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November 16, 2006

**VIA FEDERAL EXPRESS**

Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Drive  
Capitol Heights, MD 20743

**FILED/ACCEPTED**  
**FEB 15 2007**  
Federal Communications Commission  
Office of the Secretary

**Re: In the Matter of the Request for Review of Decision on Appeal of the  
Universal Service Administrator by the State-Operated School District of  
the City of Paterson, Paterson, New Jersey  
CC Docket No. 96-45 CC Docket No. 02-06  
Contact Person: James Eric Andrews**

Applicant Name: Paterson School District  
Billed Entity No: 122871  
Form 471 Application No.: 463661  
Funding Request No.: 1305447

Dear Secretary:

We are General Counsel for the State-Operated School District of the City of Paterson also known as the Paterson Public Schools or Paterson School District. On behalf of the School District, please find enclosed an original and four copies of the District's Request for Review of the Administrator's Decision on Appeal in the above matter with Exhibits A through M. Please contact the undersigned for any questions you may have. I can be reached at (973) 540-7354 or at jea@spsk.com.

Thank you for your assistance.

Respectfully submitted,

SCHENCK, PRICE, SMITH & KING, L.L.P.

  
James Eric Andrews

Cc: Dr. Michael E. Glascoe, Superintendent

No. of Copies rec'd 041  
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IN THE MATTER OF THE REQUEST : FEDERAL COMMUNICATIONS COMMISSION  
FOR REVIEW OF A DECISION OF :  
THE UNIVERSAL SERVICE :  
ADMINISTRATOR BY THE STATE : CC DOCKET NO.: 96-45  
OPERATED SCHOOL DISTRICT : CC DOCKET NO. : 02-06  
OF THE CITY OF PATERSON, :  
PATERSON, NEW JERSEY :  
:  
: ON APPEAL FROM:  
:  
: UNIVERSAL SERVICE ADMINISTRATOR'S  
: DECISION ON APPEAL  
: DATED SEPTEMBER 18, 2006

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**REQUEST FOR REVIEW**

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SCHENCK, PRICE, SMITH & KING, LLP

10 Washington Street, P.O. Box 905

Morristown, New Jersey 07963-0905

(973) 539-1000

Attorneys for State-Operated School District of the  
City of Paterson

Re: Form 471 Application Number: 463661

Funding Year: 2005/2006

Applicant's Form Identifier: pps2005-2006

Billed Entity Number: 122871

SPIN Name: Cross Telecom Corporation

SPIN: 143026279

FRN: 1305447

Contract No. A42285

Pre-Discount Amount: \$571,309.19

Adjusted Funding Commitment: 0.00

By: James Eric Andrews, Esq.

Dated: November 16, 2006

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## INTRODUCTION

The State-Operated School District of the City of Paterson ("Paterson School District" or "District") hereby appeals the Universal Service Administrative Company's ("USAC"), Schools and Libraries Division's ("SLD") (hereinafter jointly "USAC") September 18, 2006 Decision on Appeal denying the Paterson School District's appeal of the USAC's May 8, 2006 decision denying \$479, 899.72<sup>1</sup> in E-rate funding to the District for the provision of basic maintenance for internal telecom connections. The USAC's Decision on Appeal provides in pertinent part:

- Upon through review of the appeal letter and relevant documents, USAC has determined that, at the time you submitted your Form 471 application, you did not have a signed contract in place with your service provider. During the application review, the applicant was asked to provide copies of signed and dated contracts. On October 20, 2005, you stated that products and services for FRN 1305447 were procured from NJ state master contract number A42285 (Notice of Award T-1316). Our records show that, at the time of the Form 471 filing, this contract was extended until February 28, 2005. Subsequent extensions to the master contract did not occur until after the Form 471 filing. FCC Rules state that a contract must be signed and dated on or after the Allowable Contract Date as calculated by the Form 470 posting date, but prior to the submission of the Form 471. In this case, you have not demonstrated that you have complied with FCC rules; therefore, the appeal is denied.
- SLD has determined that, at the time you submitted your Form 471 application, you did not have a signed contract for services in place with your service provider(s) for services other than tariffed or month-to-month services. FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." 47 C.F.R. § 54.504(c). The FCC has consistently upheld SLD's denial of Funding Request Number(s) when there is no contract in place for the funding requested. The FCC Form 471 instructions under Block 5 clearly state that you MUST sign a contract for all services that you order on your Form 471 except tariffed services and month-to-month services. You did not provide evidence with your appeal that, at the time you signed your Form 471, you had signed a contract for eligible services. Consequently, SLD denies your appeal.

