



June 4, 2010

Letter of Appeal  
Federal Communications Commission  
Office of the Secretary  
445 - 12th Street, S.W.  
Room TW-A325  
Washington, DC 20554

CC: 02-6

Re:	Form 471 Application Number:	432427
	Funding Year:	2004
	Applicant's Form Identifier:	TISD 04
	Billed Entity Number:	142108
	FCC Registration Number:	0013525662
	SPIN:	143022561
	Service Provider Name:	Complete Networking Solutions
	Service Provider Contact Person:	Mike Salas
	Notification of Commitment Adjustment Letter Date:	April 7, 2010

We would like to formally appeal the decision as stated in the Commitment Adjustment Decision Letter received April 7, 2010, "it was determined that the applicant did not have a contract in place at the time of the submission of the Form 471."

Please refer to the attached Memorandum and Ratification of Agreement signed and dated by Paul Vranish, Superintendent Tornillo Independent School District and Mike Salas, Complete Networking Solutions on May 26, 2010. The purpose of the document is to affirm and ratify the contractual agreement between both parties regarding the installation of internal connections and information services i.e. fiber optic cable during the 2004 funding year.

According to state requirements, a person can accept an offer by a written contract, a bilateral contract or a unilateral contract. We believe a unilateral contract existed between both parties because the receipt of goods and services were rendered by the vendor as approved and funded by USAC. Please refer to the attached letter by Mike Salas that helps support our position.

It should be noted, and we are sure you agree, that there is no question that the equipment and services were delivered and installed that year, that the price for this procurement was well within the norms for a project of that type in that funding year, and that there is no question as to the appropriate use of the fiber backbone, etc. – the District still uses them on a daily basis as it acts as the main network back bone that connects our 2 campuses. Finally the project "makes sense" in the context of the internal assessment conducted at the time which established that we needed a high speed connection between campuses.

TORNILLO INDEPENDENT SCHOOL DISTRICT



The District would like to make it clear that in no way have these funds, equipment and services been used for anything other than the intended purposes. We are one of the 10 poorest school districts in Texas; the District relies on E-Rate funding to provide its students and teachers with an opportunity to experience technology as they would in urban areas. We are not in the business of manipulating or cheating programs to fund frivolous technology projects. Given the preponderance of our good faith efforts to comply with the program standards, it is our formal request that you close this case with a favorable ruling for Tornillo ISD and allow us to put this matter behind us.

Sincerely,

Tornillo Technology Department  
Paul Vranish  
Superintendent  
PO Box 170  
Tornillo, TX 79853  
P: 915-765-3000  
F: 915-764-2120  
[vranishpl@tisd.us](mailto:vranishpl@tisd.us)  
[erate@tisd.us](mailto:erate@tisd.us)

CC: Mike Salas (Complete Networking Solutions)

**MEMORANDUM AND RATIFICATION OF AGREEMENT**

STATE OF TEXAS

COUNTY OF El Paso

The purpose of this document is to affirm and ratify the contractual agreement between Tornillo Independent School District and Complete Networking Solutions regarding the installation of internal connections and information services i.e fiber optic cable.

Wherein, the parties hereto entered into a binding contractual agreement for the installation of fiber optic cable initially for the funding year 2004.

The parties entered into negotiations and Complete Networking Solutions supplied Tornillo Independent School District full and complete bid information and documentation for the project which in due course was agreed upon and accepted by Tornillo Independent School District in all aspects, thereby forming a mutually agreeable binding contractual agreement for the installation of fiber optic cable.

The project was fully and satisfactorily completed by Complete Networking Solutions and the resulting internal connections and information services were accepted by Tornillo Independent School District.

Whereas, both parties now herein affirm and ratify said contractual agreement in all aspects, terms and conditions for all purposes.

Dated: May 26, 2010.

