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May 19, 2008

VIA ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 02-6
Consolidated Request for Review of the Decisions of the Universal Service Administrator
FY 2001 to Little Flower Union Free School District, A+ Technology Solutions, Inc., and
Integra Consulting & Computer Services, Inc.
Applicant Name: Little Flower School District
Billed Entity Number: 123977
Form 471 Application Number: 230544
Funding Request Number(s): 638905, 537661, 537681, 638928, 638948, 638969 and 638989.

I. Joint Request for Review and Waiver

A+ Technology Solutions, Inc., (“A+”) and Integra Consulting & Computer Services, Inc. (“Integra”) (collectively, “the Parties”), pursuant to Section 54.719(c) of the Federal Communication Commission’s (“Commission” or “FCC”) rules, submit this Joint Request for Review and Waiver (“Appeal” or “Request”) seeking reversal of the Administrator’s Decision on Appeal (“USAC” or “Administrator”), denying funding requests for Funding Year (“FY”) 2001.¹

This Appeal is timely. Section 54.720(a) of the Commission’s rules requires the filing of an appeal “within sixty (60) days of issuance” of a decision by USAC. The USAC COMAD Denials² to Integra and A+ were dated March 19, 2008, and 60 days thereafter is May 18, 2008. Since May 18th falls on Sunday, a holiday according to Commission rules,³ the deadline is the following business day, May 19, 2008. Therefore, this Appeal is timely filed.

¹ Attachment 1, Administrator’s Decision on Appeal--FY 2001 to Integra Consulting & Computer Services, Inc., dated Mar. 19, 2008, denying FRN 638905. Attachment 2, Administrator’s Decision--FY 2001 on Appeal to A+ Technology Solutions, Inc., dated Mar. 19, 2008, denying FRNs 537661, 537681, 638928, 638948, 638969 and 638989 (“collectively USAC COMAD Denials”)

² *Id.*

³ 47 .C.F.R. § 1.4(j).

II. Summary

USAC has spent seven years investigating one small school district through conducting an audit⁴ of 2001, multiple PIA reviews, selective reviews, special investigation reviews, pattern analysis reviews, pouring over Web sites, lease agreements and corporate records only to fall woefully short on substantive and procedural grounds in its funding denial decision. The facts demonstrate that USAC has misapplied the law to the facts and created law to carve out its justification for denial, thereby exceeding its authority under Commission rules.

In addition, USAC's unwarranted, seven-year inquiry represents an abuse of discretion and is not in accordance with Congress's intent in establishing the E-Rate Program. Rather, Congress intended that funds be awarded to schools and libraries in a competitively neutral manner.⁵ Yet USAC's heightened scrutiny is anything but competitively neutral.

Moreover, USAC has failed to file its COMAD Denials in a timely fashion according to Commission precedent. The record will show that USAC's action is time-barred because the COMAD Denials were not filed within a five-year period after final delivery of service for FY2001 for Little Flower's 471 Application No. 230544. As a result, the Commission should reject USAC's arguments and fully fund the FRNs in this case.

In addition, the Parties have not violated any federal statutes, Commission rules or Orders. Moreover, there are neither Commission rules nor precedent that prevents a company from organizing different operating divisions to provide different services. Rather, the issue in this case is whether a competitive bid violation has occurred as a result of an improper relationship. As the facts will demonstrate, there was no improper relationship and there was no competitive bid violation.

There was no improper relationship because the facts will show that Integra as an E-Rate consultant, provided Little Flower with basic, clerical and administrative E-Rate consulting services. Integra was not involved in Little Flower's selection of products and services or its selection of vendors. Integra had absolutely no involvement in Little Flower's competitive bid process. Letters from Little Flower demonstrate that Integra provided only "necessary clerical" and data entry support to navigate the E-Rate forms and adhere to program filings and deadlines.⁶ At no time did Little Flower relinquish control of its competitive bidding process or abdicate its competitive bid process responsibilities to Integra.⁷

⁴ Attachment 3, Little Flower 2003 Letter.

⁵ See 47 U.S.C. § 254(h)(2) (stating that the "Commission shall establish competitively neutral rules to enhance ... access to advanced telecommunications and information services for all public and non-profit secondary school classrooms, health care providers and libraries ...").

