Before the
Federal Communications Commission
Washington, D.C.

In the Matter of:

Petition for Reconsideration of a Decision of the Telecommunications Access Policy Division by Dickenson County Schools, Virginia	)	DA 02-1212
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Changes to the Board of Directors Of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

In accordance with CFR Title 47 Part 1, Section 1.106, Dickenson County Public Schools, Clintwood, Virginia petitions the Wireline Competition Bureau (WCB) to reconsider a decision of the Telecommunications Access Policy Division (TAP). In the alternative, to the extent that issues raised in this petition require full Commission review, we ask that this Petition for Reconsideration be forwarded to the full Commission under provisions in this section.

Background

Dickenson County applied for Universal Service (E-Rate) discounts under the Schools and Libraries program for Year Four. Two of the discount funding requests were denied because the Schools and Libraries Division SLD determined that the contact person listed on our Form 470 was also a representative of a vendor selected by Dickenson to provide internal connection services and included in our Form 471 discount funding application. We appealed to the SLD and were denied. We then appealed to the

Common Carrier Bureau and were denied on May 22, 2002.[1] We now submit this Petition for Reconsideration to the WCB.

Pleadings

In our Application for Review, we asked the Common Carrier Bureau to overturn the SLD decision on the grounds that the Commission's Mastermind Decision was interpreted too broadly.[2] In its decision, the TAP disagreed in that the Mastermind decision as articulated by the Commission was properly administered in the Dickenson denial. The TAP declined to revisit the Mastermind decision because it lacked authority to alter a full Commission decision.[3]

As we expressed in our Application for Review, the Mastermind decision addressed questionable practices of a vendor during the Form 470 posting period and contract selection process. The Commission ruled that Forms 470 listing a MasterMind employee as contact person were defective.[4] Further, the Commission found that "…an applicant violates the Commission's competitive bidding requirements when it surrenders control of the bidding process to a service provider that participates in the bidding process." [5]

To the extent that the contact person on the Form 470 participates in the bidding process is a clear violation of program rules resulting in a defective Form 470. However, because telecommunications services can only be provided by telecommunications common carriers and the Form 470 is segregated into three categories of service, we believe that in the limited instances where a service provider listed as contact on the

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[1] Order by Telecommunications Access Policy Division DA 02-1212, Adopted May 21, 2002.
[2] Dickenson County Application for Review dated February 14, 2002, at 3 through 7.
[3] TAP Order at 9.
[4] Federal Communications Order in MasterMind Request for Review FCC 00-167, (2000) at 9.

Form 470 is not representing a common carrier, the telecommunications services portion of the Form 470 should not be invalidated. We note that the Commission provides clarifying language in the MasterMind order: "…when an applicant delegates that power to an entity that also will participate in the bidding process as a ***prospective service provider*** (emphasis added), the applicant irreparably impairs its ability to hold a fair and open competitive bidding process."[6] Throughout the MasterMind Order, the Commission emphasizes links between the contact person and the bidding process. Even in cases where the contact person represents a vendor that is not awarded a contract, the Commission held that "…a prospective bidder may choose not to participate in a competitive bidding process if it believes that the bidding will not be conducted in an open and fair manner, given that another bidder is serving as the contact person."[7] Here again the Commission reiterates the connection between the contact person and a prospective bidder. The contact person listed on our Form 470 could not have been a bidder for telecommunications services, and therefore had no predisposition to influence the selection process.

As noted in our Request for Review we noted that Thomas Educational Consulting Inc. (TECI) was "…incapable of bidding on the local and long distance portions of our request because TECI was not a telecommunications "common carrier" and was only eligible to provide internal connections."[8] Thus, as a matter of law, TECI could not bid on telecommunications services and could not possibly be "another bidder" or "prospective service provider" for our telecommunications service request. We feel

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[5] FCC 00-167 at 10.
[6] FCC 00-167 at 10.
[7] FCC 00-167 at 11.
[8] Dickenson County Application for Review at 8.

there is sufficient ambiguity in the Order language and circumstances surrounding our denial to warrant review of the TAP decision.

