

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
)  
Consolidated Request for Review by ) CC Docket No. 02-6  
Send Technologies, LLC of )  
Decisions of Universal Service Administrator )  
Regarding Union Parish School Board )  
)

To: The Commission

**CONSOLIDATED REQUEST FOR REVIEW**

Send Technologies, LLC (“Send”), through counsel, and pursuant to Section 54.719(c) of the Commission’s rules,<sup>1</sup> hereby submits this Consolidated Request for Review (“Request for Review”) seeking reversal of two decisions of the Administrator of the Universal Service Administrative Company (“USAC”), issued on January 20, 2004.<sup>2</sup> These decisions upheld two Commitment Adjustment Letters (“CALs”) issued by USAC’s Schools & Libraries Division (“SLD”) on January 31, 2003 to Send and Union Parish School Board located in Farmerville, Louisiana (“Union Parish”) which sought to rescind \$185,610.00 in E-rate funding granted to Union Parish in August of 2000 and August of 2001.<sup>3</sup>

As further explained below, this Consolidated Appeal relates to another appeal already pending before the Commission (“December Appeal”) concerning three other almost identical CALs the SLD also issued to Send and Union Parish on January 31, 2003 seeking to rescind E-rate

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<sup>1</sup> 47 C.F.R. § 54.719(c).

<sup>2</sup> Letters from the Universal Service Administrative Company to Mark Stevenson, President, Send Technologies, LLC regarding Union Parish School Board (Jan. 20, 2004) (“*Administrator’s Decision on Appeal*”), attached hereto as Exhibit A.

<sup>3</sup> Specific information regarding the two CALs at issue in this Consolidated Appeal is as follows: (1) FRN: 175066, Funding Year: 1999-2000, Form 471 Application Number: 121741, Billed Entity Number: 139313, filed on January 22, 1999, granted by the SLD on August 28, 2000, CAL issued January 31, 2003 rescinding \$126,360.00; and (2) FRN: 594052, Funding Year: 2001-2002, Form 471 Application Number: 229706, Billed Entity Number: 139313, filed on December 5, 2000, granted by the SLD on August 7, 2001, CAL issued January 31, 2003 rescinding \$59,250.00.

funding to Union Parish in excess of \$167,000.00.<sup>4</sup> Given that the Consolidated Appeal and December Appeal (“Appeals”) pertain to the same parties, underlying facts and history, and legal and policy arguments, all information and arguments set forth in the December Appeal are hereby incorporated into this Consolidated Appeal. A copy of the December Appeal is attached as Exhibit B.<sup>5</sup> Send also believes it is most appropriate for the Commission to consider the Appeals together, on the same time-line as the December Appeal. If consideration of the December Appeal would be delayed by combining it with this Consolidated Appeal, Send requests that they remain bifurcated.

As discussed in the December Appeal, and as highlighted herein, the Commission should overturn USAC’s decisions with respect to Union Parish, and direct it to withdraw the CALs because: (1) there was no prohibited conflict of interest under applicable law that compromised Union Parish’s competitive bidding process; (2) Union Parish complied with the letter and spirit of all applicable competitive bidding rules and the intent underlying such rules; (3) later-adopted Commission precedent regarding the competitive bidding rules, including the *MasterMind* cases, is inapplicable to Union Parish’s granted applications and involves easily distinguishable facts; (4) the SLD and USAC exceeded their authority when they interpreted current Commission precedent regarding the competitive bidding rules and retroactively applied such interpretations to Union Parish’s E-rate applications; and (5) USAC exceeded its authority when it justified its actions in the Union Parish case by relying on Part 48 regulations that are wholly inapplicable to the E-rate Program. If the Commission determines that it cannot overturn USAC’s decisions based upon the foregoing, then the competitive bidding rules should be waived in this case. The harm resulting

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<sup>4</sup> Filing information regarding the three CALs at issue in the December Appeal is as follows: (1) Funding Year: 1999-2000, Form 471 Application Number: 119672, Billed Entity Number: 139313, FRN: 171021, rescission of \$23,124.00; (2) Funding Year: 2000-2001, Form 471 Application Number: 160965, Billed Entity Number: 139313, FRN: 385823, rescission of \$63,000.00; and (3) Funding Year: 2000-2001, Form 471 Application Number: 163210, Billed Entity Number: 139313, FRN: 405241, rescission of \$80,900.40.