⁶ Attachment 3, Letter from Little Flower Superintendent John Edwards to Wayne Scott, USAC Director, dated Sep. 17, 2003 ("Little Flower 2003 Letter"), Attachment 4, Letter from Little Flower Superintendent George Grigg to USAC, dated Feb. 8, 2006 ("Grigg 2006 Letter").

⁷ *Id.*

In addition, the facts will demonstrate that no service provider was excluded from the vendor selection process by Little Flower, because Little Flower relied on vendors listed on various state master contracts that already had been competitively bid by the state.

The Parties abided by the rules and procedures in place in FY2001 and Little Flower conducted a fair and open competitive bid process without any service provider involvement in complete compliance with the Commission's rules. Moreover, Integra and A+ have acted responsibly and in good faith to comply with the Commission's competitive bidding regulations. USAC has failed to demonstrate that the Parties have acted improperly or compromised the integrity of the competitive bidding process.

USAC, throughout its multi-year investigation, audits, and special compliance reviews, has failed to rely upon information and procedures applicable to FY2001. In reaching its decision in its funding denials, USAC failed to provide and to cite pertinent legal support that was applicable to FY2001. At that time, the only guidance provided by USAC and the Commission related to service provider involvement as a consultant to an applicant were drawn from the Commission's *MasterMind* Order, which is discussed in detail in section IV.

USAC's ongoing investigation is fundamentally unfair and prejudicial because USAC waited more than seven years to take action. This protracted delay is unduly burdensome and unfair to Little Flower and the Parties. The Parties must now recreate a timeline for a company (Integra) that was in transition in 2000/2001 and provide documentation for FY2001—a time period that even exceeds the FCC's five-year record keeping requirement.

In FY2001, Integra was in the process of consolidating all of its services and functions to A+. The transition resulted in some inevitable interchange in the name of the companies providing consulting, products and IT services. However, the record will demonstrate that the clerical, basic and administrative E-Rate consulting services were performed by a consultant with no involvement in the service provider functions of the organization.

III. Statement of Facts

A. Background

The facts before the Commission are straightforward. In FY 2001, Little Flower and other neighboring school districts relied on various state master contracts for multiple services. The state master contracts already had been competitively bid by the New York State Office of General Services ("OGS") and were maintained by OGS. A+ appeared as a lead company on many master contracts and in others, A+ was listed as a lead company's reseller. In this way, A+ was selected to provide internal connections, such as servers, wiring and Interactive TV, to Little Flower.

In addition to the services previously described, Little Flower also sought wireless equipment and installation in FY2001 for its school district. Again, Little Flower turned to the OGS master contract list. For wireless equipment and installation, Symbol Technologies, Inc. ("Symbol") was listed as the lead company and Integra was listed as a reseller. Little Flower chose Integra to provide wireless equipment and installation in FY2001 in compliance with state and federal competitive bid

rules. Unlike the other state master contracts, A+ was not listed as a provider on OGS's wireless master contract for wireless equipment and installation.

In addition to internal connections, Little Flower and other school districts purchased E-Rate Consulting Services through the Eastern Suffolk Board of Cooperative Education Services administrative ("BOCES") from the separate E-Rate consulting division, Integra.⁸ Integra's Rosanne Sweeney provided all of Little Flower's basic and clerical consulting services.

More than seven years later, on September 28, 2007, USAC sent A+ and Integra two separate Commitment Adjustment and Further Explanation of Commitment Adjustment Letters ("COMAD Justification Letter")⁹ rescinding funding commitments for the following FRNS:

FRN	Subject	FCDL E-Rate Approved Funding	Amount Disbursed and Reimbursement Sought	Party
537661	Internal Connections	\$43,200.00	\$43,200.00	A+ Technology Solutions, Inc.
537681	Internal Connections	\$14,078.70	\$14,078.70	A+ Technology Solutions, Inc.
638928	Internal Connections	\$73,187.82	\$73,187.82	A+ Technology Solutions, Inc.
638948	Internal Connections	\$180,000.00	\$90,000.00	A+ Technology Solutions, Inc.
638969	Internal Connections	\$54,000.00	\$54,000.00	A+ Technology Solutions, Inc.
638989	Internal Connections	\$108,108.00	\$54,000.00	A+ Technology Solutions, Inc.
Total:			\$328,466.52	

USAC's COMAD Justification Letter to Integra also included the following FRN:

FRN	Subject	FCDL E-Rate Approved Funding	Amount Disbursed and Reimbursement Sought	Party
638905	Internal Connections	\$37,626.75	\$37,626.75	Integra Consulting & Computer Services, Inc.

