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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 6, 2001

Magalie Salas
Secretary
Federal Communications Commission
445 12th Street SW
Room TW-A325
Washington, DC 20554

RE: In the Matter of Request for Review of the Decision of the Universal Service Administrator by Fairfax County Public Schools Under FCC Docket Nos. 97-21 and 96-45

Dear Ms. Salas:

Enclosed please find the original and four copies of the Request for Review of the Fairfax County Public Schools in the above-referenced matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Orin R. Heend", is written over a horizontal line.

Orin R. Heend

Funds For Learning
2111 Wilson Blvd. #700
Arlington, VA 22201

No. of Copies rec'd 014
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

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| | | |
|--|---|---------------------|
| In the Matter of: |) | |
| |) | |
| Request for Review of the |) | |
| Decision of the |) | |
| Universal Service Administrator by |) | |
| |) | |
| Fairfax County Public Schools |) | 471 App. No. 266045 |
| Fairfax, VA |) | |
| |) | |
| 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. |) | |

To: The Commission
Chief, Common Carrier Bureau

REQUEST FOR REVIEW

Fairfax County Public Schools (“FCPS” or “School District”), by its representative, hereby seeks review of the determination of the Schools and Library Division of the Universal Service Administrative Company (“SLD”), dated August 7, 2001, reducing the School District’s request for universal service support in Funding Request No. 663320.

Facts

FCPS requested twelve months worth of E-rate support for long distance telephone service under its contract with AT&T. (Block 5 Funding Request, Attachment A). However, the SLD awarded FCPS support for only three months worth of service, claiming that it was approving the FRN as submitted. (See Funding Commitment Decision Letter, Attachment A).

FCPS awarded the contract to AT&T on February 22, 1999. The contract has an ultimate expiration date of September 18, 2003. (This date was corrected in Block 5 during the review process). There is no dispute that the contract is E-rate eligible, and that the FCPS may exercise its options to extend the contract through September 18, 2003 without any further competitive bidding either through its own procurement or the Form 470 process.

Although the SLD failed to offer any explanation for its decision to reduce the FRN, we will speculate that it was because one term of the contract expired in September 2001. At the time FCPS filed its Form 471, it fully intended to exercise its option to renew, and indeed in June of this year, before the funding year even started, it did just that.

Discussion

For purposes of this appeal, we have no choice but to assume what the SLD's position is, as the SLD failed to include it in its decision. Because of this fundamental error, and because it renders an effective appeal of the decision impossible, we request that the Commission remand this FRN to the SLD with instructions to explain its underlying rationale.

We will assume that the SLD's position is that it cannot grant funding for service to be provided after a contract's technical expiration date. Period. In the context of the application process, such a hard and fast rule does not make sense. Indeed, the SLD's own rules with respect to master contracts that expire during the funding year proves this point. (Attachment C)

The contracting facts here are not unusual. The applicant must file a Form 471 in the fall/winter of the year preceding the beginning of the funding year for which it is applying for discounts. The applicant has an E-rate eligible, multi-year contract with a term that will not expire until the middle of that funding year. The applicant's contract permits it to exercise unilaterally an option to renew the contract for at least another term,

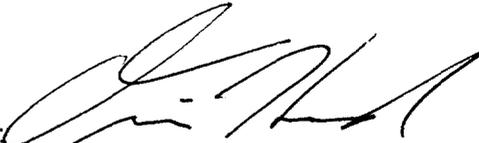
which will take the contract past the end date of the funding year for which the applicant is applying for support. The applicant fully expects to exercise its option, but it cannot do so for sound legal, administrative, or economic reasons so far in advance. Thus, the applicant applies for the twelve months worth of support under the contract that it has every reason to expect (and no reason not to expect) will be in place throughout the applicable funding year.

