required that the administrator of the schools and libraries support mechanism establish and maintain a website that would be known and accessible to all providers to allow them to identify potential customers quickly and easily.[7]

4. Although the Commission wanted all schools and libraries participating in the program to enjoy the benefits of competition generated by postings on the SLD website, and wanted contracts supported by the program opened to all competing providers, it recognized that some schools and libraries were legally bound by existing contracts that they could not breach without triggering a penalty. The Commission did not want to exclude these schools and libraries from receiving the benefits of universal service support until their binding contracts expired,[8] and it was concerned that voiding those contracts could be unfair to providers.[9] On the other hand, the Commission was concerned that it not enable incumbent carriers to use long-term contracts to lock out competitors before those competitors had a chance to contact schools and libraries.[10]

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[3] *See* 47 U.S.C. 254 (h)(1)(B).

[4] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Erratum, FCC 97-157 (rel. June 4, 1997), *aff'd in part, rev'd in part, remanded in part sub nom Texas Office of Public Utility Counsel v. FCC*, No. 97-60421 (5th Cir., July 30, 1999) (*First Report and Order*).

[5] *See Universal Service Order*, 12 FCC Rcd at 9028-29, 9078.

[6] *See Universal Service Order*, 12 FCC Rcd at 9079.

[7] *See Universal Service Order*, 12 FCC Rcd at 9078-79.

[8] *See Universal Service Order*, 12 FCC Rcd at 9064.

[9] *See Universal Service Order*, 12 FCC Rcd at 9063.

[10] *See Fourth Reconsideration Order*, 13 FCC Rcd at 5442.

5. The Commission resolved this difficulty by permitting schools and libraries to receive discounts on existing contracts without posting such contracts on the website, but only until the contract expired or until a renewal provision *permitted* them to consider other options.[11] Once a school or library is free, under its existing contract, to consider other options, the Commission's rules require it to submit its service requests (FCC Form 470 applications) for posting on the website, where they can be considered by all potential competitors.[12] The school or library must then wait four weeks[13] and "carefully consider all bids submitted"[14] before selecting a provider, subject to any state or local procurement rules. The Commission concluded that this process "is the most efficient means for ensuring that eligible schools and libraries are informed about the choices available to them and receive the lowest prices."[15]

B. Florida's Petition

6. The Florida DMS provides telecommunications services to schools and libraries throughout the State of Florida using competitively-bid master contracts.[16] Pursuant to the Commission's universal service rules, the Florida DMS applied for support of its provision of telecommunications services to eligible schools and libraries.[17]

7. On May 11, 1998, Florida DMS filed a Motion for Declaratory Ruling or, Alternatively, a Petition for Waiver, of the Commission's rule regarding voluntary extensions of contracts.[18] The Florida DMS first seeks a declaratory ruling that the exercise of the renewal provisions of its master contracts is not a "voluntary extension" of a contract, and, thus, is exempt from the Commission's competitive bid requirements.[19] In the event the Commission is unwilling to render such a ruling, the Florida DMS alternatively seeks a waiver of the Commission's rule on

[11] *See Universal Service Order*, 12 FCC Rcd at 9062-64.

[12] *See* 47 C.F.R. § 54.511(d).

[13] *See* 47 C.F.R. § 54.504(b)(4).

[14] *See* 47 C.F.R. § 54.511(a).

[15] *See Fourth Reconsideration Order*, 13 FCC Rcd at 5447.

[16] *See Florida DMS Motion* at 1.

[17] *See Florida DMS Motion* at 1.

[18] *Florida DMS Motion* at 1.