<sup>5</sup> Consolidated Request for Review by Send Technologies, LLC of Decisions of Universal Service Administrator Regarding Union Parish School Board, CC Docket No. 02-6 (filed Dec. 16, 2003) (“December Appeal”).

from rescinding the monies allocated to Union Parish and Send far outweigh any purported benefit in denying the waiver.

**I. BACKGROUND.<sup>6</sup>**

As explained in greater detail in the December Appeal, Union Parish filed multiple applications in 1999 and 2000 for funding for Internet access and internal connections and related installation and technical support offered through the E-rate Program for funding years 1999-2001. The Technology Systems Administrator for Union Parish, Tom Snell, was listed as the contact person on Union Parish's Form 470 applications. Snell holds a fifteen percent minority, non-controlling unitholder interest in Send. Snell is not now, nor has he ever been, an employee of Send, and Snell has never undertaken any operational responsibility for Send. Snell is a passive investor. Snell's ownership interest in Send is not attributable under applicable Louisiana state and local law. Immediately upon learning that Send had responded to Union Parish's Form 470 applications with competitive bids, Snell informed the Superintendent of Union Parish, who sought and received a specific determination that Snell's unitholder interest would not pose a conflict of interest under Louisiana state law if Send were awarded E-rate contracts. Notwithstanding the finding that Snell did not have a conflict of interest, he was nevertheless insulated from the Union Parish competitive bidding process, and subsequent decision making involving Send, in order to ensure a full and fair competitive bidding process, both in reality and perception. It was impossible for Union Parish to know when it filed its initial Form 470 that listing Snell, its own Technology Systems Administrator, as the contact person, would later raise a theoretical question about the fairness of its competitive bidding because Send would later bid for Union Parish's services.

The FCC's and the SLD's competitive bidding rules have never addressed such conflicts of interest, but they do require compliance with local and state competitive bidding and procurement laws – which Union Parish observed. Union Parish received a determination from the State of

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<sup>6</sup> See pages 1-13 of the December Appeal for a full recitation of the facts and history concerning this case. Also attached hereto are declarations of Tom Snell, Donna Cranford and Mark Stevenson, all of whom have personal knowledge of the facts set forth herein.

Louisiana that Snell's unitholder interest in Send did not pose a conflict of interest. This is significant since the FCC's rules specifically provide that the federal law is not intended to preempt the state law on such matters. At the time it submitted its Form 470s, Union Parish complied with all known federal, state and local competitive bidding rules with respect to the E-rate Program.

On January 31, 2003, two to three years after Union Parish's five applications were granted and funded, and after it received valuable Internet access services and internal connections from Send, the SLD issued CALs seeking to void the granted applications and rescind the funding already allocated pursuant to the applications. Send filed with USAC a consolidated appeal addressing all five CALs on April 1, 2003, three of which were denied on October 17, 2003, and two of which were denied four months later on January 20, 2004. The stated basis for all of the SLD's and USAC's arguments emanated from Commission precedent regarding competitive bidding that was adopted in the *MasterMind* line of cases years after the Union Parish applications were granted. Based on this precedent, which is easily distinguished from the facts in this case, the SLD asserted that Union Parish's Form 470s contained "service provider contact information" and violated the intent of the competitive bidding process. Union Parish's Form 470s do not contain "service provider contact information," but they were nevertheless declared invalid and all funding related thereto was rescinded.

## **II. THE PUBLIC INTEREST REQUIRES THAT THE FCC OVERTURN THE CALS, OR IN THE ALTERNATIVE, GRANT UNION PARISH AND SEND A WAIVER.**

Without repeating the detailed arguments contained in the December Appeal, all of which favor the Commission overturning USAC's decisions, this Consolidated Appeal simply highlights important points raised for the Commission's consideration in the Union Parish case.