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<sup>1</sup> In its appeal before the USAC, the District mistakenly referenced \$57,309,19 as the E-rate funding amount. This amount is the pre-discount amount. The District is actually eligible for E-rate funding for 84% of this figure or \$479,899.72. The District paid 16% amounting to \$91,409.47 to the vendor in December 2005.

## SUMMARY

Contrary to the USAC's finding in its September 18, 2006 Decision on Appeal, State Master Contract No. A42285 was in place when the District's Form 471 was signed and filed, and remained effective for the 2005/2006 funding year. No re-bidding of the State Master Contract took place during the period in question, and the existing contract was not replaced. As the Paterson School District was in full compliance with state procurement laws and the USAC's requirements, it strongly objects to the USAC's ruling that the State Master Contract was invalid simply because it was extended without re-bidding.

In its September 18, 2006 Decision on Appeal, the USAC also states that the District did not provide sufficient evidence indicating that there was a signed contract with a vendor at the time it signed its Form 471. The instructions for filing Form 471 state that the existence of a signed State Master Contract between the state and the service provider meets the FCC's signed contract requirement. As the record and the attached documents show, the District contracted for services pursuant to a valid New Jersey State Master Contract.

In In the Matter of Request for Review of a Decision of the Universal Service Administrator by Paterson School District, Paterson, New Jersey, DA 06-2269 (November 2, 2006), this Commission recently determined that State Master Contract A42285 (the same contract that is at issue in this case) was a valid contract that remained effective for funding year 2004/2005. As will be shown below, this is clear precedent for a finding by the Commission in this case that State Master Contract A42885 continued effective for funding year 2005/2006.

In the alternative, should the Commission disagree with the above arguments, the District seeks waiver of the Commission's rule at 47 C.F.R. Section 54.504(c). As argued in detail below, waiver of this rule would be consistent with the public interest standards followed by the

Commission in its recent decisions. There have been no findings by the USAC even suggesting that the District committed any fraud or misuse of funds when it utilized the State Master Contract.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

On December 20, 2004, the District posted its Form 470 for the purpose of applying for and obtaining E-Rate funding for maintenance services for its internal telecom connections. See first page of "Form 470--Receipt Notification Letter" and Form 470 attached hereto as Exhibit A. While the purpose of the posting was to receive multiple bids for the proposed work, no bids were received. Fortunately, the District was able to utilize the existing State Master Contract for basic maintenance services (T1316, Contract No. A42285) pursuant to New Jersey law. See, N.J.S.A. 18A:18A-10.<sup>2</sup> Given the situation at the time, the District properly determined that use of the State Master Contract was the most cost-effective way in which to engage a service provider for the continued maintenance of its internal telecom connections.

After the 28-day waiting period, on February 15, 2005, Cross Telecom Corporation (hereinafter "Cross Telecom"),<sup>3</sup> an eligible state contract service provider, sent the District proposed pricing for a maintenance contract under the State Master Contract. See Exhibit C. Thereafter, after determining that Cross Telecom's pricing was in conformance with the State Master Contract pricing, by letter incorrectly dated February 27, 2005, but actually sent on February 17, 2005, the District notified Cross Telecom that its offer was acceptable. See Exhibit D.<sup>4</sup>

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<sup>2</sup> State Master Contract A42285 is administered by the New Jersey Department of the Treasury, Division of Purchase and Property

<sup>3</sup> Cross Telecom is an authorized dealer for Avaya. Cross Telecom was added as a dealer via Addendum No. 24 to the State Master Contract attached hereto as Exhibit B.

<sup>4</sup> Even though Cross Telecom is listed as the service provider under Spin # 143026279, Cross Telecom is just a re-seller of Avaya, Inc.'s services. Therefore, Avaya has actually provided the maintenance services. The District plans on submitting a Change of Spin Form to reflect this fact.

On February 17, 2005, the District signed and thereafter submitted Form 471, indicating therein that it would be utilizing the existing State Master Contract with a contract award date of January 17, 2005. See first page of "Form 471-Receipt Acknowledgment Letter" and Form 471 attached hereto as Exhibit E; see also Block 5 of Form 471, Attachment 21, attached hereto as Exhibit F.<sup>5</sup> At paragraph 8 of its October 20, 2005 response to the USAC's Program Integrity Assurance team, the District once again indicated that it was using State Master Contract #A42285 for FRN 1305447. See Exhibit G.

During the period in question, the State Master Contract was extended four times. Addenda to the contract were issued as follows:

Addendum #31 – March 1, 2005 through June 30, 2005

Addendum #33 – July 1, 2005 through October 31, 2005

Addendum #37 – November 1, 2005 through April 30, 2006

Addendum #40 – May 1, 2006 through October 31, 2006

See Exhibit H. These addenda confirm the continuing existence of the contract during the funding year. Moreover, the Division of Purchase and Property always notifies service providers before extending a State Master Contract. These letter notifications must be signed by the service provider evidencing its agreement to the extensions. See Exhibit I.

