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E-Rate Funding—Guaranteed

October 14, 2009

Letter of Appeal
Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

The New Jersey School Development Authority (NJSDA) hereby requests a review of the Universal Service Administrative Company's denial of the funding request listed below, and requests that the funding for the FRN be restored.

The person who can most readily discuss this with you is the district's E-Rate consultant:

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Funding information:

Funding Year: 2008
FRN: 1711303
Form 471 #: 621028
BEN: 15218925
Entity Name: New Jersey School Development Authority

The Funding Commitment Decision Letter (FCDL) for this funding request (FRN), dated June 10, 2009, lists three reasons for modification of the funding request:

1. Removal of ineligible equipment,
2. Modification of dollar amount to agree with underlying documentation, and
3. Reduction of discount to a level that could be validated based on third-party data.

The FCDL also lists two denial reasons:

1. Cost-effectiveness: ports/student and drops/student ratios are too high, and
2. No Priority Two funding available at 80% discount level.

The NJSDA is not appealing the first two funding modifications. The third modification reason causes the second denial reason, so this appeal covers two areas: the proper discount level for this application, and the cost effectiveness of this application

Discount Level Calculation

This request for funding is for a new school being built as a replacement for the Speedway School. The discount level for the Speedway School on the Newark School District's Form 471 #677536 for 2009-2010 is 90%. That application, approved by PIA, shows 85.9% of students eligible for free and reduced lunch. This data is taken from the 2008-2009 school year, and is the most current data available for determining the appropriate discount level for the Speedway School. Based on the best data available, the discount level for the Speedway School should be 90%.

Cost Effectiveness

According to the FCC guidance in the Ysleta Order, in the event that the applicant conducts an open, competitive bidding process and receives only one bid, it must ensure that the bid is cost-effective, that is "services are priced so high as to be considered not cost-effective under our rules."[1] The cost-effectiveness guidance from the Ysleta Order does not apply in this case, as: 1) there was more than one bid, and 2) prices were not "exorbitant."

In USAC's applicant training in the Fall of 2008, the reasons given for Cost Effectiveness Review were:

1. Costs of the products and services are significantly higher than the costs generally available in the applicant's marketplace for the same or similar products or services.
2. Equipment is priced two or three times greater than the prices available from commercial vendors.[2]

In this case, the review was initiated because USAC found that the technology design included a number of drops which USAC considered inappropriate for the number of students. The design for this school was developed by the architect's subcontractor following state guidelines and the Newark School District technology plan, and was approved by the school district, the New Jersey Treasury's Department of Community Affairs, and the NJSDA.

The Commission has not granted USAC the authority to overrule state guidelines or district technology plans in order to enforce USAC's own standard for drops/student or ports/student. USAC can only find that a funding request is not cost-effective if: 1) price was not the primary factor in selecting a bidder, or 2) the unit prices on a bid are "exorbitant."

The number of drops and data ports for this project were developed in compliance with state guidelines and the district technology plan for drops/classrooms and students/classroom. In this case, USAC is overruling state and local requirements, in

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[1] *Ysleta Order*, FCC-03-313, paragraph 54.
[2] "Cost Effectiveness Review," slide 5, USAC applicant training, Fall 2008.

direct violation of FCC rules that "[E-Rate] competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements."[3] In order to comply with USAC standards for drops/student, the NJSDA will not be able to comply with state and local requirements.

To reduce the number of drops and ports would require revisions to the local technology plan (moving away from state standards), followed by a redesign of the technical specifications (which must be approved by the district, the NJ Treasury Department and the NJSDA at three stages of development), a rebid of the E-Rate and non-E-Rate portions of the contract, delaying the opening of the school by at least a year.

Since USAC has not informed the applicant what number of drops/student is cost-effective, the applicant will have to guess at what the standard is, then make the changes described above, then apply again for funding. If the new guess is too high, the applicant will have to go through the entire process again, delaying the project another year. This guess-and-apply cycle could go on for years.

If the Commission has set a standard for the maximum number of drops per student, then the number of drops/student in this case should be calculated using an enrollment of 690. As stated on the project page for this school,[4] the school is designed for 690 children. The RFPs available from that page provide the "new construction RFP" documents as specified in the USAC training.[5] The size of the school is designed to meet the district's future needs, and does not include excess capacity. The NJSDA cannot provide free and reduced lunch forms or attendance records are available, since the expanded school will not open until January 2010. USAC rules allow applicants to make purchases to accommodate planned expansions. The district plan to expand this school was approved by the NJ Department of Education before the building was designed.

The New Jersey School Development Authority requests that this funding request be approved. If the funding request cannot be approved, the NJSDA requests that the Commission inform us of the correct number of drops for this facility, so that the district can request an exception to the state guidelines, rewrite the local technology plan, redesign the project, and rebid the contract.

Thank you for your attention to this matter.

Sincerely,

Dan Riordan
President

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[3] 47 C.F.R. § 54.504(a).
[4] http://njsda.com/Schools/schools/descr_det.asp?SchoolID=13-3570-x07
[5] "Cost Effectiveness Review," slide 11, USAC applicant training, Fall 2008.