### **A. There Was No Prohibited Conflict of Interest in the Union Parish Case Under Any Applicable Law.<sup>7</sup>**

USAC alleges that Snell's minority interest in Send is a conflict of interest under E-rate Program rules. However, no prohibited conflict of interest was created by identifying Snell as the

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<sup>7</sup> See December Appeal at 13-15.

Union Parish contact in the Form 470s at issue here. The FCC's rules addressing E-rate competitive bidding practices have never, and do not today, address or define conflicts of interest in general, or how conflicts may arise by virtue of associations or affiliations between a service provider and an E-rate applicant. More specifically, no FCC or Program rules address whether minority, non-controlling unitholder interests held by a school or library employee in a service provider under contract to the school or library may be considered a conflict of interest. The FCC's rules only provide that applicants must seek competitive bids and comply with state and local procurement regulations. The FCC's competitive bidding rules do not preempt state or local rules.

In Union Parish's case, the state of Louisiana found that there was no prohibited association between Snell and Send. The state and local competitive bidding requirements for Louisiana, including Louisiana's conflict of interest rules, to which Union Parish was bound under both FCC regulation and state law, provide that a conflict of interest would be found if a public servant like Snell owned or controlled in excess of 25% of a company with whom the public servant's agency did business. Snell holds a 15% interest in Send which is not attributable under Louisiana law.

The SLD's rules also did not address "prohibited associations" or conflicts of interest that could compromise the competitive bidding process until September 2002, years after the Union Parish applications were granted and funded, when the SLD posted an announcement on its website with the holding of *MasterMind* case. In the absence of FCC rules addressing conflict of interest issues in these circumstances, and the FCC's conclusion that its competitive bidding rules do not preempt state and local rules, the Commission must find that Snell did not have notice that his minority ownership interest in Send could raise a prohibited conflict of interest.

**B. Union Parish Undertook a Competitive Bidding Process that Complied with All Applicable Laws.<sup>8</sup>**

The intent of the E-rate Program competitive bidding process, to ensure that Union Parish would obtain the most cost-effective services available, was not violated simply because Snell was listed as the contact person for Union Parish. The bright line analysis applied by the SLD and

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<sup>8</sup> See December Appeal at 8-12, 15-21.

USAC ignores the facts of this particular case. What is germane is that Union Parish undertook, in good faith, a full and fair competitive bidding process and received Internet services at less than half the cost of services offered by Send's competitors. Union Parish also received internal connections at rates that were a fraction of the costs offered by other competitors. By obtaining services at the lowest costs possible, Union Parish lessened its own demands on universal service funds and increased funds available to other applicants. Thus, the process Union Parish went through to choose Send explicitly met the public policy objectives that underlay the competitive bidding rules.

**C. USAC Exceeded its Authority in Applying the Rationale from the *Mastermind* Case to the Union Parish Case.<sup>9</sup>**

USAC exceeded its authority when it applied a broader interpretation of the *Mastermind* line of cases to Union Parish's and Send's case. The facts in those cases can be easily distinguished from the Union Parish case. First, in each of the *MasterMind* cases the SLD and the Commission ruled on pending applications and funding requests and denied such applications *prospectively*. In Union Parish's case, however, the SLD seeks to undo previously granted applications and rescind funding for services already rendered based upon later-adopted Commission precedent.

Second, unlike the *MasterMind* cases, the SLD and USAC have not asserted in Union Parish's case that the competitive bidding process undertaken by Union Parish did not comply with the Commission's rules and state and local competitive bidding requirements. USAC's focuses solely on the name of the authorized contact person listed on the Form 470, concluding that because Snell was listed on the Form 470, Union Parish could not have undertaken a fair competitive bidding process. The facts in this case do not support such a conclusion. USAC values form over substance when it suggests that Union Parish's competitive bidding process would have been valid if only it had listed someone else as the contact person. Even if another person had been listed on Union Parish's application, it would not have impacted what was already a full and fair competitive bidding process undertaken by Union Parish in good faith.