While we acknowledge we erred by allowing a person connected with a prospective bidder of internal connections services to be listed as contact person on our Form 470, our relationship with Mr. Lovelace was that of client and consultant, as he assisted us with the very complex E-Rate process. We reemphasize the fact that, despite the appearance of impropriety, Dickenson County never relegated the vendor selection process to Mr. Lovelace or TECI. We received the bids, we evaluated them and we made the final selection.

Dickenson County has a relatively high discount rate of 79 percent and has received E-Rate funding commitments of $61,411.15 in Year Two, $117,608.40 in Year Three, $60,359.52 in Year Four, and $85,386.36 thus far in Year Five. Our year one Form 471 was lost in Kansas and to date has not been located. Ongoing E-Rate discounts are vital for support of telephone and Internet services for our students and teachers at nine Dickenson County schools. As we stressed in our Request for Review, asked for discounts on essential services at state contract rates, or rates negotiated in good faith. Review of our Form 471 and attached paperwork would show that we did not attempt to defraud the program, waste program resources, or abuse the program.

Prevention of Waste, Fraud, and Abuse

Dickenson County very much supports prevention of waste, fraud, and abuse with E-Rate program resources. We realize that if fraudulent and wasteful practices by vendors and applicants could lead to tighter regulatory controls or even the demise of this important program. We support Commission efforts to eliminate E-Rate abuse with the

recent Notice of Proposed Rule Making and comment opportunity. We also agree that naming a contact person associated with a bidder of an internal connection vendor could leave the impression of impropriety and concede that resulting E-Rate discount requests for internal connections should be denied under the MasterMind decision. We ask however that the entire Form 470 not be disqualified, but rather only the category of service request that the vendor was authorized to perform – in this case, internal connections.

While we recognize that waste, fraud, and abuse by applicants and vendors is a significant concern at the Commission and we applaud efforts to curb such abuse, we are wary of attempting to control such abuses with incremental minor changes in program regulations and policies, leading to even more complexity in an already overly burdensome program. As numerous commentors in the recent NPRM pleaded, the E-Rate application process must be made simpler for applicants.[9]

We understand that the Commission, the SLD, and other governmental law enforcement agencies are currently investigating certain applicants and vendors for possible criminal violations of E-Rate regulations.[10] We hope these investigations lead to criminal prosecution, large fines, and possible incarceration for the guilty parties. We also hope that new E-Rate regulations adopted by the Commission resulting from the NPRM will decrease waste, fraud, and abuse while making the program simpler for small applicants such as us. We do caution however, that even with new restrictions imposed on the bidding process through the MasterMind decision and other regulations and policies designed to curb program abuses, the lure of windfall profits for vendors or

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[9] See comments under FCC proceeding 02-6

[10] Schools & Libraries Committee Minutes - October 22, 2001, January 23, 2002

extravagant funding for applicants is strong enticement for unscrupulous vendors or greedy applicants. As a relatively high discount applicant, we are continually approached by vendors – including well known national companies – with schemes to substantially increase our E-Rate funding or to receive effectively free services using their systems which, according to them, comply with E-Rate regulations and policies. Those that wish to circumvent the MasterMind decision have already devised new ways to abuse the program, leaving legitimate applicants with more regulatory hurdles and greater possibility of rejection or denial for simple technical reasons.

Conclusion

We have resisted the temptation of asking for more than our fair share of funding and are thankful that a program such as E-Rate does exist to provide needed subsidies to schools and libraries. We appreciate the funding we have received thus far through this program. The funding under consideration with this petition constitutes only our local and long distance telephone service and is provided at rates negotiated by the Commonwealth of Virginia. We ask the Commission to grant this Petition for Reconsideration for the limited interpretation of the MasterMind decision enumerated above and remand our Form 471 application to SLD for processing of our local and long distance discount request. Alternatively, should the Commission choose not to grant our request, we ask for a waiver of FCC regulations to serve the public interest.

Restectfully Submitted this thirtieth day of May, 2002,

David C. Yates

Technology Coordinator