In these circumstances, the applicant, like FCPS here, has a legally binding contract with the service provider at the time it files its Form 471. Further, it has the right to *legally bind* the service provider to the terms of the contract for which it is applying for support *through the end of the funding year*. Under these circumstances, it certainly would appear that contracting facts comply with the spirit and objectives of the rules, even if one were to conclude that they do not do so literally. To work effectively, the E-rate application process has been required to bend repeatedly to accommodate real world practices. Although we believe that no such bending is required here, if indeed it is, we submit that it will help the program to operate more efficiently and benefit all of the E-rate stakeholders.

REQUESTED RELIEF

For these reasons, the School District requests that the SLD's funding decision in FRN 663320 be remanded to the SLD with directions either to explain the underlying rationale for its decision or to issue an amended FRN for the full amount of funding originally requested.

Respectfully submitted on behalf of
FAIRFAX COUNTY PUBLIC SCHOOLS

By: 
Orin R. Heend

Funds For Learning, LLC
2111 Wilson Blvd. Suite 700
Arlington, VA 22201
703-351-5070

cc: Deborah Sansone
IT Business Specialist
Fairfax County Public Schools
4107 Whitacre Road, Rm. V-26
Fairfax, VA 22032

A

Entity Number 0000126423 Applicant's Form Identifier FCPS-PY4-471-02
 Contact Person Deborah Sansone Phone Number (703) 426-8863

Block 5: Discount Funding Request(s) Block 5, page 1 of 8
 Instructions: Use one Block 5 page for EACH service (Funding Request Number) for which you are requesting discounts.
 Make as many copies of this page as necessary, and number the completed pages to assure that they are all processed correctly.

FRN # _____ (to be assigned by administrator)

| | |
|--|---|
| 11 Category of Service (only ONE category should be checked) <input checked="" type="radio"/> Telecommunications Service <input type="radio"/> Internet Access <input type="radio"/> Internal Connections | 15 Contract Number (if available; use "T" if tariffed services, "MTM" if month-to-month services as described in Instructions) RQ980000861 |
| | 16 Billing Account Number (e.g., billed telephone number) 8800-001-4253 |
| 12 Form 470 Application Number (15 digits) 360260000149494 | 17 Allowable Vendor Selection/Contract Date (mm/dd/yyyy) (based on Form 470 filing) 02/22/1999 |
| 13 SPIN - Service Provider Identification Number (9 digits) 143001192 | 18 Contract Award Date (mm/dd/yyyy) 02/23/1999 |
| | 19a Service Start Date (mm/dd/yyyy) 07/01/2001 |
| | 19b Service End Date (mm/dd/yyyy) (use only for "T" or "MTM" services) |
| 14 Service Provider Name AT&T Corp. | 20 Contract Expiration Date (mm/dd/yyyy) 09/18/2005 |

21 Description of This Service: You MUST attach a description of the service, including a breakdown of components and costs, plus any relevant brand names. Label this description with an Attachment #, and note number in space provided below.
 Attachment # 1

22 Entity/Entities Receiving This Service:
 a. If the service is site-specific (provided to one site and not shared by others), list the Entity Number of the entity from Block 4 receiving this service : _____
 b. If the service is shared by all entities on a Block 4 worksheet, list the worksheet number (e.g., A-1): A-1

| 23 Calculations | | | | | | | | | | |
|---|---|--|--|--|--|---|---|---|-------------------------------------|---------------------------------------|
| Recurring Charges | | | | | Non-Recurring Charges | | | Total Charges | | |
| A | B | C | D | E | F | G | H | I | J | K |
| Monthly \$ charges (total amount per month for service) | How much of the \$ amount in (A) is ineligible? | Eligible monthly pre-discount amount (A minus B) | # of months service provided in program year | Annual pre-discount \$ amount for eligible recurring charges (C x D) | Annual non-recurring (one-time) \$ charges | How much of the \$ amount in (F) is ineligible? | Annual eligible pre-discount \$ amount for one-time charges (F minus G) | Total program year pre-discount \$ amount (E + H) | % discount (from Block 4 Worksheet) | Funding Commitment \$ Request (I x J) |
| \$18,433.00 | \$8,744.00 | \$9,689.00 | 12 | \$116,268.00 | \$0.00 | \$0.00 | \$0.00 | \$116,268.00 | 46% | \$53,483.28 |