⁸ Attachment 5, Letter from Allan Herrmann, Senior Purchasing Agent, Eastern Suffolk Board of Cooperative Education Services, to Integra Consulting and Computer Services, Inc., dated Sept. 24, 2001 (notifying Integra of the Board's approval to extend Integra's contract for the E-Rate consulting services bid under RFP #001-1 for an additional year from Sept. 25, 2001, through Sept. 24, 2002).

⁹ Attachment 6, COMAD Justification Letter to A+ from USAC, dated Sep. 28, 2007 ("A+ COMAD Justification Letter"); Further Explanation of Commitment Adjustment Letter to A+, dated Sep. 28, 2007. Attachment 7, COMAD Justification Letter to Integra from USAC, dated Sep. 28, 2007 ("Integra COMAD Justification Letter"); Further Explanation of Commitment Adjustment Letter to Integra from USAC, dated Sep. 28, 2007.

The Parties appealed the denials to USAC.¹⁰ On March 19, 2008, USAC denied the appeals.¹¹ Days later, on March 24, 2008, USAC issued Demand Payment Letters to A+ and Integra, threatening to red light the Parties, despite the fact that the 60-day appeal period had not expired.¹²

B. Companies Provided Services to Little Flower

Little Flower chose Eastern Suffolk BOCES as its E-Rate consultant in FY2001 with services provided by Integra's consulting division. Little Flower chose Integra's service division and A+ to provide products and services as service providers. They are described in more detail below.

1. Integra's E-Rate Consulting Services

Integra provided E-rate consulting services to Little Flower through its consulting contract with Eastern Suffolk BOCES. Integra performed clerical work for Little Flower that did not include any role or responsibility in identifying or selecting the services sought, the evaluation of the bids, and the choice or selection of the service provider. At all times, Integra provided only administrative and clerical support in assisting Little Flower in processing forms, adhering to deadlines, and assisting with responses to a multitude of PIA and USAC questions. At no time, was Integra or for that matter A+ ever involved in the competitive bid process for Little Flower or any other school district.

Integra provided these E-Rate consulting services as a separate operating unit of Integra Consulting & Computer Services. In FY 2001, Rosanne Sweeney¹³ performed all of Integra's day-to-day E-Rate consulting services. Sweeney continues to serve as Integra's E-Rate consultant today for Little Flower and other school districts.¹⁴

In numerous responses to USAC, Little Flower has described Integra's consulting role as one with the sole administrative function of "data enter[ing] the information provided by Little Flower on our Form 470, provid[ing] basic information about the program and assist[ing] us in meeting all

¹⁰ Attachment 8, Letter of Appeal from A+ Technology Solutions, Inc. to USAC, dated Nov. 1, 2007 ("A+ Letter of Appeal"); Attachment 9, Letter of Appeal from Integra Consulting & Computer Services, Inc., dated Nov. 15, 2007 ("Integra Letter of Appeal")(incorporating the arguments and supporting documents of the A+ Letter of Appeal).

¹¹ See Attachments 1 and 3, USAC COMAD Denials.

¹² Attachment 10, Demand Payment Letter to A+ from USAC, dated March 24, 2008. Attachment 11, Demand Payment Letter to Integra from USAC dated March 24, 2008. The Parties find that USAC's procedures are flawed with respect to the issuance of such Demand Payment Letters within the 60-day period to appeal. The issuance of such letters and threat of red light during the 60-day appeal window is unfair. Demand Payment Letters should be held in abeyance until the time period for the USAC and/or FCC appeal has been exhausted.

¹³ A+ Letter of Appeal, page 4. See also Attachment 6, Declaration of Rosanne Sweeney.