[19] *See Florida DMS Motion* at 9-10.

voluntary extensions of contracts, such that the exercise of the Florida DMS's contract renewal options would be exempt from the Commission's competitive bid requirements.[20]

8. On May 21, 1998, the Common Carrier Bureau (Bureau) released a public notice seeking comment on the Florida DMS Petition.[21] Four parties filed comments,[22] and two parties filed reply comments.[23] All of the parties filing comments or reply comments expressed their support for the Florida DMS petition.[24]

9. On September 8, 1998 the Florida DMS submitted a letter in response to a staff inquiry.[25] In the letter, the Florida DMS clarifies the issues on which it seeks confirmation. First, it seeks confirmation that if it signs a contract based on a request made according to the Commission's competitive bidding process -- filing FCC Form 470 and waiting for four weeks after the form is posted on the schools and libraries website -- and that contract contains a renewal clause, that it can renew that contract without reposting the contract.[26] Second, the Florida DMS seeks confirmation that, although an applicant for support must file FCC Form 470 and wait four weeks after Form 470 has been posted before signing a renewal of a contract if it did not go through the Commission's competitive bidding process for that contract, Commission rules do not require the applicant to undertake any other formal bidding processes before renewing the existing contract.[27]

III. DISCUSSION

[20] *See Florida DMS Motion* at 10.

[21] Florida Department of Management Services Files Motion for Declaratory Ruling or, in the Alternative, Petition for Waiver, of Existing Contracts Rules, CC Docket No. 96-45, *Public Notice*, DA 98-977 (rel. May 21, 1998).

[22] Comments were filed by AT&T Corporation, Bell Atlantic, US West Communications, Inc., and BellSouth.

[23] Replies were filed by National Association of State Telecommunications Directors and the New York State Office of General Services Information Technology & Procurement.

[24] *See* AT&T Corporation comments at 1; Bell Atlantic comments at 1; U.S. West comments at 1; BellSouth comments at 2; National Association of State Telecommunications Directors reply comments at 2; New York State Office General Services Information Technology & Procurement reply comments at 1.

[25] Letter from Colette K. Bohatch, Counsel for Florida DMS, to Mark Nadel, FCC, Accounting Policy Division, August 21, 1998; *See also* Letter from Colette K. Bohatch, Counsel for Florida DMS, to Mark Nadel, FCC, Accounting Policy Division, August 26, 1998; Letter from Colette K. Bohatch, Counsel for Florida DMS, to Mark Nadel, FCC, Accounting Policy Division, September 8, 1998 (*Florida DMS September letter*).

[26] *Florida DMS September letter* at 1.

[27] *Florida DMS September letter* at 2.

10. We clarify, based on our review of Commission policies regarding service request postings and of our rules, that the interpretations set forth in the Florida DMS's September 8, 1998 letter are accurate. First, once a school or library's service request has been posted on the SLD website, the school or library may sign contracts with providers that include renewal options and the school or library subsequently may exercise those renewal options without any additional service request posting. We conclude that permitting a school or library to commit to a long-term contract after participating in the competitive bidding process does not compromise the benefits derived from competition. As long as all providers have had the opportunity to compete for the same contract, schools or libraries can enter into renewable contracts of any length or form, as permitted by state law.

11. Second, when applicants are seeking to renew an existing contract that was not previously posted, Commission rules do not require them to undertake any further competitive bidding processes beyond posting their requests and carefully considering all bids submitted. State rules, however, might impose additional requirements. The Commission's posting requirement seeks to ensure that all competing providers that monitor the SLD website can become aware of any school or library that they might serve and to ensure that the competing providers have the opportunity to contact those schools and libraries before the latter have signed binding contracts.[28] As long as new competitors have the opportunity to view and respond to such postings, and applicants consider any bona fide offers, the Commission's rules would be satisfied. The Commission's rules do not require schools and libraries to undertake any additional competitive bidding procedures, although state procurement rules might trigger additional requirements.

12. We, therefore, confirm that, for a contract that has been competitively bid through the FCC Form 470 application process, no reposting of the contract is necessary before a renewal option is exercised. We also confirm that Commission rules do not require schools and libraries that submit an FCC Form 470 application for posting on the SLD website before they renew a contract to undertake any other competitive bidding processes other than to consider carefully any bona fide responses to their posting.

[28] *See Fourth Reconsideration*, 13 FCC Rcd at 5447.

