

**Before the  
Federal Communications Commission  
Washington, D.C.**

**In the Matter of:**

Appeal for Review of decisions	)	
of the Schools and Libraries Division	)	
of the Universal Service Administrative	)	
Company for Coahoma County School	)	Application Number
District, Clarksdale, Mississippi	)	477513
	)	
Joint Board on Universal Service	)	CC Docket No. 02-6

**Appeal for Review of Funding Commitment Adjustment Decision made March 24,2009 by Coahoma County School District, Clarksdale, Mississippi Billed Entity Number 128533, Form 471 Application Number listed above and funding request 1319043.**

In accordance with the Code of Federal Regulations Title 47, Part 57, Section 54.719, Coahoma County School District (Coahoma) hereby requests the Federal Communications Commission (Commission) review the decision of the Universal Service Administrative Company (Administrator) captioned above.

**Coahoma County School District**

Coahoma County School District is an impoverished school district in rural Mississippi serving 1,600 students at six schools, each with an E-Rate discount of 90 percent, with approximately 100 percent of students eligible for the National School Lunch Program. The district discount rate is 90 percent. The annual school budget is modest and insufficient to provide our teachers and students with state-of-the-art technology found in more affluent school systems. Without E-Rate discounts, affordable telephone service, telephone systems or improvements to Local Area Networks in our schools would be out of reach. Discounts on basic maintenance of eligible equipment helps augment our technology budget. The E-Rate program was structured specifically to

make advanced services such as those here under appeal to school districts such as Coahoma.

Throughout the E-Rate program Coahoma has applied for discounted service in a fiscally responsible manner. Unlike some high-discount schools or libraries, we have never used our discount rate to abuse the program or order extravagant services.

### **Background**

The Year 2005 E-Rate funding requests for Coahoma schools included a request for discounted cellular phone services. The Form 471 application that included a funding request for cellular phone services was submitted to the Administrator via the online submission system. The certification page for this application was signed and submitted on February 18, 2005. Item 21 attachments were submitted to the Administrator on February 19, 2005. Item 21 attachments detailed each funding request and were submitted in the format suggested on the Administrator's Web site. Funds were disbursed on November 9, 2006.

On January 8, 2008, KPMG, represented by Christopher Staake, initiated an E-Rate examination of compliance with Commission Rules and Orders related to disbursements made between July 1, 2006 and June 30, 2007. KPMG is an audit firm hired by the Administrator to perform attestation examinations of selected beneficiaries. Initial documents that detailed some of the things KPMG wanted to know and see were sent to Coahoma on January 10, 2008. Coahoma responded to this in a timely manner. Mr. Staake and other KPMG Administrative staff conducted an Entrance Conference on January 22, 2008 to explain the details of the E-Rate examination to Coahoma staff and start the onsite part of the examination. Coahoma received its findings from the

examination on February 11, 2008. On February 14, 2008, KPMG conducted an Exit Conference explaining the findings and ending the onsite part of the examination.

Finding EF-304.4 stated: “Coahoma County School District (CCSD) did not perform an Express Parties List (EPL) bid evaluation as required under State of Mississippi ITS contract list and local school district requirements.” On February 21, 2008, Coahoma responded to this finding with the following response: “CCSD followed the rules as stated in the Program Compliance 2005 training document that applicants must be able to document why they selected the specific provider off the master contract. We’ve sent you documents that showed that Cellular South was the only local vendor listed on the EPL that had coverage for this area at the time. There is no state or local procurement document that states that we were required to bid for services listed on the State Master Contract EPL.”

On September 2, 2008, a management representation letter was sent to the Administrator outlining the details of the findings. The Administrator’s management response comments stated: “Program Rules require an applicant to conduct a competitive bidding process prior to selecting its service provider. Since the Beneficiary states they feel the rules were followed, USAC will reach out to the Beneficiary to obtain copies of the documentation. If the documentation does not support their claim, USAC will seek recovery by the auditors. USAC management concurs with the recommendation.”

