Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of	)	
Decision of the	)	**File Number:**
Universal Service Administrator by	)	
	)	**CC Docket Number: 02-6**
Kansas City Unified School District 500	)	
	)	
Schools and Libraries Universal Service	)	
Support Mechanism	)	
	)	

REQUEST FOR REVIEW

Petitioner, Kansas City Unified School District 500, respectfully requests that, pursuant to the authority contained in Sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and pursuant to the authority delegated in sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review as filed by Petitioner be granted by the Federal Communications Commission, that USAC's denial be overturned, and that minimum processing standards be waived for good cause shown. In support of this Request, Petitioner Kansas City Unified School District 500 states and alleges as follows:

STATEMENT OF FACTS

1. Kansas City Unified School District 500 (hereinafter referred to as "Petitioner") is a Kansas school district located in Kansas City, Kansas. The district includes roughly 20,000 students, including 44 eligible funding sites.

2. The Kansas City Unified School District 500 applied for funding through the Schools and Libraries Division of the Universal Services Administrative

Company (hereinafter referred to as "USAC") which administers the Universal Service Fund.

3. In Funding Year 2009, Petitioner applied for USAC Funding to be used to procure local phone service (PRI lines and T1 lines) for the benefit of Petitioner.

4. On December 24, 2008, Petitioner filed Form 470 Description of Services Requested and Certification, pursuant to the competitive bidding requirements of USAC.

5. Form 470 is a Request for Proposals. These documents are voluminous and highly complex (as the FCC has stated). A copy of the Form 470 as filed by Petitioner is attached hereto as Exhibit A.

6. Pursuant to the competitive bidding requirements, Form 470 must be posted for 28 days so as to allow for proper comprehension and analysis by prospective bidders.

7. Petitioner's Form 470 included a statement that no additional Requests for Proposals were being submitted by Petitioner.

8. On February 12, 2009, Petitioner filed Form 471, application number was 665917.

9. No bids had been received by January 21, 2009, pursuant to Petitioner's Form 470 Description of Services Requested and Certification. January 21, 2009, was the end of the competitive bidding window.

10. AT&T was the then current vendor for Petitioner for the relevant services. On January 22, 2009, AT&T confirmed that it would not change the relevant prices.

11. On February 2, 2009, Mr. Joseph R. Fives, the Director of Technology and Information Services for Petitioner, dispatched an e-mail to Surewest and Paetec, both of which are technological companies providing information technology services of the nature needed by Petitioner. This e-mail was not a Request For Proposals, but rather an informal communication directing Surewest and Paetec to consult the Form 470.

12. The email sent by Mr. Fives does not resemble the Form 470 Request for Proposals in form or in function. No new information was provided and the e-mail was designed to direct the companies to the Form 470 Description of Services Requested and Certification which was the only Request for Proposal submitted by Petitioner in Funding Year 2009.

13. Following presentation of bids from Surewest, Paetec and AT&T, a contract was signed between Petitioner and Surewest on February 9, 2009 as Surewest provided the lowest priced bid.

14. Cost was the only factor in choosing the winning vendor.

15. On July 8, 2009, Petitioner submitted bid documentation referred to as "RFP 20022" to USAC.

16. Petitioner's bid documentation was denied by USAC on or about December 30, 2009. A copy of USAC's Funding Decision Commitment Letter is attached hereto as Exhibit B.

17. On February 24, 2010, Petitioner's Appeal was denied by USAC based upon the erroneous assertion that the e-mail of February 2, 2009, was a formal Request for

Proposals. A copy of Petitioner's Letter of Appeal to USAC as well as the Denial is attached hereto as Exhibit C.

ARGUMENTS AND AUTHORITIES

18. The Federal Communications Commission (hereinafter referred to as "the FCC") has the authority on appeal to waive minimum processing standards as established by USAC, which is a derivative administrative agency of the FCC. See: The Federal Communications Act of 1934, As Amended, 47 USC §151, et seq.

19. Based upon a review of the relevant precedent, good cause exists to waive the minimum processing standards established by USAC.