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<sup>9</sup> See December Appeal at 21-31.

Moreover, in the *MasterMind* line of cases, the conflict of interest presented is obvious because in each case the schools delegated their responsibility to undertake competitive bidding to service providers. That is not the case for Union Parish. The holdings in the various *MasterMind* cases cannot be used as a blunt instrument, or a bright line test, without regard to the individual facts of a case – especially a case like Union Parish’s. To do so misses the essential point – the spirit and letter of the competitive bidding rules was observed and the public interest was served by the bidding process undertaken by Union Parish.

**D. USAC Exceeded its Authority in Retroactively Imposing its Own Expanded Interpretation of the *Mastermind* Cases to Union Parish’s Granted and Funded Applications.<sup>10</sup>**

USAC does not have the authority to make policy, interpret any unclear rule promulgated by the Commission, or create the equivalent of new guidelines. Although the Commission discussed whether an “association” with a service provider may run afoul of the competitive bidding requirements in the later-decided *Mastermind*-type cases, USAC’s interpretation of the FCC’s precedent, that an applicant’s contact person cannot be associated with a service provider (even when the contact person is an employee of the applicant), goes beyond the FCC’s interpretation and seems specifically tailored to cast doubt on the Union Parish applications. The “association” the FCC prohibited in the *MasterMind* cases was an exclusive association with a service provider, not a situation in which an applicant’s employee had a minority unitholder interest in a service provider. Thus, it was inappropriate for USAC to adopt and apply to Union Parish’s case an interpretation of FCC case law that is broader than what the Commission actually held in those cases.

Even assuming, *arguendo*, that USAC interpreted Commission precedent correctly, USAC exceeded its authority by retroactively applying such precedent in this case. It is a basic tenet of American jurisprudence that if a court overturns its prior precedent in a line of cases, the new precedent is applied prospectively. The *Mastermind* cases which discuss prohibited associations were released *after* all five of Union Parish’s Form 470s were granted and funded.

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<sup>10</sup> See December Appeal at 21-30.

Both courts and the Commission have long recognized that new policies and decisions cannot be applied retroactively to cases already concluded, especially where parties detrimentally relied on the previous policy. Specifically, Union Parish detrimentally relied on the fact that the SLD granted and funded its Form 470 applications year after year. Had the SLD made Union Parish first aware that listing Snell as a contact person may trigger a rule violation in the case of its applications for the 1999-2000 funding year, it could have taken corrective action for subsequent years. Union Parish had no reason to believe that the SLD would years later declare Union Parish's funded application invalid because of an alleged competitive bidding violation claim based upon later-adopted and inapplicable case law.

In other FCC decisions regarding the E-rate Program, including *Prairie City School District*, *Williamsburg-James City*, *Ysleta* and *Winston-Salem* (all of which are discussed on pages 26-30 of the December Appeal) the Commission held that where an application was submitted before the establishment of a particular and applicable rule, the applicants could not have been aware of the application requirements. Clarifications of universal service policies are to be applied only prospectively by the SLD.

The Commission should conclude in Union Parish's case that the SLD cannot retroactively apply USAC's current interpretations of prohibited associations to Union Parish's case, if any such interpretations can even be found to apply. The Commission has never determined that such passive unitholder interest creates an improper association between an applicant and service provider. Furthermore, Union Parish's funding requests were approved and monies were allocated well before the Commission announced in *Carethers* that certain associations between applicants and service providers could violate the E-rate Program's competitive bidding rules. Union Parish and Send (and possibly other E-rate participants) relied on the competitive bidding rules, and interpretations thereof, that were current when the applications were filed and reasonably interpreted them to support the conclusion that the type of association presented in Union Parish and Send's case was permissible – especially since state and local procurement guidelines also were observed and no conflict of interest was found to exist by the state of Louisiana. Allowing USAC's

decision to stand in the Union Parish case would mean that the SLD and USAC can retroactively deny previously granted applications based upon rules and precedent adopted after applications are approved. Serious questions would be raised about whether E-rate participants can ever rely upon actions taken by the SLD.

