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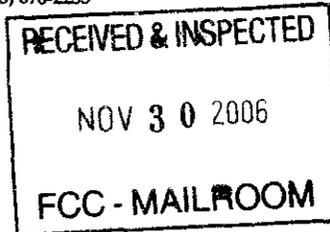
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November 29, 2006

**VIA FEDERAL EXPRESS**

Federal Communication Commission  
Office of the Secretary  
9300 East Hampton Drive  
Capital Height, MD 20743

Re: Billed Entity Name: Boys Village Youth & Family Services  
Application Number: 346207  
Billed Entity Number: 216181  
CC Docket No. 96-45 and CC Docket No. 02-06

**REQUEST FOR REVIEW**

I. Introduction

This Request for Review is an appeal of the Administrator's Decision on Appeal, dated October 2, 2006 with respect to Funding Request Numbers ("FRN") 932177 and 932186.

II. Party In Interest

This Appeal is filed on behalf of Boys and Girls Village, Inc. formerly known as Boys Village Youth and Family Services, Inc. (hereinafter referred to as "Boys and Girls Village" or the "Agency").

III. Statement of Facts

A. Background

Boys and Girls Village, Inc. is a non-profit entity, with facilities in Milford, Bridgeport, and Waterbury, Connecticut providing a variety of educational and social services to underprivileged and at risk youths and families. In addition to its other services, Boys and Girls Village operates a day school funded in part by the Connecticut Department of Education and the local school districts.

Because it is a small non-profit entity, Boys and Girls Village does not have a full compliment of IT staff. In fact, during the relevant time period it had just a single individual, Rod Waller, whose job encompassed responsibility for overseeing all of the agencies' IT needs across four difference facilities.

In 2001, the Agency first applied for funding from the School and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) (Application Number 257286). Importantly, the application was completed exclusively by and with input only from Agency personnel, primarily Rod Waller, and his boss, Doug DeCerbo. Being unfamiliar with the process, however, Mr. Waller added to the application (257286) that the consultant then being used by the Agency, Interactive Marketing Corp. ("IMC"), was also available (i.e. in addition to Mr. Waller) to assist in answering technical questions about the Agency's existing systems. He did so because he relied upon IMC for day to day technical support in certain areas beyond his expertise. Nonetheless, IMC did not assist in the preparation of the application.

B. Facts

Subsequently, in funding year 2003, two new and unrelated applications were filed (FRN 932177 and 932186). Those are the applications at issue in this Request for Review. Significantly, neither IMC nor Mr. Caldarella had anything to do with the preparation of those applications, or the RFP, and unlike the mistaken reference in the 2001 application, no reference was made to IMC or Caldarella in either of the 2003 applications. Accordingly, USAC's conclusion in the Administrator's Decision on Appeal dated October 2, 2006, that "the applicant stated that the service provider, Interactive

Marketing Corp., assisted Boy's Village in preparing the Form 470 and RFP," is simply wrong. This conclusion is particularly erroneous with respect to FRN 932177, where SBC (now AT&T), the regional telephone company, and not IMC, was in fact the provider. There is no relationship between SBC and Caldarella.

IV. Question Presented

The question presented by this Appeal is whether USAC erred in concluding that IMC participated in preparation of the application and RFP in FRN 932177 and 932186.

V. Discussion

Under the Telecommunications Act, <sup>1</sup>eligible schools and libraries may apply for discounts for eligible telecommunications services, internet access, and internal communications.<sup>2</sup> Section 254(h) (l) (b) limits such discounts to services provided in response to bona fide request for services by an eligible entity.<sup>3</sup> To ensure accountability the Federal Communication Commission (the "Commission") requires that a description of services sought be posted on the USAC's website to be evaluated by prospective providers.<sup>4</sup> In addition, the Commission requires that schools and libraries award contract for eligible services pursuant to a competitive bidding process.<sup>5</sup>

To provide a fair and open bidding process, the Commission has adopted several requirements:<sup>6</sup>

1. The applicant must make a bona fide request for services by filing an FCC Form 470, which is posted on USAC's website;
2. The Form 470 requires, among other things, that the applicant name a person whom prospective service providers can contact for

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<sup>1</sup> 47 U.S.C. §254.

<sup>2</sup> 47 U.S.C. §254(h) (l) (b).

<sup>3</sup> Id.

<sup>4</sup> Universal Service Order, 12 FCC record at 9076, para. 570.

<sup>5</sup> Id. at para. 480.

<sup>6</sup> 47 C.F.R. §§ 54.504, 54.511.

additional information;

3. The applicant must wait 28 days after the Form 470 is posted, before entering into a contract for services;
4. Submit a Form 471, which requests support for eligible services; and
5. The applicant must carefully consider all bids submitted, and while price is the primary factor, it is not the only factor to be considered.<sup>7</sup>

The foregoing are the only relevant requirements under applicable law. Ultimately, the goal is to ensure that a competitive bidding process occurs, and that the lowest most qualified bidder is awarded the contract. It is intended to ensure that a provider and applicant do not conspire to rig an RFP in a manner which gives the provider an unfair advantage, or chills participation by other providers. Participation by a provider in preparing either an application or the RFP, is prohibited.

