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Express Mail ER 789764363 US

Appeal, and request for Expedited Relief, to the Federal Communications Commission on behalf of Por Vida, Inc.

July 1, 2004

97-21

Secretary
Office of the Secretary
Federal Communications Commission
445 - 12th Street, S.W., Room TW-204B
Washington, D. C. 20554

This is an appeal from a decision by the Schools and Libraries Division of the USAC.

Enclosed are the original and four copies of the Appeal. An extra copy is also enclosed. Please time stamp the extra copy and return it to me in the enclosed self addressed stamped envelope.

Nathaniel Hawthorne

Nathaniel Hawthorne
Attorney for Wayne County Public Schools

Enclosures

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

In the Matter of the)	File No. SLD -
)	
Appeal of the Decision of the)	
)	
Universal Service Administrator by)	
the)	
)	
Wayne County Public Schools)	
)	
)	
)	CC Docket No. 96 - 45
Federal-State Joint Board on)	
Universal Service)	
Changes to the Board of Directors of)	
The National Exchange Carrier)	
Association, Inc.)	CC Docket No. 97 - 21

Appeal
and
Request for Expedited Relief
on behalf of the
Wayne County Public Schools

July 1, 2004

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W. Suite TW-A325
Washington, D.C. 20554

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stamped envelope.

(1) **Funding Commitment Decision Letters Appealed**

Form 471 Application Number: 375634
Form 471 Application Number: 375658
Form 471 Application Number: 375599
Form 471 Application Number: 375658
Form 471 Application Number: 375448

Funding Year 2003: 07/01/2003-06/30/2004
Billed Entity Number: 126855

Date of Funding Denial Notice: May 5, 2004
Date of Appeal: July 1, 2004

(2) **SLD Contact Information**

(a) John Hicks
jhicks@wcps.org
Tel. (919)705.6091

(b) Nathaniel Hawthorne, Attorney (To discuss this Appeal)
27600 Chagrin Blvd., Ste 265
Cleveland, OH 44122
Tel. (216) 514.4798

(3) **Funding Request Numbers Appealed**

FRNs -1028610, 1028483, 1028686, 1028719, 1028742, 1028767,1028792,
1028818, 1028863,1028119, 1028156, 1028204, 1028249,
1028307,1028352,1028398,1028991

(4) SLD's Reason for Funding Denial

The SLD denied funding because:

“ price was not the primary factor in selecting ...[service providers]....”

(5) The SLD's Decision was unreasonable and arbitrary and must be reversed. The Wayne County Public Schools (WCPS) vendor selection process criteria is set forth below.

“Vendor Selection Process

The following is a listing of how many bids received for

each FRN:

<u>FRN#</u>	<u>Service</u>	<u>471 App. #</u>	<u>No. of bids</u>
1012784	Local telephone	370993	0
1013871	Long Distance telephone	371510	0
1040656	T-1 Circuits via Bell South	378544	0
1025189	T-1 Circuits via Sprint	374551	0
1028991	Int. Connections: Server OS	375749	2
1028119	Server, switches: Belfast Academy	375448	2
1028156	Server, switches: Brogden Primary	375448	2
1028204	Server, switches: Carver Heights	375448	2
1028249	Server, switches: Dillard Middle	375448	2
1028307	Server, switches: Goldsboro Mid.	375448	2
1028352	Server, switches: North Drive	375448	2
1028398	Server, switches: School St. Elem.	375448	2
1028686	Int. Connections: Belfast Academy	375658	2
1028719	Int. Connections: Brogden Primary	375658	2
1028742	Int. Connections: Carver Heights	375658	2
1028767	Int. Connections: Dillard Middle	375658	2
1028792	Int. Connections: Goldsboro Mid.	375658	2
1028818	Int. Connections: North Drive	375658	2
1028863	Int. Connections: School St. Elem.	375658	2
1028483	IP Telephony	375599	2
1028610	Voice Over IP	375634	2
1042281	Int. Connections: TekNet	377119	1

Wayne Co. Public Schools posted a request for proposal for all the above FRN's except for 1012784, 1013871, 1040656, 1025189. These specific FRN's are bundled telecommunications services that provides local and long distance service (see description for Part I, #1) and T-1 circuits and Internet access (see description for Part I, #1).

The remaining FRN's received bids are a result of the Request for Proposal (Part I, #1). Several parties expressed interest in our RFP and requested copies, but most did not respond with a specific proposal (see Part I, #6). The parties that did respond with specific proposals were evaluated according to the following factors:

- Meeting proposal deadline
- **Detail in pricing of each eligible service for each eligible school**
- Completeness and overall understanding of the scope of the project
- Neatness and legibility

...

...the lowest overall price was not necessarily at the best interest of our school district. We also factored into this decision the detail that was put into the description of services, to determine which bidder had a complete understanding of the project. We felt that commitment to a complete, quality job was just as important a factor as the consideration of overall pricing." **Emphases added**

(6) The SLD rules provide, *inter alia*, that: "When you examine and evaluate the bids you receive for eligible services, you 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." **Emphases added**

(7) As stated in the documentation provided to the SLD, and the quote above is taken from that documentation, WCPS complied with the SLD's rule. **That is, WCPS selected the most cost effective services/hardware.**

(8) The FCC has stated that "under our rules, applicants must select the most cost-effective bids. 47 C.F.R. § 54.504(a) Specific services with definite prices were provided to the SLD. WCPS evaluated the actual dollar amount of eligible

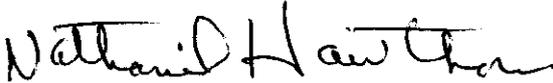
services during the bidding process. This is consistent with both FCC and SLD rules.

Conclusion:

Wayne County Public Schools is Requesting the Following Action by the FCC:

- (a) Within 90 days or less Order funding for the telecommunications services requested in the 471 Applications, and ALL FRNs .
- (b) Set aside funds to totally fund Wayne County Public Schools' request.

Respectfully submitted,



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