¹⁴ Attachment 12, Fax to USAC from Rosanne Sweeney, dated December 20, 2006 (attaching Little Flower's Form 471 for telecommunications services provided by Verizon Wireless and NextGen Telephone, Inc., and demonstrating Sweeney's clerical role in entering data on behalf of Integra. Little Flower's Form 471 listed Myra Polite of Little Flower as the contact person and was certified by Little Flower Superintendent George Grigg.).

deadlines required by the filing.”¹⁵ Little Flower has stated that Integra had “no other role or control of the process of filing our Form 470, and ... has never had any undue influence over Little Flower.”¹⁶ Little Flower further affirmed to USAC that Integra provided “limited neutral assistance in preparation of Form 470,” by data entering information provided by Little Flower to Integra.¹⁷ As further evidence of this limited consulting relationship, a January 31, 2001, invoice from Integra to the Eastern Suffolk BOCES demonstrates that the services that Integra provides were clerical and administrative in nature as is evidenced by the \$75 hourly fee, not the several hundred dollar per hour fee that USAC asserted in original notice.¹⁸

2. Integra’s Wireless Equipment and Installation Services

A separate division of Integra provided custom programming and support solutions to non-school entities in New York in FY2001 and had been doing so since 1988.¹⁹ This operating division of Integra appeared as a reseller of Symbol on a master contract for wireless equipment and installation that had been competitively bid by the New York State OGS. Little Flower chose Integra from the master state contract as the most cost effective provider for wireless equipment and installation.

A+ might have been the service provider for those services, but had not been listed on the state master contract as a reseller and, therefore, could not be chosen by Little Flower. Although Integra remained on the state master contract list, Integra’s executives were in the process of transitioning its services and operations to A+, a separate corporation. As part of that process, Integra asked Symbol to correct the New York State contract list by replacing Integra with A+ as a wireless reseller. The state contract list was not revised to reflect A+’s addition until February 10, 2004.²⁰ Although Integra sought to have the change take effect in 2001, Symbol failed to submit a contract addendum immediately to OGS adding A+ to its contract list. As a result, Integra’s service provider unit remained on the OGS contract list. When Little Flower sought wireless equipment and installation in FY2001, it relied on the OGS master contract list for wireless equipment and installation, where Integra appeared as a reseller. Little Flower chose Integra from the OGS contract list as its wireless service provider.

3. A+ Internal Connections for Schools

¹⁵ Attachment 13, Letter from George Grigg, Superintendent, Little Flower School District to Michael Deusinger, Special Investigations Dept, to USAC, dated January 6, 2005 (“Grigg 2005 Letter”).

¹⁶ *Id.*

¹⁷ See Attachment 4, Grigg 2006 Letter.

¹⁸ Attachment 14, Integra Consulting and Computer Services, Inc., Invoice to Eastern Suffolk BOCES, dated January 31, 2001.

¹⁹ Attachment 15, Letter from David Antar, President of Integra, to George Grigg, Superintendent, Little Flower, dated Dec. 28, 2006 (“Antar 2006 Letter”).

²⁰ Contract Award Notification Update #7, Addendum to Contract of Symbol Technologies, Inc., Group 77502, dated February 10, 2004. <http://www.ogs.state.ny.us>. (search “Symbol Technologies, Inc.”; then follow “Purchasing Memos” hyperlink).

A+ appeared as a provider of products and services on various master contracts maintained by OGS. In some cases, A+ was the lead company on the OGS master contracts. In others, A+ was a reseller of a lead company on a master contract. In FY2001, Little Flower chose A+ from the OGS contract lists to provide certain internal connections. A+ was not listed as a reseller of wireless equipment and installation on Symbol's master contract on file with OGS.

IV. Legal Arguments

A. The Required Time For Audits, Investigations Has Lapsed

The Commission has determined that USAC's audits and investigations are subject to a five-year administrative time limitation. In its Fifth Report and Order,²¹ the Commission stated:

“Accordingly, we announce our policy that we will initiate and complete any inquiries to determine whether or not statutory or rule violations exist within a five-year period after final delivery of service for a specific funding year.”²²

USAC's denials are improper because the five-year administrative period has lapsed. Delivery of final service for all of the FRNs that are the subject of this appeal are outside of the five-year period. The Service Certifications²³ in the following chart serve as proof that Little Flower received final delivery of service on all FRNs by July 12, 2002.