**E. USAC Exceeded its Authority in Applying Part 48 Federal Acquisition Planning Rules to Union Parish's Case.<sup>11</sup>**

As previously stated, USAC is not empowered to make policy, interpret any unclear rule promulgated by the Commission or to create the equivalent of new guidelines. In its denial of the previously filed appeals, USAC exceeds its authority by applying the federal procurement rules and creating the equivalent of new guidelines for the E-rate Program. Instead of applying FCC or Support Mechanism rules for the relevant time periods to Union Parish's case, USAC disregards the rights of Union Parish and Send and applies Part 48 of the Code of Federal Regulations, which the Commission has specifically stated is "inapplicable" to the E-rate Program.

**F. If Necessary, Waiver of the Competitive Bidding Rules is Appropriate in Union Parish's Case.<sup>12</sup>**

If the Commission determines that listing Snell as a contact person on Union Parish's Form 470s violated the letter and the spirit of the competitive bidding rules, it would be in the public interest to grant Union Parish a waiver of the competitive bidding rules in this case. There was no way Union Parish could have known when it filed its Form 470 that listing Snell, its own employee, would create a potential competitive bidding issue solely because Send would later choose to bid on Union Parish's services. Neither the Commission nor the SLD has ever explained that listing an applicant's employee, who has a minority and silent ownership interest in a service provider, as a contact person on a Form 470 is a competitive bidding violation. In fact, Union Parish followed and complied with all applicable federal, state and local competitive bidding and conflict of interest regulations, and received a favorable ruling from the state on the conflict of interest issue.

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<sup>11</sup> See December Appeal at 31-32.

<sup>12</sup> See December Appeal at 32-37.

In addition, Union Parish continued to submit Form 470s with Snell listed as the contact person for the school system because the SLD continued to approve Union Parish's funding requests. In good faith, Union Parish relied on the SLD's prior approvals of its Form 470s and would not have submitted additional funding requests had it thought or known that listing Snell as its contact person violated the intent of the E-rate Program's competitive bidding process. In reliance on the granted and funded applications, valuable services were rendered and paid for. As in *Ysleta*, the Commission should therefore consider Union Parish's reliance on the rules and interpretations regarding competitive bidding and conflicts of interest that were available, and the SLD's grant of Union Parish's applications, and grant this waiver request. Denying a waiver in this case would result in irreparable harm to Send, Union Parish and, most importantly, the students and faculty of Union Parish who would be required to find funding in already constrained school budgets to retroactively pay Send for services rendered years ago.

### III. CONCLUSION.

For the reasons set forth herein and in the December Appeal, Send requests that the Commission reverse USAC's decision denying Send's appeal of the CALs and direct the SLD to withdraw the CALs issued to Send and Union Parish. If, however, the Commission does not overturn USAC's decision, Send requests a waiver of the FCC's and SLD's competitive bidding rules.

Respectfully submitted,

/s/ Jennifer L. Richter  
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Mark Stevenson  
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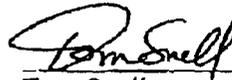
March 22, 2004

**DECLARATION OF TOM SNELL, UNION PARISH SUPERINTENDENT**

Mr. Tom Snell, being duly sworn, declares as follows:

1. My name is Tom Snell. I am the Superintendent of the Union Parish School Board ("Union Parish"). My office address is 1206 Marion Hwy, Farmerville, Louisiana, 71241. I submit this declaration in support of Send Technologies LLC's ("Send") Consolidated Request for Review, dated March 22, 2004 ("Request for Review").
2. All of the facts and information set forth in the Request for Review concerning Send's provision of services to Union Parish School Board under the E-rate Program are true and correct to the best of my knowledge.
3. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 22nd day of March, 2004.