On December 12, 2005, the District issued Purchase Order No. 604646 authorizing payment of 16% of the cost of the maintenance contract under State Master Contract A42285. See Exhibit J. On May 8, 2006, the USAC released its Funding Commitment Report denying E-rate funding to the District. See page 10 of the Funding Commitment Report attached as Exhibit

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<sup>5</sup> Attachment 21 is dated January 20, 2004 even though it was submitted in 2005. This was an error. Despite the wrong date, attachment 21 otherwise sets forth accurate information relating to the District's 2005/2006 funding year Form 471 filing, including its reference to utilization of State Master Contract #42285.

K. By letter dated July 7, 2006, the District appealed the USAC's decision. See Exhibit L. As noted above, on September 18, 2006, the USAC issued its Decision denying the District's appeal. See Exhibit M.

## LEGAL ARGUMENT

### POINT 1

#### **THE STATE MASTER CONTRACT WAS A VALID CONTRACT AT THE TIME THE DISTRICT SIGNED ITS FORM 471 THAT REMAINED IN PLACE FOR THE 2005/2006 FUNDING YEAR, AND THE PATERSON SCHOOL DISTRICT'S USE OF THIS CONTRACT COMPLIED WITH ALL STATE AND FEDERAL REQUIREMENTS**

In its Decision on Appeal, the USAC concludes that the State Master Contract was not in place for the full funding year because it expired and was extended on several occasions during the period in question. The USAC's conclusion is in error. The District followed all USAC instructions relating to Forms 470 and 471 as well as state procurement laws when it utilized the existing State Master Contract. As noted above, no bids were received from interested service providers for the provision of maintenance after the District posted its Form 470. In February 2005, state contract A42285 (Telecommunications Equipment – wired) was in full force and effect with its expiration set for February 28, 2005. In New Jersey the practice is that the state contract is periodically extended and the District understandably believed that future extensions, at least covering the funding year, would be forthcoming. As anticipated, the state contract never expired and remained in place with the same terms and conditions for the entire 2005/2006 funding year. See addenda numbers 31, 33, 37 and 40 (Exhibit H) and relevant extension letters (Exhibit I).

Aside from the fact that we are now dealing with a different funding year, this case is identical to the District's appeal in In the Matter of Request for Review of a Decision of the Universal Service Fund Administrator by Paterson School District, Paterson, New Jersey, CC Docket No 02-06, DA 06-2269 (November 2, 2006) (hereinafter "Paterson I"). In Paterson I, the Commission determined that the New Jersey State Master Contract No. A42285 did indeed

remain in effect as a valid contract for funding year 2004/2005 and ordered that the USAC reinstate the funding commitment to the District. The Commission stated:

We grant Paterson's appeal of the decision by USAC rescinding funding on the basis that Paterson did not have a signed valid contract that covered the entire funding year. Section 54.504(c) requires that an applicant have a signed contract in place before filing its FCC Form 471. The record demonstrates that Paterson accepted the service provider's offer of services pursuant to an existing state master contract before filing its Form FCC 471 and that the state master contract was continuously in effect throughout Funding Year 2004. We find that USAC's policy on expiring state master contracts is not applicable to the instant situation because New Jersey simply extended the existing state master contract as it had done numerous times previously and did not intend to select a new service provider. Because Paterson's service provider would not have changed, we find it had a valid contract with the service provider before it filed its FCC Form 471. Accordingly, we grant Paterson's Request for Review and remand its appeal to USAC for further processing consistent with our decision.

Id. at 4. The issue then, as it is now, is whether the State Master Contract meets the requirement of 47 C.F.R. Section 54.504(c) that there be a signed contract in place covering the funding year. In Paterson I, the issue was whether contract A42285 was valid for funding year 2004/2005, while the issue in this case is whether contract A42285 remained valid for funding year 2005/2006. As will be shown, it is clear that the Commission's reasoning in Paterson I applies with equal force to this matter.

The USAC defines a state master contract as "those contracts which are competitively bid and put in place by an entity of state government for use by others." See, [http://www.usac.org/sl/applicants/step04/contract\\_guidance.aspx](http://www.usac.org/sl/applicants/step04/contract_guidance.aspx). New Jersey contract number A42285 fits this description. In its Decision on Appeal, the USAC suggests that the District should have followed procedures for state master contract replacements found on its website. As the Commission determined in Paterson I, these procedures have no applicability to the facts herein. In this regard, the USAC website provides two scenarios which it describes as follows:

Scenario A -- State master contract expiring before the funding year

A state master contract may expire BEFORE the start of the funding year for an application. In this case, your state intends to select a service provider as part of a **competitive bidding process to provide services under a new state master contract**, but that process has not been completed and you are not yet sure who that service provider will be.