Attachment A
Page 1 of 1

B

Attachment B

Page 1 of 1
FUNDING COMMITMENT REPORT

Form 471 Application Number: 266045
Funding Request Number: 673744 Funding Status: Funded
Services Ordered: Telecommunications Service
SPIN: 143001192 Service Provider Name: AT&T Corp.
Contract Number: RQ980000861
Billing Account Number: 8800-001-4253
Earliest Possible Effective Date of Discount: 07/01/2001
Contract Expiration Date: 09/18/2001
Pre-Discount Amount: \$29,067.00
Discount Percentage Approved by the SLD: 46%
Funding Commitment Decision: \$13,370.82 - ERN approved as submitted

Funding Request Number: 673750 Funding Status: Not Funded
Services Ordered: Telecommunications Service
SPIN: 143000904 Service Provider Name: Nextel Communications of Mid-?
Contract Number: MTM
Billing Account Number: 0012073270-6
Earliest Possible Effective Date of Discount: 07/01/2001
Contract Expiration Date: 06/30/2002
Pre-Discount Amount: \$192,000.00
Discount Percentage Approved by the SLD: N/A
Funding Commitment Decision: \$0.00 - Incl. svcs./ or product(s)
Funding Commitment Decision Explanation: 30% or more of this ERN includes a request for cellular service for Technology Specialists which are ineligible to receive service(s) based on program rules.

Funding Request Number: 673756 Funding Status: Funded
Services Ordered: Telecommunications Service
SPIN: 143000196 Service Provider Name: Southwestern Bell Mobile Syst
Contract Number: RQ0035869239A
Billing Account Number: 914228374
Earliest Possible Effective Date of Discount: 07/01/2001
Contract Expiration Date: 06/30/2004
Pre-Discount Amount: \$365,062.56
Discount Percentage Approved by the SLD: 46%
Funding Commitment Decision: \$167,928.78 - ERN approved as submitted
Funding Commitment Decision Explanation: The estimated one-time and/or monthly charge was changed to reflect the documentation provided by the applicant.

Funding Request Number: 673767 Funding Status: Funded
Services Ordered: Telecommunications Service
SPIN: 143001422 Service Provider Name: Verizon-Virginia, Inc.
Contract Number: PC98127082
Billing Account Number: 118768358419295105
Earliest Possible Effective Date of Discount: 07/01/2001
Contract Expiration Date: 03/24/2002
Pre-Discount Amount: \$36,675.00
Discount Percentage Approved by the SLD: 46%
Funding Commitment Decision: \$16,870.50 - ERN approved as submitted



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Reference Area

State Replacement Contracts

State Master Contracts are those contracts which are competitively bid and put in place by an entity of state government for use by others. If you are using or intend to use a state Master Contract for E-rate eligible services and the Master Contract expires before June 30 of the Funding Year for which you are applying for discounts, you may be eligible for E-rate discounts for the full funding year. However, you must follow the appropriate state replacement contract procedure described below.

A state Master Contract may expire BEFORE the start of the Funding Year for which you are applying for discounts. In this first situation, your state intends to select a service provider as part of a competitive bidding process to provide services under a new state Master Contract, but that process has not been completed and you are not yet sure who that service provider will be (Situation A below).

A state Master Contract may expire DURING the Funding Year for which you are applying for discounts. In this second situation, the current service provider will provide services during part of the Funding Year under that state Master Contract, but your state intends to select a service provider as part of a competitive bidding process to provide services under a new state Master Contract during the remainder of the Funding Year. Again, that process has not been completed and you are not yet sure who the new service provider will be (Situation B below).

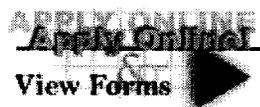
If the state Master Contract expires **BEFORE July 1 of the Funding Year for which you are applying (BEFORE the Funding Year)** please follow the directions under **Situation A** below.