Tornillo Independent School District

Complete Networking Solutions

By: [Signature]  
Tornillo ISD

By: [Signature] 5-26-2010  
Mike Salas  
President

JUN 2010

FCC Mail Room

May 9, 2010

Paul Vranish, Superintendent  
Tornillo Indep School District  
PO Box 170  
Tornillo, TX 79583

RE: Form 471 Application Number: 432427  
Funding Year: 2004  
Applicant's Form Identifier: TISD 04  
Billed Entity Number: 142108  
FCC Registration Number: 0013525662  
SPIN: 143022561  
Service Provider Name: Complete Networking Solutions  
Service Provider Contact Person: Mike Salas

According to the Notification of Commitment Adjustment Letter for Funding Year 2004 originated on April 7, 2010, during a review USAC determined that Tornillo ISD did not have a contract in place at the time of submission of the Form 471. My office has been unable to produce our copy of the contract initiated prior to the filing of the Form 471 and contingent upon the school's approval of E-Rate funding.

Consideration needs to be given to the numerous discrepancies in the information provided for completing the process and the fact that there was no contract number listed on the 471 at the time that the FRN was approved and the Funding Commitment Decision Letter was issued.

It is customary for Complete Networking Solutions to obtain a signed contract when selected as a Service Provider for the filing of a 471. Each contract is enacted contingent upon funding. However, the guidance offered by the Universal Service Administrative Company is inconsistent and often contradictory of other sections of such guidance.

*USAC's Step 4: Contract Guidance states: Obtaining the service provider signature and date is not a program requirement, but state and/or local contract law may include this as other compliance requirements. (Reference: Highlighted section of attached.)* In that statement and numerous other sections of the rules and regulations, it requires applicants and service providers to meet all state contract requirements. We understand that according to state requirements, a person can accept an offer by one of numerous methods including: a written contract, a bilateral contract or a unilateral contract.

A unilateral contract suggests undeniable proof of the receipt of goods and services that were approved and funded on the FRN. All materials and services were purchased and installed within the timeframe of the funding period: July 1, 2004 through June 30, 2005. The agreement between Tornillo ISD and Complete Networking Solutions was clear, understood and contingent upon E-Rate Funding. The project did and continues to follow the purpose of the E-Rate Program to provide your school affordable access to telecommunications and information services.

Sincerely,  
Mike Salas dba Complete Networking Solutions





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### Schools and Libraries

#### About the Schools and Libraries Program:

- 1 Overview of the Program
- 2 Overview of the Process
- 3 Outreach and Training
- 4 RAIM Overview
- 5 Filing Appeals
- 6 Understanding Audits

#### Schools and Libraries Tools:

- 1 Apply Online
- 2 Comments
- 3 Submit a Question
- 4 Latest News
- 5 Calendar/Reminders
- 6 Required Forms
- 7 Reference Area
- 8 Search Tools
- 9 Citations and Corrections
- 10 Suspensions and Debarments
- 11 Program Complaint
- 12 Whistleblower Hotline
- 13 Submitting a Complaint

Applicants and service providers must meet all Federal Communications Commission (FCC) and state contract requirements.

#### CONTRACTS

In general, a contract is a binding agreement, enforceable by law, between two or more parties that creates an obligation to do, or not do, something. Contract definitions and requirements are contained in each state's or territory's contract law.

Except for services to be delivered under non-contracted (either on month-to-month arrangement) FCC rules require that an applicant sign a contract with the service provider before signing and submitting a completed *Services Ordered and Certification Form* (Form 471). Applicants must be able to demonstrate that they had a signed and dated contract in place at the time they submitted a completed Form 471. Applicants must also comply with state and/or local contract law. Obtaining the service provider signature and date is not a program requirement, but state and/or local contract law may include this or other compliance requirements.

Acceptable standards for applicant signature and dated contract -examples:

- Applicant handwritten signature and signature date
- Date contract awarded may be contained in the body of the contract, or
- Date contract awarded may be in the opening statements of the contract.

When state and/or local contract law does not require the applicant to sign and date the contract, the applicant will be given the opportunity to complete a certification statement. The certification statement affirms that the applicant is compliant with their state and/or local contract law.

Verbal agreements and quotes do not meet FCC requirements. Generally purchase orders do not meet USAC contract guidelines. We recommend that if applicants intend to use a purchase order as their contract they check their state and/or local contract laws to ensure that purchase orders must state and/or local contract requirements.