IV. ORDERING CLAUSE

13. IT IS THEREFORE ORDERED, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and sections 0.91, 0.291, and 1.2 of the Commission's rules, 47 § C.F.R. §§ 0.91, 0.291, and 1.2, that the Florida Department of Management Services' Motion for a Declaratory Ruling is GRANTED as qualified by the above paragraph.

FEDERAL COMMUNICATIONS COMMISSION

Lisa M. Zaina
Acting Deputy Chief,
Common Carrier Bureau

EXHIBIT F

Subject: Charitable Donations to Schools
Date: Tue, 02 Feb 1999 10:42:52 -0600
From: Chris Webber <cwebber@mmind.net>
To: Guy LoPresti <glopres@neca.org>
BCC: rgates@mmind.net, cwebber@mmind.net

Hello Guy,

I guess this is my question of the week. MasterMind is an ISP for k-12 schools in Oklahoma. We have given charitable donations to schools in the state since 1995. We now have a competitor that is telling our schools that we are performing an illegal act by donating money to schools. Specifically, they are faxing schools and telling them that we are violating the "free services rule" by discounting the undiscounted portion of the bill. This is not true, but we do plan to give donations to schools, which they may spend as they like. Please let me know if this in any way affects SLC funding rules.

Chris Webber
Director of Erate Services
MasterMind Internet Services, Inc.

EXHIBIT 6

Subject: MasterMind
Date: Tue, 09 Feb 1999 13:41:59 -0500
From: GUY LOPRESTI <GLOPRES@neca.org>
To: rgates@mmind.net
CC: cwebber@mmind.net

Sirs,

Thank you for your correspondence regarding MasterMind's services and charitable contributions offered to schools and libraries participating in the E-Rate program. After reviewing the marketing material that MasterMind is offering to applicants who post Form 470 requests for service, a couple of points need to be made. MasterMind is offering to assist schools and libraries in the completion of their Forms 470, 471 and 486. Mastermind is also offering to analyze applicants services requested to help determine their eligibility under the program and are also offering problem resolution and audit support. Please understand that these offerings are considered consulting services and the cost associated with them are not eligible for discount under the program. If there is a charge for these services, please do not include it in your fee for Internet Access charged to schools and libraries participating in the program. Secondly, I have taken the opportunity to confer with Debra Kriete, General Counsel of Schools and Libraries Division about your inquiry and she offered the following--

The Free Services Advisory states the following:

"We are pleased that vendors are increasing the ability of schools and libraries to acquire the services that they need to make effective use of technology. However, we want to remind applicants and vendors that the value of these price reductions/promotional offers must be applied before the vendor submits the bid for the pre-discount cost. The pre-discount cost is the basis upon which funding requests will be made by Form 471 applicants. The value of all price reductions or promotional offers must be deducted from the cost of service to the applicant to establish the applicant's pre-discount cost. In other words, the Universal Service Program "Pre-Discount Cost" that will appear in Columns 8, 9, and 10 of Items 15 and 16 on FCC Form 471 must take into account all vendor price reductions."

The express words of the Advisory prohibit the exclusion of any discounts available to applicants when the vendor develops and bids on a prediscount price for services.

The marketing materials of MasterMind state that Master Mind will make grants available to applicants to fund the applicant's undiscounted cost of the services. But presumably, these grants are not being applied to MasterMind's prediscount bid price? Why not? If MasterMind knows that it can make grants available to applicants, then why isn't MasterMind factoring in that grant to reduce its prediscount cost bid to applicants, thereby reducing the cost of the discounts to the Universal Service Fund? If MasterMind cannot count on receiving the grant, then MasterMind could develop alternate bids: one bid if the grant is approved and forthcoming and another grant if the grant is not forthcoming.

As a second point, I am concerned about the accuracy of MasterMind's advertising that they have a former SLC employee on staff. Technically, NCS is a subcontractor of NECA, and NCS and SLC have no direct relationship. I think it would be more accurate to state that MasterMind employs a former member of the Client Service Bureau staff, but this advertisement should not be construed as SLC's endorsement of this employee."

Thank you, Debra Kriete for Schools and Libraries Division of USAC.

