BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of	)	
	)	
Request for Review by	)	
	)	
Northeast Arizona Technological Institute of Vocational Education (NATIVE Vocational District)	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-06
	)	

REQUEST FOR REVIEW

Funding year 2006 (7/1/2006 to 6/30/2007)
Billed Entity Name: NATIVE Vocational District
Billed Entity No.: 16020596[1]
Form 470 Application No.: 720060000568310
Form 471 Application Nos.: 507313, 532327, and 536056

I. Introduction and Background

NATIVE Vocational District ("NATIVE") respectfully requests a review of the Administrator's Decisions[2] denying all funding requests on all three of the Form 471 applications (Nos. 507313, 532327, and 536056) filed for Year 2006 by NATIVE, because the underlying Form 470[3] used for all three applications "failed to advise bidders an RFP was issued."

[1] NATIVE has two Billed Entity Numbers, one for the District (16020596) and one for the District Office (16032082). Two of the referenced Forms 471 (536056 and 532327) were actually filed under NATIVE Vocational District Office.
[2] See attached Administrator's Decision Letters dated December 5, 2006, December 20, 2006 and January 4, 2007 from the Schools and Libraries Division of the Universal Service Administrative Company. Since the denial reason for each Form 471 is essentially the same, and arises from the same circumstances, I respectfully request that all three appeals be combined into this one Request for Review.
[3] Form 470 Number 720060000568310 attached for your convenience

NATIVE, which participates in the Universal Service Support Mechanism for Schools and Libraries (known as "the E-rate program"), is an Arizona school district entirely contained on the Navajo reservation. As the Superintendent of the NATIVE District, I properly completed and filed a Form 470 (Application Number 720060000568310), which listed in great detail under each category of service, the exact service or function and attendant quantity or capacity being sought, as is required under Items 8, 9, 10 and 11 of the Form 470. NATIVE also indicated (in Items 8b, 9b, 10b and 11b) that it had not and would not be issuing a Request for Proposals.

On August 15, 2006 SLD issued a Funding Decision Commitment Letter that denied all Priority One Telecommunications and Internet Access Funding Request Numbers (FRNs) on NATIVE Form 471 Application Number 507313[4], on the basis that NATIVE had issued an RFP and failed to notify potential bidders that it was doing so. NATIVE appealed this decision to the SLD on October 10, 2006 and on December 5, 2006 received an Administrator's Decision Letter upholding the denial of funding.

On August 15, 2006 SLD issued a Funding Decision Commitment Letter that denied the Basic Maintenance Funding Request Number (FRN) on NATIVE Form 471 Application Number 532327[5], on the basis that NATIVE had issued an RFP and failed to notify potential bidders that it was doing so. NATIVE appealed this decision to the SLD on October 10, 2006 and on December 20, 2006 received an Administrator's Decision Letter upholding the denial of funding.

On October 3, 2006 SLD issued a Funding Decision Commitment Letter that denied all Internal Connections Funding Request Numbers (FRNs) on NATIVE Form 471 Application Number 536056[6], on the basis that NATIVE had issued an RFP and failed to notify potential bidders that it was doing so. NATIVE appealed this decision to the SLD on October 10, 2006 and on January 4, 2007 received an Administrator's Decision Letter upholding the denial of funding.

Given the totality of circumstances surrounding the filing of the underlying NATIVE Form 470, which was the basis for all funding requests on all three referenced Form 471 applications, I believe that the Schools and

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[4] The relevant Funding Request Numbers (FRN) are: 1469901, 1469955, 1470012, 1470039, 1470089, 1484987, and 1485286.

[5] The relevant Funding Request Number (FRN) is 1470438.

[6] The relevant Funding Request Numbers (FRN) are: 1483288, 1483352, 1483401, 1483636, 1483698, 1483745, 1483790, 1483846, 1483892, 1483925, 1483964, 1483993, 1484029, 1484066, 1484100, 1484122, 1484210, 1484246, and 1484278.

Libraries Division (SLD) of the Universal Service Administrative Company (USAC) erred in stating:

> "In accordance with guidelines set forth by the FCC, the NATIVE document titled Description of Services for Telecommunications describes the project undertaken with sufficient detail and contains all the elements required of an RFP, such as description of the scope of services, location, etc. Therefore, the document must be considered an RFP."

I now respectfully request a review of the three pertinent and previously referenced SLD decisions on appeal.

II. Discussion

On December 23, 2005, I completed and filed the Form 470 application for the NATIVE District for Year 2006 services/products. This Form 470 indicated that NATIVE was seeking services/products in all four categories of service (Telecommunications Services, Internet Access, Internal Connections and Basic Maintenance). In each of the appropriate categories, NATIVE provided a detailed description of the services/products sought. For example, the following is what was indicated in Item 8, Telecommunications Services:

Service or Function:	Quantity and/or Capacity:
telephone service	4 existing lines
cellular service	2 lines
Fax machine line	1 line
Conferencing services	9 sites
Long Distance Service	5 lines
Distance Learning Circuits	DS3; 14 circuits
Conferencing Services	4 lines
Custom Calling Services	4 lines
DSL	1 line
Internet 2	DS3 line to closest link

Sufficient detail was provided so that interested service providers could reasonably ascertain exactly what types of services/products were being sought and could contact the NATIVE staff as needed. It was my intention that interested service providers would contact me for further information.