If the state Master Contract expires **BETWEEN July 1 and June 30 of the Funding Year for which you are applying (DURING the Funding Year)**, please follow the directions under **Situation B** below.

Situation A. State Master Contracts expiring before the Funding Year:

1. The Billed Entity must fill out a Form 471 Block 5 Funding Request covering the REPLACEMENT Master Contract, using

- How to Apply
- Service Providers
- Reference Area
- SLD Forms
- Funding Commitments
- Site Map



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- Item 12: use the establishing Form 470 number for the expiring Master Contract.
- Item 13: use SPIN number 143999999.
- Item 14: use STATE REPLACEMENT CONTRACT as the Service Provider name. (Although a commitment of funds can be made towards the State Replacement Contract, no funds will be authorized for disbursement until there has been a SPIN change; see Step 3, below.)
- Item 15: use "SRC" as the prefix in front of the expiring Master Contract number. (For example, if the expiring Master Contract number is WNT-98-005, use the number SRCWNT-98-005 as the contract number.)
- Item 16: use the same Billing Account Number (if applicable) as used for the expiring Master Contract.
- Item 17: the Allowable Vendor Selection/Contract Date will be pre-populated by the system (it will be related to the Form 470 number that was used in Item 12.) Manual filers may leave this item blank.
- Item 18: the Contract Award Date should be the day AFTER the expiration of the expiring Master Contract.
- Item 19a: the Service Start Date should be July 1 of the Funding Year.
- Item 20: the Contract Expiration Date will be the end of the Funding Year. (You will reflect the true expiration date of the replacement contract on your subsequent Funding Year Form 471.)
- Item 21: submit a copy of the expiring Master Contract as the attachment for Description of Service.
- Item 22: indicate the entities that will receive this service under the replacement Master Contract.
- Item 23: For both recurring charges and one-time charges, the funding commitment will be limited to charges contained in the expiring Master Contract. That means, the monthly charges MUST be no greater than what is contained in the expiring Master Contract. (If the replacement Master Contract charges are different, they can be reflected in Forms 471 filed in subsequent years.)

- If there was no provision for one-time charges under the expiring Master Contract, but there is such a provision in the replacement Master Contract, there can be no claim for one-time charges under the replacement Master Contract for this Funding Year. (You may claim one-time charges incurred in subsequent program years in Forms 471 filed in those subsequent years.)
2. When the state is ready to begin the competitive procurement process for the replacement Master Contract, the state entity negotiating the replacement Master Contract will be required to file a Form 470 (and have it posted for a minimum of 28 days prior to signing the replacement contract). If the state does NOT file the Form 470, however, you will NOT be eligible for discounts for the replacement Master Contract for the program year.
 3. After the state replacement Master Contract has been signed, you must request a SPIN change (replacing the service provider designation "State Replacement Contract" with the name of the actual vendor who has been awarded the replacement Master Contract) by marking up the relevant pages from your Funding Commitment Decision Letter (FCDL). On your FCDL you must indicate:
 - the appropriate Funding Request Number (FRN);
 - the actual service provider name;
 - the actual service provider's SPIN;
 - the state entity's Form 470 Application Number which was filed for the replacement Master Contract;
 - the replacement contract number; and
 - the ACTUAL expiration date of the replacement contract.
 4. You must SIGN and date the marked up page(s) of the FCDL. Return it to the SLD by mail express delivery to SLD, State Replacement Contracts, P.O. Box 300, 80 South Jefferson Road, Whippany, NJ 07981.
 5. You will receive notice when the SPIN change has been made.
 6. Once you receive notification that the SPIN change has been made, you can submit a Form 486 for this FRN(s) using the replacement Master Contract information.
 7. In subsequent program years when you file a Form 471, you will reference the state entity's Form 470 application number

as the establishing Form 470 for this replacement Master Contract.

Situation B. State Master Contracts expiring DURING the Funding Year

In this case, the Billed Entity must fill out two Form 471 Block 5 Funding Requests. You must put your Funding Request(s) for the expiring Master Contract and the replacement Master Contract on the SAME Form 471.