If you have other issues or concerns to discuss regarding the program, please do not hesitate to contact me. Thanks again for your correspondence.

Guy LoPresti
Associate Manager- Services
SLD/USAC
973)581-6708
glopres@neca.org

EXHIBIT H

Subject: Possible meeting
Date: Mon, 26 Jul 1999 12:09:01 -0500
From: Chris Webber <cwebber@mmind.net>
To: mharcourt@universalservice.org

Matt,

I'm not sure if you remember speaking with me before, but I work for MasterMind Internet Services. We currently have over 170 schools on line. I was a former call center operator in Lawrence. We have hired David Butler from the call center as well. His former position with NCS was at a supervisor/trainer level. We are planning on increasing the number of schools that we have for program year three drastically. We obtain authorization from the schools to complete all of the SLD forms for the schools, and designate myself as a contact person, which ensures that PR or PIA operators can get a live person, no matter what time of year they call. We are EXTREMELY interested in a face to face meeting with you. We would pay for all of our expenses incurred and are only asking for a half day or full day (depending on your schedule) meeting to clarify procedures and rules outlined by the SLD. Additionally, after having dealt with hundreds of school districts, we could inform you of areas that are especially confusing for applicants. For example, there is information posted on the web site that is contrary to other postings on your web site (email is listed both as an internal connection and telecommunication service), that we would be happy to point out. We are looking at the possibility of handing 500-1000 applications for program year three. Please let me know at your earliest convenience.

Thank you,

Chris Webber
Director of Erate Services
MasterMind Internet Services

EXHIBIT I

Subject: Letters of Agency - 470/471
Date: Fri, 10 Sep 1999 10:19:41 -0500
From: Chris Webber <cwebber@mmind.net>
To: ewolfhagen@universalservice.org

Ellen,

As discussed in our meeting, attached are the letters of agency for out potential customers for your review. I appreciate you taking additional time to review these LOA's for us. Please let me know if you have any revisions to suggest.

p.s. - The Holocaust Museum was amazing. I spent the rest of the day there, didn't even get to the Capital. Thanks for the suggestion - very well done.

Chris Webber

470 LOA CW.doc	**Name:** 470 LOA CW.doc **Type:** Microsoft Word Document (application/msword) **Encoding:** base64

471_LOA.doc	**Name:** 471_LOA.doc **Type:** Microsoft Word Document (application/msword) **Encoding:** base64

EXHIBIT J

Subject: RE: Letters of Agency - 470/471
Date: Mon, 13 Sep 1999 10:30:11 -0400
From: "Ellen Wolfhagen" <ewolfhagen@universalservice.org>
To: "Chris Webber" <cwebber@mail.mmind.net>

Chris: So glad you found the Holocaust Museum worthwhile. As to your Letters of Agency, as we discussed, it is inappropriate for MasterMind to file Forms 470 on behalf of school and library applicants, as it gives the appearance that the applicant has a pre-existing relationship with MasterMind which compromises the fair and open quality of the competition that is the subject of the Form 470. The LoA on the Form 471 looks fine. Ellen

-----Original Message-----
From: Chris Webber [mailto:cwebber@mmind.net]
Sent: Friday, September 10, 1999 11:20 AM
To: ewolfhagen@universalservice.org
Subject: Letters of Agency - 470/471

<< File: 470 LOA CW.doc >> << File: 471_LOA.doc >> Ellen,

As discussed in our meeting, attached are the letters of agency for out potential customers for your review. I appreciate you taking additional time to review these LOA's for us. Please let me know if you have any revisions to suggest.

p.s. - The Holocaust Museum was amazing. I spent the rest of the day there, didn't even get to the Capital. Thanks for the suggestion - very well done.

Chris Webber

EXHIBIT K

Form 470 Pitfalls

This document is designed to notify you of some of the common pitfalls experienced in previous funding years as applicants complete FCC Form 470.