Based upon the *Fifth Report and Order*, the last day for A+ and Integra to have received notice from USAC would have been July 11, 2007. USAC did not issue a determination regarding A+ and Integra until September 28, 2007. Thus, USAC's rescission of funding of the above FRNs is time-barred.

FRN	Date of Final Service Delivery/Installation	Authorized Signature	Fifth Report & Order Cutoff Date
537661	July 12, 2002	John Edwards, LF Superintendent	July 11, 2007
638948	July 12, 2002	John Edwards, LF Superintendent	July 11, 2007
638989	July 12, 2002	John Edwards, LF Superintendent	July 11, 2007

²¹ *In Re Schools and Libraries Universal Service Support Mechanism*, Fifth Report and Order, 19 FCC Red 15808, FCC 04-190 (rel. Aug. 13, 2004) (“Fifth Report and Order”).

²² *Id.* at ¶32.

²³ Attachment 16, Service Certification of Little Flower School District for FRNS 537661, 638948, 638989, 638928, signed by Little Flower Superintendent John Edwards, date services delivered and installed July 12, 2002; Service Certification for FRN 638905 signed by Little Flower Superintendent John Edwards, date services delivered and installed, July 12, 2002; Service Certification for FRN 638969, signed by Little Flower Superintendent John Edwards, date services delivered and installed, November 1, 2001. *See also* Attachment 18, FCC Form 474, dated November 1, 2001, for FRN 537681. (No Service Certification was requested for FRN 537681).

638928	July 12, 2002	John Edwards, LF Superintendent	July 11, 2007
537681	July 12, 2002	John Edwards, LF Superintendent	July 11, 2007
638969	November 1, 2001	John Edwards, LF Superintendent	October 31, 2006
638905	July 12, 2002	John Edwards, LF Superintendent	July 11, 2007

In the Administrator’s Decision to the Parties, USAC argues that “the deadline for delivery and implementation of non-recurring services is September 30 following the close of the funding year.”²⁴ However, USAC has improperly interpreted “the final delivery of service for a specific funding year” in the FCC’s *Fifth Report and Order*.

If the Commission had intended final delivery of service to occur on September 30th following the close of the funding year, as USAC asserts, it would have expressly stated so in its *Fifth Report and Order*. The *Fifth Report and Order* was issued four years after the Commission adopted the rule to extend deadlines of non-recurring services. Still, USAC failed to provide any support for its interpretation that the Commission intended for the five-year deadline for E-Rate Program inquiries into statutory or rule violations to track the extension of deadlines of non-recurring services. USAC cannot unilaterally adopt its own rules in the absence of Commission authority.

Moreover, USAC’s attempt to interpret the Commission’s *Fifth Report and Order* exceeds the scope of its authority pursuant Section 54.702(c)²⁵ of the Commission’s rules. If USAC had desired to bring clarity to the Commission’s Fifth Report and Order, it could have sought Commission guidance under Section 54.702(c).²⁶ USAC, however, chose not to do so.

For these reasons, the Commission’s decision to sunset USAC’s inquiries “within a five-year period after final delivery of service for a specific funding year” is appropriate. The Commission’s *Fifth Report and Order* recognizes that its rules and decisions change dramatically over time and that any review that exceeds five years would be unjust and unreasonable given the changes in business circumstance and the burden on the Parties to conduct research of old facts given the applicant’s and Parties’ limited resources. As a result, the Parties respectfully request that the Commission reverse the Administrator’s Denial, rescind the USAC Demand Letters and fully fund the above FRNs.

The *Fifth Report and Order* is dispositive on USAC’s completion of inquiries “within a five-year period after final delivery of service for a specific funding year.” However, in the interest of addressing USAC’s rationale set forth in its COMAD Denials and preserving all arguments on appeal, the Parties respond in more detail below.

B. USAC Is Not Legally Authorized to Issue a COMAD For Procedural Reasons

²⁴ See USAC COMAD Denials, page 2, ¶2.

²⁵ 47 C.F.R. §54.702(c)(2008) (stating that, “Where the Act or the Commission’s rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.”).