Scenario B – State master contract expiring during the funding year

A state master contract may expire DURING the funding year for which you are applying for discounts. In this second situation, the current service provider will provide services during part of the funding year under that state master contract, but your state intends to select a service provider as part of a **competitive bidding process to provide services under a new state master contract** during the remainder of the funding year. Again, that process has not been completed and you are not yet sure who the new service provider will be.

See, <http://www.usac.org/sl/applicants/step04/state-replacement-contracts.aspx> (emphasis supplied). As was the case during the 2004/2005 funding year, the state contracting authority in New Jersey apparently never intended to “select a service provider as part of a competitive bidding process to provide services under a new state master contract” either before commencement of or during the 2005/2006 funding year. Therefore, as the Commission has already found in Paterson I, no competitive bidding was needed to extend the contract. The District understood that it was not necessary to pursue the additional requirements for a replacement State Master Contract even though the existing contract was set to expire on February 28, 2005. As the State of New Jersey had no plans in place to seek new bids before or during the funding year, the District understood that the extension process would simply continue the contract that the State contracting authority had previously utilized. As noted above, the Commission accepted this reasoning when it stated “[b]ecause Paterson’s service provider would not have changed, we find it had a valid contract with the service provider before it filed its FCC Form 471.” In the Matter of Request for Review of a Decision of the Universal Service Fund Administrator by Paterson School District, Paterson, New Jersey. *supra* at 4. The

erroneous conclusion of the USAC in the previous Paterson matter and in this case is due to its misinterpretation of the word “expiration”. The assumption appears to be that if a contract is set to expire, it cannot be extended without adherence to a new competitive bidding process. However, in New Jersey, state contracts are frequently extended without re-bidding as the State did in these circumstances and as the Commission in Paterson I found would allow the contract to continue as a valid State Master Contract.

The USAC alleges that the District failed to provide evidence that there existed a signed contract at the time that it signed its Form 471; a requirement under 47 C.F.R. Section 54.504(c). However, Step 4 of the USAC’s contract guidance procedures provides the following:

If the applicant selects the state master contract as the most cost-effective alternative, the applicant is required to follow the applicable provisions of the state master contract, state contract law, and state and local procurement laws. **The signed state master contract between the state and the service provider meets the FCC signed contract requirement.**

See, <http://www.usac.org/sl/applicants/step04/contract-guidance.aspx> (emphasis supplied), See also, FCC Form 471 Instructions-2004 at 2. Therefore, as is clear from the above instructions, the existence of a State Master Contract utilized by the school district applicant fulfills the signed contract requirement of 47 C.F.R. 54.504(c). In Paterson I, the Commission agreed when it found that the New Jersey State Master Contract was indeed a valid contract.

In this case, the State Master Contract certainly existed at the time the District submitted its Form 471 Certification remaining in place for the 2005/2006 funding year, as evidenced by the Exhibits H and I attached hereto. So we think it odd indeed to question the very existence of the State Master Contract when the State of New Jersey relies on its continued validity to engage telecom services for many of its state government operations.

We note that when a State Master Contract is publicly bid in New Jersey, proposals are solicited from bidders, and if the State's Division of Purchase and Property accepts a bid, notification is then sent to the bidder requesting the signature of the official representing the bidder as evidence of the bidders acceptance of the terms and conditions of the contract. While New Jersey State Master Contracts do not contain signatures on the last page of the contract in the traditional way, the vendor's signed acceptance together with the terms and conditions set forth in the State's proposal constitutes the written contract. If the State decides to extend the contract without public bidding, notification of the extension is sent by the Division of Purchase and Property to those service providers listed on the state contract. The extension letters state that an extension is being contemplated and that the service provider must sign and return the letter if it wishes to accept the extension and continue as an authorized service provider under the state contract. See Exhibit I. <sup>6</sup>

In view of the foregoing analysis already approved by the Commission in Paterson I, the District respectfully requests that the Commission direct the USAC to award funding for maintenance services for funding year 2005/2006 in the amount of \$479,899.72. The Funding Year has now passed, and the vendor has provided maintenance services for the entire funding year under a New Jersey State Master Contract. The District's contract with Cross Telecom Corporation was a valid state contract allowable under the federal rules and utilized by the

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<sup>6</sup> The SLD cites In the Matter of Request for Review by Waldwick School District, Waldwick New Jersey, DA 03-3526 (released November 5, 2003) as support for its position regarding the Paterson School District's contract. In that case, Waldwick School District's appeal was denied because there was no contract with the service provider and Waldwick continued to use a previous contractor on a month to month basis. Unlike the situation in Waldwick, the Paterson School District was able to utilize an existing state contract with a state contract listed service provider. Waldwick's continued use of a different contractor, without notifying the SLD, was the basis for the Commission's denial. In contrast, the Paterson School District provided accurate information at all times and allowed the services of the vendor listed on the state master contract.