Free Service Advisory

The SLD is aware that some vendors have offered price reductions or promotional offers for services in addition to the discounts available from the Schools and Libraries Universal Service Program. We are pleased that vendors are increasing the ability of schools and libraries to acquire the services that they need to make effective use of technology. However, we want to remind applicants and vendors that the value of these price reductions/promotional offers must be applied **before** the vendor submits the bid for the pre-discount cost. The pre-discount cost is the basis upon which funding requests will be made by Form 471 applicants. The value of all price reductions or promotional offers must be deducted from the cost of service to the applicant to establish the applicant's pre-discount cost. In other words, the Universal Service Program "Pre-Discount Cost" that will appear in Columns 8, 9, and 10 of Items 15 and 16 on FCC Form 471 must take into account all vendor price reductions.

For example, if a vendor informs an applicant that its best regular price is $100, but that it will also offer the applicant a 20% price reduction, then the pre-discount cost to be included on Form 471 is $80. The applicant's universal service discount will be applied to this $80 pre-discount cost. The vendor and applicant **cannot** use the $100 price as the pre-discount cost to be used for computing the Schools and Libraries Universal Service Program funding, and then have the vendor convey the additional 20% price reduction to the applicant's non-discounted portion of the cost. In other words, all vendor discounts must be reflected in the competitive bid price offered in response to a Form 470 posting. The SLD will be reviewing applications to assure that the FCC rules on competitive bids and lowest corresponding price are complied with fully. If the SLD determines that a request in Column 10 of Items 15 or 16 features a pre-discount cost where the value of vendor price reductions/promotional offers has not already been deducted, the SLD will deny the request for such services.

What Exactly is "Most Cost Effective?"

We also want to remind all Form 471 applicants that when examining their bids for eligible services, the applicant must select the most cost-effective bid. This means that the price should be the primary factor, but does not have to be the sole factor, in evaluating the bids. Other relevant factors may include: prior experience including past performance; personnel qualifications including technical excellence; management capability including schedule compliance, and environmental objectives. The value or price competitiveness of services or products that are ineligible for universal service discounts **cannot** be factored into the evaluation of the most cost-effective supplier of eligible services.

For example, Vendor A offers a price for eligible services of $1,000. Vendor B offers a price for the same services for $1,200 dollars, but this price also includes ineligible services valued at $300 in that price (at no additional cost to the applicant). The value of this "free" software or hardware cannot be factored into the evaluation of the most cost-effective supplier of eligible services. All other things being equal, Vendor A is offering the most cost-effective bid for services eligible for a universal service discount.

Completing FCC Form 470

Many service providers offer to complete the E-rate forms for their clients. It is important to remember that applicants, and **only** applicants can complete the Form 470. The SLD views the completion of Forms 470 by service providers to be a violation of the competitive bidding requirements of the program, as it appears that the applicant has a pre-existing relationship with the vendor, which compromises the open and fair quality of the competition that is the subject of the Form 470. As a result, ~~and thus~~ those Forms signed by vendor representatives will be ~~are~~ rejected.

EXHIBIT L

Subject: 470 Process
Date: Mon, 27 Sep 1999 10:54:22 -0500
From: Chris Webber <cwebber@mmind.net>
To: ewolfhagen@universalservice.org
CC: kwatt@mmind.net, rgates@mmind.net

Ellen,

I have a question about the process of filing the 470 form. The instructions from the "Train the Trainer" session in Chicago state: "It is important to remember that applicants, and only applicants, can complete the Form 470. The SLD views the completion of Forms 470 by service providers to be a violation of the competitive bidding requirements of the program... **As a result, those Forms signed by vendor representatives will be rejected**" (emphasis added).

Can MasterMind post the Form 470 to the SLD's web site, once the information to be included on the form has been presented to us by the school and the school has expressly designated MasterMind to do so? The authorized person from the school will sign the 470; MasterMind will not sign this form for an applicant. Additionally, the contact person listed on the Form 470 will be the designated representative from the school (not an employee of MasterMind). I just want to make sure that I am reading the instructions correctly, that the only disallowed action by vendors, that will result in the rejection of the form 470, is the signing of the form 470 by a vendor representative, as per the SLD's new instructions distributed at the "Train the Trainer" session in Chicago.