Coahoma received a letter on January 28, 2009 from Adrian Sewdat, the Administrator on January 28, 2009, asking Coahoma to confirm if we agreed with the commitment adjustment and recovery of improperly disbursed funds determination. The commitment adjustment amount is \$16,197.30; therefore, the amount of funds that the

Administrator declared was improperly disbursed funds is \$9,070.00. Since Coahoma did not agree with the Administrator's determination, we had 15 days to respond with supporting documentation. On February 9, 2009, the State E-Rate Coordinator for the Mississippi Department of Information Technology Services (ITS) responded on our behalf to Mr. Sewdat. Coahoma made a follow-up call to Mr. Sewdat to see if he got the information he needed. He informed Coahoma that he was in discussion with our state E-Rate coordinator and that he would contact us if he needed any further explanation or documentation. Coahoma was not contacted again until March 24, 2009.

On March 24, 2009, almost two months after the commitment adjustment letter from the Program Compliance team was sent, the Administrator mailed a Notification of Commitment Adjustment letter to Coahoma informing us that our funding commitment will be rescinded in full and the Administrator will seek recovery of any disbursed funds, \$9,070.49, from the applicant.

With this appeal, we will show that Coahoma followed all rules as it relates to FCC, state, and local procurement/competitive bidding requirements. The Administrator acted on an incorrect interpretation of ITS Express Products List (EPL) requirements. As such, the funding commitment adjustment decision must be reversed. All pertinent documents were submitted in the E-Rate examination of compliance to KPMG and are on file with them.

### **Procurement/Competitive Bidding**

The Administrator, in its Funding Commitment Adjustment report, cites that Coahoma certified a Funding Year 2005 FCC Form 470 for the services in question. Specifically, the Administrator states: "On your FY 2005 FCC Form 470, you certified

that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements.” The facts will show that Coahoma did not file, therefore, did not certify a Funding Year 2005 FCC Form 470 for the cellular phone services. ITS filed the form 470 on behalf of all school districts in the state of Mississippi. Coahoma only referenced this 470 when filing its 471 application. ITS places bids for cellular and other goods and services on behalf of Mississippi agencies, universities, community/junior colleges, and governing authorities (cities, counties, school districts, etc.). ITS EPLs are multi-vendor awards that meet Mississippi requirements for legal purchases.

The Funding Commitment Adjustment report also stated: “During the course of an audit it was determined that you failed to comply with all FCC, state and local procurement/competitive bidding requirements because you did not perform an Express Products List (EPL) bid evaluation as required under the State of Mississippi Information Technology Services Schools and Libraries Program Master Contracts requirements.” Coahoma chose a vendor off the EPL based off best price and service in the area at the time. ITS Cellular Express Products (EPL) 3389-B only encourages customers to work with more than one vendor as a decision is made.<sup>1</sup> Under the Negotiate/Evaluate section of the EPL, it also states “EPL Customers must still do their own evaluation to support that they are choosing the products and vendors that meet their “lowest and best” criteria.”<sup>2</sup> The ITS Procurement Handbook states: “Since there are multiple options, the

---

<sup>1</sup> Mississippi Department of Information Technology Services Cellular Express Products List (EPL) 3389-B, Released January 7, 2005 at 2.1”ITS encourages you to work with more than one vendor as you make your decisions”

<sup>2</sup> Mississippi Department of Information Technology Services Cellular Express Products List (EPL) 3389-B, Released January 7, 2005 at 2.2.1”EPL Customers must still do their own evaluation to support that they are choosing the products and vendors that meet their “lowest and best” criteria.”

purchaser is responsible for evaluating each option within the category and documenting for the purchasing file the rationale for making a selection.”<sup>3</sup> Coahoma provided KPMG evidence of this evaluation by giving them coverage maps and price per minute breakdowns. The Funding commitment adjustment report suggests that we were required to do a “bid evaluation” as opposed to doing an “evaluation” as stated above. There’s no EPL rule or procurement policy that requires Coahoma to do a “bid evaluation”. This implies that Coahoma bids out the services, which ITS has already done for us, and then evaluates the bids.

