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November 18, 2005

FCC
Office of the Secretary
445 12th Street SW
Washington, DC 20554

Re:

CC Docket No. 02-6

Appeal Letter
Form 471Application Number: 430346
Funding Request Number: 1194499
Funding Year 2004: 07/01/2004- 06/30/2005
Billed Entity Number: 198905

Service Provider: VIP Technologies, LLC
SPIN: 143027680

To Whom it May Concern;

Please consider this an appeal to an Administrator's Decision on Appeal dated September 22, 2005 on an appeal that Tashbar of Lakewood submitted on the above listed application and funding request number.

SLD decision on appeal: Denied

I believe that the SLD has not considered nor understood our position as we have clearly affirmed that the vendor was not involved in the competitive bidding nor vendor selection process. SLD has dismissed our affirmation that we contracted a third party to assist in the preparation of the Form 470. That this third party may have used similar language in assisting other schools with the same does not negate the fact that we have complied with all rules and regulations set forth for the E-Rate program and our Form 470 is not in violation of any such rules or regulations.

In addition, any inquiries would show that the third party delegated was not associated with any service provider.

The SLD states that in our appeal "we have not shown that SLD's determination was incorrect" and consequently, SLD denied our appeal. All that has been written in our appeal substantiates exactly what the SLD states has not been.

We appeal to the FCC to review all the relevant rules, regulations, forms, and appeals and I trust that after doing so Tashbar of Lakewood will be granted an approval of the above listed Form 471 application previously rejected by the SLD.

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List A B C D E

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I look forward to favorable prompt response.

I remain,

Rabbi Fisher
Administrator
Tashbar of Lakewood
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Text of Administrator's Decision on Appeal, dated September 22, 2005

On appeal, you seek reversal of the SLD decision to deny the reference FRN based o improper vendor involvement in the competitive bidding process. In support of your argument, you assert that your Form 470 was prepared solely by an independent third party consultant and your school. You further assert that there was no involvement by VIP Technologies or any other vendor in the preparation and filing of the Form 470. A review of the Form 470 would show that the Form was designed for Tashbar Of Lakewood School and Tashbar Of Lakewood School alone, listing only those services applicable to the school.

Upon thorough review of your appeal, it was determined that the cited establishing Form 470 displays striking similarities with the Form 470 certifications and service descriptions of other applicants who selected VIP Technologies LLC as their service provider. The Form 470 exhibits a pattern service description and certification, which implies service provider involvement in the bidding process. As is noted on the SLD website (www.sl.universalservice.org/whatsnew/reminders-F470.asp) , applicants may not delegate the competitive evaluation role to anyone associated with a service provider. A "Fair" competition means that " all bidders are treated the same , and that no bidder has advance knowledge of the information contained in the RFP." Applicants and service providers should not have a relationship prior to 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 anyway." A service provider, who will participate in the competitive process as a bidder , cannot complete the Form 470. Assistance from service providers I developing Requests for Proposals (RFP) " is permissible even if the provider plans to submit a bid in response to that RFP, as long as the service provider's assistance is neutral." For example , RFPs may not be written in a way that only the service provider who assisted could win the bid. The above findings indicate that the vendor was improperly involved in the competitive bidding process, which is a violation of the rules of this Support Mechanism.

SLD denied your funding request because it determined that similarities in the Form 470 provided to SLD among applicants associated with this vendor, indicate that the vendor was

properly involved in the competitive bidding and/or vendor selection process. In your appeal, you have not shown that SLD's determination was incorrect. Consequently, SLD denies your appeal.

FCC rules require applicants to submit an FCC Form 470 to USAC for posting on its website. 47 C.F.R. ~ 54.505(b). The FCC requires applicants to " submit a complete description of the services they seek so that it may be posted for competing service providers to evaluate ." Federal-State Joint Board on Universal service CC Docket No. 96-45 =, Report and Order, FCC 97-157, 570 (rel. May 8, 1997)(Universal Service order). The FCC requires " the application to describe the services that the school and libraries seek to purchase in detail to enable potential providers to formulate bids." Th eForm 470 warns applicants that " service provider involvement with the preparation or certification of a Form 470 can taint the competitive bidding process and result in the denial of funding requests." See Schools and Libraries Universal Service , Description of Service Requested and Certifiaction Form 470 , OMB 3060-0806(FCC Form 470) . Once the applicant enters into an agreement with the service provider, the applicant submits an FCC Form 471 to SLD. 47 C.F.R. ~54.504(c). The FCC has stated that applicants cannot abdicate control over the application process to a service provider that is associated with the FCC Form 471 for that applicant. Request for Review by Bethlehem Temple Christian School, Federal-State Joint Board ion Universal Service , Change to the Board of Directors of the National Exchange Carrier Ass. Inc. CC Docket Nos. 96-45,97-21, DA-0 1-852 6(rel. Apr. 6, 2001).

Pursuant to its authority to administer the SLD Support Mechanism, SLD selects certain applicants for a Selective Review to ensure that they are following FCC rules relating to, among other things, the competitive bidding process. Applicants who are chosen for this review are sent the "E-Rate Selective Review Information Request." As part of this request , applicants are asked to answer certain questions regarding their competitive bidding and vendor selection process. In particular , applicants are asked to: Please provide complete documentation indicating how and why you selected the service provider. This documentation should include a description of your evaluation process and the factors you used to determine the winning contract.

According to the Selective Review Information Request, the person authorized by the applicant to sign on the applicant's behalf, or the entity's authorized representative , is required to certify that the authorized signer prepared the responses to the Selective Review Information Request On behalf of the entity.

<u>Appeal to SLD, dated January 25, 2005</u>:

This is an appeal on a Funding Commitment Decision Letter dated December 3, 2004. The above listed Funding Request Number (FRN) 1194499 was denied total funding due to the following

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decision explanation: *"Similarities in the Forms 470 among applicants associated with this vendor indicate that the vendor was improperly involved in the competitive bidding and vendor selection process."*

We are terribly disappointed, frustrated and upset by this most recent correspondence denying funding to the above funding request.

We hereby affirm that the preparation and submission of the Form 470 was performed directly and solely between an independent third party consultant and our school. Being that our school did not feel proficient enough in filing the required forms necessary to apply for E-Rate funding given all the rules and regulations set forth by the Schools and Libraries Division, we sought out and retained the services of an independent consultant to prepare and submit the Form 470 on behalf of the school. Together with our consultant, we carefully reviewed the list of eligible services available on the SLD's website. Those services that were applicable to the school and those services that the school anticipated requesting discounts for, were specified with detail in the appropriate blocks on the Form 470. The quantity and/or capacity were specified per the schools needs and specifications. A cursory review of our 470 would show you that it was designed for our school and our school alone. (If our paid consultant, while servicing other schools, used similarities in the forms, this
a-is not a problem in SLD regulations so long as it is an outside consultant and
b-is certainly not a reason for denial to us since we assumed full responsibility for the form 470 and there was no vendor involvement .)

Being that according to all the rules and regulations set forth by the SLD and the FCC we are allowed to contract with a third party, that is exactly what we did. We gave explicit authorization and compensation for the work that was done pertaining to the Form 470 on our behalf. We reiterate that there was no involvement by VIP Technologies or any other vendor for that matter in the preparation and filing of the Form 470.

We are therefore requesting that the administrator reverse this decision and fund the above listed Funding Request being that we are in compliance with all rules and regulations.

Thank you for your consideration in this matter. We look forward to a prompt response.

Please feel free to contact me at 732.905.1111 for any further clarification.

I remain,

Rabbi Fisher
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