District in conformance with New Jersey public contracting law during the Funding Year. As argued above, the District had complied with all of the requirements of the Form 471 when it was submitted and as the Commission has already found in Paterson 1, was not obligated to follow replacement contract procedures irrelevant and inapplicable under the current circumstances. Moreover, the project was performed in accordance with the terms of the State Master Contract which remained in full force and effect during the 2005/2006 Funding Year. These facts alone should provide sufficient assurances that the work under the contract was completed in accordance with all USAC and Commission requirements.

## POINT II

**IN THE ALTERNATIVE, SHOULD THE COMMISSION DETERMINE THAT THERE WAS A TECHNICAL VIOLATION OF ITS SIGNED CONTRACT RULE, 47 C.F.R. SECTION 54.504(c), IT SHOULD WAIVE THIS RULE IN THE INTERESTS OF FAIRNESS AND IN FURTHERANCE OF SOUND PUBLIC POLICY**

It has been submitted that the District was in compliance with the 47 C.F.R. Section 54.504(c) under the present circumstances. In the event that the Commission determines that the District was not in compliance, waiver of this rule in furtherance of sound public policy and elemental fairness is appropriate.

The Commission may waive its rules for good cause shown. 47 C.F.R. Section 13. The Commission describes the basis for a finding of good cause as follows:

A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.

In the Matter of Requests for Waiver of the Decision of the USAC by Illinois School For the Visually Impaired, DA 06-785 at page 3, para. 5 (citations omitted)(released April 3, 2006). As will be shown, the circumstances surrounding the District's decision to use a State Master Contract warrant waiver of 47 C.F.R. Section 54.504(c) should the Commission determine that there was a violation of this rule.

47 C.F.R. Section 504-54(c) provides in pertinent part that an eligible School District "shall upon signing a contract for eligible services, submit a completed FCC Form 471 to the Administrator". By letter dated February 27, 2005, the District accepted Cross Telecom's offer of services in conformance with the State Master Contract's

discounted pricing. See Exhibit D. In order to effectuate service under the state master contract, the District issued Purchase Order No. 0604646 under the State Master Contract on December 12, 2005. As noted above, the Purchase Order provided that a percentage of the contract price amounting to \$ 91,408.47, was to be paid directly by the District with the balance paid via E-rate funding.

The Commission has recently released a number of decisions wherein it waived the provisions of 47 C.F.R. Section 54.504(c) even though it found that there had been technical violations of the rule. In In the Matter of Requests for Waiver of the Decision of the USAC by Illinois School For the Visually Impaired, DA 06-785 (released April 3, 2006), the Commission considered an appeal after the USAC had rescinded 100% of funding because no contract was in place at the time it signed its Form 471. While the vendor performed the work under a valid contract in place during the funding year, due to the requirements of Illinois law, the Illinois School was not allowed to enter into the contract until it received word from the USAC that its internal connections project was fully funded. Therefore, no contract was in place for the funding year at the time the Illinois school filed its Form 471.

In rendering its decision in the above case, the Commission waived 47 C.F.R. Section 54.504(c) and directed that the USAC reinstate the funding commitment previously rescinded by the USAC. In doing so, the Commission noted that there was no evidence in the record suggesting an intention to defraud or abuse the USAC's program. Of key importance here is the Commission's statement that while the Illinois school missed the deadline for submitting a signed contract, it did indeed have "a legally binding contract in place during the funding year

and before the vendor began providing services.” *Id.* at page 3, paragraph 7. In other words, no harm was done to the process and the work was performed under a valid contract.<sup>7</sup>

The District reasonably believed when it signed Form 471 that the State Master Contract authorized by the State’s Division of Purchase and Property was the most cost-effective way in which to proceed and that it met all E-rate filing requirements. On December 12, 2005 via a purchase order, the District officially authorized payment to the vendor of 16% of the cost of the contract pursuant to the existing New Jersey State Master Contract. See Exhibit J. Therefore, in keeping with the above-cited Commission decisions, no harm was done to the procurement process because there was a “legally binding contract in place during the funding year and before the vendor began providing services.” *Id.* at 3.

When all of the facts are examined, it is apparent that the standard for waiver referenced in paragraph 5 of the Commission’s decision in DA 06-785 (Illinois case) is applicable in this case as well. Continued denial of funding represents a hardship for a school district already subject to severe budgetary constraints. Under these circumstances, especially when there is no allegation of fraud or abuse of the funding process, waiver of the rule is entirely appropriate.