On February 17, 2009, Coahoma was contacted by KPMG for another audit. This time it was an E-Rate examination of compliance with Commission Rules and Orders related to disbursements made between July 1, 2007 and June 30, 2008. This came only after a few days of receiving the letter from Adrian Sewdat, asking Coahoma to confirm if we agreed with the commitment adjustment and recovery of improperly disbursed funds determination from the E-Rate examination of compliance with Commission Rules and Orders related to disbursements made between July 1, 2006 and June 30, 2007. During this audit the same issue came up about the procurement/competitive bidding requirements but it was only for a different item from a different EPL. The language was exactly the same where it encourages you to work with more than one vendor<sup>4</sup> and it says

---

<sup>3</sup> Mississippi Department of Information Technology Services Procurement Handbook, at 011-030 Procurement Instruments: Express Products Lists (EPLs) Responsible Use of EPLs “Since there are multiple options, the purchaser is responsible for evaluating each option within the category and documenting for the purchasing file the rationale for making a selection.”

<sup>4</sup> Mississippi Department of Information Technology Services LAN Express Products List-Networking #3330-B, Released January 7, 2004 at 4.1”ITS encourages you to work with two or more vendors as you make your decisions.”

that customers must still do their own evaluation to support their decision.<sup>5</sup>

Coahoma provided KPMG the same type of documentation that we provided them during the previous examination. Coahoma also provided KPMG with email from the ITS EPL Team leader that concurred with us that stated: “Per the Instructions for Use for LAN EPL - Networking # 3330b, page iii, item 4.1, ITS encouraged the customer to contact two or more EPL vendors in making their EPL purchase decisions, but there was no requirement that they contact two or more EPL vendors.” Coahoma’s explanation along with supporting documentation satisfied them and it wasn’t listed as a finding. This represents two different interpretations of state and local procurement/competitive bidding requirements from the same firm, KPMG.

### **State Master Contract List**

The State of Mississippi ITS contract list is a list put together by the E-Rate department of ITS. It list contracts that have been bid by ITS and have been awarded. EPLs are referenced in this list for multi-vendor awarded contracts.

Finding EF-304.4 from KPMG makes reference to this contract list by stating that Coahoma did not perform an EPL bid evaluation based on a requirement of this contract list. This list only references contracts; it does not list rules regarding the contracts. This list does list guidelines for purchasing services not listed on the ITS Master Contract List, though.

It also includes a statement that from our state E-Rate coordinator that advises districts to get two quotes from vendors listed on the EPL. Our state E-Rate Coordinator

---

<sup>5</sup> Mississippi Department of Information Technology Services LAN Express Products List-Networking #3330-B, Released January 7, 2004 at 4.1.1” EPL Customers must still do their own evaluation to support that they are choosing the products and vendors that meet their “lowest and best” criteria.”

also clarified this in his email to Mr. Sewdat by stating: “This is my advice to them, to help them when PIA calls and asks for justification in their choosing a vendor from the EPL. This is not a state procurement rule.” He went on to say that “no state procurement rule was violated” by Coahoma and that his “advice to applicants is not considered a procurement rule”.

## **Conclusion**

The apparent final decision of rescinding in full and seeking recovery of any disbursed funds from Coahoma appears to rest with whether or not a “bid evaluation” or an “evaluation” was required to support the selection of a vendor. KPMG and the Administrator describe an evaluation as a “bid evaluation”. The state procurement handbook and the referenced EPL only use the term “evaluation”.

Coahoma also met all other FCC, state, and local requirements. Coahoma did evaluate by analyzing lowest and best cost along with coverage areas. KPMG and the Administrator incorrectly concluded that a “bid evaluation” was required. The State of Mississippi ITS EPL team leader and the State E-Rate Coordinator both concurred with Coahoma’s interpretation. The funding commitment adjustment decision must be reversed.

Respectfully submitted this 22<sup>nd</sup> day of May, 2009,

Anthony Dixon

Coahoma County School District

1555 Lee Drive

Clarksdale, MS 38614

Ph: 662-624-5448 Fax: 662-624-5512

[adixon@coahoma.k12.ms.us](mailto:adixon@coahoma.k12.ms.us)