Thank you for your clarification,

Chris Webber

EXHIBIT M

Subject: RE: 470 Process
Date: Wed, 13 Oct 1999 17:47:02 -0400
From: "Ellen Wolfhagen" <ewolfhagen@universalservice.org>
To: "Chris Webber" <cwebber@mail.mmind.net>
CC: <kwatt@mail.mmind.net>, <rgates@mail.mmind.net>

Chris: I think you are generally on the right track, however, it is not just the signing of the Form 470 we check. We are also looking to be sure that the RFP and responses to the posting are not being funneled through a vendor. Again, the reasoning is that having to respond to a vendor or through a vendor gives the appearance of bias and a compromised competitive procurement.

Ellen Wolfhagen
Counsel
USAC/Schools and Libraries Division

-----Original Message-----
From: Chris Webber [mailto:cwebber@mmind.net]
Sent: Monday, September 27, 1999 11:54 AM
To: ewolfhagen@universalservice.org
Cc: kwatt@mmind.net; rgates@mmind.net
Subject: 470 Process

Ellen,

I have a question about the process of filing the 470 form. The instructions from the “Train the Trainer” session in Chicago state: “It is important to remember that applicants, and only applicants, can complete the Form 470. The SLD views the completion of Forms 470 by service providers to be a violation of the competitive bidding requirements of the program… **As a result, those Forms signed by vendor representatives will be rejected**” (emphasis added).

Can MasterMind post the Form 470 to the SLD’s web site, once the information to be included on the form has been presented to us by the school and the school has expressly designated MasterMind to do so? The authorized person from the school will sign the 470; MasterMind will not sign this form for an applicant. Additionally, the contact person listed on the Form 470 will be the designated representative from the school (not an employee of MasterMind). I just want to make sure that I am reading the instructions correctly, that the only disallowed action by vendors, that will result in the rejection of the form 470, is the signing of the form 470 by a vendor representative, as per the SLD’s new instructions distributed at the “Train the Trainer” session in Chicago.

Thank you for your clarification,

EXHIBIT N

Subject: Answer to Your Question
Date: Mon, 22 Nov 1999 18:16:32 -0500
From: "Ellen Wolfhagen" <ewolfhagen@universalservice.org>
To: <cwebber@mail.mmind.net>

Chris:

Thank you for submitting your question. I want to be very clear, but I am also concerned about giving the impression that I am approving or somehow accepting MasterMind's practices. Given that, let me state that although I believe MasterMind may at this point be in literal compliance with program rules, I have become aware of some practices in Year 3 which raise significant concerns on the part of SLD. Those practices include, but are not limited to, the following:

1) MasterMind may indeed "complete" the Form 470, if by complete you mean fill in the information SUPPLIED by the school. I am aware of serveral instances in Year 3 where the school/district was not aware of the filing until AFTER the Form 470 was posted. As I sure you understand, Chris, through our various communications, it is necessary for MasterMind to have its Letter of Agency on file BEFORE filing out the Form 470.
2) I have also seen some Form 470s that are very unclear about the type or quantity of services being requested. Again, as you know, the purpose of the Form 470 is to solicit bids; if the Form itself is unclear as to what is being requested, how can vendors make a meaningful response?
3) I know that you have put in a request for entity numbers from Year 2 Forms 471, from the Client Service Bureau. I am troubled by this request for two reasons; one, as you are well aware, our resources are limited and I don't believe this is an appropriate use of those resources and two, because again there is the appearance that the entities are not involved with you in this whole process. Before SLD will consider fulfilling this request, we need to have a better understanding of the intended use of this information.

I appreciate the opportunity, Chris, to work with MasterMind to be sure that both our goals are met: that you get the business you want and that all your applications are in full compliance with program rules. I think that if there are further questions or concerns on your part, perhaps we should set up a meeting in Washington, D.C. That would give us an opportunity, like we had last August, to really discuss all the ramifications of the rules and the actions you are taking.

Ellen Wolfhagen
Counsel
Schools and Libraries Division/USAC