As explained above, and corroborated in the attached affidavits, at no time did IMC or Mr. Caldarella participate in any manner in the applications or RFP concerning FRN 932177 and/or 932186. USAC appears to take the fact that Caldarella was mistakenly referenced as a resource in the 2001 application in FRN 257286, and either assumes without justification that he did so in 2003, or invokes a rule, found no where in the Federal Regulations, that all applications are thereafter tainted and that IMC and/or Caldarella are somehow barred from participating in future projects. This amounts to illegal rule making on the part of USAC.

It is undisputed that: (1) the Agency is a non-profit engaged in educating children, (2) the lowest bidder was awarded the contract in each instance, (3) the funds were used by and for the benefit of educating children, and (4) there was no competitive advantage afforded IMC in either of the projects at issue. Accordingly, it would work an injustice to disallow the request for funding under these circumstances, particularly when the goods have been purchased and installed by the respective providers, and there is not even a hint, let along a preponderance of evidence establishing that IMC was given an actual advantage, or that the price was not competitive.

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<sup>7</sup> Id. at 9029, para. 481.

The facts in this case are similar to those in MasterMind Internet Service, Inc., FCC decision 00-167. In that case, like here, the applicant had listed the provider on one of several applications submitted, as a person to contact for more information. USAC denied each of the applications, including those not listing MasterMind as a contact. On appeal the Commission reversed and remanded concluding that USAC erroneously rejected those applications not listing MasterMind as a contact person:

"To the extent that the applications at issue here were denied by SLD in instances that the Applicant did not name a Master Mind employee as the contact person and a MasterMind employee did not sign the associated forms 470 or 471, we do not believe that there has been a violation of the competitive bidding process."

Similarly, the determination in this case was erroneous. IMC did not assist with the preparation of the applications or the RFP as to 932177 or 932186. The Administrator's conclusion to the contrary is simply wrong. Moreover, there is no basis in the statute, regulations or case law for the position that because a provider has an existing business relationship with a provider, pursuant to which it provides technical support, that it is barred from participating in an RFP by the same applicant.

VI. Conclusion

Based upon the foregoing, the decision of the USAC was in error; therefore, the FCC is respectfully requested to reverse Administrator's Decision or Appeal dated October 2, 2006.

Boys and Girls Village, Inc.

By \_\_\_\_\_

  
Floyd J. Dugas, Esquire  
Berchem, Moses & Devlin, P.C.  
75 Broad Street

**AFFIDAVIT OF ROBERT CALDARELLA**

I, Robert Caldarella, being duly sworn, hereby deposes and says:

1. I am over eighteen years of age and understand the duties and obligations of an oath.

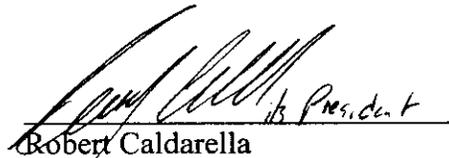
2. I am making this statement from personal knowledge.

3. At all relevant times herein, I have been the President of Interactive Marketing Corp. ("IMC").

4. No agent, servant and/or employee of IMC assisted Boy's Village Youth and Family Services in preparing the Form 470 or Form 471 or any Request For Proposal for Application Number 346207 and associated Funding Requests Numbers 932177 and 932186.

5. Neither the Service Provider, IMC, nor any of its agents, servants and/or employees were the named contact person on any document associated with the bidding process including but not limited to the Form 470 which initiated the bidding process for Application Number 346207.

6. No agent, servant and/or employee of IMC was involved in the bid selection for Application Number 346207.

  
Robert Caldarella

Subscribed and sworn to before me, the undersigned officer, this 29<sup>th</sup> day of November, 2006, by Robert Caldarella known by one or more to my satisfaction to be the same.

  
Scott C. DeLaura  
Commissioner of the Superior Court

**AFFIDAVIT OF DOUG DeCERBO**

I, the undersigned, being of lawful age and believing in the obligation of an oath, do hereby swear or affirm as follows:

1. I am currently and at all relevant times have been employed by Boys & Girls Village, Inc. formerly Boys Village Youth and Family Services, Inc. (the "Agency") as Chief Operating Officer, and as such former IT Manager Rod Waller reported to me. Mr. Waller was responsible for all computer and communications equipment for the Agency.

2. On behalf of the Agency, I oversaw preparation of and also signed the Form 470's in connection with Funding Request Numbers 932177 and 932186.

3. At no time did Interactive Marketing Corp. ("IMC"), Robert Caldarella or anyone else associated with IMC, assist in the preparation of either of those applications.

4. Rod Waller was responsible for preparing and administering the Request for Proposals ("RFP") in connection with the above referenced funding requests. Neither IMC nor Robert Caldarella participated in the preparation, administration or awarding of the RFP.

5. In each case the vendor submitting the lowest cost proposal was selected among the parties submitting proposals. To the best of my knowledge, nothing in the details of the RFP afforded IMC or Caldarella a competitive advantage as to the aforementioned applications.

\_\_\_\_\_  
Doug DeCerbo

SUBSCRIBED AND SWORN TO before me, the undersigned officer, this \_\_\_\_ day of November 2006, by Doug DeSerbo known by one or more to my satisfaction to be the same.

\_\_\_\_\_  
Notary Public  
My Commission Expires

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