²⁶ *Id.*

As explained above, USAC has failed to prove or cite any violation of federal statute or Commission competitive bidding rules in its COMAD denials. In its 2001 *Universal Service Order*, the Commission stated that USAC can only recover funding for a violation of federal statute.²⁷ The Commission further held in its *Fifth Report and Order* that actions that fail to rise to the level of a statutory violation or Commission regulation do not require recovery.²⁸

In this case, there is no evidence that Integra and/or A+ violated a federal statute or competitive bidding rule of the Commission. Even assuming, for argument's sake, that Integra and/or A+ failed to follow USAC procedures, that would not be grounds for recovery of disbursed funds. The Commission has held that if the "procedural violation is inadvertently overlooked during the application phase and funds are disbursed, the Commission will not require that they be recovered, except to the extent that such rules are essential to the financial integrity of the program, as designated by the agency, or that circumstances suggest the possibility of waste, fraud, or abuse, which will be evaluated on a case-by-case basis."²⁹

Here, Little Flower relied on the OGS master contract list to purchase wireless equipment and installation from Integra, a reseller of Symbol. As indicated earlier, A+ should have been listed as Symbol's reseller instead of Integra, because all of Integra's services and operations were being transitioned to A+. Symbol, however, failed to amend its OGS master contract to reflect the change to A+ until 2004. Symbol's failure to amend its contract resulted in a procedural glitch. Despite the glitch, there is no evidence that any abuse occurred because none did. Little Flower remained in complete control at all times of its competitive bid process. As a result, USAC lacks the authority to issue a COMAD on procedural grounds and the recovery of funds is not required in this case.

C. USAC Failed to Demonstrate a Violation of Commission Competitive Bidding Requirements

USAC has failed to provide any evidence that Integra and/or A+ violated the Communications Act or the Commission's competitive bid rules and decisions.

The FCC Form 470 is the official FCC request for E-Rate services and initiates the competitive bidding process for the E-rate Program.³⁰ As such, the Commission requires the applicant to follow certain steps to ensure that the competitive bid process is fair and open. For one, the FCC Form 470 must be signed by a person authorized to request the services on behalf of the applicant.³¹ In addition, the FCC Form 470 requires the applicant to name a contact person, who is responsible to speak with prospective service providers.³²

²⁷ *Universal Service*, Report and Order, 14 FCC Rcd 2769 at ¶11 (1999).

²⁸ *Fifth Report and Order* at ¶19.

²⁹ *Id.*

³⁰ *Description of Services Requested and Certification Form*, OMB 3060-0806 (FCC Form 470).

³¹ FCC Form 470 Instructions at 19-20.

³² *Id.*

The Commission reaffirmed these requirements in its 2000 *MasterMind* Order.³³ In that case, MasterMind sought the Commission's review of USAC's denial of funding requests. Certain funding requests were denied even though a MasterMind employee was not listed as the contact person and a MasterMind employee had not signed the school district's Form 470 or Form 471.³⁴ In that decision, the Commission found that USAC had erred in denying requests for support that did not name a service provider as the contact person on the Forms 470 or 471.³⁵ Importantly, the Commission found that no competitive bid violation occurred where the applications did not name a MasterMind employee as the contact person and a MasterMind employee did not sign the FCC Forms 470 and 471. The Commission concluded, however, that an applicant surrenders control of the bidding process and violates the Commission's competitive bidding process when a service provider serves as a contact person on the Forms 470 or 471 or signs those forms.³⁶

MasterMind was the controlling law during FY 2001. However, USAC has failed to adhere to the Commission's conclusions in the *MasterMind* Order and has failed to apply the Commission's *MasterMind* holdings to the facts in this case. In this case, the service provider was not listed as a point of contact on Little Flower's FCC Forms 470 or 471. Rather, Myra Polite, a Little Flower employee, was listed as a point of contact on Little Flower FCC Forms 470 and 471. In addition, Little Flower Superintendent John Edwards signed and certified Little Flower's FCC Form 470.