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<sup>7</sup> See, In the Matter of Cincinnati City School District, DA06-1107 (released May 26, 2006) (Commission waived 47 C.F.R. Section 54.504(e) where City Schools issued a purchase order before filing Form 471, but did not enter formal contract until later). See also, In the Matter of Requests for Review by Richmond County School District, Hamlet N.C., DA 06-1265 (released June 13, 2006) and In the Matter of Request for Waiver, West Virginia Department of Education, DA 05-2179 (released July 27, 2005).

CONCLUSION

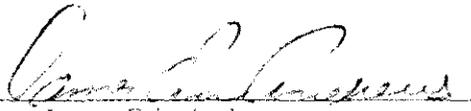
In conclusion, New Jersey State Master Contract #A42285 remained in effect for the Funding Year and the District's vendor performed under that contract in accordance with its terms and conditions. For the reasons outlined above and in the Commission's decision in Paterson I, the signed contract requirement was met and as is required under the Form 471 process and noted above, use of the State Master Contract by the District was a valid exercise of the District's contracting authority under New Jersey public contracting law.

In the alternative, should the Commission disagree and conclude that there was a technical violation of 47 C.F.R. Section 54.504(c), we request that the Commission waive this rule because there was in fact a valid contract between the parties at the time the work was performed by the service provider without harm to the E-rate process.

Under either approach, we respectfully request that the Commission direct that the USAC award full funding for the maintenance service contract in the amount of \$479,899.72. The Paterson School District serves especially needy children, and a decision denying the within appeal, especially when there is no allegation of fraud or hint of abuse of the funding process, would work a hardship against the Paterson School District and run counter to the policies that gave rise to utilization of E-rate funding in the first place.

Respectfully submitted,

SCHENCK, PRICE, SMITH & KING, LLP  
Attorneys for  
THE STATE-OPERATED SCHOOL DISTRICT  
OF THE CITY OF PATERSON

By:   
James Eric Andrews

Date: November 16, 2006

# EXHIBIT A



Universal Service Administrative Company  
Schools & Libraries Division

FORM 470-Receipt Notification Letter  
(Funding Year 2005: 07/01/2005--06/30/2006)

February 01, 2005

Ralph Barca  
PATERSON SCHOOL DISTRICT  
35 CHURCH ST  
PATERSON, NJ 07505-1306

Re: Applicant's Form Identifier:  
Form 470 Application Number: 909620000525134  
Entity Number: 122871  
Date Form 470 Posted: 12/20/2004  
Allowable Vendor Selection/Contract Date: 01/17/2005

Dear Ralph Barca:

This letter is to notify you that the Schools and Libraries Division (SLD) has received your FCC Form 470, "Description of Services Requested and Certification Form," and your signed certification. This letter provides important information about program rules. Please read this letter carefully and retain it for your records and future reference.

The Form 470 Application Number listed above has been assigned by the SLD and will be used to track your Form 470. This number must be provided on each FCC Form 471, "Services Ordered and Certification Form," Block 5 Funding Request that cites this Form 470. Any applicant who relies on this Form 470 will need to know this Form 470 Application Number. You may wish to share this number with those schools and/or libraries featured in this application to assist them in their preparation of the Form 471.

The purpose of the Form 470 is to open a competitive bidding process for the services desired. The Form 470 applicant is responsible for ensuring an open, fair competitive process and selecting the most cost-effective provider of the desired services with price being the primary factor. The Form 470 must be completed by the entity that will negotiate with potential service providers. A service provider who will participate in the competitive bidding process as a bidder cannot complete it. Please be aware that if a service provider was involved in the preparation or certification of your Form 470, this involvement could taint the competitive bidding process and result in the denial of your funding requests.

FCC rules require that requests for non-contracted tariffed or month-to-month services and requests for new contractual services be posted on the SLD section of the USAC web site for a period of at least 28 days before selecting a vendor in order to provide for a competitive bidding process. If you indicated on your Form 470 that you have an RFP, that RFP must also be available to potential bidders for at least 28 days before selecting a vendor. In addition, if you are seeking support on your Form 470 for the first time for services delivered under a multi-year contract signed on or before July 10, 1997, the SLD cannot process your Form 471 until the 28-day waiting period has elapsed. State or local laws may require a longer procurement cycle. This 28-day waiting period must occur before

FCC Form

Approval by OMB  
3060-0806

470

### Schools and Libraries Universal Service Description of Services Requested and Certification Form

Estimated Average Burden Hours Per Response: 4.0 hours

This form is designed to help you describe the eligible telecommunications-related services you seek so that this data can be posted on the Fund Administrator website and interested service providers can identify you as a potential customer and compete to serve you.