1. For EACH Funding Request that you have under an expiring Master Contract, fill out one Block 5 covering the EXPIRING Master Contract.
2. For EACH Funding Request that you have under an expiring Master Contract, fill out an additional Block 5 Funding Request covering the REPLACEMENT Master Contract, using the instructions below:
 - Item 12: use the establishing Form 470 number for the expiring Master Contract.
 - Item 13: use SPIN number 143999999.
 - Item 14: use STATE REPLACEMENT CONTRACT as the Service Provider name. (Although a commitment of funds can be made towards the State Replacement Contract, no funds will be authorized for disbursement until there has been a SPIN change; see Step 4, below.)
 - Item 15: use "SRC" as the prefix in front of the expiring Master Contract number. (For example, if the expiring Master Contract number is WNT-98-005, use the number SRCWNT-98-005 as the contract number.)
 - Item 16: use the same Billing Account number (if applicable) as used for the expiring Master Contract.
 - Item 17: the Allowable Vendor Selection/Contract Date will be pre-populated by the system (it will be related to the Form 470 number that was used in Item 12.) Manual filers may leave this Item blank.
 - Item 18: the Contract Award Date should be the day AFTER the expiration of the expiring Master Contract.
 - Item 19a: the Service Start Date should be the day AFTER the expiration of the expiring Master Contract.
 - Item 20: the Contract Expiration Date will be the end of the Funding Year (You can reflect the true expiration

date of the replacement contract or your subsequent year Form 471.)

- o Item 21: submit the Description of Service used for the expiring Master Contract as the attachment for Description of Service.
 - o Item 22: indicate the entities that will receive this service under the replacement Master Contract.
 - o Item 23: For both recurring charges and one-time charges, the funding commitment will be limited to charges contained in the expiring Master Contract. That means, the monthly charges MUST be no greater than what is contained in the expiring Master Contract. (If the replacement Master Contract charges are different, they can be reflected in Forms 471 filed in subsequent years.)
 - o If there was no provision for one-time charges under the expiring Master Contract or you will not be incurring one-time charges under the expiring Master Contract during the Funding Year, but there is a provision for one-time charges under the replacement Master Contract, there can be no claim for one-time charges under the replacement Master Contract for this filing year. (You may claim one-time charges incurred in subsequent program years in Forms 471 filed in those subsequent years.)
3. When the state is ready to begin the competitive procurement process for the replacement Master Contract, the state entity negotiating the replacement Master Contract will be required to file a Form 470 (and have it posted for a minimum of 28 days prior to signing the replacement contract). If the state does NOT file the Form 470, however, you will NOT be eligible for discounts for the replacement Master Contract for the remaining portion of the Funding Year.
 4. After the state replacement Master Contract has been signed, you must request a SPIN change (replacing the service provider designation "State Replacement Contract" with the name of the actual vendor who has been awarded the replacement Master Contract) by marking up the relevant pages from your Funding Commitment Decision Letter (FCDL). On your FCDL you must indicate:
 - o the appropriate Funding Request Number (FRN);
 - o the actual service provider name;
 - o the actual service provider's SPIN;

- o the state entity's Form 470 application number which was filed for the replacement Master Contract;
 - o the replacement contract number and
 - o the ACTUAL expiration date of the replacement contract.
5. You must SIGN and date the marked up page(s) of the FCDL. Return it to the SLD by mail or express delivery to (SLD, State Replacement Contracts, P.O. Box 300, 80 South Jefferson Road, Whippany, NJ 07981).
 6. You will receive notice when the SPIN change has been made.
 7. Once you receive notification that the SPIN change has been made, you can submit a Form 486 for this FRN(s) using the replacement Master Contract information.
 8. In subsequent program years when you file a Form 471, you will reference the state entity's Form 470 application number as the establishing Form 470 for this replacement Master Contract.

**Go back to
Previous Page**

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Page 6 of 6

Attachment C