20. The only alleged error in the processing standard was an e-mail, which was an informal communication directing Surewest and Paetec to consult the Form 470 and is attached hereto as Exhibit D. Clearly this e-mail does not comport with any Form 470 or 471 as required by USAC.

21. Given the requirements of the USAC program, which the FCC has admitted are complex and onerous, it is reasonable to excuse minor clerical errors.[1]

22. The FCC has maintained that the "[R]ules and instructions for filing the FCC Form 471 are vague and unclear" and that resulting misunderstandings leading to forms being filed out of time warrant review and reversal of denials by USAC.[2]

23. The primary objective of the USAC program is to ensure that schools and libraries benefit from the Schools and Libraries Universal Service Support Mechanism as contemplated by the Statute.[3]

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[1] *In Re: Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al,.* ¶21, adopted May 19, 2006.

[2] *In Re Requests for Waiver of Decisions of USAC by Academy for Academic Excellence, Apple Valley, California, et al.* ¶4. Adopted March 9, 2007. (Schools and Libraries Universal Support Mechanism, File Nos. SLD-539076, 539722 et al, CC Docket No. 02-6)

24. "Importantly, applicants' errors could not have resulted in an advantage for them in the processing of their application. That is, the applicants' mistakes, if not caught by USAC, could not have resulted in the applicant receiving more funding than it was entitled to. In addition, at [that] time, there [was] no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements." This resulted in undue hardship. Applicants demonstrate here that rigid compliance with the application procedures does not further the purposes of section 245(h) or serve the public interest.[4] Here, Petitioner incurred no benefit nor received any additional funding to which it was not entitled. There is no evidence of waste, fraud, or abuse or misuse of funds.

25. The alleged violation at issue is procedural rather than substantive. Precedent demonstrates that such a violation warrants review and reversal.[5]

26. Granting this request for waiver of minimum processing standards will not interfere with monies held by the Universal Service Fund as should these requests all be fully funded, these funds have already been collected and held in reserve. No prejudice results to the Universal Service Fund or to the public interest.[6]

27. Specifically, precedent exists for review and reversal of a USAC denial based upon misinterpretation of a Request for Proposal. Some of these documents were

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[3] *In Re Naperville Community Unit School District 203, Naperville, Illinois*, ¶9, adopted February 27, 2001

[4] *In Re: Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al.*. ¶11, adopted May 19, 2006. *See Also* 47 USC §254(h), discussing the USAC program's primary goal of serving the public interest.

[5] *In Re Requests for Waiver of Decisions of USAC by Academy for Academic Excellence, Apple Valley, California, et al.* ¶5. Adopted March 9, 2007. (Schools and Libraries Universal Support Mechanism, File Nos. SLD-539076, 539722 et al, CC Docket No. 02-6). *Citing In Re: Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al.*. ¶14, adopted May 19, 2006.

[6] *In Re Requests for Waiver of Decisions of USAC by Academy for Academic Excellence, Apple Valley, California, et al.* ¶6. Adopted March 9, 2007. (Schools and Libraries Universal Support Mechanism, File Nos. SLD-539076, 539722 et al, CC Docket No. 02-6).

categorized by petitioners as "Requests for Quotes" or "Description of Services" and were merely "[…] restatement of information on their FCC Forms 470."[7]

CONCLUSION

Petitioner respectfully requests that, pursuant to the authority contained in Sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §151-154 and 254, and pursuant to the authority delegated in sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), and pursuant to the precedent of *The Bishop Perry* Order, et al, that the Requests for Review as filed by the Petitioner be granted and that a waiver of minimum processing standards be granted in this case. Petitioner respectfully requests that USAC's denial be reversed.

Joseph R Fives

Joseph R. Fives
Director, Technology & Information Services
Kansas City Kansas USD 500

Date: APRIL 21, 2010

Dr. Jill Shackelford
Superintendent of Schools
Kansas City Kansas USD 500

Date: 4/21/2010

[7] *In Re: Requests for Review of Decisions of the Universal Service Administrator by Approach Learning and Assessment centers, Santa Ana, CA, et al.*, ¶¶7-8. Adopted October 30, 2008. File Nos. SLD-506121, et al, CC Docket No. 02-6.