Furthermore and most critical and significant to this appeal is the fact that Little Flower did not delegate its power and responsibility to any entity that participated as a vendor in the competitive bidding process.³⁷

For the past five years, Little Flower has consistently and repeatedly told USAC that it never relinquished control of the competitive bidding process. In 2003, Little Flower Superintendent John Edwards told USAC's auditors that Little Flower never surrendered control of the process "not only in terms of who communicated with the prospective service providers, but what was provided in response to the inquiries."³⁸ In 2005, then Superintendent George Grigg reaffirmed the role of Integra as "supplying clerical and support staff to assist in the transfer of information provided to it" by Little Flower.³⁹ Grigg stated further that "Integra has always been neutral, has never had any undue influence over Little Flower, nor have they displayed any inappropriate conduct during the Form 470 process."⁴⁰

³³ *Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services*, 16 FCC Rcd 4028 (2000) ("*MasterMind* Order").

³⁴ *Id.* at 4033 ¶6.

³⁵ *Id.* at 4033 ¶14.

³⁶ *MasterMind* Order at 4033, ¶10.

³⁷ Grigg 2006 Letter. *See also* Attachment 17, Declaration of David Antar.

³⁸ Little Flower 2003 Letter.

³⁹ Grigg 2005 Letter.

⁴⁰ *Id.*

In 2006, Grigg responded again to USAC with the same refrain: Integra's E-Rate consultant provided "limited neutral assistance in the preparation of our form 470. ... At no time did Little Flower relinquish control of the procurement process to anyone other than Little Flower personnel. In addition, no information was shared with any service providers that would have tainted the competitive bid process."⁴¹

As stated earlier, Little Flower relied on a New York State-approved contract list available through OGS for prospective service providers. In addition, Little Flower also awarded similar eligible services to other service providers. For example, Little Flower's FCC Form 471 for FY 2001 indicates that Avaya, Inc. and Eastern Suffolk BOCES also were selected as service providers for FRNs totaling \$18,609.00.⁴² Those awards serve as further evidence that Little Flower maintained control of the selection process and chose an array of services providers rather than granting exclusive provision of eligible services to a single provider.

Instead of relying on the Commission's *MasterMind* decision, USAC, in denying Little Flower's funding requests, relied on outdated information listed on company Web sites. USAC argues in its Further Explanation of Commitment Adjustment Letter⁴³ that Integra's Web site "does not appear to include information about its E-Rate consulting services" and that A+'s Web site indicates that it can be contacted at the same address as Integra. USAC asserts that the Web site demonstrates an improper relationship between the companies.

Nevertheless, USAC correctly states that the Web sites did not contain information related to Integra's E-Rate consulting services. As such, USAC improperly bases its rationale for denial on the basis that the E-Rate consulting services partnered with services providers. This is factually incorrect. Integra's consulting services never partnered with any service provider. The only vendor partnerships that existed were service provider-to-service provider partnerships, which is common, every day industry practice for these types of services.

USAC, however, reviewed the Web sites well beyond FY 2001 and perhaps as late as 2007. As a result, the Web sites have changed over time. In addition, even assuming that in 2001 Integra's Web site lacked information about its E-Rate consulting services, that would not be unusual. At the time, Integra was still a service provider acting as a reseller of Symbol's wireless equipment and installation. As stated earlier, Integra was transitioning all of its services and operations to A+. At worst, USAC's Web site observations demonstrate that Integra and A+ were lax in updating the transition of service provider functions online. It is absurd, however, to conclude, as USAC does, that failure to maintain information on a Web site is a statutory or regulatory violation. There is no

⁴¹ Grigg 2006 Letter. *See also* Antar 2006 Letter (noting that Integra's E-rate consultant never was listed as contact for Little Flower and that all communications go through and are approved by Little Flower); *See also* Attachment 18, Declaration of Rosanne Sweeney.

⁴² Little Flower Form 471, App. No. 230544, Billed Entity No. 123977, FY 2001-2002.

⁴³ Further Explanation of Commitment Adjustment Letter to Integra from USAC, dated September 28, 2007, page 2. Explanation of Commitment Adjustment Letter to A+ from USAC, dated September 28, 2007, page 2. ("Explanation Letters"). *See* footnote 9.

federal statute, Commission rule or Commission precedent stating that outdated Web site information constitutes a violation of the Commission's competitive bidding process.

USAC, in misapplying the law to the facts in this case, is exceeding its authority by attempting to inappropriately extend its reach. Moreover, it is unusual that USAC did not even cite to *MasterMind*, the controlling law at the time of the alleged violations, in its COMAD Denial and Demand Payment Letters.⁴⁴ Instead, USAC cites as its only legal authority a 2007 Commission decision⁴⁵ that did not even exist in FY 2001—the funding year at issue—and that therefore cannot apply retroactively to actions that occurred in FY2001.