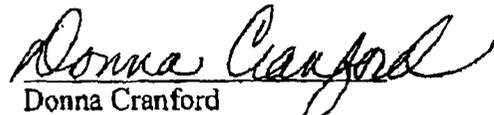
Tom Snell  
Superintendent  
Union Parish School District

**DECLARATION OF DONNA CRANFORD, UNION PARISH  
BUSINESS MANAGER**

Ms. Donna Cranford, being duly sworn, declares as follows:

1. My name is Donna Cranford. I am the Business Manager for the Union Parish School Board ("Union Parish"). My office address is 1206 Marion Hwy, Farmerville, Louisiana, 71241. I submit this declaration in support of Send Technologies LLC's ("Send") Consolidated Request for Review, dated March 22, 2004 ("Request for Review").
2. All of the facts and information set forth in the Request for Review concerning Send's provision of services to Union Parish School Board under the E-rate Program are true and correct to the best of my knowledge.
3. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 22nd day of March, 2004.

  
Donna Cranford  
Business Manager  
Union Parish School District

**DECLARATION OF MARK STEVENSON**

Mr. Mark Stevenson, being duly sworn, declares as follows:

1. My name is Mark Stevenson. I am President of Send Technologies LLC ("Send"). My office address is 2904 Evangeline Street, Monroe, Louisiana, 71201. I submit this declaration in support of Send's Consolidated Request for Review, dated March 22, 2004 ("Request for Review").
2. All of the facts and information set forth in the Request for Review concerning Send's participation in the competitive bidding process as a bidder, and its provision of services to Union Parish School Board under the E-rate Program, are true and correct to the best of my knowledge.
3. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 22nd day of March, 2004.

  
Mark Stevenson  
President  
Send Technologies LLC

## CERTIFICATE OF SERVICE

I, Theresa Rollins, hereby certify on this 22th day of March, 2004, a copy of the foregoing Consolidated Request for Review has been served via electronic mail (\*) or first class mail, postage pre-paid, to the following:

Eric Einhorn\*  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
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Universal Service Administrative Company  
Letter of Appeal  
Post Office Box 125 – Correspondence Unit  
80 S. Jefferson Road  
Whippany, NJ 07981

/s/ Theresa Rollins

# **EXHIBIT A**



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**Administrator's Decision on Appeal - Funding Year 2001-2002**

January 20, 2004

Mark Stevenson, President  
Send Technologies LLC  
2904 Evangeline Street  
Monroe, Louisiana 71201

Re: Union Parish School Board

Re: Billed Entity Number: 139313  
471 Application Number: 229706  
Funding Request Number(s): 594052  
Your Correspondence Dated: April 1, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2001 Funding Commitment Adjustment for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 594052  
Decision on Appeal: **Denied in full**  
Explanation:

- You have stated that your appeal will provide clarifying information that corrects the erroneous assumptions made by the Schools and Libraries Division when it adjusted and rescinded funding that was granted to Send Technologies and Union Parish for Funding Year 2001. You stated that there was no error during the initial review process regarding the Form 470 cited, but there was an error in a subsequent review due to insufficient information held by the SLD about Tom Snell and the competitive bidding process undertaken by the Union Parish School Board. You stated that listing Mr. Snell as the contact person on the Form 470 did not violate the intent of the bidding process and that the Union Parish Form 470 did not contain any service provider contact information. You further clarified