#### Establishing Forms 470

The establishing *Description of Services Requested and Certification Form* (Form 470) is the form that serves as the basis for the competitive bidding process. For a multi-year contract, the establishing Form 470 for that contract could have been posted in a previous funding year.

#### Qualified existing contracts

A qualified existing contract is:

- A signed, written contract executed pursuant to the posting of a Form 470 in a previous funding year
- A contract signed on or before July 10, 1997 and reported on a Form 470 in a previous year as an existing contract

#### Tariffed services provided under a contract

A tariffed service provided under contract is a service offered under one or more tariffs and for which a contract has been signed. In all cases, funding requests for which a contract has been signed should be reported as contracted services. Form 471 Black 5 should include the Contract Number in Item 16 (not a "T"), the Contract Award Date in Item 18, and the Contract Expiration Date in Item 20.

#### STATE MASTER CONTRACTS

A state master contract is a contract that is competitively bid and put in place by a state government entity for use by others.

#### Filing the Form 470

#### Step 4: Submit a Service Provider

- 1 Select a Service Provider
- 2 Add Service Provider
- 3 Add Contract
- 4 Add Contract
- 5 Contract Guidance
- 6 Add Contract

**If the state files a Form 470**, then the applicant may use the state's Form 470 on its Form 471. The state must follow a competitive bidding process pursuant to FCC requirements and state procurement law.

The applicant is required to follow the applicable provisions of the state master contract and state and local procurement laws. No separate bid/contract documents or contracts are required by the applicant using the state's Form 470, other than what is required by the state master contract and state and local procurement laws. The signed state master contract between the state and the service provider meets the FCC signed contract requirement.

**If the applicant files a Form 470** and considers a state master contract as one of the bids, the applicant must follow a competitive bidding process pursuant to FCC requirements and state and local procurement law. Price must be the primary factor. That is, it must be weighed more heavily than any other factor.

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.

**Reporting the Contract Award Date for state master contracts**

The Contract Award Date shall not be earlier than the 29th day after the posting of the Form 470. If an applicant files its own Form 470 and chooses either a new or a pre-existing state master contract as the most cost-effective bid, the applicant should record its decision to purchase off the state master contract after the bidding process is complete and to record the date of this memorialization as the Contract Award Date on the Form 471.

**Purchase orders or other state master contract requirements for applicants**

If the state master contract requires the issuance of purchase orders or contains other requirements for applicants, the applicants must meet those requirements. For example, if the state master contract requires the applicant to issue a purchase order by July 1, then the applicant is required to meet that deadline.

**MULTI-YEAR CONTRACTS AND CONTRACTS INCLUDING VOLUNTARY EXTENSIONS**

A multi-year contract means a contract that covers more than one year. For example, a three-year contract would expire at the end of the third year. A contract including voluntary extensions means that the contract expires at the end of its original term and may be voluntarily extended for one or more years pursuant to the provisions in the contract.

To comply with FCC competitive bidding requirements, the applicant must indicate in its Request for Proposals (RFP) and Item 7 of the Form 470 its intent to enter into a multi-year contract for services or a contract that includes voluntary extensions. The applicant must also indicate the type of services for which it is seeking a multi-year contract.

**When voluntary extensions are indicated in Item 13 of Form 470 and in the RFP, if an RFP was used, the applicant does not have to post a new Form 470. In the event the Form 470 does not indicate voluntary extensions, the contract cannot extend the contract beyond its original expiration date without posting a new Form 470.**

FCC rules grant a limited extension of the competitive bidding rules for contracts for non-recurring services. [C]ontracts for non-recurring services may be voluntarily extended to comply with the appropriate deadline for the implementation [of delivery and installation for non-recurring services]. Parties may not, however, extend other contractual provisions beyond the date established by the Commission's rules without complying with the competitive bidding process. (FCC 01-195 released June 29, 2001). If an applicant is granted an extension of time for delivery and installation of non-recurring services, the applicant may extend the relevant contract without rebidding. Applicants should file a Form 500 to notify USAC of such contract extensions.

**Multi-year contracts for newly-eligible services or entities**

If the original Form 470 or RFP did not include the newly-eligible services or entities, the applicant will be required to post a new Form 470 for those services.