Because USAC failed to meet its burden in proving a violation of the competitive bidding process and because the facts in this case fully comply with the Commission's *MasterMind* decision, the Commission should reverse USAC's denials.

D. Mailing Forms to Track Delivery is Clerical in Nature

USAC also based its funding denial on the fact that the certification for Little Flower's FY 2001 Form 470 was mailed from Integra's Massapequa, New York, office. The Commission has determined that the mere act of mailing FCC Form 470 certifications does not constitute a violation of its competitive bidding process. In its *Caldwell Parish* Order,⁴⁶ the Commission reviewed USAC's funding denials of applicants who gave their FCC Forms 470 certifications to an employee of a service provider to mail to USAC using the service provider's Federal Express account. In reaching its conclusion, the Commission found that the service provider's "provision of Federal Express mailing service for the certifications does not, by itself, rise to the level of a violation of the competitive bidding process."⁴⁷ While the Parties note that the Commission was not clear as to whether it granted retroactive status to this issue, the facts in *Caldwell Parish* are similar to Integra's. Integra mailed the certification for Little Flower's FCC Form 470 after it was signed by Little Flower's School Superintendent.

As in *Caldwell Parish*, in this case, Rosanne Sweeney, as the E-Rate consultant, not service provider, mailed the certification as a means to track and deliver the certification. Nonetheless, USAC determined that this action, in conjunction with unexplained similarities in the FCC Forms 470, constituted improper service involvement and violated the Commission's competitive bidding rules.⁴⁸ Because Little Flower's consultant never engaged in any competitive bid processes for Little

⁴⁴ Explanation Letters, page 3.

⁴⁵ *Request for Review of a Decision of the Universal Service Administrator by Send Technologies*, CC Docket No. 02-6, DA 07-1270 (2007).

⁴⁶ *Requests for Review of Decisions of the Universal Service Administrator by Caldwell Parish School District, et al.*, Order, , DA 08-449, CC Docket No. 02-6 (rel. Feb. 22, 2008).

⁴⁷ *Id.* at ¶12.

⁴⁸ *Request for Review of the Decision of the Universal Service Administrator by Academy of Careers and Technologies, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5348, 5349, para. 3 (finding that USAC improperly denied requests for funding based on its "pattern analysis" procedure when USAC stopped its review after identifying a pattern in certain applications without sufficiently examining whether the Commission's rules were actually violated due to improper third-party participation in the competitive bidding process).

flower, a consultant mailed Little Flower's certification merely to provide for the tracking and timely filing of the document, the Commission should conclude that Integra's assistance did not interfere with the competitive bidding process.

V. Conclusion

We respectfully request the Commission to grant this joint appeal because USAC failed to file its COMAD Denials in accordance with the Commission's five-year deadline. As a result, USAC's action is time-barred.

Even if the Commission finds that USAC's actions were timely, the Commission should find that the facts demonstrate that Little Flower alone was responsible for the competitive bidding process. At no time did Little Flower delegate authority of the competitive bidding process, or surrender its control to any another entity.

USAC's—and the taxpayers'—resources are best served when USAC focuses on whether schools and applicants are engaged in open and fair competitive bidding process rather than how or where the schools file their forms. The evidence in this case clearly establishes that Little Flower remained in complete control of the preparation and filing of its Forms 470 and that no service provider was involved in the competitive bidding process. The Commission cannot permit USAC to disregard the record and make decisions that lack grounding in fact and in law.

If the Commission finds that the Parties have erred, it should conclude that theirs was a minor, clerical error. The Commission has held that procedural violations do not warrant recovery of funds.⁴⁹ Finally, the Commission has ruled that administrative errors do not constitute competitive bid violations.⁵⁰ In this case, the failure to amend the OGS master contract to add A+ led Little Flower to erroneously include Integra on its Form 471. Accordingly, the Commission should reverse USAC's COMAD Denials.

⁴⁹ *Fifth Report and Order* at ¶19.

⁵⁰ *Bishop Perry Order* at ¶8.