that unlike all of the Master Mind type cases, Mr. Snell is an employee of the applicant (Union Parish School Board) and not an employee or representative of a service provider. You believe that the intent of the bidding process was fully observed and fulfilled in the case of Union Parish. You also stated that Mr. Snell holds a fifteen percent minority ownership interest in Send Technologies and that he is not now, nor has ever been an employee of Send. You explained that Mr. Snell is a passive investor in Send, and his ownership interest is substantially below that which could raise a question about a conflict of interest under any applicable law. You stated that out of an abundance of caution, Mr. Snell disclosed his passive minority investment interest in Send to the appropriate local government officials after initial bids were received and Mr. Snell had realized that Send was bidding for Union Parish's services. You also stated that the SLD's review of the previously approved and committed applications was prompted when the SLD learned of the Louisiana Audit that took place years after the competitive bidding process for Union Parish services. You noted that this matter was favorably resolved at the state level and the Louisiana Board of Ethics confirmed that there was no violation of the state and local procurement processes to ensure competition and this finding is significant. You close the appeal by stating that the critical public interest policies served by the Commission's competitive bidding rules are to ensure that schools and libraries seeking support through the E-rate program obtain the most cost-effective services available. Through Union Parish's competitive bidding process, there was a fair and open competition for bidding of services, and at the end of the bidding process, Send was found to be the most cost-effective choice. Thus, the process used by Union Parish to choose Send explicitly met the public policy objectives that underlie the competitive bidding rules. Send Technologies and Union Parish are requesting that the SLD withdraw the issued Commitment Adjustment Letters and overturn its decision to rescind funding for this application.

- After a thorough review of the appeal, and the documentation (audit report from the State of Louisiana Legislative Auditor) which was obtained by the SLD, it was determined that Mr. Tom Snell who is the authorized contact person listed on the cited Form 470 (Application Number: 927550000315997) also has a 15% ownership interest in the selected service provider (Send Technologies, LLC) as listed on the Form 471 application. According to the rules of the Support Mechanism, this is considered to be a conflict of interest (*see* FCC rule paragraph *infra*) and is in violation of the competitive bidding guidelines. The authorized contact person listed on the Form 470 cannot be associated in any way with a service provider because this violates the intent of the bidding process regarding fair and open competition. Based on this determination, the SLD Commitment Adjustment Letter that was issued on January 31, 2003 to the applicant and the related service provider informing them of the commitment adjustment that was performed on this request (the rescinding of \$59,250.00 in full) was properly justified and was done according to the rules of the Support Mechanism.

- FCC rules require the applicant to provide a fair and open competitive bidding process. Per the SLD website; "In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with 'inside' information or allow them to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected." Since the applicant's contact person in this case has been determined to have a 15% ownership interest in the selected service provider from whom the applicant is requesting services, all funding requests that are associated with the cited Form 470 must be denied. Consequently, the appeal is denied.
- Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing unfair competitive advantage.<sup>1</sup> A competitive bidding violation and conflict of interest exist when an applicant's consultant, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.
- FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids.<sup>2</sup> FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements.<sup>3</sup> In the May 23, 2000 *MasterMind Internet Services, Inc. (MasterMind)* appeal decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.<sup>4</sup> The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied.<sup>5</sup> Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone and fax numbers, and email address. Your request for SLD to withdraw the Commitment Adjustment Letter and overturn its decision to rescind funding for this application is denied.

<sup>1</sup> See e.g., 48 C.F.R. § 9.505(a), (b).

<sup>2</sup> See 47 C.F.R. §§ 54.504(a), 54.511(a).

<sup>3</sup> See 47 C.F.R. § 54.504(a), (b)(2)(vi).

<sup>4</sup> See *Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 4028 (2000).

<sup>5</sup> *Id.*

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

Cc: Tom Snell  
Union Parish School Board  
Marian Highway  
Farmerville, LA 71241



**Administrator's Decision on Appeal - Funding Year 1999-2000**

January 20, 2004

Mark Stevenson, President  
Send Technologies LLC  
2904 Evangeline Street  
Monroe, Louisiana 71201

Re: Union Parish School Board

Re: Billed Entity Number: 139313  
471 Application Number: 121741  
Funding Request Number(s): 175066  
Your Correspondence Dated: April 1, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 1999 Funding Commitment Adjustment for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 175066  
Decision on Appeal: **Denied in full**  
Explanation:

- You have stated that your appeal will provide clarifying information that corrects the erroneous assumptions made by the Schools and Libraries Division when it adjusted and rescinded funding that was granted to Send Technologies and Union Parish for Funding Year 1999. You stated that there was no error during the initial review process regarding the Form 470 cited, but there was an error in a subsequent review due to insufficient information held by the SLD about Tom Snell and the competitive bidding process undertaken by Union Parish School Board. You stated that by listing Mr. Snell as the contact person on the Form 470 in no way violated the intent of the bidding process and, that Union Parish's Form 470 did not contain any service provider contact information. You further clarified that unlike all of the Master Mind type cases, Mr. Snell is an employee

of the applicant (Union Parish School Board) and not an employee or representative of a service provider. You believe that the intent of the bidding process was fully observed and fulfilled in the case of Union Parish. You also acknowledged that Mr. Snell holds a fifteen percent minority ownership interest in Send Technologies and that he is not now, nor has ever been an employee of Send. You explained that Mr. Snell is a passive investor in Send, and his ownership interest is substantially below that which could raise a question about a conflict of interest under any applicable law. You stated that out of an abundance of caution, Mr. Snell disclosed his passive minority investment interest in Send to the appropriate local government officials after initial bids were received and Mr. Snell had realized that Send was bidding for Union Parish's services. You also stated that the SLD's review of the previously approved and committed applications was prompted when the SLD learned of the Louisiana Audit that took place years after the competitive bidding process for Union Parish services. You noted that this matter was favorably resolved at the state level and the Louisiana Board of Ethics confirmed that there was no violation of the state and local procurement processes to ensure competition and this finding is significant. You close the appeal by stating that the critical public interest policies served by the Commission's competitive bidding rules are to ensure that schools and libraries seeking support through the E-rate program obtain the most cost-effective services available. You believe that through Union Parish's competitive bidding process there was a fair and open competition for bidding of services, and at the end of the bidding process, Send was found to be the most cost-effective choice. Thus, you claimed that the process Union Parish went through to choose Send explicitly met the public policy objectives that underlay the competitive bidding rules. Send Technologies and Union Parish are requesting that the SLD withdraw the issued Commitment Adjustment Letters and overturn its decision to rescind funding for this application.

After a thorough review of the appeal and the relevant documentation (audit report from the State of Louisiana Legislative Auditor), which was obtained by the SLD, it was determined that Mr. Tom Snell, who was the authorized contact person listed on the cited Form 470 (Application Number: 716920000143248), also has a 15% ownership interest in the selected service provider (Send Technologies, LLC) as listed on the Form 471 application. According to the rules of the Support Mechanism, this is considered to be a conflict of interest (*see* FCC rule paragraph *infra*) and is in violation of the competitive bidding guidelines. The authorized contact person listed on the Form 470 cannot be associated in any way with a service provider because this violates the intent of the bidding process regarding fair and open competition. Based on this determination, the SLD Commitment Adjustment Letter that was issued on January 31, 2003 to the applicant and the related service provider informing them of the commitment adjustment that was performed on this request (the rescinding of \$126,360.00 in full), was properly justified and issued in accordance with the rules of the Support Mechanism.

- FCC rules require the applicant to provide a fair and open competitive bidding process. Per the SLD website; "In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with 'inside' information or allow them to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected." Since the applicant's contact person in this case has been determined to have a 15% ownership interest in the selected service provider from whom the applicant is requesting services, all funding requests that are associated with the cited Form 470 must be denied. Consequently, the appeal is denied.
- Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing unfair competitive advantage.<sup>1</sup> A competitive bidding violation and conflict of interest exist when an applicant's consultant, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.
- FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids.<sup>2</sup> FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements.<sup>3</sup> In the May 23, 2000 *MasterMind Internet Services, Inc. (MasterMind)* appeal decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.<sup>4</sup> The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied.<sup>5</sup> Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone and fax numbers, and email address. Your request for SLD to withdraw the Commitment Adjustment Letter and overturn its decision to rescind funding for this application is denied.

<sup>1</sup> See, e.g., 48 C.F.R. § 9.505(a), (b).

<sup>2</sup> See 47 C.F.R. §§ 54.504(a), 54.511(a).

<sup>3</sup> See 47 C.F.R. § 54.504(a), (b)(2)(vi).

<sup>4</sup> See *Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 4028 (2000).

<sup>5</sup> *Id.*

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

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