Please read instructions before beginning this application.

(To be completed by entity that will negotiate with providers.)

#### Block 1: Applicant Address and Identifications

Form 470 Application Number: 909620000525134
Applicant's Form Identifier:
Application Status: COMPLETE
Posting Date: 12/20/2004
Allowable Contract Date: 01/17/2005
Certification Received Date:

1. Name of Applicant: PATERSON SCHOOL DISTRICT		
2. Funding Year: 07/01/2005 - 06/30/2006	3. Your Entity Number 122871	
4a. Applicant's Street Address, P.O.Box, or Route Number 35 CHURCH ST		
City PATERSON	State NJ	Zip Code 07505-1306
b. Telephone number (973) 321-0909	c. Fax number (973) 321-0901	
d. E-mail Address		
5. Type Of Applicant <input checked="" type="checkbox"/> Individual School (individual public or non-public school) <input checked="" type="checkbox"/> School District (LEA;public or non-public[e.g., diocesan] local district representing multiple schools) <input type="checkbox"/> Library (including library system, library branch, or library consortium applying as a library) <input type="checkbox"/> Consortium (intermediate service agencies, states, state networks, special consortia)		
6a. Contact Person's Name: Ralph Barca		
<i>First, fill in every item of the Contact Person's information below that is different from Item 4, above. Then check the box next to the preferred mode of contact. (At least one box MUST be checked.)</i>		
6b. Street Address, P.O.Box, or Route Number <input checked="" type="checkbox"/> 385-391 Totowa Avenue		
City PATERSON	State NJ	Zip Code 07502

<input checked="" type="checkbox"/>	6c. Telephone Number (973) 321-0909
<input checked="" type="checkbox"/>	6d. Fax Number (973) 321-0910
<input checked="" type="checkbox"/>	6e. E-mail Address erbarca@paterson.k12.nj.us

**Block 2: Summary Description of Needs or Services Requested**

**7 This Form 470 describes (check all that apply):**

a.  Tariffed services - telecommunications services, purchased at regulated prices, for which the applicant has no signed, written contract. A new Form 470 must be filed for tariffed services for each funding year.

b.  Month-to-month services for which the applicant has no signed, written contract. A new Form 470 must be filed for these services for each funding year.

c.  Services for which a new written contract is sought for the funding year in Item 2.

d.  A multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous program year.

**NOTE:** Services that are covered by a signed, written contract executed pursuant to posting of a Form 470 in a previous program year OR a contract signed on/before 7/10/97 and reported on a Form 470 in a previous year as an existing contract do NOT require filing of a Form 470.

**What kinds of service are you seeking: Telecommunications Services, Internet Access, or Internal Connections? Refer to the Eligible Services List at [www.sl.universalservice.org](http://www.sl.universalservice.org) for examples. Check the relevant category or categories (8, 9, and/or 10 below), and answer the questions in each category you select.**

**8  Telecommunications Services**  
*Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?*

a.  YES, I have an RFP. It is available on the Web at or via (check one):  
 the Contact Person in Item 6 or  the contact listed in Item 11.

b.  NO, I do not have an RFP for these services.

*If you answered NO, you must list below the Telecommunications Services you seek. Specify each service or function (e.g., local voice service) and quantity and/or capacity(e.g., 20 existing lines plus 10 new ones). See the Eligible Services List at [www.sl.universalservice.org](http://www.sl.universalservice.org) for examples of eligible Telecommunications Services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Add additional lines if needed.*

Service or Function:	Quantity and/or Capacity:
ASYNCHRONOUS TRANSFER MODE (ATM)	DISTRICT WIDE
CELLULAR SERVICES	165 PHONES
DIGITAL TRANSMISSION SERVICES	DISTRICT WIDE
DIRECT INWARD DIALING	1500 CIRCUITS
DIRECTORY ASSISTANCE CHARGES	4000 PHONES
DISTANCE LEARNING CIRCUITS	1
LONG DISTANCE TELEPHONE SERVICES	53 SCHOOLS
MESSAGE RATE SERVICE	DISTRICT WIDE
POTS	500 CIRCUITS

**9  Internet Access**  
*Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?*

a  YES, I have an RFP. It is available on the Web at or via (check one):  
 the Contact Person in Item 6 or  the contact listed in Item 11.

b  NO, I do not have an RFP for these services.

If you answered NO, you must list below the Internet Access Services you seek. Specify each service or function (e.g., monthly Internet service) and quantity and/or capacity(e.g., for 500 users). See the Eligible Services List at [www.sl.universalservice.org](http://www.sl.universalservice.org) for examples of eligible Internet Access services. Add additional lines if needed.