The NATIVE District is entirely contained on the Navajo reservation where infrastructure is limited, new development is highly regulated, and there are unique geographical and political limitations on providing service. It is not an easy job due to the remoteness and forbidding geography to interconnect all eight school sites that we serve with interactive video conferencing, nor are we an area that usually generates vigorous competition and many service provider inquiries. In fact, the recurring services that we requested were continuations from previous years, where only the incumbent service provider is qualified to provide the service. In order to be sure that all potential bidders who responded to the Form 470 were given the same information, I decided to prepare a supplemental document in order to provide details on the geographical, political, and infrastructure background of the NATIVE District.

In preparing my documents I relied on the guidance on the SLD website, the Form 470 instructions and the Arizona state law regarding

procurement. There is no indication on the SLD website, nor in the Form 470 instructions, that a document which contains all the elements required of an RFP, such as description of the scope of services, location, etc., would be interpreted by SLD to be an RFP. It should be noted that SLD appears to be able to make this interpretation *regardless of the intent of the originator of the document*.

Perhaps I misunderstood, but I thought that there was a difference between a Request for Proposals, which under Arizona code I would have had to advertise in the "official newspaper of the county" for at least two weeks prior to bid openings, and the document that I prepared, which was intended to provide further information. Since I did not engage in the official Arizona procurement procedure for using an RFP, it did not ever occur to me that my document could still be interpreted to be an RFP. If I had thought such an occurrence were even possible, I would have asked SLD to clarify what additional information I could have given to those service providers who in fact responded to the posted Form 470, but needed more details about the logistical and political constraints of dealing with the Navajo Reservation.

More than three weeks after the Form 470 was posted, and in response to service providers' questions, I prepared the document titled *Description of Telecommunications, Internet, Maintenance and Internal Connection Services Listed in the FCC 470 #720060000568310*, with the stated intent:

Intent

To further define the services and products requested in FCC 470 # 720060000568310 and to identify qualified Vendor/contractors to provide Telecommunications, Internet, Maintenance, and Internal Connection Services for Year 9 erate funding for 2006.

This long, very detailed document which refers to the Form 470 that was properly filed, provides descriptions of existing services, Navajo Reservation area information and restrictions, requirements to be considered, evaluation criteria, contact information and mailing addresses, and due dates. The need for this additional document was to provide necessary background on some of the geographical, political and logistical limitations of providing the desired interactive video conferencing service to all eight NATIVE district schools.

It should be noted that the Description of Services document was not prepared until after the Form 470 was filed, and was not made available until January 18, 2006, more than three weeks after the posting of the Form 470. It was only after potential service providers contacted NATIVE, based on the posted Form 470 contact information, that they were sent a copy of the

Description of Services. All along I thought that this document was a consequence of the Form 470, to be used only for those service providers who responded to the Form 470, to expand the context for the requested services, rather than a stand-alone document that could be seen as the basis for soliciting bids. That distinction is important, along with the stated intent of the document. For these reasons, and the additional requirements under state law, I did not feel that the document was the equivalent of an RFP, and so I asserted on the Form 470 that the NATIVE District had not issued nor was going to issue an RFP.

To hold otherwise, puts applicants under the Universal Support Mechanism for Schools and Libraries (known as the "E-rate program") in the untenable position of always having to check the box indicating that they have an RFP, whether or not they know at the time of the Form 470 filing if they intend to provide further information to bidding service providers. If that were true, the Commission should amend its rules to require and clarify that E-rate applicants check Items 8a, 9a, 10a, and 11a, as appropriate, in all instances, to protect applicants from deciding after the filing of the Form 470 that they need to provide further detailed information to bidding service providers.

In this case, SLD imposed their interpretation of the document as an RFP, despite the stated intent of NATIVE, which resulted in a total denial of all three Forms 471 based on Form 470 Number 720060000568310. This situation is adversely affecting the quality of education for thousands of the poorest students in Arizona. NATIVE acted in ways it thought met the requirements of Arizona state law. There is no definition of an "RFP" on the SLD website, nor any mention of FCC guidelines stating documents containing "sufficient detail and … all the elements required of an RFP, such as description of the scope of services, location, etc." will be considered as an RFP. Also, there is no indication that the applicant may be risking funding denial if the Form 470 was not marked to indicate the presence of an RFP if they create such a detailed document. These lapses should not be held against NATIVE; it acted in a reasonable manner to ensure that the service providers who responded to the Form 470 that NATIVE posted had all the information necessary, including the geographical and political limitations of working on the Navajo reservation, to complete the proposed projects.

III. Prayer for Relief

I respectfully seek review of the Administrator's Decisions and ask that the entire set of circumstances surrounding the Description of Services document (including the intent behind its creation, the fact that it was created after the Form 470 was filed and the fact that it was given only to

those service providers who contacted NATIVE as a result of the posted Form 470) be taken into consideration in deciding whether NATIVE in fact violated any FCC guidelines.

Alternative Waiver Request

In the alternative, if the document is indeed interpreted as an RFP, I respectfully ask that the requirement for checking the appropriate box on the Form 470 indicating the presence of an RFP be waived. Strict compliance with the rule would not further the purpose of 47 U.S.C. § 254(h), which directs the Federal Communications Commission to "enhance . . . access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers and libraries." To uphold the denial of funding would inflict undue hardship on the Navajo Reservation and the thousands of students served by the NATIVE District. Therefore, I would ask that the requirement be waived and the application sent back to SLD for processing.

Sincerely,

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