Service or Function:	Quantity and/or Capacity:
INTERNET ACCESS	53 SCHOOLS
BROADBAND INTERNET ACCESS	53 SCHOOLS
WIRELESS INTERNET ACCESS	DISTRICT WIDE

10  Internal Connections  
 Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?

a  YES, I have an RFP. It is available on the Web at or via (check one):  
 the Contact Person in Item 6 or  the contact listed in Item 11.

b  NO, I do not have an RFP for these services.

If you answered NO, you must list below the Internal Connections Services you seek. Specify each service or function (e.g., local area network) and quantity and/or capacity(e.g., connecting 10 rooms and 300 computers at 56kbps or better). See the Eligible Services List at [www.sl.universalservice.org](http://www.sl.universalservice.org) for examples of eligible Internal Connections services. Add additional lines if needed.

Service or Function:	Quantity and/or Capacity:
ACCESS POINT	53 SCHOOLS
BATTERY BACKUP	53 SCHOOLS
CABINETS	10 FOR SERVERS
CLIENT ACCESS LICENSES	10, 000
CODEC/VIDEO ENCODER	10
COMMUNICATIONS SERVER	LAN & CONNECTING 10,000 USERS
CONDUIT/RACEWAY	53 BUILDINGS
CONNECTOR	53 SCHOOLS
DOCUMENTATION	53 SCHOOLS
EDGE DEVICE	53 SCHOOLS
FILE SERVER	10
HUB	10
LOCAL AREA NETWORK (LAN)	LAN/2 BUILDINGS 250 ROOMS
MAINTENANCE AND TECHNICAL SUPPORT	DISTRICT WIDE
POWER POLES	53
PBX (WIRED AND WIRELESS)	DISTRICT WIDE UPGRADE
RACKS	3 SCHOOLS
RAID	28 SERVERS
ROUTERS	10 ROUTERS
SOFTWARE	35 SERVER UPGRADE
WIRING INTERNAL	LAN/1000 COMPUTERS
WIRELESS LOCAL AREA NETWORK	DISTRICT WIDE
CHANGE FEES	DISTRICT WIDE
CONFIGURATION CHARGES	DISTRICT WIDE
EXTENDED WARRANTY	DISTRICT WIDE
FREIGHT INSURANCE FEES	DISTRICT WIDE

LEASING FEES	DISTRICT WIDE
PER DIEM	DISTRICT WIDE
SHIPPING CHARGES	DISTRICT WIDE
✓ TECHNICAL SERVICES	SERVERS & LAN EQUIPMENT
✓ TRAVEL TIME	DISTRICT WIDE
E-MAIL SERVICES	DISTRICT WIDE
UNINTERRUPTABLE POWER SUPPLY	53 SCHOOLS FOR SERVERS AND SWITCHES
VIDEO EQUIPMENT	53 SCHOOLS
VOICE/VIDEO OVER IP (VOIP)	53 SCHOOLS
WIRE AND CABLE MAINTENANCE	DISTRICT WIDE
WIRE MANAGER	LAN/1000 COMPUTERS

**11** (Optional) Please name the person on your staff or project who can provide additional technical details or answer specific questions from service providers about the services you are seeking. This need not be the contact person listed in Item 6 nor the signer of this form.

Name: Ralph Barca	Title: Director of Technology
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Telephone number (973) 321 - 0909
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Fax number (973) 321 - 0910
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E-mail Address erbarca@paterson.k12.nj.us
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**12.**  Check here if there are any restrictions imposed by state or local laws or regulations on how or when providers may contact you or on other bidding procedures. Please describe below any such restrictions or procedures, and/or provide Web address where they are posted and a contact name and telephone number for service providers without Internet access.

**13.** If you intend to enter into a multi-year contract based on this posting or a contract featuring an option for voluntary extensions you may provide that information below. If you have plans to purchase additional services in future years, or expect to seek new contracts for existing services, summarize below (including the likely timeframes).

**Block 3: Technology Assessment**

**14.**  **Basic telephone service only:** If your application is for basic local and long distance telephone service (wireline or wireless) only, check this box and skip to Item 16.

**15.** Although the following services and facilities are ineligible for support, they are usually necessary to make effective use of the eligible services requested in this application. Unless you indicated in Item 14 that your application is ONLY for basic telephone service, you must check at least one box in (a) through (e). You may provide details for purchases being sought.

a. Desktop software: Software required  has been purchased; and/or  is being sought.

b. Electrical systems:  adequate electrical capacity is in place or has already been arranged; and/or  upgrading for additional electrical capacity is being sought.

c. Computers: a sufficient quantity of computers  has been purchased; and/or  is being sought.